monthly total flow-through rates, Qwest's total flow-through rates are comparable to those of BOCs that the Commission has previously approved.[409] We also note several measures taken by Qwest to ensure continued improvement of flow-through rates. These include change requests that are scheduled to be adopted with the IMA 12.0 release (scheduled for April 2003) to install additional business process layer (BPL) edits to improve automatic rejects so that errors that currently cause LSRs to fall out for manual handling will be rejected upfront instead.'" This will enable the competing LEC to make the correction and resubmit the LSR so it will flow through.'" Additionally, Qwest clarified business ordering rules and competing LEC disclosure documentation with the IMA 11.0 release.[412]

111. With respect to commenters' second argument, we disagree that Qwest's low commercial flow-through rates for orders that are eligible to flow through require that we find that Qwest is not compliant with checklist item 2.[413] Commenters state that even the third-party test showed a higher failure rate for Qwest's UNE-platform transactions designed to flow-through than third-party tests for other BOCs.[414] We find that Qwest has met the flow-through benchmarks under PO-2B for most states over the past nine months.[415] At the same time,

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fail to flow through and submit proposed improvements to the CMP. *See* Qwest III Notarianni/Doherty Reply Decl. at 94.

409 Qwest I Reply at 40 citing ***Bell Atlantic New York Order*** at n.512 and 569; ***Verizon Massachusetts Order*** at para. 49; ***Verizon Rhode Island Order*** at Appendix B; ***Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance). NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine,*** CC Docket No. 02-61, Memorandum Opinion and Order, 17 FCC Rcd 11659, Appendix B (2002) ***(Verizon Maine Order);*** and ***Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey,*** WC Docket No. 02-67. Memorandum Opinion and Order. 17 FCC Rcd 12275, Appendix B (2002) ***(Verizon New Jersey Order).***

410 Qwest I Williams Decl. at para. 116.

411 *Id.*

412 ***Id.***

413 AT&T Qwest I Comments, Finnegan Decl. at para. 138; Covad Qwest I Comments at 40 (stating that 67% of its flow-through eligible orders submitted via GUI and 44% via EDI fell out and were manually processed); Touch America Qwest I Reply at 15; WorldCom Qwest I Lichtenberg Decl. at para. 37.

414 WorldCom Qwest I Comments at 9-10; WorldCom Qwest I Comments, Lichtenberg Decl. at para. 35. We note that the third-party test showed 94-96% achieved flow-through rate for resale, 95-97% for UNE-platform, 84-88% for unbundled loops, and 100% for ported numbers. KPMG Final Test at 158-168 (Tests 13-1-3, 13-1-4, 13-1-5, 13-1-6, 13-1-7, 13-1-8, 13-1-9, 13-1-10, 13-1-11).

415 Qwest 111 Notarianni/Doherty Reply Decl. at para. 93. *See* also PO-2B-1 (Elec Flow-through for All Elig. UNE-platform POTS LSRs Rec'd via GUI) and PO-2B-2 (Elec Flow-through for All Elig. WE-platform POTS LSRs Rec'd via EDI). We note that Qwest has missed the benchmark in Idaho for PO-2B-I for LNP orders for all four months (four month average of 78%), and in Utah for LNP orders (four-month average of 72%). Qwest also (continued....)

benchmarks were raised in July 2002. Qwest missed the upwardly adjusted benchmarks, but flow-through rates have continued to improve since July.[416] We expect that Qwest's flow-through rates will improve over time as individual carriers gain experience with the OSS and Qwest conducts training for competing carriers to help improve their order submissions.[417]

112. With respect to the third argument, we find that the disconnect problems associated with conversions from Centrex 21 do not have a competitively significant effect. Qwest states that, unlike conversions where the product remains unchanged, during a conversion of Centrex 21 to a POTS service, there is a 30-second period when a customer is out of service.[418] This occurs for retail customers converting from Centrex 21 to POTS service, as well as conversions from Centrex 21 to UNE-platform or resale POTS.[419] Qwest states that a longer out-of-service period occurs in rare circumstances when lines involving hunt groups with the call forwarding feature are served by a Nortel DMS100 switch.[420] Qwest has been able to identify only two Eschelon orders that fell into this category between January and June 2002.[421] Because this outage affects so few of Eschelon's orders and is typically less than a minute in duration, we find that this issue does not rise to the level of checklist non-compliance.

(vi) Other Ordering Issues

113. *Equivalent Access to Due Dates.* We find that Qwest offers nondiscriminatory access to due dates. Although PO-15, which measures the number of due date changes per order, shows that Qwest has changed due dates for wholesale more than it has for its retail customers,[422] we do not find this discrepancy to be competitively significant. As explained above, some of the due date changes are the result of service being provisioned to its competitors ahead of schedule.

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missed the benchmark for all four months in Utah for PO-2B-1 and PO-2B-2 for POTS resale orders (four-month average of 81% for orders submitted via GUI, 47% for orders submitted via EDI). Qwest also missed the benchmark for PO-2B-2 in Wyoming for July through September (four-month average of 86%).

416 *Id.*

417 *See* Qwest I Reply at 39.

418 *See* Qwest Aug. Sa Ex *Parte* Letter at 7

419 *See id.* Additionally, Qwest states that in order to minimize the impact to end users, these types of orders are worked between 11 PM and 6 AM.

420 *See id*

421 *See id* *See also* Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene Donch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Dec. 5,2002) at 1 (Qwest Dec. 5a *Ex Parte* Letter).

422 *See* PO-IS (Number of Due Date Changes per Order)

We therefore reject AT&T's assertion that competing LECs suffer from a higher rate of postponed installation, and that this delay causes customer dissatisfaction.[423]

d. Billing

114. Consistent with the determinations of the commissions of the nine application states, we find that Qwest provides nondiscriminatory access to its billing functions."'' **As** discussed below, Qwest offers competing carriers access to a set of billing systems that are the same systems Qwest uses for its own retail operations. In combination, these billing systems provide **all** the information, in **an** appropriate format, that is necessary for competing carriers to have a meaningful opportunity to compete. Qwest's commercial performance data demonstrate its ability to provide competing carriers with service usage information in substantially the same time and manner that Qwest provides such information to itself, and with wholesale carrier bills in a manner that gives competing carriers a meaningful opportunity to compete. In sum, Qwest has met, with few exceptions, the benchmarks for timeliness, accuracy, and completeness in providing usage information and **for** wholesale bills.[425] Moreover, in finding that competing carriers have a meaningful opportunity to compete, we rely on third-party testing, conducted by KPMG, which found Qwest's billing system to be accurate and reliable.''"

115. Pursuant to the Commission's prior section 271 decisions. BOCs must provide competitive LECs with two essential billing functions: (i) complete. accurate and timely reports on the service usage of competing carriers' customers and (ii) complete. accurate and timely wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.'" Service-usage reports and wholesale bills are issued by incumbent LECs **to** competitive LECs for two different purposes. Service-usage reports are issued to competitive LECs that purchase UNEs, such as unbundled switching, and measure the types and amounts **of** incumbent LEC services used by a competitive LEC's end users.[428] In contrast. wholesale bills are issued by incumbent LECs to competitive LECs to collect compensation **for the** wholesale inputs, such as

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423 AT&T Qwest I Comments at 40; AT&T Qwest 1 Comments, Finnegan/Connolly Menezes Decl. at paras. 139-141.

424 Colorado Commission Qwest I Comments at 44-45; Qwest 1 Application App. C. Recommendation of the lowa Board Key Recommendations, Vol. 1, Tab 5 at 3; Idaho Commission Qwest I Comments **at** 13-14; Montana Commission Qwest II Comments at 19-22; Nebraska Commission Qwest I Comments **at** 2, 8-9; North Dakota Commission Qwest I Comments, Consultative Report at 281; Utah Commission Qwest II Comments ***at*** 1; Washington Commission Qwest 11 Comments at 14; Wyoming Commission Qwest II Comments at 6.

425 See BI-1 (Time to Provide Recorded Usage Records), BI-2 (Invoices Delivered within 10 Days), B1-3 (Billing Accuracy – Adjustments for Errors), and BI-4 (Billing Completeness).

426 KPMG Final Report at 15-16,

427 ***Verizon*** Pennsylvania ***Order,*** 16 FCC Rcd at 17427, para. 15; ***Verizon*** *Massachusetts* ***Order,*** 16 FCC Rcd **at** 9043-44, para. 97; *SWBT Kansas/Oklahoma* ***Order,*** 16 FCC Rcd at 6316-17, para. 163; Bell *Atlantic New* ***York Order,*** 15 FCC Rcd at 4075, para. 226.

428 ***See,*** *e.g.,* ***Bell*** *Atlantic New* ***York Order,*** 15 FCC Rcd at 4075, para. 226

unbundled elements, used by competitive LECs to provide service to their end users.[429] Wholesale bills are essential because competitive LECs must monitor the costs they incur in providing services to their retail customers.[430] We discuss both elements of billing below.

(i) Service Usage

116. We find that Qwest demonstrates that it provides competing carriers with complete, accurate and timely reports on the service usage of its customers in substantially the same time and manner that it provides such information to itself.[431] Specifically, Qwest. using the same process that it uses for its own end users, collects competitive LEC end-user usage data and provides competitive LECs with a cumulative record of their customers' usage via the Daily Usage File (DUF).[432] Competitive LECs then are able to reconcile Qwest's DUF with their own usage records to ensure Qwest accurately charges them for their customers' usage.[433]

117. We reject concerns raised by commenters because they do not raise issues relevant to our section 271 analysis or do not provide enough evidence to support a finding of checklist non-compliance.[434] For example, Eschelon asserts that Qwest does not provide complete and accurate records of switched access minutes of use (MOU).[435] Eschelon asserts, and we agree, that Qwest would benefit inappropriately in two ways if this allegation were true: (1) it would deprive competitive LECs of revenue by decreasing the amount of access charges they collect

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429 *See, e.g., Verizon Pennsylvania Order,* 16 FCC Rcd at 17425, para. 13. Qwest's wholesale bills are generally issued on a monthly basis. Qwest I Notarianni and Doherty Decl. at paras. 490-95.

430 *SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6316-17, para. 163.

431 *id.;SWBT Texas Urder,* 15 FCC Rcd at 18461, para. 210; *Bell* Atlantic New *York Order,* IS FCC Rcd at 4075, para. 226.

432 Qwest I Notarianni and Doherty Decl. at para. 516

433 Competitive LECs may return the DUF to Qwest within 90 days of receipt for investigation of errors. *id.* at para. 524.

434 We reject AT&T's claims that Qwest failed to provide timely DUF files for the nine application states. AT&T does not directly state that it did not receive DUFs for the application states, but instead claims that it offers local service in Colorado, Arizona and Washington and that Qwest failed initially to provide DUFs for "two of those States until 2002." AT&T Qwest I Finnegan, Connolly and Menezes Decl. at para. I 16. AT&T's conclusory claims lack the specifics necessary to rebut Qwest's showing on this issue. Similarly, AT&T points to performance data from 2001 as evidence that Qwest's DUFs are incomplete or inaccurate. *Id.* at para. 224. In the instant proceeding, however, we consider only recent commercial data, beginning with June 2002, in making our decision. In addition, OneEighty claims that starting in August, 2002, it experienced a drop in the call termination records it received from Qwest. OneEighty Qwest III Comments at 14. We address issues raised by OneEighty under our discussion of checklist item number 11.

435 Eschelon Qwest I Comments at 25-26; Eschelon Qwest III Comments at 47-53. The Department of Justice indicated that it considered this allegation one that should command the Commission's attention. Department of Justice Qwest III Evaluation at 5, n.22.

from IXCs; and (2) as an IXC, Qwest would pay less than it should for access.[436] Eschelon provides evidence that it undertook an independent audit in which the auditor placed test calls and later examined records received from Qwest to determine if the calls placed appear in the records.[437] The audit determined that approximately 22 percent of the call records expected were not found, and that the missing records did not appear to be caused by Eschelon's processes.[438] In addition, Eschelon provides evidence that its MOU have dropped, without change in Eschelon's usage patterns."' After careful consideration, we reject Eschelon's *argument* and find that the evidence on the record demonstrates that Qwest provides competing carriers with complete, accurate and timely reports on their customers' service usage. In particular, the record shows that Qwest reviewed the audit report and performed an internal investigation."' Qwest explains, first, that its review of the call records was hindered by the age of the records and lack of relevant information from Eschelon."' Nonetheless, Qwest demonstrates that it accounts for 97.3 percent of the records it was able to research.[442] Of note, Qwest demonstrates that some of the calls that generated the greatest percentage of "missing" call records in the audit were, in fact, calls that do not generate access records.[443] Further, Qwest provides a reasonable explanation for the drop in Eschelon's MOU over a period of months that Eschelon does not dispute on the record. Qwest demonstrates that other carriers, including Qwest, had similar drops in access records during the same time period.[444] In addition to Qwest's nondiscriminatory performance, the independent

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436 Eschelon Qwest III Comments at 48.

437 Eschelon Qwest III Comments at 50-51, exhibit 39

438 *id*

439 Eschelon Qwest III Comments at 52-53.

440 Letter from R. Hance Haney, Executive Director - Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Nov. 8,2002) at 3 -8 (Qwest Nov. 8b *Ex Parte* Letter) (citing confidential version).

441 Id. at 3-4

442 Id at 4. Qwest claims that the methods used by the auditor made Qwest's investigation difficult by, for example, placing numerous calls on the same line to the same number with different calling patterns all within minutes of each other. Without Eschelon providing "connect time" in all instances, Qwest claims it was handicapped in investigating the calls. Id

443 *Id.* at 5. For example, local calls and directory assistance records do not generate switched access usage. *id.* Qwest's investigation showed that 80.9% of the records Qwest was able to research were successfully found by the auditor; 9.2% of the records were found by Qwest in the ADUF or ODUF records provided to Eschelon; 4.3% of the records were for uncompleted calls; 1.9% of the calls did not generate automatic message accounting (AMA) records (meaning that the test calls had not been answered and accordingly, did not generate usage records); 1.0% of the calls are not call types that generate access records. Finally, Qwest found a CRIS toll guide error accounted for the missing 2.7% of the records that should have generated access records. *id* at 4 - 5.

444 Qwest Nov. 8b *Ex* Parte Letter (citing confidential version). In addition, Qwest performed additional analysis and determined that a number of factors accounted for Eschelon's decreasing MOU, including: loss of the end-user to Qwest or another competitive LEC, line conversion to a loop account by Eschelon (which would no longer generate switched access), line disconnected, and lack of use on the line during the month by the end-user. Id. at 7.

third-party test that KPMG performed provides additional assurance that Qwest's DUF is delivered in a timely and accurate manner."'

118. We reject AT&T's contentions that Qwest fails to provide nondiscriminatory access to its billing functions. First, although AT&T is correct that it took Qwest six times to pass KPMG's military-style test for production processes related to DUF reports, Qwest ultimately demonstrated an ability to sufficiently provide service usage files due to process improvements such as additional training.[446] During the course of the test, KF'MG was also able to determine that Qwest's processes for creating and distributing the DUF files are functional, except for the aspects of the process that involve return of DUF records.[447] KF'MG used the Observations and Exceptions process to communicate DUF problems to Qwest, rather than the returns process. Accordingly, KF'MG was unable to determine if the DUF returns process would function appropriately in the event that a competitive LEC would choose to make such a return.[448] Thus, we rely here on the conclusions of the commissions of the nine application states, as well as that of KPMG, that Qwest demonstrates that it provides the requisite DUF functionality.[449]

(ii) Wholesale Bills

119. We find that Qwest's Customer Record and Information System ("CRIS") wholesale bills provide competitive LECs a meaningful opportunity to compete. Although Qwest provides competitive LECs with a billing format that is not an industry standard, we find that Qwest ultimately satisfies its evidentiary burden for demonstrating that its bills are

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445 KPMG Final Report at 413 (providing the results of Test 19-1-2, stating "DUF records produced by Qwest contain field values in accordance with both EMI guidelines and expected results").

446 Id. at 44-45. AT&T argues that Qwest failed KPMG's DUF tests five straight times before barely passing the sixth time and that these failures call into question the reliability of Qwest's DUF mechanisms. *Id.* at 45. We note that the purpose of KPMG's military style testing ("test until you pass") was to incent Qwest to implement systemic changes, such as additional training and software fixes, that would allow Quest to pass. Idaho Commission Qwest I Comments at 11 ("Many of the improvements Qwest implemented to improve its performance consisted of additional training or coaching of existing personnel.").

447 KPMG Final Report at 15-16.

448 Id. at 432 (referencing Test 19.6-1-17). Specifically, because none of the events occurred that would enable, or trigger, a review of these functionalities, KPMG was unable to observe various test criteria concerning DUF. Although KPMG issued an "unable to determine" rating, KPMG was able to conclude that processes are in place for these criteria. We agree with the Colorado Commission's conclusion that, because these triggering events have a low occurrence rate, and because no objections were filed regarding KPMG's finding that Qwest's processes are in place, Qwest has adequately demonstrated that it has sufficient processes in place for each of these components. Colorado Commission Qwest I Comments at 43-44.

449 *See, e.g., id.* at 44. We also encourage the state commissions to continue monitoring Qwest's billing performance and note, for example, that the Idaho Commission states that it will continue to monitor Qwest's performance in this area. If evidence reveals problems due to lack of inadequately trained staff, the Idaho Commission will address these issues within the periodic reviews contained in the performance plans. Idaho Commission Qwest 1 Comments at 10-11.

electronically auditable and, in combination with the commercial data and its DUF performance, comply with the OSS billing requirements under checklist item 2.

120. We begin our analysis with an overview of Qwest's wholesale billing systems and summarize the various steps Qwest has taken to provide competitive carriers with an auditable wholesale bill. Next, we describe the commercial performance of Qwest's wholesale billing systems. We then analyze the results of the third-party review **of** Qwest's billing systems. We also discuss the sufficiency of the evidence presented to demonstrate ***that*** Qwest provides complete, accurate, and timely wholesale bills.

121. ***Background.*** In **the** nine application states, Qwest utilizes the same system, CRIS, for billing resale and UNE- platform that it uses in the retail context.'" Qwest bills **resale** products, such **as** basic business and residential services, Centrex. and PBX, through CRIS.'" In addition, Qwest **uses** CRIS to bill UNE products such as unbundled **loops,** line sharing, sub-loops, EELs and UNE-platform.[452] Once Qwest generates a competitive LEC's wholesale bill using CRIS, Qwest is able to provide the bill electronically in either EDI **or ASCII** format.[453]

122. Commenters have raised a number of issues related to the ability of competitive carriers to audit wholesale bills, specifically UNE-platform bills generated by Qwest's CRIS.'" We agree with AT&T and WorldCom that Qwest must demonstrate that it can produce a readable, auditable, and accurate wholesale bill to satisfy its nondiscrimination requirements under checklist item 2.[455] Consistent with **the** Commission's ***Pennsylvania*** *271* ***Order,*** we find that for the BOC to meet the requirement that wholesale bills are auditable, a competitive LEC must be able to receive customer bills in an electronic format that reasonably permits the

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450 Qwest I Notarianni and Doherty Decl. at para. 491. Qwest utilizes at least **two** other billing systems, Integrated Access Billing System ("IABS") for a limited set of products, including Resale Frame Relay, LIS, UDIT, CCSAC. E911, as well **as** for recurring charges for collocation and dark fiber, and the Billing and Receivable Tracking System ("BARTS'), which is used for products and services not otherwise billed through CRIS or IABS. Id. at paras. 502,513; **see** *also* **KPMG** Final Report at **8.**

451 Qwest I Notarianni and Doherty Decl. at para. **491**

452 Id.

453 *Id.* at para. 498. In addition to several traditional transmission methods for the ASCII format, such as diskette and CD ROM, for example, all three of Qwest's billing formats can be provided via Web access. Id

454 The inability to audit bills electronically impedes a competitive LEC's ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reviewing complex paper bills or attempt to design software that can organize the information on the BOC's wholesale bills. Second, inaccurate bills cause a competitive LEC to expend unnecessary resources reconciling and pursuing bill corrections, to show improper overcharges **as** debts on its balance sheet until resolution, and to lose revenue where back-billing customers in response to an untimely wholesale bill becomes impossible as a practical matter. *Verizon Pennsylvania* Order, 16 FCC Rcd at 17431-32, para. 23.

455 AT&T Qwest I Comments at 46; WorldCom Qwest I Lichtenberg Decl. at para. 73.

competitive LEC to manipulate the data to perform audits on a customer-by-customer basis.[456] We decline in this proceeding, however, to specify particular billing systems, such as CRIS or CABS, or electronic billing formats, such as ASCII or BOS, that a BOC must provide.[457] Instead, we describe various functionalities that, in accordance with our past section 271 decisions, BOC wholesale bills must incorporate. We then consider whether Qwest's CRIS ASCII bills possess these attributes.

123. The ability to audit Qwest's CRIS ASCII wholesale bills to ensure they are both accurate and timely represents a crucial component of OSS.[458] To make this possible, the BOC must provide the billing data in a form that enables a competitive LEC. without unreasonable expense and delay, to manipulate the data into fields that reasonably correspond with its internal records, e.g., the identity of the customer accounts, services ordered, and relevant rate information. For practical purposes, the ability of competitive LECs to audit bills electronically depends on the availability of software, either directly from the BOC, commercially from a third-party vendor, or designed by an efficient competitor itself.[459] The billing format should support commonly available software that permits the competitive LEC to receive the bill via electronic interface, to compare the BOC's bill with the competitive LEC's internal records, and to prepare any inquiries for resolution by the BOC.

124. We find that Qwest's current electronic bills meet these criteria and note that the billing agent for at least one competitive LEC states that it is able to perform "detailed" electronic audits of Qwest's UNE-platform and resale bills.[460] We reject AT&T's assertion that

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456 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17428, n.51 (addressing transferability of a retail-formatted bill into a computer spreadsheet for computer auditing).

457 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17522, App. C, para. 30 (stating that national standards are not a prerequisite to the provision of access to any particular OSS function).

458 We note that Qwest asserts that no competitive LEC raised the issue of auditability of Qwest's bills as an issue during the ROC workshops or OSS test. Letter from Yaron Dori, Counsel for Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-148, at 3 (filed July 19,2002) (Qwest July 19 *Ex Parte* Letter) (citing confidential version).

459 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17440-41, para. 36 (discussing a third-party confirmation that commercial software was available to audit Verizon's wholesale bills).

460 Qwest Notarianni and Doherty Reply Decl. at para. 179, Reply Exhibit CLD-32, March 12,2002 E-Mail from Ted Bailey-BroadMargin.com to Pam Delaittre-Qwest. BroadMargin, a third-party vendor that audits Global Crossing's bill, states that it electronically receives Qwest wholesale UNE-platform and resale bills and performs detailed audits on these bills. *Id.* (stating also that Qwest's customer support staff has "been extremely helpful in resolving and answering any questions"). We reject AT&T's contention that its investigation of vendors who provide software to audit Qwest's CRIS bills demonstrates that those bills cannot be electronically audited. Letter from Amy L. Alvarez, District Manager – Federal Government Affairs, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-418 and 02-189 (filed Aug. 29,2002) at 4-6 (AT&T Aug. 29 *Ex Parte* Letter). We find AT&T's investigation results to be speculative and unconvincing. For example, AT&T's determination that the work required to audit Qwest's bills might "result in a substantial increase in the price of the software" provided by TEOCO, is not a compelling demonstration that Qwest's bills cannot be electronically audited. *See* Qwest III Application, App. Tab 5 at 8-12.

Qwest's CRIS ASCII bills only provide summarized volumes of services and their respective universal service ordering codes ("USOCs")."' While Qwest does provide a monthly bill that summarizes the total numbers of services ordered with the respective USOCs, Qwest also provides competitive **LECs** with a separate bill that itemizes certain information, such as USOCs and relevant **tax** information, for each of the competitive LEC's relevant customer accounts!" We also disagree with AT&T's assertion that Qwest's bills are not auditable because they are not provided via a Carrier Access Billing System in Billing Output Specification format ("CABS BOS"). Qwest has demonstrated, as one example, that an ASCII format version **of** the CRIS wholesale bill can be transferred to a variety of spreadsheet applications whereby the data can be manipulated.[463] In reaching our conclusion, we note that the Department of Justice has

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[461] AT&T Qwest I Finnegan, Connolly and Menezes Decl. at para. 234. See also Eschelon Qwest III Reply Comments at 2-5. We reject Eschelon's assertions regarding the auditability of Qwest's CRIS bills. As discussed herein, the record demonstrates that Qwest's bills are electronically auditable. See also Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Dec. 13,2002) (Qwest Dec. 13 *Ex* Parte Letter). Additionally, Eschelon fails to provide sufficient evidence to demonstrate that the complained of billing concerns are competitively significant. We also fmd WorldCom's claim that "it has hundreds of thousands of outstanding billing disputes open with Qwest" unpersuasive because WorldCom provides neither supporting details regarding the validity of these disputes, nor an explanation why CABS billing would resolve these billing issues. WorldCom Qwest I Lichtenberg Decl. at para. 73.

[462] Letter from Peter D. Shields, Counsel for Qwest, to Marlene H. Dortch. Secretary. Federal Communications Commission, WC Docket No. 02-148, at 2-4 (filed July 10,2002) (Qwest July 10 *Ex* ***Parte*** Letter); Qwest July 19 *Ex* Parte Letter at 1 (citing confidential version); see also Qwest III Application. Att. Tab **5** at 4-5. We reject AT&T's claim that Qwest's ASCII files, specifically UNE-platform wholesale bills, are too large to import into commercially available spreadsheets. AT&T Qwest I Reply at 38. In the event competitive LEC bills contain too many lines, Qwest will provide additional segmentation of sub-accounts. Qwest I Notarianni and Doherty Reply Decl. at para. 209. We note that, although Qwest processes bills in multiple billing centers throughout its 14-state region, the record in the instant application does not reflect any meaningful differences between the bills of the nine application states. AT&T Qwest I Reply at 37 (referencing a billing dispute in Washington). Similarly, we reject AT&T's assertion that the absence of summarized charges in bills issued by Qwest's central region billing center "effectively prevents" AT&T from auditing those bills. See AT&T Aug. 29 *Ex* ***Parte*** Letter at 1-3. The record demonstrates that all three of Qwest's billing regions contain equivalent audit-affecting billing information and a comparable level of detail. Qwest III Application, Att. Tab 5 at 6. Additionally, AT&T's complaint regarding summary information is relevant only to paper bills; Qwest provides electronically auditable bills that contain the requested summary information. *Id.*

[463] Qwest July 19 *Ex* Parte Letter at I (citing confidential version); see also Qwest I Notarianni and Doherty Reply Decl. at para. 210. Qwest's website provides competitive LECs with documentation containing instructions on importing CRIS ASCII files into competitive LEC software. Qwest I Notarianni and Doherty Reply Decl. at para. 179, Reply Exhibit CLD-26 at 6 (providing instructions on importing the ASCII bill into spreadsheets, relational databases, and word processing software packages). Qwest's documentation states that each data element in the ASCII format is divided, or delimited, by commas and/or quote marks ("comma delimited") which then allows the competitive LEC to import the data elements into commercial software. Qwest I Notarianni and Doherty Reply Decl. at para. 179, Reply Exhibit CLD-26 at 6. 15. Seven out of eleven competitive LECs in Colorado receive their wholesale bills in ASCII format. Qwest I Notarianni and Doherty Reply Decl. at para. 181, n.223. Also, four out of four competitive LECs in Idaho, two out of four competitive LECs in Iowa, and four out of five competitive LECs in Nebraska and North Dakota receive their wholesale bills in ASCII format. *Id.*

determined that the record "support[s] a positive assessment of Qwest's wholesale billing capabilities."[464]

125. In addition, we are encouraged by the fact that Qwest has responded in good faith to competitive LEC requests to support an additional industry standard format. On April 19, 2002, Qwest announced that it would provide competitive LECs with the option of having UNE-platform bills provided in CRIS BOS format.[465] From April 19,2002 to July 1,2002, Qwest sought comment from competitive LECs, made subject matter experts available for question and answer sessions, provided a month-long testing window, and, on July 1,2002, made this new format available.[466] Although we commend Qwest for making available a BOS-formatted bill, we do not rely on these bills as there is no commercial or third party evidence that Qwest's BOS bills can be successfully audited.[467] To the contrary, Qwest's introduction of BOS bills has not been problem free.[468] However, we are encouraged by Qwest's demonstrated willingness to work collaboratively with competing LECs to produce accurate and timely BOS bills.

126. Finally, although not of decisional weight, we note that Qwest has responded to the concerns raised in the record by voluntarily committing to a series of undertakings aimed at ensuring continued acceptable performance. Although we do not rely on these recent undertakings in finding that Qwest provides nondiscriminatory access to its OSS billing functions, these commitments give us additional confidence that Qwest will continue to deliver timely and accurate wholesale bills and endeavor to remedy wholesale billing disputes expeditiously. Qwest has voluntarily committed to proposing additional performance metrics for measuring billing dispute timeliness.[469] These new performance measurements, for dispute-

[464] Department of Justice Qwest III Evaluation at 8

[465] Qwest July 10 Ex Parte Letter at 2 (discussing Qwest BOS billing).

[466] Id Notably, AT&T acknowledges that it transmitted BOS test tiles for UNE-platform during June 2002 AT&T Qwest I Finnegan, Connolly and Menezes Decl. at para. 234.

[467] WorldCom Qwest I Lichtenberg Decl. at para. 70.

[468] See, *i.e.*, AT&T Qwest III Comments at 63, App. Tab E, Finnegan/Connolly/Wilson Decl. at paras. 75-115; Qwest III Notarianni/Doherty Reply Decl at paras. 134-139; Letter from Yaron Dnri, Counsel for Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148 and 02-189 (filed September 4,2002) (Qwest Sept. 4b Ex Parte Letter); Letter from R. Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Oct. 11,2002) (Qwest Oct.11a Ex Parte Letter).

[469] Letter from Anthony Luis Miranda, Counsel for Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-148, at 1-4 (filed August 2, 2002) (Qwest August 2d Ex Parte Letter). Qwest has committed to submitting the proposed billing PID BI-5 to competitive LECs and state commission staff as part of the ROC's long term section 271 PID administration process. Id. at 3-4; see also Qwest I Notarianni and Doherty Reply Decl. at para. 226 (stating that "Qwest will submit the proposed PID to Long Term PID Administration").

acknowledgement timeliness[470] and dispute-resolution timeliness,[471] represent important steps in ensuring that any billing errors are resolved in a timely fashion.

(iii) Billing Performance

127. ***Commercial Usage.*** Qwest's performance data demonstrate its ability to provide competitive LECs with service usage information in substantially the same time and manner that Qwest provides such information to itself, as well as wholesale bills in a manner that gives competitive LECs a meaningful opportunity to compete. Qwest consistently has met, with a few minor disparities which are addressed below, the benchmarks for timeliness, accuracy, and completeness in delivering service usage information and wholesale bills.[472] In addition, in finding that competitive LECs in the nine application states have a meaningful opportunity to compete, we rely on successful third party testing of Qwest's billing systems.[473]

128. AT&T challenges the commercial reliability of Qwest's wholesale bill.[474] AT&T contends that Qwest's own reported data on billing accuracy and bill completeness confirm that Qwest falls short of its obligation to provide nondiscriminatory access.[475] Although Qwest missed the parity standard for UNE and Resale billing completeness in Colorado, Idaho, Utah,

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470 Draft PID BI-5A measures the number of billing adjustment claims acknowledged during the month that are acknowledged within two business days after receipt. Qwest August 2d *Ex Parte* Letter at Att. 1. In June 2002, Qwest tracked this PID internally and reports a result of 90%. That figure rises to approximately 97% when one competitive LEC's results are removed from the calculation. The service representative for this competitive LEC was unaware of the 2-day acknowledgement requirement and "assumed that acknowledgement could accompany resolution within 28 calendar days." *Id.* at 2. Nonetheless, while we do not rely on Qwest's internal unaudited measurements, we are encouraged that Qwest has already begun to track its performance of BI-5. For the four-month period covering June through September 2002, Qwest missed the 95% benchmark in June and in July. Qwest's performance improved markedly in the two most recent months, where it exceeded the benchmark.

471 Draft PID BI-5B measures the number of billing adjustment claims acknowledged during the month that are resolved within 28 days after acknowledgement. Qwest August 2d *Ex Parte* Letter at Att. 1. In June 2002, Qwest tracked draft 91-59 internally and reports that it successfully resolved 97 of 102 disputes (95%) within 28 calendar days of the acknowledgement, with an average resolution timeframe of 20.7 days. *Id* at 3. Although we do not rely on Qwest's internal unaudited measurements, we are encouraged that Qwest has already begun to track billing dispute resolution performance and note that the record does not reflect any significant competitive LEC concerns regarding billing dispute resolution. For the four-month period covering June through September 2002, Qwest missed the 95% benchmark in June and in July. Qwest's performance improved markedly in the *two* most recent months, where it exceeded the benchmark.

472 The following PIDs were used to evaluate Qwest's billing performance: BI-1 Time to Provide Recorded Usage Records; BI-2 Invoices Delivered Within 10 Days; BI-3 Billing Accuracy-Adjustment for Errors; and BI-4 Billing Completeness.

473 KPMG Final Report at 407-80 (providing results of KPMG billing system tests).

474 AT&T Qwest I Comments at 44.

475 Id. at 46.

and Wyoming for the previous four months, the performance disparity was minimal.[476] Accordingly, we find that despite the *de minimis* difference in errors between Qwest's retail and wholesale bills, competitors have a meaningful opportunity to compete.

129. Qwest's billing accuracy performance, with few exceptions, is also sufficient.[477] Although Qwest missed the benchmark for UNE and resale billing accuracy in Washington[478] for three out of the last four months, the record demonstrates that Qwest's misses in July, August, and September in Washington were related to one time rate errors that are not likely to reoccur.[479] Qwest's other miss in Washington was *de minimis*, with Qwest performing at above 95% in June 2002. We are persuaded that these misses have been satisfactorily corrected and do not affect a competitive LEC's ability to compete.

130. We reject Eschelon's numerous assertions that Qwest's bills are not accurate.'" As discussed above, Qwest's commercial performance demonstrates that Qwest's commercial performance is adequate. To the extent Eschelon asserts that Qwest's bills have contained "invalid rates" that are inconsistent with its interconnection agreements, Eschelon should pursue its contractual dispute resolution process or raise the issue before the appropriate state commission.[481] Finally, Eschelon's allegations regarding Qwest's "Billmate" system do not

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476 Specifically, Qwest provides its retail customers approximately 2.05%, 1.27%, 1.98%. and 1.07% better service in this category than it provided Colorado, Idaho, Utah, and Wyoming competitive LECs, respectively. Similarly, in Iowa, and Montana, Qwest missed the same metric for two of the last four months, with the difference in performance amounting to approximately 0.79% and 0.07% in each state, respectively. BI-4A evaluates the completeness with which Qwest reflects non-recurring and recurring charges associated with completed service orders on bills.

477 The Department of Justice states that "[o]n the whole, Qwest's commercial performance and the third-party testing has satisfied the Department that, despite limited problems. Qwest's wholesale billing meets the requirements for accuracy." Department of Justice Qwest I Evaluation at 25, n.116.

478 In addition, Qwest missed parity for BI-3A (Billing Accuracy – Adjustments for Errors, UNEs/Resale) in Iowa, North Dakota, Nebraska, and Utah in three of the last four months. The record demonstrates that Qwest's misses in Iowa, North Dakota, and Utah were *de minimis,* with Qwest's averaging 1.59%. 1.09%, and 0.68% better performance for retail in Iowa. North Dakota, and Utah respectively, in the previous four months. In addition, Qwest's performance in Nebraska was within one percentage point of parity in *two* of the three months it missed. In August, 2002, Qwest demonstrates that it missed parity because it included a timely cost docket implementation in its reporting that should have been excluded. Qwest Nov. 8b *Ex Porte* Letter at 1-2.

179 Id. at 2; Letter from R. Hance Haney, Executive Director – Federal Regulatory, Qwest to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Nov. 20,2002) (Qwest Nov. 20a Ex *Parte* Letter).

480 Eschelon Qwest I Comments at 22-24

481 *See id.* at 22; see also Letter from Karen L. Clauson, Senior Director of Interconnection, Eschelon Telecom Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Dec. 4, 2002) (Eschelon Dec. 4 Ex *Parte* Letter) at exh. 46 (raising similar billing issues before the Arizona Corporation Commission). Further, Eschelon's allegations regarding the bills for UNE-Eschelon/UNE-Star appear to be disputes between parties, and more appropriate for the interconnection dispute resolution process. *Id.* at 22-23. Similarly, while Eschelon argues broadly that Qwest's practice of informing competing LECs of rate changes is imperfect, see (continued.. ..)

contain enough detail for this Commission to make a determination. Eschelon, for example, does not provide sufficient information regarding the data it considers necessary, but missing, from Billmate, or how the lack of such data harms Eschelon.[482]

131. *Third-Party Testing.* Our conclusions are bolstered by KPMG's third-party studies of Qwest's billing systems, processes and performance. Notably, KPMG concluded that Qwest can create and distribute bills to competitive LECs in an accurate and timely fashion.[483] Contrary to AT&T's claims that KPMG reviewed inaccurate and unreliable data,[484] we find that KPMG's data reconciliation sufficiently established the integrity of billing data.[485] KPMG's review provides relevant evidence of Qwest's billing performance to supplement the commercial performance data that Qwest has presented.

e. Change Management

(i) Change Management Process

132. In previous section **271** orders, the Commission has explained that it must review the BOC's change management procedures **to** determine whether these procedures afford an efficient competitor a meaningful opportunity to compete by providing sufficient access to the BOC's OSS.[486] In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, we first assess whether the plan is adequate by determining whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; *(3)* that the change management plan defines a procedure for the timely resolution of change management disputes; **(4)** the availability of a stable testing environment that mirrors production; and **(5)** the efficacy of the documentation the BOC makes available for the purpose of building an electronic gateway.[487] After determining whether the BOC's change

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id. **at 18-19, it does not suggest that Qwest's actions violate any of its stated procedures or demonstrate that Qwest's policies deny it a meaningful opportunity to compete.**

[482] ***See id.*** **at 22.**

[483] KPMG **Final Report at 16.**

[484] **AT&T Qwest I Comments at 47-48 (arguing that Qwest's manual processing of orders negatively affected data). WorldCom claims that the data are flawed because "presumably" Qwest lacks sufficient internal checks to verify the validity of its bills. WorldCom Qwest I Comments at 18. We disagree and find that KPMG's test provides adequate assurance that Qwest's internal processes are sufficient.** ***See, e.g.,*** **KPMG Final Report at 424 (referencing 19.6-1-4).**

[485] ***Id.*** **at 19.**

[486] ***Bell Atlantic New York Order,*** **15 FCC Rcd at 3999-4000, paras. 102-03;** ***SWBT Texas Order,*** **15 FCC Rcd at 18403-04, paras. 106-08.**

management plan is adequate, we evaluate whether the BOC has demonstrated a pattern of compliance with this plan."

(ii) Adequacy of the Change Management Process

133. *Organization and Accessibility.* We find that Qwest's current Change Management Process ("CMP") is clearly drafted. well organized, and accessible.[489] Qwest's CMP was created as a result of an extensive collaborative effort beginning in 1999 between Qwest and competitive LECs.[490] Beginning in July 2001, Qwest began replacing its former Co-provider Industry Change Management Process ("CICMF"') with the collaboratively designed CMP.[491] Qwest's CMP is memorialized in a single document entitled "Qwest Wholesale Change Management Process Document" and is available on Qwest's website.[492] We find that Qwest, through the CMP, effectively processes and communicates to competitive LECs "any changes in Qwest's OSS interfaces and to products and processes that are within the scope of the CMP."[493]

134. *Competing Carrier Input.* We find in particular that Qwest's CMP provides competitive carriers with substantial opportunities to address Qwest-proposed changes and to

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[487] *SWBT Texas* Order, 15 FCC Rcd at 18404, para. 108. We have noted previously that we are open to consideration of change management plans that differ from those already found to be compliant with the requirements of section 271. *Bell Atlantic New York* Order. 15 FCC Rcd at 4004. para. 111; SWBT *Texas* Order, 15 FCC Rcd at 18404, para. 109.

[488] *Bell Atlantic New* York Order, 15 FCC Rcd at 3999,4004-05, paras. 101, 112.

[489] Qwest I Application App. A, Tab 11, Declaration of Dana L. Filip (Qwest I Filip Decl). at paras. 24-25; Colorado Commission Qwest I Comments at 49 (concluding that "Qwest clearly meets this element of the FCC's test").

[490] Qwest I Filip Decl. at para. 4. We note that the Colorado Commission states that Qwest has in place the most comprehensive, inclusive, and forward-looking change management plan in the nation. Colorado Commission Qwest I Comments at 45.

[491] KPMG Final Report at 17. Qwest's CMP distinguishes between the Systems CMP that governs changes to electronic interfaces, and the Product/Process CMP that governs changes to wholesale products and processes. Id.

[492] Qwest I Filip Decl. at paras. 3, 24-25. The most recent draft CMP document has been available for several months on Qwest's website and is described by the Colorado Commission as being clearly written. Colorado Commission Qwest I Comments at 49. Moreover, Qwest and competing carriers jointly determined the contents of the CMP document during the redesign process. Colorado Commission Qwest 1 Comments at 49. The North Dakota Commission describes Qwest's CMP as clearly organized, readily accessible via Qwest's website, and containing a wealth of information including schedule of meetings and the status of requests. North Dakota Commission Qwest I Comments, Consultative Report at 172-73.

[493] Qwest I Filip Decl. at para. 4. We also note that the Commission has recognized that changes that do not impact OSS interfaces are not necessarily required to be a pan of a change management process. *Verizon Pennsylvania* Order, 16 FCC Rcd at 17451, para. 51 (accepting Verizon's argument that "the changes to the BOS BDT billing systems are 'back-office' OSS changes that do not impact OSS interfaces"). Nonetheless, Qwest has expanded its CMP process to include products and processes as well as changes to OSS interfaces.

initiate their own changes.[494] That is, the CMP was created with, and provides for substantial input from, competitive LECs.[495] As noted in previous section 271 applications, "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."[496] Here, Qwest's CMP provides a collaborative process in which competitive LECs are closely involved."' We encourage Qwest to continue to collaborate with competitive LECs through this important process.[498]

135. As part of the change management process, competitive LECs and Qwest meet at least two days a month to consider changes to the CMP.[499] In addition to providing a forum for upcoming releases, competitive carriers may both discuss change requests and prioritize requests at these meetings.[500] Competitive LECs are able to initiate a change request by e-mailing a completed change request form (which is available on the CMP website with detailed instructions) to Qwest's Systems CMP Manager."' Qwest's CMP Manager acknowledges receipt within two business days and within two more business days is responsible for posting the request to the CMP website and returning to the request originator a detailed report designating

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494 Qwest I Filip Decl. at para. 4. The Nebraska Commission found that competing carriers have had, and shall continue to have, substantial opportunities for meaningful input into the design and operation of Qwest's change management process. Nebraska Commission Qwest I Comments at 7.

495 KPMG Final Report at 508 (describing the CMP collaborative process).

496 *SWBT Texas* Order, 15 FCC Rcd at 18410, para. 117

497 In addition to the numerous opportunities, described herein, that competitive carriers have to communicate with Qwest regarding the CMP, the Colorado Commission informs us that the participants in the CMP redesign process have met in-person a total of 45 days in the last year with several carriers actively participating. Colorado Commission Qwest I Comments at 49. The Iowa Board found, in particular. that Qwest's CMP provides an effective forum for competitive LECs and Qwest to discuss and implement changes to Qwest's products. technical documentation, OSS interfaces, and processes that would result in changes to competing carrier operating procedures. Qwest I Application App. C, Vol. 1, Tab 15, IUB Conditional Statement Regarding Change Management Process Compliance at 8-9. Based on the evidence in the record. we are not persuaded by Eschelon's assertion that the change management process was "completed in a manner that precluded full review and participation, especially for small carriers." Eschelon Qwest I Comments at 27.

498 We reject AT&T's claims that Qwest has not completed the collaborative redesign process. AT&T Qwest I Finnegan/Connolly/Menezes Decl. at paras. 16-17. The issues AT&T raises – manual work-around processes and CMP voting procedures -- have been resolved and resolution of these issues demonstrates that competitive LECs are able to successfully request changes through Qwest's CMP. Qwest I Reply at 55–56.

499 Qwest I Filip Decl. at para. 4. The minutes from these meetings are posted on Qwest's CMP website and are regularly distributed to competitive LECs. *Id.;* see also North Dakota Commission Qwest I Comments, Consultative Report at 172-73 (describing the collaborative meetings).

500 Qwest I Filip Decl. at *paras.* 4-5. We note khat no commenter has questioned the effectiveness of the collaborative nature of this process. Nor has any commenter argued that Qwest does not adhere to the collaborative meeting schedule.

501 *Id.*

various Qwest subject matter experts, responsible directors, and the assigned request project manager.'" Within eight business days of receipt of the completed change requests, Qwest holds a clarification meeting with the request originator. If the request is received within three weeks of a scheduled CMP meeting, the request is presented at the meeting.'" Subsequently, depending on the ***OSS*** function affected by the change request, parties are invited to submit written comments and Qwest renders a decision pursuant to various defined schedules.'" We find that by providing this defined schedule of intervals and responsible personnel, Qwest demonstrates that it provides competitive LECs with an adequate opportunity to provide substantial input in the change management process.

136. ***Dispute Resolution.*** Additionally, we find that the Qwest **CMP** provides **a** sufficient mechanism for resolving impasses between Qwest and competitive LECs.[505] The CMP provides **a** detailed process for escalations whereby a Qwest employee (Director or above) is assigned to the escalation.[506] In the event the competitive LEC wishes to further dispute an issue, there is a defined dispute resolution process which provides for arbitration, mediation, or submission to the appropriate regulatory agency.'"

137. *Testing Environment.* We find that Qwest's Stand Alone Test Environment ("SATE) provides competing carriers with **a** sufficient testing environment to successfully adapt to changes in Qwest's OSS.[508] Although we recognize that SATE was not fully tested by KPMG,

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502 *Id.*

503 ***Id.*** at paras. 28-29.

504 ***Id.*** at paras. 51-70,

505 ***SWBT Texas Order,*** 15 FCC Rcd at 18404, para. 108.

506 Qwest 1 Filip Decl. at para. 91.

507 Id. at paras. 91-93. The CMP also has an "exception process" whereby Qwest or a competitive LEC can request a deviation from the CMP. *Id.* at para. 48.

508 ***Bell Atlantic New York Order,*** 15 FCC Rcd at 4002-03, para. 109. Prior to August 2001, Qwest supported only its Interoperability test environment for competing carriers testing an **EDI** interface. In response to KPMG identifying several deficiencies with Interoperability, Qwest implemented the SATE on August 1,2001. Qwest I Notarianni and Doherty Decl. at para. 717. Due to the then relatively recent release of Version 9.0 of SATE on January 28,2002, however, KPMG was unable to conduct a transaction-based test of SATE. Thus, **KPMG** was unable to conclude whether SATE supports flow-through transactions. **KPMG** Report at 580-81 (referencing Test 24.6-1-8 and describing Exception 3077 which was closed unresolved). Qwest **asserts,** however, and we agree that the addition of Virtual Interconnect Center Knowledge Initiator ("VICKI"), which provides post-order response capability, in January 2002 and flow-through capabilities in May 2002 address many of KPMG's concerns in Exception 3077. Qwest July 19 ***Ex Parte*** Letter at **10** (citing confidential version); see also Qwest I Notarianni and Doherty Decl. ***at*** para. 723. Further, we note that the Colorado Commission states that it has adequately addressed this issue in requiring a new PID, PO-19, to be added to the performance plan that will measure production mirroring. Colorado Commission Qwest I Comments at SO-52. Therefore, we examine the record to consider whether SATE incorporates the requisite functionalities and to determine whether competitive LECs are actually entering production by using SATE.

we find that commercial activity shows that Qwest provides an adequate testing environment that mirrors production.[509]

138. Competing carrier commercial activity demonstrates that SATE currently allows carriers to successfully test their EDI interfaces in SATE and enter production."' Qwest states that, as of July 9,2002, eleven competitive LECs, with an additional five through third-party vendors, have successfully tested in SATE and entered production.[511] We also note that Qwest provides competitive LECs with several tools to implement SATE, including a technical support staff, an interface testing users' group that meets regularly as part of the change management process, and extensive documentation on SATE implementation.[512]

139. We find that the record demonstrates that SATE allows competitive LECs to electronically test their OSS interfaces by submitting pre-defined test scenarios that are intended to mirror production responses."' We reject claims that SATE does not mirror the production environment's responses because it does not provide identical responses to all submissions."' To

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509 In reaching our conclusion, we note the findings of HP's review of SATE as part of the Arizona Commission's evaluation. In its evaluation, HP concluded that "the Qwest SATE is adequate to support New Release Testing by a [competitive LEC]." Qwest I Application App. A, Tab 10, Exhibit LN-OSS-77, SATE New Release Test Summary Report, at I I; ***see also*** Qwest I Notarianni and Doherty Decl. at para. 751 (addressing the Arizona HP test results). HP also noted that competitive LECs "appear to be successful in using SATE and many [competitive LECs] appear to be migrating to using the SATE rather than Qwest's Interoperability." ***Id.*** We note that HP did not, however, conduct an evaluation of production mirroring for Version 9.0. Instead, HP developed a series of recommendations aimed at ensuring that SATE remains adequate for supporting new releases. HP recommended that Qwest create additional documentation identifying business rule changes and documentation defining the resolution process for production mirror issues. ***Id*** As addressed in our discussion of CMP documentation, the record reflects that Qwest has provided these documents to competitive LECs on its website.

510 Qwest I Notarianni and Doherty Decl. at para. 740

511 Qwest July 19 *Ex Parte* Letter at 13; ***see also*** Qwest I Notarianni and Doherty Reply Decl. at para. 245. Notably, Qwest submitted a letter from a third party software vendor, Nightfire, that develops interfaces for competitive LECs. ***Id.,*** Attachment B. Nightfire states that it has successfully tested, for five competitive LECs, the following Qwest products in SATE: Resale POTS, Unbundled Loops, Number **Portability,** Loop with Number Portability, Sub Loops, Line Sharing, and UNE-P POTS. ***Id.*** Similarly, SWBT demonstrated that several carriers utilized its testing environment. ***SWBT Texas Order,*** 15 FCC Rcd at 18411-12, para. 120.

512 Qwest I Notarianni and Doherty Decl. at para. 720; Qwest July 19 ***Ex Parte*** Letter at 1 I (describing SATE documentation provided to competitive LECs) (citing confidential version).

513 Qwest I Notarianni and Doherty Decl. at para. 718; Qwest July ***19*** *Ex* ***Parte*** Letter at **8-9** (describing the differences between **SATE** responses and production responses) (citing confidential version).

514 WorldCom Qwest I Comments at **21.** We also find that Qwest provides a stable testing environment because it makes no changes to the test environment (other than "bug" fixes – production support changes necessary to correct software problems that are identified during the pre-implementation testing period prior to implementing a major release) during the 30-day period prior to implementation of a new release. Qwest I Notarianni and Doherty Decl. at para. 731 (referencing KPMG's findings that Qwest makes SATE available to competitive LECs approximately 30 calendar days prior to production); Qwest Nov. ***6*** *Ex* ***Parte*** Letter at ***3*** (defining "bug"). This requirement is documented in the CMP under "Change to Existing ***OSS*** Interfaces." ***Id***

the contrary, in the *SWBT Texas 271 Order,* the Commission held its mirroring requirement does not mandate that the testing environment provide a set of responses identical to the production environment?" Instead, a BOC's testing environment must perform the **same** key functions.[516] Here, SATE returns all IMA-EDI generated production error messages, as well as "commonly triggered" legacy system errors.[517] Qwest acknowledges that SATE does not provide identical responses to every possible scenario?" That is, SATE does not provide every possible error response in Qwest's legacy system, but rather provides a response that indicates the type of error submitted. Competitive LECs are then able to use Qwest's documentation to determine the cause of the error response."' In order for competitive LECs to determine what a particular response represents, Qwest documents and makes available all known differences between SATE and the production environment.[520] In addition, Qwest has offered to add to SATE any error message or test scenario that a competitive LEC requests.[521] Accordingly, we conclude that SATE is designed to ensure that competitive LECs' EDI interfaces can communicate with Qwest's systems regarding key functionalities and to allow real-world orders to be tested?"

140. Lastly, we find that Qwest provides competitive LECs with the ability to migrate to an updated version of its testing environment, *i.e.*, "versioning." In reviewing a section **271** application, the Commission looks for mechanisms to ensure the timely and effective transition from one testing environment software release to another, thus showing that competitors have a meaningful opportunity to compete?" Qwest's versioning process. which allows use of a prior SATE release even after implementation of a new release in order to provide flexibility on the timing of migrating to the new release, provides a sufficient mechanism to protect competing carriers from premature cut-overs and disruptive changes to their OSS interfaces.'" Qwest makes SATE available for an extended testing period, allowing competitive LECs to test a new EDI release for thirty days prior to and, on average, six months after the introduction of the next

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515 *SWBT Texas Order*, 15 FCC Rcd at 18421, para. 138.

516 ***Id.***

517 Qwest I Notarianni and Doherty Decl. at para. 736.

518 ***Id.*** at paras. 736-37.

519 Qwest July *19* Ex *Parte* Letter at 7-8 (describing SATE legacy error messages) (citing confidential version),

520 Qwest July 19 Ex *Parte* Letter at 11 (citing confidential version).

521 ***Id.*** Qwest states that no competitive LEC has requested that any additional error messages be added to SATE. *Id.*

522 ***See*** Qwest July 19 *Ex Parte* Letter at 7 (citing confidential version).

523 ***SWBT Texas Order,*** 15 FCC Rcd at 18408, para. 115. While a change management process must include assurances that changes to existing OSS interfaces will not disrupt competing carriers' use of the BOC's OSS, the Commission has not required any particular safeguard. ***See Bell Atlantic New York Order,*** 15 FCC Rcd at 4004-05, para. 110; ***SWBT Texas Order*** 15 FCC Rcd at 18406, para. 112.

524 Qwest I Notarianni and Doherty Decl. at para. 732.

release.[525] We encourage Qwest to continue this practice, and to accept and consider any input from competitive LECs regarding software problems they discover during testing before Qwest decides to implement a new software release.

141. We also reject claims that SATE is inadequate because it does not enable competitive LECs to test all of Qwest's products.[526] The record reflects that SATE generally allows competitive LECs to test all products that are presently being ordered and to add new products as needed?" Although Qwest admits that certain products are not yet available for testing in SATE,"' SATE was collaboratively designed with competitive carriers prioritizing the products that would be initially offered.[529] The few remaining products not yet available in SATE presently are not being ordered in significant quantities by competitive LECs.[530] Moreover, competitive LECs are able to request that new products be added to SATE through the change management process.[531]

142. Similarly, we reject claims that SATE is inadequate because the directory listing function does not exist in SATE and that the test deck only includes the simplest of order types.[532] With respect to the directory listing function, Qwest explains that, contrary to WorldCom's assertion, the pre-order directory listing information is included on the SATE test scenario CSR, thus allowing competitive LECs to test ordering functionality related to directory

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525 *Id.*

526 *See, e.g.*, AT&T Qwest III Comments at 64-65; WorldCom Qwest I Comments at 21-22

527 Qwest I Notarianni and Doherty Decl. at paras. 747, 765-69.

528 Id. at para. 766. Qwest notes that it proposed in May 2002 to add an extensive list of products to SATE, with competitive LECs showing little or no interest in adding 14 of Qwest's proposed products. Id. at paras. 767-68.

529 Id. at paras. 718, 721.

530 Qwest Nov. 6 Ex *Parte* Letter at 3.

531 We reject AT&T's argument that use of the change management process to request that new products be added to SATE denies competing LECs an opportunity to compete. AT&T Qwest 111 Comments at 65, App. Tab E, Declaration of John Finnegan. Timothy Connolly and Kenneth Wilson at paras. 118-119 (AT&T Qwest III Finnegan/Connolly/Wilson Decl.). As discussed herein, we find that Qwest's change management process provides competitive LECs an opportunity to request changes to Qwest's OSS. Qwest explains that it reached a compromise with AT&T on September 30,2002 which mandates that Qwest use a threshold of 100 EDI transactions in the production environment during the previous 12 months to calculate which products to add to SATE. This issue and compromise is an impasse issue that is pending before the Arizona Corporation Commission. Qwest III Notarianni & Doherty Reply Decl. at para. 166. *See also* Qwest Nov. 6 *Ex Parte* Letter. Accordingly, AT&T's concerns should be minimized as Qwest will automatically be adding frequently ordered products, without need to resort to the change management process.

532 WorldCom Qwest III Comments at 16; Letter from Lori Wright, Associate Counsel, WorldCom, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Nov. 6,2002) at 5,12 (WorldCom Nov. 6 Ex *Parte* Letter).

listings?" In addition, Qwest added the capability of running the pre-order test listings reconciliation query to **SATE** in IMA release 11.0 on October 19,2002, pursuant to a change request prioritized through the CMP.[534] Finally, although WorldCom's request with respect to directory listing information was only added in October, 2002, competing LECs are also able to test the facilities based directory listing capability through the Interoperability test environment.[535]

143. With respect to WorldCom's concerns regarding test scenarios, we conclude that the record demonstrates that Qwest's practice of adding test scenarios for competing LECs upon request adequately addresses WorldCom's concern. The record demonstrates that Qwest's practice **of** adding test scenarios for competing LECs upon request allows competing LECs to test scenarios based on their individual business needs, while ensuring that the data document is not constantly changing.[536] WorldCom asserts that this practice results in harm to competitive LECs because they may be unaware that such test scenarios exist and bear the consequences in production.[537] We find, however, that the record belies this concern; competitive LECs were aware of this approach and agreed to it, indicating that other LECs do not share WorldCom's concern.[538] We are also comforted by Qwest's practice of adding test scenarios that are requested by multiple competitive LECs to the test deck.

144. ***Documentation Adequacy.*** **As** discussed above in the section addressing ***Organization and Accessibility*** of the CMP, we find that Qwest provides sufficient documentation to allow competitive LECs to design their **OSS** interfaces. We agree with the Colorado Commission that the documentation supplied to competing carriers by Qwest is

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[533] Qwest III Notarianni & Doherty Reply Decl. at para. 169. See also Letter from R. Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-314** (filed Nov. **14,2002)** (Qwest Nov. 14a *Ex Parte* Letter). In fact, WorldCom ultimately determined that it could obtain directory listing information in the manner described by Qwest. However, WorldCom asserts that Qwest's method for obtaining directory listing information requires that WorldCom develop "complex logic" and that such a process would be difficult, expensive, and time consuming. WorldCom Nov. **6** *Ex* ***Porte*** Letter at 5. Accordingly, we find that Qwest does make directory listing information available to competitive LECs in a nondiscriminatory manner. Although WorldCom alleges that Qwest's manner of making such information available may cause competitive LECs to incur development expenses, WorldCom presents no evidence that such costs are competitively significant or discriminatory.

[534] Qwest III Notarianni & Doherty Reply Decl. at para. 168.

[535] ***Id.*** Indeed, the record demonstrates that several competing LECs have used the Intemperability test environment for testing Facility Based Directory Listings and are in production for these products. ***Id.*** at n. **262**

[536] Qwest states that it currently does not add test scenarios that are requested by a single competitive LEC to the current or future **SATE** versions, which would make such test scenarios available to all competitive LECs, because the infinite number of test scenarios threatens to clutter the SATE Data Document with unnecessary test scenarios created at the request of individual competitive LECs. ***Id.*** at paras. **171-172.** ***See also*** Qwest Nov. **6** *Ex* ***Porte*** Letter at 1-2.

[537] WorldCom Qwest III Comments at **17.**

[538] Qwest Nov. 6 *Ex* ***Parte*** Letter at **2**

robust.[539] Qwest provides competing carriers with an EDI development process, interface specifications, technical specifications, change notifications and an actual walk-through if requested."' We base our decision that Qwest provides adequate documentation in large part on Qwest's demonstration, discussed above, that several competitive carriers are using electronic interfaces in production.

(iii) Adherence to the Change Management Process

145. We find that Qwest demonstrates that it adequately adheres to the CMP.[541] Although KPMG did not perform a third-party test of Qwest's adherence to its CMP, we rely on the findings of the commissions of the nine application states in finding that Qwest follows its documented processes. As in previous section 271 decisions, we consider whether the BOC accepts change requests, whether the BOC adheres to its CMP by demonstrating it implements change requests prioritized by competing carriers, and whether the BOC establishes a pattern of compliance with its CMP's intervals for notification of system changes.[542]

146. In reaching our conclusion, we rely on the findings of the state commissions, which closely participated in the CMP process. According to the evidence, Qwest conducts monthly meetings with competing carriers, tracks and documents change requests, discusses its responses during the monthly CMP meetings, modifies responses based on competing carrier input when appropriate, and provides competing carriers web-based access to change requests and related documentation.[543]

147. We reject commenters' contentions that, because certain parts of the change management process were revised earlier this year, Qwest has not had an adequate opportunity to

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539 Colorado Commission Qwest I Comments at 52.

540 *Id.* We recognize that, because discussions between Qwest and competitive LECs regarding CMP changes are ongoing and will continue to be for the foreseeable future, KPMG was unable to review certain aspects of CMP, which were either too new, or not yet mature enough to evaluate. KPMG Final Report at 17. Accordingly, KPMG was not able to verify that Qwest has defined and documented all aspects of the new CMP.. *Id.*

541 The Colorado Commission concluded that Qwest's CMP is sufficiently in place and documented. Colorado Commission Qwest I Comments at 48. The Colorado Commission argues that, although KPMG could not determine, due to ongoing redesign negotiations, whether the CMP was fully implemented or documented, Qwest has already implemented and posted to its website processes that go beyond any change management process previously approved by this Commission. *Id.*

542 *BellSouth Georgia/Louisiana Order* at paras. 192-96.

543 North Dakota Commission Qwest I Comments, Consultative Report at 174. Further, the North Dakota Commission found that Qwest has developed and maintains a competing carrier and Qwest CMP point of contact list and has established a pattern of quickly implementing the agreements reached in the redesign process. *Id.; see also* Department of Justice Qwest I Evaluation at 26 n.122 (stating "no [competitive LEC] has alleged with specificity any Qwest failure to meet a CMP-mandated, [competitive LEC]-affecting deadline since establishment of the revised CMP").

demonstrate a pattern of compliance." In light of the robust change management process that has been collaboratively designed, and the fact that Qwest has met each milestone to date regarding implementation of the CMP,[545] we find that competitive LECs have a sufficient opportunity to participate in the change management process.[546] We base our decision here on the analysis of the commissions of the nine application states, *the* commercial performance data indicating that Qwest is successfully processing change requests, and the fact that Qwest has an adequate notification process in place, both through its website and through its monthly meetings?" We also rely on KPMG's conclusions that CMP responsibilities and activities are defined,[548] the CMP is in place and documented,[549] a framework exists to evaluate, categorize,

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544 WorldCom Qwest I Comments at **19.** ***See also*** Eschelon Qwest I Comments at **28.** We note, however. that WorldCom recognizes that Qwest has "significantly improved its CMP. WorldCom Qwest I Lichtenberg Decl. at paras. 3, 74-79 (recognizing that Qwest "has worked with CLECs in the last two years to significantly improve its **OSS** and to develop a third-party test of that OSS"). Although KPMG was unable to evaluate Qwest's adherence to three criteria measuring the implementation of the product and process change management process, the Colorado Commission's evaluation of these criteria since April **2002** found that Qwest adheres to this process. Colorado Commission Qwest I Comments at **48** (referencing test criteria 23-2-7, 23-2-8, and 23-2-9). We reject AT&T's claims that Qwest has not adhered to the CMP by failing to notify competitive LECs of Qwest's ability to provision ISDN loops with pair gain. AT&T Qwest I Finnegan/Connolly/Menezes Decl. at paras. 70-72. We find that this issue, at most, represents an isolated error on Qwest's part and, further, appears to have been sufficiently resolved. We also reject AT&T's claims regarding NC/NCI codes, local service freezes. and DUF returns. AT&T claims that these issues reflect a failure by Qwest to follow the CMP, yet AT&T does not identify which states these issues involve and, further, AT&T makes only general references to what part of the CMP Qwest violates. AT&T Qwest I Finnegan/Connolly/Menezes Decl. at paras. **73-82.** We find that these issues are isolated incidents and appear to all have been resolved in a timely fashion. ***Id***

545 Qwest I Filip Decl. at para. **144.**

546 ***Id.*** at paras. 143-44. AT&T claims that many of Qwest's milestones are "ministerial" and thus irrelevant to a finding of compliance. AT&T Qwest I Finnegan/Connolly/Menezes Decl. at paras. **48.** We disagree, however. and find that many of the milestones that AT&T criticizes, such as conducting scheduled meetings, and diligently following each part of the change request process, are indeed the type of milestones we consider. *Id.* at **47.** AT&T appears to ask **us** to reject these milestones because they **do** not demonstrate or reflect the "effectiveness" of such meetings. ***Id.*** at para. **49.** To the contrary, there has been no objective measure proposed on this record that would capture the "effectiveness" of a meeting as AT&T apparently envisions. Moreover, the record does not reflect any contention that the meetings were not an appropriate part of the implementation of the change management process. Instead, we note that Qwest's CMP has a robust dispute resolution process that allows competitive LECs to escalate issues that are not effectively or adequately addressed at change request meetings. Further, in light **of** the state commissions' active participation in this process to date, we find it instructive that no commission has indicated that Qwest's milestones were insufficient.

547 Qwest I Filip Decl. at para. **145.** Qwest has conducted change management meetings with competitive LECs at least once a month since **1999.** *Id.* at para. **147.** Qwest distributes change request notifications at these meetings and also, since August **2001,** posts the minutes of these meetings on its website. ***Id***

548 KPMG Final Report at **513** (referencing Test 23-1-1).

549 KPMG Final Report at **514** (referencing Test 23-1-2). KPMG was able to observe, through change requests submitted by both Qwest and competitive LECs, all four types of system changes: regulatory; industry guideline; Qwest-originated; and competitive LEC-originated. ***Id***

and prioritize proposed changes,[550] the CMP includes procedures for allowing input from all interested parties:" and the CMP defines intervals for considering and notifying customers about proposed changes.[552] Lastly, we agree with the Department of Justice's conclusion that Qwest has demonstrated its compliance with the basic CMP elements that have been in place for more than nine months, as well as the procedures implemented after April 1, 2002.[553]

148. We reject claims that Qwest's actions over the course of the past few months demonstrate that Qwest does not adhere to its CMP."' Qwest, in fact, agrees that one of the instances cited by WorldCom was a violation of its CMP,[555] but persuasively argues that isolated instances of noncompliance with CMP are not sufficient to undercut the overall strong performance Qwest has demonstrated.[556] In addition, Qwest has met the benchmark for the relevant PID for each of the previous four months.'"

149. We also reject claims that the CMP must be finalized before we can review a BOC's compliance. As of September 30,2002, when the instant applications were filed, only small details remained to be discussed in the redesign process?" We agree with the Iowa Board that even though final language is not complete and the CMP is not perfected, the change management process is, by its very nature an evolving and dynamic process.[559] For purposes of

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550 KPMG Final Report at 514-15 (referencing Test 23-1-3)

551 KPMG Final Report at 516 (referencing Test 23-1-4).

552 KPMG Final Report at 517 (referencing Test 23-1-5). KPMG also concluded that documentation regarding CMP changes is properly distributed. KPMG Final Report at 517-18 (referencing Test 23-1-6).

553 Department of Justice Qwest I Evaluation at 26-27 (noting that the "CMP redesign and implementation is a dynamic process"). From June through September 2002, Qwest met over 100% of the milestones for processing Qwest-originated product and process change requests. Qwest III Reply App. A, Tab 18, Reply Declaration of Dana L. Filip (Qwest III Filip Reply Decl). at para. 6; Letter from R. Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket. No. 02-314 at 1 (filed Nov. 12,2002) (Qwest Nov. 12a *Ex Porte* Letter). From June through September 2002, Qwest met 100% of the milestones for processing competitive LEC-initiated product and process change requests. Qwest III Filip Reply Decl. at para. 6; Qwest Nov. 12a Ex *Parte* Letter at 2.

554 WorldCom Qwest II Reply Comments at 13-15; WorldCom Qwest III Comments at 18

555 See Qwest III Filip Reply Decl. at para. 12

556 Id. at para. 8.

557 PO-16: Timely Release Notifications.

558 Qwest III Filip Reply Decl. at para. 5.

559 Qwest I Application App. C, Vol. 1, Tab 15, IUB Conditional Statement Regarding Change Management Process Compliance at 8-9; see *also* Department of Justice Qwest I Evaluation at 26.

this section 271 analysis, we find Qwest has presented a complete and organized CMP that is readily accessible to competing carriers in Qwest's SGAT and on Qwest's website.[560]

150. ***Accepting Change Requests.*** Qwest also demonstrates that it validates change requests for acceptance into the process in a timely manner and in accordance with the intervals specified in the CMP. Qwest notes that it has met 98% of its commitments in processing product and process change requests since November 2001.[561] Between June 1 and September 30, 2002, Qwest processed 60 *OSS* interface change requests.[562] During the same period, Qwest processed 16 competitive LEC-initiated product and process change requests.[563]

151. ***Implementation of Prioritized Changes.*** We also find that Qwest adheres to the CMP in part because Qwest demonstrates that it promptly implements change requests prioritized by competing carriers through the CMP.[564] We find that, as language was agreed to between Qwest and competitive carriers during the redesign process, this language was promptly added to the CMP and implemented by Qwest in a timely fashion.[565] We find that the bulk of the change management provisions have been in place for months and Qwest has adhered to these provisions.[566]

152. ***Notification Adequacy and Timeliness.*** We find that Qwest has established a pattern of compliance with the intervals established in the CMP for notification of a variety of

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560 Id. Qwest maintains the most recent version of the change management process on its website and continues to file monthly change management status reports with the Iowa Board on meetings held with competing carriers to redesign the process. Iowa Board Qwest I Comments at 38-39.

561 Qwest I Filip Decl. at para. 144

562 Qwest Nov. 12a *Ex* Parte Letter at 2

563 Id.

564 The Colorado Commission found that Qwest adheres to the change management process, specifically with regard to defining standards for the prioritization system and for severity coding under test criterion 23-1-8. Colorado Commission Qwest I Comments at 47. Although KPMG reached an "unable to determine" result regarding this test, the Colorado Commission found that Qwest and the competing carriers have in fact sufficiently prioritized the IMA releases 10.0 and 11.0, and that the change in classification of change requests did not affect the prioritization process. Colorado Commission Qwest I Comments at 47. The Colorado Commission also notes that the Colorado performance plan has a 100% benchmark for initial and subsequent release notifications, carrying daily penalties ranging from $50 – 200 per day. Id. at 46-47. Qwest has met the benchmark in all of the previous four months for timely release notifications. See PO-I6 (Timely Release Notifications).

565 Because the CMP revision process is uniform across the nine application states, we rely on the finding of the Colorado Commission that Qwest demonstrates that it revises and implements changes to the CMP in a timely fashion. Colorado Commission Qwest I Comments at 52. The Colorado Commission also finds that Qwest has continued to follow the basic prioritization process for IMA releases 10.0 and 11.0. *Id.*

566 Colorado Commission Qwest I Comments at 52-53

system changes.[567] The commercial data reflect that Qwest has adequate performance with regard to timeliness of release notifications. In addition, Qwest has made significant improvements to its tracking and release notification internal procedures by designating a project manager to ensure release notifications are tracked and issued on a timely basis.'"

f. Maintenance and Repair

153. Based on the evidence in the record, we conclude, as did the nine state commissions, that Qwest provides nondiscriminatory access to its maintenance and repair *OSS* functions.'" We find that Qwest has "deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions" that Qwest provides itself.[570] Competing carriers have access to these functions in substantially the same time and manner as Qwest's retail operations, and with an equivalent level of quality.[571] Qwest demonstrates that competitive LECs have equivalent access to the same information as Qwest retail representatives[572] and the same access to maintenance and repair functionality as Qwest's retail operations.[573] Below, we briefly discuss how the commercial data[574] and the findings of

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561 The Commission's prior section 271 orders recognize the importance of a BOC's provision of timely, complete, and accurate notice of alterations to its systems and processes and, therefore, the Commission requires that a BOC have "established a pattern of compliance with the relevant notification and documentation intervals in its Change Agreement." *SWBT Texas Order,* 15 FCC Rcd at 18415, para. 126.

568 Qwest I Filip Decl. at para. 162-63. These new procedures became effective on April 1,2002 with all subsequent release notifications being issued on a timely basis.

569 *See, e.g.*, Montana Commission Qwest II Comments at 19-23; Utah Commission Qwest II Comments at 1; Washington Commission Qwest II Comments at 1, 33 (recommending approval of application generally; the Washington Commission Comments do not specifically address maintenance and repair); Wyoming Commission Qwest II Comments at 6.

570 *Bell Atlantic New York Order,* 15 FCC Rcd at 4067, para. 211

571 *Bell Arlanric New York Order,* 15 FCC Rcd at 4067, para. 211.

512 We reject any claims that Qwest must provide an application-to-application maintenance and repair interface. The Commission raised concerns in the *BellSouth Second Louisiana Order* about the importance of integrating maintenance and repair databases. *Second BellSouth Louisiana Order,* 13 FCC Rcd at 20694-96, paras. 149-52. More recently, however, the Commission found that "a BOC is not required, for the purpose of satisfying checklist item 2, to implement an application-to-application interface for maintenance and repair functions – provided it demonstrates that it provides equivalent access to its maintenance and repair functions in another manner." *Bell Atlantic New York Order,* 15 FCC Rcd at 4068, para. 215; *SWBT Texas Order,* 15 FCC Rcd at 18458 n.565. Nonetheless, while we do not require an application-to-application maintenance and repair interface here because Qwest provides equivalent access, we are encouraged by the Iowa Board's finding that Qwest maintains a test environment that is more than sufficient to enable competing carriers to successfully test their electronic interfaces with Qwest's maintenance and repair functions prior to production. Qwest I Application App. C, Vol. 1, Tab 15, IUB Conditional Statement Regarding Change Management Process Compliance at 16-18.

573 *See Bell Atlanlic New York Order,* 15 FCC Rcd at 4069-70, para. 215.

574 We note that, in its comments, AT&T lists without elaboration various performance metrics missed by Qwest for particular months. *See* Section 1, *supra.* Because AT&T neither provides specific evidence regarding these (continued.. ..)

KPMG's third-party test demonstrate that Qwest's systems are functional and provide service to competitive LECs in a nondiscriminatory manner.'"

154. *Commercial Data.* We conclude that the commercial data demonstrate that Qwest addresses trouble complaints for competing carriers in substantially the same time and manner that it addresses complaints from its own retail customers.[576] We base our conclusion on the fact that, for the months June through September 2002, Qwest missed few parity performance measures. Qwest's overall performance in promptly clearing out-of-service orders, clearing troubles in a timely fashion,[577] responding to customer calls on a timely basis,[578] restoring service,[579] and meeting repair appointments[580] indicates that Qwest performs these functions in substantially the same time and manner for both competitive LECs and Qwest's retail customers. We also note that the record reflects very few complaints from competitive LECs regarding Qwest's maintenance and repair performance.[581]

155. *Third Party Test.* The results of the Third Party Test demonstrate that Qwest is capable of providing competing LECs with maintenance and repair services in a

(Continued from previous page)
missed metrics, nor demonstrates any harm or discrimination resulting from the misses, we do no find that the missed metrics listed by AT&T alter our conclusion that Qwest provides nondiscriminatory access to its maintenance and repair functions.

575 *See* KPMG Final Report at 16.

576 Bell Atlantic New York *Order,* 15 FCC Rcd at 4072, paras. 220-22

577 MR-3 (Out of Service Cleared within 24 Hours); MR-4 (All Troubles Cleared within 48 Hours); MR-5 (All Troubles Cleared within 4 Hours).

578 MR-2 (Calls Answered within 20 Seconds – Interconnect Repair Center).

579 MR-6 (Mean Time to Restore).

580 MR-9 (Repair Appointments Met).

581 But see WorldCom Qwest I Comments at 16 (arguing that Qwest's "region wide" UNE-P repair performance is unsatisfactory). See also Eschelon Qwest I Comments at 9, arguing that Qwest is not prepared to deal with DSL repair issues. In particular, Eschelon claims that "Qwest has said it does not have back end system records containing the DSL technical information needed for repair of Centron/Centrex Plus lines with DSL." *Id* However, the record indicates that Qwest developed a manual process to address this problem and that a change management request submitted by Eschelon for a mechanized solution is being investigated by Qwest. Qwest I Simpson Reply Decl. at paras. 3-5; Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 (filed August 19,2002) (Qwest August 19a *Ex Parte* Letter). Eschelon observes that Qwest's manual workaround is only for orders on a going forward basis and that Qwest has not offered a solution for Eschelon's customers that already have DSL. Eschelon Qwest III Comments at 39. However, Qwest explains that it currently has approximately 20 accounts in service that meet the parameters of Eschelon's concern, and all of those accounts contain the required DSL information. Letter from R. Hance Haney, Executive Director – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-314 (filed Oct. 11,2002) (Qwest Oct. 1 Id *Ex* Parte Letter). Accordingly, we find that Eschelon's concern is adequately addressed by Qwest and does not present a competitively significant problem.

nondiscriminatory manner.[582] Although KPMG identified four exceptions during its review that were closed as unresolved,[583] for the reasons discussed below, we find that none of these issues is competitively significant. First, KPMG noted that in the end-to-end trouble reporting process, problems arose involving the accuracy of closeout codes describing the nature and location of the UNE-P and Resale POTS repairs placed on trouble tickets by Qwest field technicians.'" Qwest asserts, and we agree, that its performance rises to a satisfactory level when the trouble ticket's narrative field is viewed in conjunction with the closeout code.[585] That is, a proper determination regarding the nature and location **of** the trouble is far more likely to occur when the narrative description is taken into consideration. In addition, Qwest has instituted an internal audit process and additional training of its technicians to improve coding of trouble tickets.[586] In view of the rise in Qwest's performance when the narrative field is considered and its corrective actions, we find that Qwest's performance in this category, which involves an identical process for both retail and wholesale customers, provides competitive carriers with the same quality service Qwest provides itself.[587]

156. Similarly, KPMG found that Qwest's maintenance and repair records reflected UNE-P, Resale, and Centrex 21 repair information that was inconsistent with the nature of the actual faults introduced by KPMG.[588] In this "troubles" category, which is measured by a KPMG-set **95** percent standard, Qwest successfully repaired these services 92.28 percent of the time. We agree, however, with Qwest's assertion that the relevant consideration in this category is whether the repair process is identical for its retail and wholesale customers.[589] We find the process that KPMG reviewed is identical for competitive LECs and Qwest retail customers.[590] Moreover, we find Qwest's miss of less than **3** percent in comparison to KPMG's benchmark to be ***de minimis*** and competitively insignificant.

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582 Qwest I Application at 125-126; KPMG Report at 319-337, 344-345, 351-355, 363-385, 390-406, 658-667.

583 These four exceptions relate to Qwest's trouble reporting process

584 Qwest I Application at 126; KPMG Final Report at 353-54 (referencing Test 18-6-1 and Exception 3055). We note that there was no PID (ROC established measure) for the test; **KPMG** established the 95% benchmark.

585 Qwest I Application ***at*** 126. Qwest's performance in this category rises from ***88%*** to over 95% when the narrative field is considered. *Id.*

586 Qwest I Notariami **and** Doherty Decl. at paras. 474-75.

587 We note the conclusion of the Idaho Commission that the correct information is usually contained in the narrative field. Idaho Commission Qwest I Comments at 10. While the Idaho Commission supports additional ongoing improvements in this area, it found that the current performance does not appear to prevent a competing carrier from having a meaningful opportunity to compete. Id

588 Qwest I Application at 126-27; KPMG Final Report at 355 (referencing Test 18-7-1 and Exception 3058)

589 Qwest I Notarianni and Doherty Decl. at paras. 462, 479-80

590 ***Id.***

157. In addition, we find that the final two exceptions issued by KPMG, Exception 3053 where Qwest incorrectly entered only one out of ten total **DSI** circuit trouble "close-out'' codes, and Exception *3* 107 where Qwest missed the 24-second benchmark **for** processing non-design edit transactions by three seconds, to be ***de minimis*** in nature and not competitively significant.[591]

158. We reject AT&T's claim that Qwest fails to process competing carriers' trouble reports in a timely manner, that Qwest's fails to provide an adequate rate **of** successful repairs, and that Qwest fails to maintain adequate repair records for competing carriers.[592] We also reject AT&T's claim that Qwest fails to provide adequate access to maintenance and repair functions because its trouble rates for UNE-P customers are higher than for its own customers. As discussed herein, the commercial evidence demonstrates that Qwest has missed few measures and, further, that the differences in performance for the missed measures are not competitively significant.

159. Finally, Eschelon raises a series of complaints about Qwest's maintenance and repair capabilities, none of which rises to the level of **an** adverse checklist finding. Eschelon claims that, for unbundled loops, Qwest does not include circuit identification information in Eschelon's bills for maintenance and repair charges.[593] The resulting effect, Eschelon claims, is that if Eschelon has multiple trouble tickets for the same circuit identification number it is unable to itemize maintenance and repair charges for each trouble.'" Because Eschelon does not provide any evidence that this practice is either discriminatory or unreasonable under our precedent, and because it does not appear that any coding errors are involved, we are unable to find **such** a practice, if true, to be competitively significant. Rather, it appears that this is an issue more appropriately addressed by submitting a change request to Qwest's change management process.

160. Eschelon also claims that Qwest fails to provide a statement of time, materials and charges at the time repair work is completed, as it does for its own customers.[595] Again, we find that Eschelon fails to demonstrate that this process is discriminatory or competitively significant, particularly given that Qwest offers a process for disputing repair bills and is currently considering a process change request submitted by Eschelon on this subject.[596] Eschelon also contends that Qwest closes tickets with the incorrect cause and disposition codes.'" Eschelon

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591 Qwest I Application at **127;** Qwest I Notarianni and Doherty Decl. at paras. **462,479-SO**

592 AT&T Qwest I Comments at 44

593 Eschelon Qwest I Comments at **14**

594 Id

595 Id. at **12-13**

596 Qwest 111 Application at **39;** Qwest I Notarianni & Doherty Reply Decl. at para. **167.**

597 Eschelon Qwest III Comments at **40-41**. Eschelon states that for the week of September **9, 2002, 42** percent of design tickets Qwest coded as NTF were incorrectly coded. Id. Qwest states that its coding accuracy for the week of (continued.. ..)

claims, without providing any additional information or detail, that bill verification becomes "virtually impossible" for bills that Eschelon considers "untimely."[598] In addition, Eschelon contends that many erroneous "NTFs" are charged to the competitive LEC.[599] Eschelon does not demonstrate that Qwest's billing result is competitively significant. To the contrary, Qwest states that "less than 0.1% of Qwest's wholesale billing is associated with" maintenance and repair charges."[600] Qwest further explains that it does not issue bills that are over 45 days old.[601] Eschelon's remaining issues similarly do not rise to the level of checklist non-compliance.[602]

g. Provisioning

161. Based on the evidence in the record and in accordance with the findings of the nine state commissions,[603] we find that Qwest provisions competitive LEC orders for UNE-platform and resale services in a nondiscriminatory manner in the nine application states.[604] Below, we briefly discuss Qwest commercial performance and KPMG's third-party test with regard to provisioning.

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September 9,2002 was 97 percent for total design troubles reponed by Eschelon. Qwest III Application at 38. Given Eschelon's provision of what appears to be raw data (some of it regarding states not relevant to this proceeding) without additional explanation or supporting analysis (see Eschelon Qwest III Comments at Exhibit 36), we do not find evidence that Qwest makes coding errors that are *discriminatory* or competitively significant - particularly in light of KPMG's finding that Qwest adequately handled design trouble tickets during the third party test. See Qwest III Application at 38.

598 Eschelon Qwest I Comments at 14; Eschelon Qwest III Comments at 42.

599 Eschelon Qwest III Comments at 41-42.

600 Qwest I Notarianni & Doherty Reply Decl. at para. 238

601 Id.

602 Eschelon also asserts that Qwest leaves branded billing statements with Exhelon's end users. See Eschelon Qwest I Comments at 13. Finally, in related issues, Eschelon complains about Qwest's policy regarding "optional" testing and associated charges. Eschelon Qwest I Comments at 15-16. However. Eschelon fails to demonstrate that Qwest's actions are unreasonable or to explain why Qwest's billing dispute resolution provides an inadequate remedy. Similarly, Eschelon complains, without providing any specific instances or details that "Qwest will not accept charges from Eschelon for testing that Eschelon conducts for Qwest." Eschelon Qwest I Comments at 16; Escheloo Qwest II Comments at 28. As the Commission has stated previously. it will not consider allegations in a section 271 proceeding that are not pleaded with specificity.

603 See Colorado Commission Qwest I Comments at 15-17; Idaho Commission Qwest I Comments at 5-12; Iowa Board Qwest I Comments at 27-41; Montana Commission Qwest II Comments at 17-23: Nebraska Commission Qwest I Comments at 9; North Dakota Commission Qwest I Comments at 16, Utah Commission Qwest II Comments at 1; Washington Commission Qwest II Comments at 12; Wyoming Commission Qwest II Comments at 6.

604 Provisioning of loops is covered under checklist item 4 discussion, *infra.*

(i) Commercial Data

162. We find that the commercial data demonstrate that Qwest provides nondiscriminatory access to UNE combos, UNE-platform, and resale. Qwest's wholesale performance reflects few missed benchmarks, with the few misses generally occurring in low volume categories.[605] Based on the evidence in the record, we reject AT&T's claim that Qwest is unable to provision orders for EELs adequately.[606] Although Qwest missed the benchmark for Colorado EELs installation commitments for all four months,[607] we find that the performance disparities do not appear to be competitively significant. When we consider the relatively small number of missed installations that cause Qwest to miss this benchmark in combination with Qwest's improved performance, we find that Qwest meets it obligation here.[608] Moreover, we are encouraged by the Colorado Commission's commitment to closely monitor Qwest's EELs performance.[609] Should Qwest's performance in this area deteriorate, we will pursue appropriate enforcement action.

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605 See OP-3 (Installation Commitments Met), OP-4 (Installation Interval), **OP-5** (New Service Installation Quality), OP-6A (Delayed Days for Non-Facility Reasons), and **OP-6B** (Delayed Days for Facility Reasons) for resale, WE-platform, WE-platform Centrex orders, and UNE combos in the nine-state region. We note that Qwest missed the parity standard for Washington for OP-5 (New Service Installation Quality) in June, July, August, and September for resale business lines, and in July for resale Centrex lines. However, we note that competing LEC volumes for resale Centrex in Washington are less than 10 in every month. Although there are significant volumes of resold business lines in Washington associated with the OP-5 misses, Qwest has noted these troubles and is addressing them. See Letter from Hance Haney, Qwest, to Marlene H. Donch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Nov. **18,2002)** (Qwest Nov. 18c Ex Porte Letter) at **1-2.** For example, Qwest has noted that **23%** of the OP-5 trouble tickets are troubles associated with a non-inward line activity, such as billing-only type orders, that should not be captured in OP-5. *Id.* at 2. The metric will not include these troubles starting in November. Id. Other issues relating to OP-5 are discussed in the ordering section *supra.*

606 See AT&T Qwest I Comments at **43,** AT&T Qwest III Comments App. Tab F, Declaration of John F. Finnegan at paras. **49-51, 66,** 100, **107.**

607 **OP-3** (Installation Commitments **Met,** EELs). With a benchmark **of** 90%, Qwest's performance in Colorado **for OP-3** is 87.34%, 80.15%, 82.90%, and **88.82%** in June through September, **2002.** Qwest also failed to meet the benchmark for this PID in Idaho and Utah in July, August, and September with Idaho showing **(80%,** 84.62%, **86.67%)** and Utah showing **(85.71%,** 71.43%, **81.82%).** Qwest also missed in June and July in Washington (75%, **70%).** However, the volume of orders in these states is less than **20** in any month.

608 As the Commission has found in previous section **271** applications, performance data based on low volumes of orders or other transactions is not **as** reliable an indicator of checklist compliance as performance based on larger numbers of observations. It is **thus** not possible to place the same evidentiary weight upon – and draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity. See, *e.g., SWBT Kansas/Oklahoma* Order, 16 FCC Rcd at **6254,** para. **36.**

609 Colorado Commission Qwest I Comments at **41-42.** In addition, we note that Qwest recently instituted corrective measures which include retraining of its personnel and revisions to the methods and procedures documentation that are used by central office and field technicians. Qwest I Application, App. A, Tab **9,** Declaration of Karen A. Stewart and Lon Simpson (Qwest I Stewart/Simpson Decl.) at paras. **95-96.**

163. We reject claims that Qwest's wholesale provisioning intervals for UNE-platform orders are discriminatory.[610] Although Qwest misses the provisioning interval in several states,[611] we do not rely on Qwest's performance under the average completed interval metric as a measure of Qwest's timeliness in provisioning resale or UNE-platform Centrex. Instead, we conclude, as we have in prior section 271 orders,[612] that the missed appointment metric (or installation commitments met metric, as it is called in the Qwest territory), which Qwest passed in most months in the nine application states for both dispatch and non-dispatch UNE-platform Centrex orders, is a more reliable indicator of provisioning timeliness. Installation commitments met measures Qwest's performance in provisioning UNE-platform Centrex at the scheduled time that competitive LECs request.[613] Based on the installation commitments met data, we find that Qwest meets its obligation with respect to timely UNE-platform Centrex provisioning.

164. We reject AT&T's arguments that Qwest does not provide nondiscriminatory access to unbundled network elements because of its policies relating to the building of new facilities to serve customers!" AT&T argues that Qwest's policy of refusing to build new facilities necessary to provision a competing LEC's UNE order as well as Qwest's ability to cancel a competing LEC's order if Qwest concludes that facilities are not available is discriminatory.[615] We find that Qwest's policy on its obligation to build is comparable to policies we have accepted in previous successful section 271 applications?" The record shows that

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610 AT&T Qwest I Comments at 43; AT&T Qwest 1Finnegan/Connolly/Menezes Decl. at para. 141; AT&T Qwest II Comments at 44; AT&T Qwest III Comments at 81.

611 Qwest missed the dispatch installation interval for resale Centrex in Wyoming in July, August, and September. See OP-4 (Installation Interval, Centrex) showing 5 days to install for competing LECs versus 2.88 days for Qwest retail customers (July); 5.5 days to install for competing LECs versus 2.71 days for Qwest retail customers (Aug.); and 5 days to install for competing LECs versus 3.29 days for Qwest retail customers (Sept.). In Colorado, Qwest missed the non-dispatch installation interval for UNE-platform Centrex in June (4.63 days versus 1 day) and July (4.01 days versus 0.88 days). In Wyoming, Qwest missed the non-dispatch installation interval for UNE-platform Centrex in July (5.5 days versus 2.88 days), August (5.48 days versus 2.71 days), and September (4.29 days versus 3.29 days). See OP-4 (Installation Interval, UNE-platform Centrex) in Colorado and Wyoming. OP-4 measures the timeliness of Qwest's installation of services for customers, focusing on the average time to install service. See ROC 271 Working PID Version 5.0 at 30.

612 *See Verizon New Jersey Order,* 17 FCC Rcd at 12342-43, para. 138; see *also Verizon Massachusetts Order,* 16 FCC Rcd at 9038-39, para. 92; Bell Atlantic *New York Order,* 15 FCC Rcd at 4061-66, paras. 202-210.

613 We note that Qwest did miss the parity standard for OP-3 (Installation Commitments Met, Centrex) in Washington and Iowa for resale Centrex and resale Centrex 21, in one month of the previous four. However, the competitive LEC volumes were below 10 in both states when the parity standard was missed, and Qwest's overall four-month performance demonstrates Qwest's overall compliance. See OP-3 (Installation Commitments Met, Centrex) in Washington and Iowa.

614 See AT&T Qwest I Comments at 81-85; AT&T Qwest II Comments at 106-109; AT&T Qwest III Comments at 81. See related arguments concerning building to an interconnection point in Checklist Item 1 below.

615 AT&T Qwest II Comments at 106-109.

616 *See, e.g., Verizon Pennsylvania Order,* 16 FCC Rcd at 17469-70 at paras. 91-92.

Qwest attempts to locate compatible facilities for competing LECs, performs incremental facility work to make UNEs available, and will hold competing LEC orders for a reasonable period of time."

(ii) Third-party Test

165. Our conclusions concerning Qwest's ability to provision UNE-platform and resale services in a nondiscriminatory manner are not undermined by the results of the KPMG test which found disparity in installation intervals provided for competing LECs versus Qwest retail customers." Although Qwest concedes its failure to meet KPMG's criteria, Qwest argues that the Commission should rely on the commercial data as evidence of Qwest meeting its obligation to install competing LEC services in a nondiscriminatory manner.[619] We agree and find that Qwest's commercial performance, in combination with Qwest's recent changes and otherwise satisfactory overall performance in the third-party test, sufficiently demonstrates that Qwest meets its nondiscrimination obligation."

(iii) Other Provisioning Issues

166. *DSL Disconnects.* We find that the record shows that the DSL disconnect problems raised by Eschelon, which have since been fixed, do not have a competitively

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[617] Qwest I Reply at **74.** Additionally, § **9.1.2.1.2** of Qwest's **SGAT** states that "If cable capacity is available, Qwest will complete incremental facility work (*i.e.* conditioning, place a drop. add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises." Furthermore, the Commission is currently reconsidering the extent of an incumbent's obligation to provide access to certain unbundled network elements in its Triennial Review. ***See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,*** CC Docket No. 01- **338;** ***Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,*** CC Docket **96- 98;** ***Deployment of Wireline Services Offering Advanced Telecommunications Capability,*** CC Docket No. **98-147,** Notice of Proposed Rulemaking, FCC 01-361, 16 FCC Rcd 22781 (2001) ***(Triennial Review).***

[618] Qwest missed installation intervals for WE-platform. KPMG Final Report at 198 (referencing Test **14-1-36** and Exception **3086);** WorldCom Qwest I Comments at **16** (citing tests **14-1-34** and **14-1-36);** WorldCom Qwest 1 Lichtenberg Decl. at paras. **57-56.** Qwest, in its East region took an average of 2.8 days to install 145 orders tested, as compared with 1.5 days for retail installation. KPMG Final Report at **198.** In Qwest's Central region, Qwest took an average **of 2.6** days to install 140 orders tested, as compared to **2.1** days for retail installation. Id. In the Western Region, Qwest took an average of **2.9** days **to** install 141 orders tested, as compared to **2.2** days for retail installation. Id

[619] We reject WorldCom's request that Qwest be required to complete UNE-platform orders on the same day that they are received by Qwest. WorldCom Qwest I Comments at 15. Qwest complies with the intervals and benchmarks that were established through the collaborative ROC process, and that is sufficient for purposes of the instant application.

[620] ***See Bell Atlantic New York Order,*** 15 FCC Rcd at **3993,** para. **89;** SWBT Texas ***Order,*** 15 FCC Rcd at 18399-**18400,** para. **98.**

significant effect."[621] Eschelon has to resubmit DSL orders only on the infrequent occasion that the customer record does not show that the customer currently has DSL.[622] If any disconnects in error do occur, Qwest has committed to respond promptly and efficiently to restore such outages.[623]

167. Additionally, the record shows that the problem of DSL service disconnection before voice service occurs for both Qwest DSL and wholesale DSL disconnection orders.[624] Qwest states that it is currently investigating alternative solutions that would allow the DSL service to remain functional until the time the voice service is converted to UNE-platform.[625] The record shows that Qwest cannot currently force its systems to work the Qwest DSL service "disconnection" order at the same time as the "new installation" order is worked. This constraint applies to both retail and wholesale DSL disconnection orders, whether the disconnection order is to truly disconnect service, or is part of a move of service to a new address, or is part of a conversion to another local service provider.[626] Because there does not appear to be discriminatory treatment between Qwest retail and competing LEC services, we do not find that this problem rises to the level of checklist non-compliance.

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621 See Eschelon Qwest I Comments at 10-12; Qwest Aug. 13b Ex *Parte* Letter at 2. Eschelon argues that when it converts a customer from Qwest or converts its own customer from resale POTS or Centrex to UNE-platform, Qwest at times either disconnects the customer's DSL in error or disconnects the customer's DSL early, leaving the customer without DSL. Eschelon Qwest I Comments at 10-12. Qwest has shown that it has modified internal procedures to ensure these disconnects in error do not occur. As of July 11, 2002, Qwest's representatives have been advised to include the FID "ADSL" after the access line USOC on conversion service orders to ensure appropriate assignments are retained for Qwest DSL. Qwest found that without the ADSL FID, the service order may be completed without the DSL service, which results in DSL disconnects in error. Qwest reviewed 133 conversion orders after July 11, 2002, and found that no disconnection of Qwest DSL in error occurred when the ADSL FID was used. See Qwest Aug. 13h *Ex Parte* Letter at 2

622 See Letter from R. Hance Haney, Executive Director-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 (filed Aug. 14,2002) at 21 (Qwest Aug. 14 *Ex Parte* Letter). Additionally, Qwest states that there was only a single instance that Eschelon did need to submit an LSR. See Qwest Aug. 23a Ex *Parte* Letter at Attach.

623 Qwest I Simpson Reply Decl. at para. 10. We note that Eschelon argues that Qwest has not provided competing LECs with a written process that ensures that same day escalations will continue after section 271 approval is granted when the DSL is disconnected in error. See Eschelon Qwest III Comments at 40. However, the record shows that the escalation process is documented on Qwest's website. See Qwest III Reply, App. A, Tab 1, Reply Declaration of Lori A. Simpson at para. 10 (Qwest III Lori Simpson Reply). Qwest has stated that it will maintain processes or procedures that it has implemented in response to this issue until and unless such processes or procedures are no longer necessary or are replaced with other such processes or procedures that address the issue. *Id.*

624 Qwest III Lori Simpson Reply Decl. at para. 11.

625 Id.

626 *Id*

168. *Loss and Completion Report Issues.* Eschelon alleges that Qwest discriminates between competing LECs and itself because Qwest provides to its retail operations accurate customer loss information, but such information is not provided to competing LECs.[627] In particular, Eschelon complains that the loss reports received from Qwest "do not provide [competing] LECs with the intended ability to identify which customers have left the [competing] LEC for another carrier."[628] The record demonstrates that Qwest has adequately addressed this concern by modifying the loss and completion reports to allow competing LECs to distinguish between end users that move to a different provider and those end users that are changing products but not changing providers.[629] We note that the information provided by Qwest, in combination with information Eschelon has about its own customers, would allow Eschelon to distinguish between customers it lost, and those for whom it has recently requested a change. Accordingly, although Eschelon complains about the format of Qwest's reports and the ease with which it can use them, it has not shown that Qwest fails to provide it with necessary information.

h. UNE Combinations

169. In order to satisfy section 271(c)(2)(B)(ii), a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier.[630] We conclude, as did the commissions of the nine application states, that Qwest meets its obligation to provide access to UNE combinations in compliance with Commission rules.[631]

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627 Eschelon Qwest I Comments at 17.

628 *Id.*

629 Letter from Hance Haney, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 at 10 (filed Aug. 13, 2002) (Qwest Aug. 13 d *Ex Parte* Letter).

630 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.313(b). Overturning a 1997 decision of the Eighth Circuit Court of Appeals, on May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999). We note that other unbundled network elements are required pursuant to the checklist. but we discuss them in the context of other checklist items.

631 *See, e.g.*, Nebraska Commission Qwest III Comments at 1; Iowa Board Qwest III Comments at 1-2; Colorado Commission Qwest I Comments at 15; Montana Commission Qwest II Comments at 17-19; Wyoming Commission Qwest III Comments at 2.

170. We reject Eschelon's claim that Qwest interferes with Eschelon's customers by way of a Qwest-initiated project to increase copper availability.[632] Eschelon claims that a problem occurs with conversions of customers to Eschelon using UNE-P and resale, *i.e.*, on orders that do not otherwise generally require a dispatch!" Eschelon claims that Qwest nonetheless dispatches a technician to change cable and pair, and instead of the expected seamless conversion, a Qwest technician appears and informs the competitive LEC's customer that the technician is going to take down that customer's service.[634] Based on the record before us, we do not have adequate evidence in this proceeding to make a finding of discrimination with regard to these installations. We will monitor Qwest's actions following release of this decision, however, to ensure that Qwest complies with the conditions of approval in this order.

171. We also reject AT&T's claim that Qwest's Colorado SGAT allows Qwest to unlawfully restrict UNE combinations by imposing EEL-like restrictions on all UNEs.[635] Specifically, AT&T claims that Qwest's Colorado SGAT is discriminatory in that Qwest refuses to connect UNE combinations to certain offerings such as "voice messaging, DSL, Access Services, Private Lines, resold services, and other services that [the Colorado Commission] or the FCC expressly prohibit to be connected to UNE combinations."[636] We find, however, because there are no examples in the record of Qwest unlawfully imposing UNE restrictions, and additionally that this SGAT language is expressly limited in scope to the restrictions permitted under the Commission's rules, that there is no evidence of discrimination.

2. Pricing of Unbundled Network Elements

a. Introduction

172. Checklist item two of section 271 states that a BOC must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[637] Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible

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632 Eschelon Qwest I Comments at 7-8; Eschelon Qwest II Comments at 19

633 Eschelon Qwest I Comments at 7-8.

634 Id. at 8

635 AT&T Qwest I Comments at 88. We note that AT&T discusses the SGAT language and does not provide any examples of Qwest actually imposing EEL-like restrictions on all UNEs. Id. The dispute between AT&T and Qwest apparently stems from a proceeding at the Colorado Commission, in which Qwest argued that the Commission's commingling prohibition for tariffed special access services, *i.e.*, the EELs restriction, extends to all UNEs. Colorado Commission Qwest I Comments at 17. The hearing commissioner, however, disagreed and instead found that the prohibition applies only to looptransport combinations. Id. Qwest subsequently modified its SGAT to provide that UNEs may he connected to what Qwest calls "finished services" unless it is expressly prohibited by existing state or federal rules. *Id.*

636 AT&T Qwest I Comments at 88 (citing Colorado SGAT § 9.23.1.2.2).

637 47 U.S.C. § 271(c)(2)(B)(ii).

point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[638] Section 252(d)(1) provides that a state commission's determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.[639] Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.[640]

173. In applying the Commission's TELRIC pricing principles in this application, we do not conduct a *de* novo review of a state's pricing determinations.[641] We will, however, reject an application if "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[642] We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

174. Based on the evidence in the record before us, we find that Qwest's UNE rates in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming are just, reasonable, and nondiscriminatory, and are in accordance with section 252(d)(1). Thus, Qwest's LJNE rates in these states satisfy checklist item two.

b. Overarching Issues

175. Qwest has taken a different approach to pricing issues compared to other BOCs whose applications we previously have approved under section 271. Qwest made a series of voluntary rate reductions in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming prior to filing its section 271 applications. Those reductions were specifically calculated to produce rates that would enable those states to pass a benchmark comparison to rates in Colorado. Qwest made further reductions to certain rates during the course of this

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638 47 U.S.C. § 251(c)(3)

639 47 U.S.C. § 252(d)(1).

640 ***Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,*** CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (Local ***Competition First Report ond Order)*** (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515 (2001). The Supreme Court has recently upheld the Commission's forward-looking pricing methodology in determining the costs of UNEs. ***Verizon Communications, Inc. v. FCC,*** 122 S. Ct. 1646, 1679 (2002).

641 ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17453, para. 55 (citations omitted). ***See also Sprint v. FCC,*** 274 F.3d 549, 556 (D.C. Cir. 2001) ("When the Commission adjudicates § 271 applications, it does not – and cannot – conduct ***de novo*** review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.").

642 ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17453, para. 55 (citations omitted).

proceeding.[643] We discuss below the details of Qwest's rate proceedings in each state, as well as issues related to the benchmarking process. In this section, we discuss a number of concerns raised by the parties with respect to how Qwest has presented the applications, as well as other challenges that are not specific to any of the states in this application.

176. ***Complete-us-Filed Rule.*** We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules to the limited extent necessary to consider rate reductions taken by Qwest during the course of this proceeding.[644] The Commission maintains certain procedural requirements governing BOC section 271 applications.[645] In particular, the complete-as-filed requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to re-start the 90-day review period or to accord such information no weight in determining section 271 compliance.[646]

177. This rule provides interested parties with a fair opportunity to comment on the BOC's application, to ensure that the Attorney General and the state commissions can fulfill their statutory consultative roles, and to afford the Commission adequate time to evaluate the record.[647] The Commission can waive its procedural rules, however, if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."[648]

178. **We** find that a waiver is appropriate in these circumstances. Qwest has changed its rates subsequent to filing its applications.[649] In prior cases in which the Commission has considered post-filing rate changes, our primary concern has been to ensure that "this is not a situation where a BOC has attempted to maintain high rates only to lower them voluntarily at the eleventh hour in order to gain section 271 approval."[650] We find no evidence that Qwest has

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643 See Letter from David L. Sieradzki, Counsel for Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (tiled Oct. 7,2002) (Qwest Oct. 7 Pricing Ex *Parte* Letter); Letter from David L. Sieradzki, Counsel for Qwest Communications lnternational Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314, Attachs. (tiled Nov. 12,2002) (Qwest Nov. 12 *Ex Parte* Letter).

644 47 C.F.R. § 1.3 (2001).

645 ***See Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act,*** Public Notice, 16 FCC Rcd 6923 (Comm. Carr. Bur. 2001).

646 ***See Verizon Rhode Island Order,*** 17 FCC Rcd at 3306, para. 8; SWBT *Kansas/Oklahoma Order,* 16 FCC Rcd at 6247, para. 21.

647 ***See Veriion Rhode Island Order,*** 17 FCC Rcd at 3305-06, para. 7; ***Ameritech Michigan Order,*** 12 FCC Rcd at 20572-73, paras. 52-54.

648 ***Northeast Cellular Telephone Co.*** v. ***FCC,*** 897 F.2d 1164, 1166 (D.C. Cir. 1990); ***WAIT Radio v. FCC,*** 418 F.2d 1153 (D.C. Cir. 1969). *See also* 47 U.S.C. § 154(j); 47 C.F.R. § 1.3 (2001).

649 See Qwest Oct. 7 Pricing *Ex Parte* Letter at Attach. 1 (summarizing rate reductions to be tiled with state commissions after the September 30" tiling date of Qwest's section 271 applications).

650 ***Verizon Rhode Island Order,*** 17 FCC Rcd at 3307, para. 9.

engaged in this type of gamesmanship in this case. Qwest explained that it took voluntary rate reductions prior to filing its applications with the Commission, and that it had done so with the intent of benchmarking the rates in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming to TELRIC-compliant rates in Colorado.[651] We find that these pre-filing reductions constitute evidence of Qwest's good faith effort to present TELRIC-compliant rates at the time of filing. As explained below, we find that Qwest's post-filing rate reductions were an appropriate response to concerns identified by parties in this proceeding.

179. Another major concern that we have identified in prior cases where rates have changed during a proceeding is that interested parties be afforded a sufficient opportunity to review the new rates, and that the analytical burden of doing so is not too great in light of the time constraints inherent in the section 271 application process.[652] Again, we find no cause for concern with respect to Qwest's post-filing rate reductions. Qwest specifically identified all of its post-filing rate changes on day seven of the 90-day period, more than a week before comments were due on the application,[653] and it filed revised statements of generally available terms (SGATs) the same week the comments were filed.[654] In prior cases we have considered rate reductions made much later in the 90-day application cycle.[655] We also find that the burden associated with analyzing the new rates was not significant. Although Qwest made changes to its SGATs in all eight states, it provided a summary sheet that identified all the relevant rate changes before the comments were due.[656]

180. Finally, in prior cases we have found cause to grant a waiver of the complete-as-filed rule where the changes in rates are responsive to criticisms in the record, as compared to new information that "consists of additional arguments or information" concerning current pricing.[657] The rate reductions made by Qwest in this case satisfy this standard. The changes

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651 Qwest II Application at 159-62; Qwest I Application at 149.

652 Verizon Rhode *Island Order*, 17 FCC Rcd at 3308, paras. 10-11.

653 Qwest Oct. 7 Pricing Ex *Parte* Letter at Attach. 1

654 Qwest III Reply Comments, Tab 14, Reply Declaration of Jerrold L. Thompson and Thomas R. Freeberg, Cost-Based Rates for Unbundled Network Elements and Interconnection, para. 4 n.6 (stating that revised SGAT Exhibit A's were filed with the state commissions between October 16-18, 2002) (Qwest III Thompson/Freeberg Reply Decl.); Qwest Nov. 12 Ex Parte Letter at Attachs.

655 See, *e.g.* Verizon Rhode *Island Order*, 17 FCC Rcd at 3306-10, paras. 8-17 (considering changes in rates filed on day 80 of the application); *SWBT Kansas/Oklahoma* Order 16 FCC Rcd at 6247-49, paras. 22-26 (considering changes in rates filed on day 63 of the application); Application by Verizon New *England Inc.*, Verizon Delaware *Inc.*, Bell Atlantic Communications, *Inc. (d/b/a* Verizon Long Distance), *NYNEX* Long Distance Company *(d/b/a* Verizon Enterprise Solutions), Verizon *Global* Networks *Inc.*, *and* Verizon Select Services *Inc.*, for *Authorization* to Provide In-Region, *InterLATA* Services *in* New Hampshire *and* Delaware, WC Docket No. 02-157, Memorandum Opinion and Order, 17 FCC Rcd 18660, 18666-67, para. 11 (2002) (*Verizon Delaware/New* Hampshire Order) (considering changes in rates filed on day 64 of the application).

656 Qwest Oct. 7 Pricing *Ex Parte* Letter at Attach. 1.

657 Verizon Rhode *Island Order*, 17 FCC Rcd at 3308-09, para. 12

were responsive to arguments in the record of Qwest's prior section 271 applications,[658] and in each case the effect of the rate change was to reduce the prices that competitive LECs will pay for unbundled network elements. We find that it is fully consistent with our precedent under section 271 to consider this type of responsive information without requiring the BOC to make a new filing.

181. ***Timing.*** In prior cases in which we have applied a benchmark analysis, the "anchor" state had already received section 271 approval prior to the filing of the application for the benchmark state.[659] Some parties in this case argue that Qwest's departure from that practice, i.e., its decision to file simultaneously the anchor state (Colorado) and eight benchmark states (Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming), should be rejected because it prejudices parties that oppose the applications.[660] We disagree. Parties to this docket were not prevented from making arguments about the prices established in individual states, nor were they prevented from making arguments about the benchmarking process. Other than the condensed time frame, this is no different than if an application for Colorado had been filed first and approved before the other eight states. Although Qwest's decision to file its first nine states simultaneously has resulted in a substantial work load for parties and for the Commission, we do not think any party has been prejudiced by the simultaneous consideration of the anchor state and the benchmark states.

182. *SGAT Billing.* Eschelon argues that, when a charge is not included in Eschelon and Qwest's interconnection agreement, Qwest improperly charges SGAT rates that have not been approved by the state commissions, even though Eschelon has not opted in to Qwest's SGATs.[661] Instead, Eschelon argues that Qwest should either negotiate a rate pursuant to its interconnection agreements with Eschelon, obtain state commission approval for the rates, or reach agreement on using state commission-approved cost models and processes to calculate these rates." Eschelon requests that the Commission "state whether an [incumbent] LEC may unilaterally impose on a [competitive] LEC that has not opted in to an SGAT a rate that has not been approved in a commission cost docket or using the commission approved cost model."[662] In

[658] See AT&T Qwest II Comments at 55, Tab C, Declaration of Michael R. Lieberman and Brian F. Pitkin, paras. 21, 24 (AT&T Qwest II Lieberman/Pitkin Decl.) (arguing that Qwest's switching rates in rural states should be benchmarked against Colorado's rates exclusive of transport and tandem-switching).

[659] *Verizon Rhode Island Order*, 17 FCC Rcd at 3320, para. 39; *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6276, para. 82.

[660] Integra Qwest III Comments at 5-6; OneEighty Qwest III Comments at 4-5; AT&T Qwest II Comments at 85-95; OneEighty Qwest II Comments at 4; AT&T Qwest I Comments at 49; Integra Qwest I Comments at 5.

[661] Eschelon Qwest III Comments at 43 n.54; Eschelon Qwest II Comments at 33; Eschelon Qwest I Comments at 20.

[662] Eschelon Qwest III Comments at 43 n.54; Eschelon Qwest II Comments at 33; Eschelon Qwest I Comments at 20.

[663] *Ex Parte* Comments of Eschelon Telecom, Inc. in Opposition to the Consolidated Application of Qwest Communications International Inc. for Authority to Provide In-Region, InterLATA Services in Colorado, Idaho, (continued...)

response, Qwest notes that the claims raised by Eschelon represent company-specific billing disputes that should not affect a finding of overall compliance with section 271.[664] We find that Eschelon's allegations amount to a contract dispute regarding whether Qwest is billing Eschelon pursuant to their interconnection agreement. Such disputes are best resolved by the state commissions and should not be decided by the Commission in a section 271 proceeding.[665]

183. ***Discrimination.*** AT&T argues that Qwest is not in compliance with the nondiscrimination requirements of our pricing rules because certain favored parties have been able to purchase UNEs at discounted rates.[666] We address this argument in the public interest section below.[667] AT&T also argues that the fact that Qwest was willing to provide UNEs at lower rates to favored parties demonstrates that the higher rates available under Qwest's SGATs are in excess of forward-looking cost.[668] The basis for this argument is that it would never be in a carrier's interest to provide UNEs at a rate less than a TELIUC-based rate.[669] As evidence, AT&T identifies one agreement in which Qwest purportedly agreed to provide a competitive LEC with a "flat 10 percent discount on all purchases."[670] Even if we assume that AT&T's characterization of this agreement is accurate, the agreement identified by AT&T was terminated before Qwest filed its section 271 application, and before Qwest made its most recent rate reductions.[671] On the record before us, we find no evidence that Qwest is providing UNEs at rates below those contained in its SGATs, and therefore no basis to find that the SGAT rates exceed TELRIC-compliant levels. Even if Qwest provided rates below those in its SGATs, this does not demonstrate that the SGAT rates are outside of the TELIUC range.

(Continued from previous page)
Iowa, Nebraska and North Dakota, WC Docket No. 02-148, 51 (filed Aug. 15,2002) (Eschelon Aug. 15 *Ex Parte* Comments).

664 Qwest II Reply at 52; Qwest I Reply at 51

665 ***Verizon New Jersey Order,*** 17 FCC Rcd at 12357, para. 159; ***Application*** by ***Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Vermont,*** CC Docket No. 00-65, Memorandum Opinion and Order, 17 FCC Rcd 7625,7658, para. 58 (2002) ***(Verizon Vermont Order); SWBT Texas Order,*** 15 FCC Rcd at 18394, para. 88.

666 AT&T Qwest III Comments at 42; AT&T Qwest II Comments at 28-29; AT&T Qwest I Comments at 27-28.

667 Part VII.C., ***infra.***

668 AT&T Qwest II Comments at 29; AT&T Qwest I Comments at 28.

669 AT&T Qwest II Comments at 29; AT&T Qwest I Comments at 28.

670 AT&T Qwest II Comments at 28-29; AT&T Qwest I Comments at 28

671 See Letter from Peter A. Rohrbach, Counsel for Qwest Communications International Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148 and 02-189, at 1-2 (tiled Aug. 13,2002) (Qwest Aug. 13 *Ex Parte* Lener) (08/13/02e); Qwest Nov. 12 Ex *Parte* Lener at Anachs. AT&T raised its price discrimination claim before Qwest had finished reducing its rates, therefore it is possible that the new UNE rates are less than the prior rates with the 10 percent discount.

184. ***Price Squeeze.*** AT&T, OneEighty, and WorldCom make the argument that residential competition is not economically viable in portions of the states under review in this application because of the narrow margins available to competitors that provide service through the UNE platform (UNE-P).[672] Not only do they argue that this is a violation of the public interest section, AT&T also argues that it violates the nondiscriminatory pricing requirement in checklist item two.[673] We disagree. Section 252 requires that UNEs be priced on the basis of cost, and our analysis of Qwest's rates for purposes of this checklist requirement is intended to determine whether those rates are cost-based in accordance with this statutory requirement. The potential revenues that can be generated from purchasing UNEs, and the resulting margin, are irrelevant for purposes of assessing a carrier's compliance with this checklist item. We address the details of the price squeeze argument in the public interest section below.[674]

185. ***Old*** *Cost Data.* AT&T argues that the cost studies relied on by several of the state commissions in the benchmark states used data from 1998 or earlier, therefore rates set using these data cannot be TELRIC-based today.[675] As discussed below, prior to filing its section 271 application with the Commission, Qwest voluntarily reduced many of its recurring charges and non-recumng charges (NRCs) in the application states below the rates set by the state commissions.[676] In addition, and as discussed more fully below, we evaluate Qwest's rates through a benchmark comparison to rates in Colorado that we find to be TELRIC-compliant.[677] Given that we do not rely on the state commission-set rates in states other than Colorado, we need not address AT&T's argument on this matter.

c. Colorado

(i) Background

186. The Colorado Commission conducted two extensive cost proceedings in developing rates for interconnection and unbundled network elements. The Colorado

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672 AT&T Qwest III Comments at 78-79; OneEighty Qwest III Comments at 5-6; WorldCom Qwest III Comments at 26; AT&T Qwest II Comments at 52-53, 95-96; OneEighty Qwest II Comments at 5-6; WorldCom Qwest II Comments at 35-36; AT&T Qwest I Comments at 69-71; WorldCom Qwest I Comments at 22-34.

673 AT&T Qwest III Comments at 78; AT&T Qwest II Comments at 52-53, 95-96; AT&T Qwest I Comments at 69-70.

674 Part VILA., *infra.*

675 See AT&T Qwest II Comments at 60 (cost proceedings in Montana, Utah, Washington. and Wyoming took place in 1997 and 1998 and relied on earlier data); AT&T Qwest III Comments. Tab G, Declaration of Natalie J. Baker, Arleen M. Starr, and Douglass Denney, para. 13 (AT&T Qwest III Baker/Starr/Denney Decl.) (Iowa prices based on a record from 1996-97); AT&T Qwest III Baker/Starr/Denney Decl. at para. 25 (Idaho rates are stale); AT&T Qwest III Baker/Starr/Denney Decl. at para. 55 (North Dakota rates last arbitrated in 1997).

676 Qwest I1 Application at 159-62; Qwest I Application at 149, 163-67

677 Part IV.A.2.d.(ii)(c), *infra.*

Commission first set permanent rates in 1997 in Docket No. 96S-331T.[678] The Colorado Commission revisited **those** rates, and established additional rates, in its review of Qwest's SGAT in Docket No. 99A-577T, concluding in 2002.[679]

187. *Docket No. 96S-331T.* The Colorado Commission initiated Docket No. 96S-331T on July 1, 1996, to consider tariffs proposed by Qwest. **More** than a dozen parties participated in the case. **The** Commission held eight days **of** hearings, including live cross-examination of witnesses.[680] **The** Colorado Commission issued an order adopting rates in Docket No. 96S-331T on July **28,** 1997. **The** Colorado Commission did not select **a** specific cost model to use in calculating rates, although it stated that all the cost studies submitted by the parties were consistent with TELRIC principles."'

188. ***Docket No. 99A-577T.*** Qwest **filed** its SGAT with the Colorado Commission on November ***30,*** 1999 in Docket No. 99A-577T. Qwest filed cost studies in support of its proposed rates and responded to hundreds of discovery requests. Phase I of the proceeding ultimately involved "thousands of pages of filed testimony, hundreds of exhibits, two **full** weeks of hearings and several computer-generated models with thousands of input variables."[682]

189. The Colorado Commission issued an order in Docket No. 99A-577T on December 21,2001. **The** Colorado Commission made clear its intention to apply TELRIC principles in its decision. Specifically, the Colorado Commission stated that "[d]isputes about TELRIC as a pricing methodology . . . are immaterial to our deliberation here. Our duty is to follow the FCC's TELRIC mandate."[683] **The** Colorado Commission relied primarily on the HAI Model submitted by competitive LECs in establishing recurring charges for UNEs, although it relied on Qwest's cost studies to establish NRCs and collocation rates.[684] In deciding on inputs

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678 ***Investigation and Suspension of Tariff Sheets filed by U S WEST Communications, Inc.. with Advice Letter No. 2617, Regarding Tariffs for Interconnection, Local Termination, Unbundling and Resale of Services,*** Docket No. 96S-331T, Decision No. C97-739 (Colo. PUC 1997) ***(Colorado 331T Order)***.

679 ***U S WEST Communications, Inc.'s Statement of Generally Available Terms and Conditions,*** Docket No. 99A-577T, Decision No. C01-1302 (Colo. PUC Dec. 21,2001) ***(Colorado Pricing Order).*** The Colorado Commission subsequently made changes to the rates established in the ***Colorado Pricing Order*** in **two** separate orders **on** reconsideration. See U S ***WEST Communications, Inc.'s Statement of Generally Available Terms and Conditions,*** Docket No. 99A-577T, Decision No. C02-409 (Colo. PUC Apr. 17,2002) ***(Colorado Pricing Reconsideration Order);*** Decision No. CO2-636 (Colo. PUC June 6,2002) ***(Colorado Pricing Further Reconsideration Order).***

680 Qwest **1** Application at 9.

681 ***Colorado 331*** T ***Order*** at 36-37

682 ***Colorado Pricing Order*** at 4

683 ***Colorado Pricing Order*** at 10. ***See also Colorado Pricing Reconsideration Order*** at 4 (''Finally, this RRR decision endeavors to make the wholesale rates more accurately TELRIC **by** modifying cost model inputs to better estimate the forward-looking costs that an efficient telecommunications provider will incur.").

684 ***Colorado Pricing Order*** at ***38-40, Colorado Pricing Reconsideration Order*** at ***26*** (clarifying that Qwest's LoopMod cost model was used only **as** a secondary "check" on the HAI results and was not used to derive any rates).

for the HAI Model, the Colorado Commission relied on a number of assumptions that it described as "aggressive," which Qwest asserts had the effect of lowering UNE rates below those that an efficient carrier would incur today?"

190. Qwest states that its SGAT includes rates for a small number of products and services that have not yet been addressed by the Colorado Commission. In addition, some rates set by the Colorado Commission are identified as interim rates.[686] The Colorado Commission has stated that it will adopt rates for these products and services in Phase II of Docket No. 99A-577T.[687]

(ii) Recurring Charges

191. In setting recurring charges for UNEs, the Colorado Commission relied primarily on the HAI model advocated by AT&T, WorldCom and XO Communications!" The Colorado Commission then selected inputs for the model based on its judgment of the costs an efficient provider would expect to incur on a forward-looking basis, based on the record before it.[689]

192. AT&T argues that the loop and switching rates established by the Colorado Commission exceed the rates that would be produced by a proper application of the Commission's TELRIC requirements.[690] Specifically, AT&T challenges five of the loop inputs selected by the Colorado Commission in running the HAI model, and three of the switching inputs.[691] Covad challenges the Colorado Commission's decision to establish a positive recurring charge for the high-frequency portion of the loop.[692] For the reasons explained below, we

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685 Qwest I Application at 22 (citing ***Colorado Pricing Reconsideralion Order*** at 31).

686 Although identified as "interim," these rates are not subject to a retroactive me-up based on future rates established by the Colorado Commission. Accordingly, these rates are the effective rates in Colorado for the indefinite future. ***See Colorado Pricing Reconsideration Order*** ai I I- 12.

687 ***See Colorado Pricing Reconsideration Order*** at 10-11; ***Colorado Pricing Further Reconsideration Order*** at 12, 15.

688 ***Colorado Pricing Order*** at 38-39; ***Colorado Pricing Reconsideration Order*** at 26

689 ***Colorado Pricing Order*** at 12; ***Colorado Pricing Reconsideration Order*** at 27.

690 AT&T Qwest III Comments at 69, 70-73; AT&T Qwest I Comments at ***50***

691 AT&T Qwest III Comments, Tab I, Joint Declaration of Dean Fassett and Robert Mercer at paras. 29-64 (AT&T Qwest III Fassett/Mercer Decl.), Tab H, Joint Declaration of Richard Chandler and Robert Mercer at paras. 23-42 (AT&T Qwest III Chandler/Mercer Decl.); AT&T Qwest I Comments, Tab F, Joint Declaration of Dean Fassett and Robert Mercer, paras. 14-18 (AT&T Qwest I Fassett/Mercer Decl.); Declaration of Richard Chandler and Robert Mercer at para. 15 (AT&T Qwest I Chandler/Mercer Decl.).

692 Covad Qwest III Comments at 3; Covad Qwest I Comments at 5

conclude that the recurring charges adopted by the Colorado Commission are consistent with TELRIC principles and meet the requirements of checklist item two.[693]

(a) Loop

193. *Plant Mix.* The HAI model includes inputs that allow the user to decide what portion of plant is placed on aerial structures, underground (in conduit) or buried in trenches (without conduit). As a general matter, according to AT&T, aerial placement is the least expensive and underground placement is the most expensive.[694] AT&T asserts that the Colorado Commission selected a plant mix that included too little aerial plant and too much underground plant. Specifically, the Colorado Commission assumes 20 percent of facilities would be placed on aerial structures, rather than the 28.9 percent advocated by AT&T or the 12.3 percent advocated by Qwest. In addition, rather than assigning the 8.9 percent difference (between AT&T's proposal and the figure selected by the Colorado Commission) to buried placement, the next least expensive method of placement, the Colorado Commission assigned half to buried and half to underground. AT&T asserts that this TELRIC error has the effect of overstating loop rates by $0.48 per month.'"

194. In deciding to assume **20** percent aerial plant, the Colorado Commission rejected a lower percentage submitted by Qwest. At the same time, the Colorado Commission found that the default number in the HAI model neglected the public's aesthetic preference for buried plant.[696] The Colorado Commission explained that the plant mix inputs it adopted "reflect our judgment of the forward-looking plant mix for the various types of plant.""[697] In response to AT&T's assertion that the Colorado Commission improperly distributed the difference of 8.9 percent between buried and underground placement, the Colorado Commission explained that it did not merely "split the difference," but instead it selected different sets **of** inputs for four different classifications of outside plant, based on information provided in the record.[698] Based on the analysis performed by the Colorado Commission with regard Io this fact-specific issue, we find no clear error in its decision with respect to plant mix.

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693 We find that the recurring charges in Colorado comply with section 252(d)(2) on their own merit and not based on a comparison to any other state. We take comfort, however, in the fact that the rates established by the Colorado Commission are in the range of rates in states that have already received section 271 approval. For example, accounting for cost differences between states, loop rates in Colorado are 1 percent higher than loop rates in Texas, while non-loop rates are 10 percent less than non-loop rates in Texas (using our "standard assumptions" regarding minutes-of-use and traffic patterns.) See Part IV.A.2.d.(ii)(b)(i) below for a discussion of the use of standard assumptions in comparing non-loop rates.

694 AT&T Qwest I Comments at 63; AT&T Qwest III Fassett/Mercer Decl. at pan. 30.

695 AT&T Qwest I Comments at 64; AT&T Qwest III Fassett/Mercer Decl. at para. 38.

696 *Colorado Pricing Reconsideration Order* at 31

697 *Colorado Pricing Further Reconsideration Order* at 8

698 *Id.* at 7-8.

195. ***Placement** Costs.* Placement costs are the costs associated with placing cable, such as trenching, boring **or** plowing. In its initial pricing decision, the Colorado Commission adopted the competitive LECs' position that the cost of plowing would not exceed **$0.80** per foot.[699] On reconsideration, the Colorado Commission increased this rate to $1.30 **per foot.**[700] AT&T states that the Colorado Commission erred in its decision to increase the plowing rate to $1.30 per foot. According to AT&T, Qwest proposed an average plowing cost based on a study that had been prepared previously by AT&T's expert witness, but not submitted by AT&T in the Colorado pricing docket. AT&T states that, under TELRIC, the Colorado Commission should have selected the lowest price identified in the study, not the average price, **for** performing this activity.[701] In addition, AT&T states that the contracts in the study relied on by Qwest were for limited projects, rather than large projects, and overstate the cost of reconstructing an entire network.'" The effect of these errors, AT&T asserts, is to overstate loop costs **by** $0.09 per

196. In its second reconsideration order, the Colorado Commission notes that the "record contains extensive evidence from the parties regarding the appropriate assumptions for cable placement **costs.**"[704] The Colorado Commission made clear that its "chosen input reflects our best judgment of the accurate forward-looking cost for cable **placement.**"[705] The Colorado Commission appropriately recognized that diverse soil conditions exist in Colorado and it adopted different costs in different density zones to reflect this **fact.**[706] To the extent Qwest's proposal of $1.44 per foot was based on construction in difficult terrain, the Colorado Commission reduced this figure to reflect that the HAI model already includes **a** multiplier for difficult terrain.[707] Given the analysis of this fact-intensive issue by the Colorado Commission, we find no clear violation of TELRIC requirements.

197. ***Drop** Lengths.* Drop length is the length of wire from a pole-mounted terminal **or** buried pedestal to a customer's premises. AT&T submitted evidence to the Colorado Commission that the average statewide drop length would not exceed 69 feet. Qwest proposed an average drop length of 136 feet. The Colorado Commission rejected both proposals and

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699 AT&T Qwest III Fassett/Mercer Decl. at para. **39;** AT&T Qwest I Fassett/Mercer Decl. at para. **36;** ***Colorado Pricing Order*** at **45.**

700 ***Colorado Pricing Reconsideration Order*** at ***20.***

701 AT&T Qwest III Fassett/Mercer Decl. at para. **44;** AT&T Qwest I Fassett/Mercer Decl. at para. **41.**

702 AT&T Qwest III Fassett/Mercer Decl. at paras. **45-46;** AT&T Qwest I Fassett/Mercer Decl. at paras. **42-43.**

703 AT&T Qwest III Fassett/Mercer Decl. at para. **47;** AT&T Qwest I Fassett/Mercer Decl. at para. **44.**

704 ***Colorado Pricing Further Reconsideration Order*** at **5.**

705 *Id.* at 5.

706 ***Colorado Pricing Reconsideration Order*** at **30.**

707 ***Id.***

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found that "an average (statewide) drop length of 75 feet is a reasonable middle ground that gives recognition to the flaws of both proposals."[708] On reconsideration, the Colorado Commission concluded that it had "underestimated the average drop lengths in the least dense zones," and it adopted a new set of drop lengths with a statewide average of 87.2 feet.[709] AT&T states that the Colorado Commission erred in its initial selection of 75 feet, and the subsequent increase to 87.2 feet.'" AT&T asserts that the Colorado Commission's explanation on reconsideration – that the 75-foot estimate did not reflect longer drop lengths in rural areas – is unsupported in the record and inconsistent with the fact that the initial 75-foot estimate was based on Qwest's embedded network.'" According to AT&T, the effect of this error is to overstate loop costs by $0.10 per month.

198. In its second reconsideration order, the Colorado Commission explained more fully the basis for its decision. Specifically, the Colorado Commission explained that the evidence submitted by Qwest demonstrated that there was a wide variation in drop lengths among the different density zones.[712] Although the Colorado Commission accepted Qwest's evidence on the variability in drop lengths, it did not accept the actual distances proposed by Qwest on the grounds that Qwest's proposal did not adequately reflect the presence of multi-tenant units.'" We find no clear error in the manner in which the Colorado Commission weighed the evidence before it and selected the drop length input to be used in the model.

199. *Strand* Distance. According to AT&T, the HAI model uses a measure called "strand distance" to ensure that the distribution route distance calculated by the model matches the amount of distribution route distance actually required to connect actual customer locations.'" The model includes a strand distance normalization (SDN) option, which AT&T describes as a mechanism similar to the Minimum Spanning Tree (MST) approach utilized by the Commission's Synthesis Model.[715] AT&T states that the Colorado Commission improperly turned off the SDN option when it ran the HAI model, which caused the model to assume incorrectly that customers *are* spread uniformly throughout each cluster, rather than concentrated

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708 ***Colorado Pricing Order*** at 43.

109 ***Colorado Pricing Reconsideration Order*** at 42-43.

710 AT&T Qwest III Fassett/Mercer Decl. at paras. 59-60; AT&T Qwest I Fassett/Mercer Decl. at paras. 56-57

711 AT&T Qwest III Fassett/Mercer Decl. at para. 59; AT&T Qwest I Fassetthlercer Decl. at para. 56.

712 *Colorado* ***Pricing Further Reconsideration Order*** at 9

713 ***Colorado Pricing Order*** at 43.

714 AT&T Qwest III Fassett/Mercer Decl. at para. 48; AT&T Qwest I Fassett/Mercer Decl. at para. 45.

715 AT&T Qwest III Fassett/Mercer Decl. at para. 49; AT&T Qwest I Fassett/Mercer Decl. at para. 46.

around schools, office parks and other areas.[716] In its comments, AT&T stated that the effect of this alleged error is to increase loop rates by *$0.62* per month.[717]

200. AT&T also states that the Colorado Commission's decision to turn off the SDN option "substantially distorts" the deaveraging process.[718] As a result, only 5 percent of lines are in zone 1, as compared to almost 60 percent if the SDN option is turned on.[719] AT&T states that this approach is inconsistent with Colorado's demographics because only four wire centers in downtown Denver are in zone 1, while all the other wire centers in the Denver metropolitan area are in zone 2.[720] According to AT&T, the effect of this error is to raise the average loop rate for customers who should be in zone 1 (with the SDN option turned on) by $1.63 per line.[721] Qwest responds that the Colorado Commission reasonably declined to use the MST approach.[722] Similarly, Qwest argues that AT&T's deaveraging claim should be rejected because the Colorado Commission's approach is reasonable and TELRIC-compliant.[723] Qwest further notes that. in any event, the Colorado Commission will re-examine issues related to AT&T's claim during the upcoming phase of its UNE pricing proceeding.[724]

201. In its first pricing order, the Colorado Commission explained its decision not to use the MST algorithm in the HAI model. Specifically, the Colorado Commission found that "customer placement based on MST is not representative of the real world considerations that are properly taken into account in a TELRIC study. Despite the scorched node approach, TELRIC does not require ignoring other real world limitations or sources of network placement cost such as buildings, rivers, lakes, etc."[725] AT&T did not request reconsideration on this particular issue, and it does not appear that it raised the deaveraging issue at all. We find that the standard applied by the Colorado Commission is not inconsistent with TELRIC requirements and we find no clear error in its decision not to use the SDN option. The Colorado Commission is considering loop deaveraging issues in Phase II of its cost proceeding, and we encourage AT&T to raise this issue with the Colorado Commission during that proceeding.

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716 AT&T Qwest III Fassett/Mercer Decl. at para. 50; AT&T Qwest I Fassett/Mercer Decl. at para. 47.

717 AT&T Qwest III Fassett/Mercer Decl. at para. 51; AT&T Qwest I Fassett/Mercer Decl. at para. 48.

718 AT&T Qwest III Fassett/Mercer Decl. at paras. 65-72.

719 AT&T Qwest III Fassett/Mercer Decl. at para. 68; AT&T Qwest I Reply, Reply Declaration of Dean Fassett and Robert Mercer at para. 7 (AT&T Qwest I FassetUMercer Reply Decl.).

720 AT&T Qwest III Fassett/Mercer Decl. at para. 69; AT&T Qwest I Fassett/Mercer Reply Decl. at para. 8.

721 AT&T Qwest III Fassett/Mercer Decl. at para. 70; AT&T Qwest I Fassett/Mercer Reply Decl. at para. 9.

722 Qwest III Thompsoflreeberg Reply Decl. at paras. 15-16.

723 Qwest III Thompsoflreeberg Reply Decl. at para. 16

724 *Id.*

725 *Colorado Pricing Order* at 42.

202. ***Network Operations Expense.*** Network operations expense represents Qwest's costs associated with specific operations activities. According to AT&T, the network operations expense factor in the HAI model is used to reduce the current level of network operations expense in order to recognize TELRIC-compliant forward-looking savings.[726] AT&T asserts that the Colorado Commission committed clear error when it adopted Qwest's proposed 100 percent network operations factor, which assumes that Qwest will achieve no expense reductions on a forward-looking basis. AT&T identifies a number of specific expense accounts that should be reduced in a forward-looking environment.[727]

203. In its initial pricing decision, the Colorado Commission selected the 100 percent network operations expense factor advocated by Qwest, and rejected the 50 percent factor advocated by the competitive LECs.[728] The Colorado Commission found that the competitive LECs had not provided adequate support on the record for the proposition that Qwest would incur only half its current expenses in a forward-looking environment. Contrary to AT&T's assertions, the Colorado Commission did "agree that there should be some degree of recognition that the utilization of forward-looking technologies will likely reduce future Network Operations Expense."[729] Specifically, the Colorado Commission reduced network operations expense by applying a 4 percent productivity (net of inflation) factor to bring 1999 expenses forward to 2001.[730] Based on the Colorado Commission's assessment of the record before it, we find no clear error in the manner in which the Colorado Commission calculated network operations expense.

204. Nor are we persuaded by AT&T's argument that the Colorado Commission "appears" to have been "misled" by Qwest concerning adoption of a lower network operations expense factor than AT&T advocates.[731] AT&T asserts that the Colorado Commission adopted a per-line network operations expense additive that is more than double the additives proposed by either AT&T or Qwest.[732] Qwest responds that AT&T mischaracterized Qwest's position with respect to Colorado loop costs. Qwest had proposed its own loop cost model, which treated network operating expense as a percentage factor applied to direct investment amounts.[733] In the

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726 AT&T Qwest III Fassett/Mercer Decl. at para. 61; AT&T Qwest I Fassett/Mercer Decl. at para. 58.

727 AT&T Qwest III Fassett/Mercer Decl. at para. 63; AT&T Qwest I Fassett/Mercer Decl. at paras. 60-64.

728 *Colorado Pricing Order* at 62-63

729 *Id* at 63.

730 Id. at 63, 71

731 See AT&T Qwest III Comments at 71-73, Tab K, Declaration of Douglas Denney at paras. 8-14 (AT&T Qwest III Denney Decl.); Letter from Alan C. Geolot, Counsel for AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 (filed Nov. 12, 2002) (AT&T Nov. 12 *Ex Parte* Letter) at Attach. Supplemental Declaration of Douglas Denney (AT&T Supp. Denney Decl.).

732 AT&T Qwest III Comments at 72-73; AT&T Qwest III Denney Decl. at paras. 10-11; AT&T Nov. 12 *Ex Parte* Letter at AT&T Supp. Denney Decl.. paras. 5-6.

733 Qwest III Thompson/Freeberg Reply Decl. at para. 10

alternative, if the Colorado Commission adopted use of the HAI Model, Qwest opposed use of a 50 percent network operations expense adjustment, arguing that its current costs already reflect the efficiencies of a modem network.[734] As discussed above, the Colorado Commission rejected AT&T's proposed 50 percent adjustment, but felt some adjustment was appropriate, *so* it applied a 4 percent adjustment to reflect anticipated productivity improvements, offset by inflation."' Therefore, it does not appear that the Colorado Commission was "misled," but that it made a reasonable decision based on the record before it on this issue.

(b) Switching

205. In the ***Colorado Pricing Order,*** the Colorado Commission elected **to** retain the switching rates it adopted in 1997 in the 331T proceeding.[736] The competitive LECs requested reconsideration of that decision, and in response Qwest stated that it was willing to set switching rates using the HAI model, as proposed by the competitive LECs, provided that six specific input adjustments were made. The Colorado Commission adopted Qwest's proposal, noting that the proposed reductions were supported by the evidentiary record in the case.[737] The competitive LECs again sought reconsideration, and in response Qwest proposed rates that included only four of its original input adjustments. The Colorado Commission again adopted Qwest's proposal, subject to reexamination in its upcoming Phase II proceeding.[738] Before filing its current section 271 application, and in response to comments from AT&T, Qwest voluntarily reduced its Colorado port rate by eliminating a $0.38 vertical features software cost additive.[739] AT&T now challenges the Colorado Commission's decision on two grounds.

206. ***Fill Factor.*** The HAI model proposed by the competitive LECs included a **94** percent fill factor for switching. In the Qwest proposal ultimately adopted by the Commission, the fill factor is set at 82.5 percent.[740] AT&T states that the reduction in the fill factor from 94 percent to 82.5 percent is unjustified. Specifically, AT&T states that Qwest's argument that a lower fill factor is needed to cover increases in demand ignores the fact that the HAI model

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7JP Qwest III Thompson/Freeberg Reply Decl. at para. 11.

735 Qwest III Thompson/Freeberg Reply Decl. at para. 12.

736 ***Colorado Pricing Order*** at **79.** The port rate adopted in **1998** was **$1.78** per month and the usage rate was $0.00283 per minute.

737 ***Colorado Pricing Reconsideration Order*** at **6-7.**

738 ***Colorado Pricing Further Reconsideration Order*** at 12.

739 Qwest I Reply at **96-97;** Letter from David L. Sieradzki, Counsel for Qwest Communications International, Inc., to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. **02-148** (tiled Aug. 8, *2002)* (Qwest Aug. 8 Pricing ***Ex Parte*** Letter) (08/08/02d). Because Qwest established switching rates in the other eight states based on a benchmark to Colorado, Qwest also reduced switching rates in those states. Qwest I Reply, Reply Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection, para. **79** (Qwest I Thompson Reply Decl.).

740 ***Colorado Pricing Further Reconsideration Order*** at 12

includes a default maximum line size of 80,000 lines per switch, even though switches have the capacity to serve at least 100,000 lines.[741] The result of this error, according to AT&T, is to inflate switching costs by 8.6 percent.[742]

207. Although the Colorado Commission did not provide an analysis of this specific issue, it did note in the ***Colorado Pricing Reconsideration Order*** that there was evidence on the record supporting Qwest's first compromise proposal."[743] Specifically, Qwest submitted testimony, and made its witness available for cross-examination, explaining the basis for its proposal to use a fill factor of less than 94 percent.[744] Based on this record evidence, we do not think the Colorado Commission committed TELRIC error in adopting the second Qwest compromise proposal with the 82.5 percent fill factor. Furthermore, Qwest has provided additional material in this proceeding that demonstrates why a fill factor of 94 percent may not be sufficient.[745]

208. ***Port/Usage Split.*** In their proposed run of the HAI model, the competitive LECs urged the Colorado Commission to allocate 60 percent of switch costs to flat-rate port charges and 40 percent to per-minute usage charges. One of the adjustments advocated by Qwest, and adopted by the Colorado Commission, was to change this allocation so that 30 percent of switch costs are allocated to ports and 70 percent are allocated to usage. AT&T asserts that the Colorado Commission's decision to accept Qwest's proposal to use a 30/70 split in allocating switch costs between port and usage does not reflect the realities of a forward-looking network. Because most of the costs of a switch occur at the time it is placed in operation and do not vary with usage, AT&T argues that a 60/40 split would be more appropriate.[746] According to AT&T,

741 AT&T Qwest III Chandler/Mercer Decl. at para. 31; AT&T Qwest I Chandler/Mercer Decl. at para. 28

742 AT&T Qwest III Chandler/Mercer Decl. at para. 32; AT&T Qwest I Chandler/Mercer Decl. at para. 29.

743 ***Colorado Pricing Reconsideration Order*** at 7 n.2.

744 ***U S WEST Communicafions,Inc.'s Statement of Generally Available Terms and Conditions,*** Docket No. 99A-577T, Rebuttal and Cross Answer Testimony of Robert Brigham at 142-54 (July 20,2001).

745 Qwest I Thompson Reply Decl. at paras. 30-36. For example, Qwest argues that a 94 percent fill factor would not provide sufficient capacity to leave lines connected after a customer terminates service ("warm dial tone"). Qwest also explained that the 80,000 line maximum switch size in the HAI model does not justify the use of a higher fill factor because this input only affects the fixed component of switch investment, not the variable (per-line) component of switch investment. ***Id.*** at para. 36. For example, rather than calculate the cost of a single switch serving 90,000 lines, the model would spread those lines over two switches. This increases the fixed cost (by adding the fixed investment of a second switch), but the variable cost still is calculated based on 90,000 lines. The 80,000 line maximum therefore has little impact on the switching cost in Colorado because: (1) variable costs represent 82 percent of per-line switch costs on an average switch; and (2) only a handful of switches are large enough to be split by the model. ***Id.***

746 AT&T Qwest III Chandler/Mercer Decl. at paras. 36-37; AT&T Qwest I Chandler/Mercer Decl. at paras. 33-34.

the effect of this error is to increase switching usage costs by 75 percent, thereby deterring competitive LECs from serving high-usage customers."[747]

209. AT&T is correct in stating that our TELRIC rules establish the general principle that costs should be recovered in the manner in which they are incurred.[748] The Commission has not, however, interpreted this principle to mandate a particular allocation of switch costs between flat-rate port charges and per-minute usage charges. To the contrary, we previously have approved section 271 applications in which the state commission adopted the same 30/70 split used by the Colorado Commission.[749] Accordingly, we find that the decision by the Colorado Commission to adopt a 30/70 split does not constitute a TELRIC error.[750]

(c) Line Sharing

210. The *Colorado Pricing Order* established a rate of $4.89 per month for the High Frequency Portion of the Loop (HFPL) that carriers purchase under the Commission's line sharing requirements.[751] In setting this rate, the Colorado Commission applied an imputation test to determine whether Qwest's charges for retail DSL service cover the direct cost of the service plus an imputation of the wholesale price Qwest charges for the HFPL.[752] In applying that test, the Colorado Commission found that Qwest's retail price of $29.95 "is far above a reasonable estimate of Qwest's direct costs for providing HFPL and our proposed wholesale price."[753] Covad requested reconsideration of this decision, and the Colorado Commission affirmed its initial decision.[754] Covad again requested reconsideration, and in response Qwest expressed its

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747 AT&T Qwest III Chandler/Mercer Decl. at para. 41; AT&T Qwest I Chandler/Mercer Decl. at para. 37

748 See *Local Cornpetifion First Report and Order,* 11 FCC Rcd at 15874, para. 743

749 *Verizon Maine Order* at para. 29. AT&T attempts to distinguish the Maine decision on the ground that the Maine Commission provided a more extensive analysis in support of its decision. Although AT&T is correct that the Colorado Commission did not provide an extensive analysis of this specific issue, Qwest filed testimony in support of this adjustment and the Colorado Commission referenced that testimony in the ***Colorado Pricing Reconsideration Order.*** Although a more complete discussion by the Colorado Commission would have been helpful, we do not find that the absence of such a discussion on this issue means that we should second-guess a state decision that is consistent with our prior decisions.

750 As to AT&T's argument that Qwest's allocation of costs between port and usage charges has the effect of making high-usage customers less attractive to competitive carriers, we note that it also would seem to make low-usage customers more attractive. Given the suggestion elsewhere in AT&T's comments that it plans to serve all customers (i.e., to enter markets on a state-wide basis), we do not see how AT&T is harmed hy the port/usage allocation adopted by the Colorado Commission. AT&T Qwest I Comments at 141, Declaration of Michael Lieberman, para. 20 (AT&T Qwest I Lieberman Decl.).

751 *Colorado Pricing Order* at 114-18

752 *Colorado Pricing Order* at 117-18

753 *Id.* at 118.

754 *Colorado Pricing Reconsideration Order* at 87-88,

willingness to provide the HFPL at a rate of **zero** on a temporary basis. The Colorado Commission rejected Qwest's proposal to provide the HFPL at a rate of zero and retained the **$4.89** rate in Qwest's SGAT.[755] On August 5,2002, Qwest filed an amended SGAT with the Colorado Commission reducing the HFPL rate in zone 1 and zone 2 on **an** interim basis, pending a final decision on deaveraging of loop rates in Phase II of the 577T **docket.**[756] Covad argues that the Colorado Commission's decision to set a positive rate for the HFPL violates the ***Line Sharing Order,*** our TELRIC pricing requirements and the nondiscrimination provisions of the Act.

211. Covad argues that the Colorado Commission's decision **to** establish a $4.89 monthly charge for the HFPL violates the Commission's ***Line Sharing Order.*** According to Covad, "Qwest must be required to set the price for the [HFPL] at the same price Qwest continues to charge itself: $0."[757] Covad relies on the section of the ***Line Sharing Order*** in which the Commission stated that ''states may require that incumbent LECs charge no more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."[758] According to Covad, Qwest has acknowledged that it does not include any loop costs in its filed cost studies supporting its federal tariffs for retail DSL service,[759] and therefore any rate in excess of zero violates our rules.

212. We agree that the Colorado Commission did not follow the ***Line Sharing Order's*** guidelines for pricing the HFPL. As mentioned, the ***Line Sharing Order*** announced that "states may require that incumbent LECs charge no more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."[760] The use of the term "may" could suggest that the rule is permissive – that states have discretion to adopt a different pricing rule. On the other hand, however, the ***Line Sharing Order*** uses language that suggests the Commission meant to impose a mandatory rule. For example, the Commission stated that "[b]y ***requiring*** incumbent LECs to provide access to the shared local loops for no more than they allocate to their own xDSL services, the price squeeze may be redressed by ensuring competitive LECs and ILECs incur the same cost for access to the bandwidth required to provide xDSL services."[761] In

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755 ***Colorado Pricing Further Reconsideration Order*** at 17-18

756 The HFPL rate is now $1.82 in zone 1 and $3.80 in zone 2. See Qwest Aug. 8 Pricing ***Ex Parte*** Letter (08/08/02d).

757 Covad Qwest I Comments at 5. See ***also*** Covad Qwest III Comments at 3

758 ***Line Sharing Order,*** **14** FCC Rcd at 20975-76, para. **139.**

759 Covad Qwest III Comments at 8-9; Covad Qwest I Comments at 8.

7M) ***Line Sharing Order,*** **14** FCC Rcd at **20975,** para. 138

761 ***Line Sharing Order,*** **14** FCC Rcd at 20976, para. **141** (emphasis added). In addition, under the ***Local Competition First Report and Order,*** states already had discretion to adopt this pricing rule. There, the Commission stated that states could – but did not have to – require that incumbent LECs charge no more to competitive LECs for access to unbundled elements than the amount they charged at retail for services using the same elements. ***Local*** (continued....)

fact, in a subsequent order, the Commission stated that the pricing rule was required. Characterizing the ***Line sharing Order's*** pricing rule as mandatory, the Commission stated in the ***CALLS Order*** that "[t]he ***Line Sharing Order*** concluded that states should not permit incumbent LECs to charge more to competitive LECs for access to shared local loops than the amount of loop costs the incumbent LEC allocated to ADSL services when it established its interstate retail rates for those services."[762]

213. Because the Commission has not conclusively determined whether the HFPL guidelines are required, we decline to do ***so*** in the context of this section **271** proceeding. The Commission has typically deferred resolution of such novel issues to separate proceedings.[763] We intend to address this issue in our pending proceeding on line sharing. **We** expect that Qwest, working with the Colorado Commission, will adjust its HFPL rate **or** its retail DSL tariff. if necessary, to comply with the rules the Commission adopts in the pending proceeding.

(iii) Non-Recurring Charges

214. The NRCs established by the Colorado Commission in the ***Colorado Pricing Order*** were derived from the cost model submitted by Qwest. Qwest's model calculates NRCs by identifying each individual element of an activity, determining how many minutes it takes to accomplish each element, multiplying that figure by how often the element is likely *to* occur, and

(Continued from previous page)

Competition First Report and Order, 11 FCC Rcd at 15920, para. 850. Yet the ***Line Sharing Order*** spends four pages discussing how the HFPL should be priced, which seems odd if it meant only to re-emphasize the point already established in the *Local* ***Competition First Report and Order.***

762 Access ***Charge Reform,*** Sixth Report and Order in CC Docket Nos. 96-26? and 94-1. Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45. **15** FCC Rcd 12962. 13001, para. 98 (2000) (CALLS ***Order).*** **At** the same time, **we** note that all of the Commission's line sharing rules. including the HFPL pricing guidelines, were held invalid by the United States Court of Appeals **for** the D.C. Circuit. See *United States Telecom Ass'n v. FCC*, 290 F.3d 415,429 (D.C. Cir. 2002). Indeed. the court determined that these rules "must be vacated," and these rules would no longer be in effect but for the court's decision to stay the vacatur of the Line ***Sharing Order*** until January 2,2003. See ***id;*** USTA v. FCC, No. 00-1012. Order (D.C. Cir.. tiled Sept. 4, 2002). The Commission has recently sought an additional extension of this **stay** until February 20.2003. The Commission is currently considering line sharing in a pending proceeding. ***See Triennial Review*** Notice, 16 FCC Rcd **at** 22805-06, paras. 53-54.

763 ***See, e.g., SBC Arkansas/Missouri Order,*** 16 FCC Rcd at 20759-60, para. 82; ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17470, para. 92 ("As we have stated in other section 271 orders, new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes that our rules have not yet addressed and that do not involve ***per se*** violations of the Act or our rules, are not appropriately dealt with in the context of a section 271 proceeding."), para. 97 (concerning resale of DSL in combination with UNE-platform voice service) and para. 100 (concerning single points of interconnection). See also *Verizon Massachusetts Order,* 16 FCC Rcd at 8993, para. 10; *SWBT Texas* ***Order,*** 15 FCC Rcd at 18366, para. 23. Couns have held that the Commission is not required to solve all ambiguities in the context of a section 271 proceeding. See, *e.g.*, Bell *Atlantic New York Order*, 15 FCC Rcd at 4117-4124, paras. 316-336, *aff'd AT&T v. FCC*, 220 F.3d 607, 622-625 (D.C. Cir. 2000) (agreeing with the Commission that 'The statute is ambiguous with respect to the precise issue [nondiscriminatory access to DSL loops]" and upholding the Commission's decision not to require a separate evidentiary showing with respect to DSL loops).

finally multiplying the resulting number of minutes by the appropriate labor rate.[764] The competitive LECs sought reconsideration of the Colorado Commission's initial decision with respect to NRCs, and in the ***Colorado Pricing Reconsideration Order*** the Colorado Commission reduced the frequency estimates for a number of activities, which resulted in reductions in the NRCs.[765]

215. Notwithstanding these reductions, AT&T argues that the NRCs established by the Colorado Commission are not consistent with TELRIC requirements. AT&T identifies three principal flaws in the Colorado Commission's analysis: activities and time estimates that are not sufficiently forward-looking, recovery of costs that should be recovered through recurring charges, and recovery of disconnect costs as part of installation charges.[766] As proof that the Colorado Commission committed clear TELRIC error, AT&T attempts to show that the NRCs in Colorado are significantly higher than charges for comparable activities in other states that have received section 271 approval.[767]

216. ***Forward-Looking vs. Actual.*** AT&T argues that the NRC study adopted by the Colorado Commission reflects activities and time estimates that are not sufficiently forward-looking. Specifically, AT&T states that the Qwest study reflects the costs of several manual activities that would, and currently can, be performed electronically.[768] AT&T also states that the Qwest study assumes an unreasonably high level of fallout (10 percent) and that a much lower fallout rate (2 percent) is appropriate for fornard-looking OSS.[769] AT&T states that the NRC study approved by the Colorado Commission improperly develops time estimates for each activity based on the opinion of a single subject matter expert, which is neither objective nor statistically valid.'" The result, AT&T asserts, is that the time estimates for numerous activities are overstated.

217. We find that the arguments advanced by AT&T are not sufficient to demonstrate that the Colorado Commission committed clear TELRIC error. The Colorado Commission was presented with two cost studies that offered extremely different opinions of the activities that are necessary in a forward-looking environment, and the time and frequency associated with each activity. The Colorado Commission selected the Qwest cost study, but in its first reconsideration order the Colorado Commission made a number of adjustments to the frequencies to make them

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764 **Qwest I Thompson Reply Decl. at para. 21.**

765 ***Colorado Pricing Reconsideration Order* at 6 1-62.**

766 **AT&T Qwest I Comments at 62.**

767 *Id* **at 6 1-62.**

768 **AT&T Qwest I Comments, Declaration of Thomas Weiss at paras. 17-19 (AT&T Qwest I Weiss Decl.).**

769 *Id* **at paras. 32-33.**

770 *Id.* **at paras. 20-26.**

more forward-looking, as requested by the competitive LECs.[771] Based on the record before it, the Colorado Commission was required to make a significant number of highly fact-specific decisions. We are reluctant to interfere with state commissions with respect to these decisions, and we find that AT&T has not provided sufficient reason for us to do so here.

218. *Disconnect Costs.* AT&T states that the Colorado Commission erred by allowing Qwest to include disconnection costs in its installation NRCs.[772] According to AT&T, these costs should be recovered at the time they are incurred, if they are incurred at all. To the extent that Qwest has concerns about non-payment, AT&T states that the situation with respect to wholesale customers is distinguishable from the situation for retail customers, and there are other means by which Qwest can address the potential for non-payment by wholesale customers.[773]

219. As a conceptual matter, we do not find the decision by the Colorado Commission to allow Qwest to recover disconnection costs at the time of installation is necessarily a violation of TELRIC. As the parties note, recovery of disconnect costs at the time of installation is a well-established practice with respect to retail customers. Although AT&T may be correct that there are differences between retail and wholesale customers, we find that it is for the states to decide in the first instance the most appropriate manner of balancing the competitive LEC interest in reducing up-front charges with the need to protect incumbent LECs against the risk of non-payment by wholesale customers.[774] Where, as here, the state commission has engaged in a reasoned analysis of the merits of allowing an incumbent LEC to recover these costs at the time of installation,[775] we will not interfere with that decision.

220. A second concern advanced by AT&T is that the level of the disconnect costs included in the installation NRCs overstates the costs associated with disconnection because in most cases Qwest leaves facilities in place when a customer terminates service."[776] Qwest disputes this argument, noting that, in the case of non-platform UNE loops, the customer's loop would always have to be disconnected from the competitive LEC's switch on the date that the competitive LEC's service ended."[777] For UNE-P loops, Qwest agrees that it leaves the connection in place where there is a high degree of dedicated inside plant. For this reason, however, Qwest significantly reduces disconnection costs included in the UNE-P installation

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771 *Colorado Pricing Reconsideration Order* at 61-62

772 AT&T Qwest I Weiss Decl. at para. 11.

773 *Id.* at para. 13

774 *Local Competition First Report and Order*, 11 FCC Rcd at 15875-76, paras. 749-51 (giving states discretion with respect to recovery of non-recurring costs).

775 *Colorado Pricing Order* at 51; *Colorado Pricing Reconsideration Order* at 64-65.

776 AT&T Qwest I Weiss Decl. at para. 14

777 Qwest I Thompson Reply Decl. at para. 16.

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NRC.[778] As with other aspects of NRCs, we defer to the Colorado Commission on this issue. The Colorado Commission was presented with evidence from Qwest and the competitive LECs with respect to the time and frequency of various activities, including disconnect activities, and we are reluctant to interfere with the manner in which the Colorado Commission assessed the record before it. Although there are elements of the Colorado Commission's approach that raise questions, such as the failure to consider reducing the disconnect costs based on the time value of money,[779] overall we find that the Colorado Commission appropriately considered this issue in setting installation NRCs, and there were no clear TELRIC errors.

221. ***Recovery Through Recurring Charges.*** AT&T states that the Colorado Commission erred by allowing Qwest to recover the costs of certain activities through NRCs, even though the activities produce a benefit that will last for longer than one year and should be recovered through recurring charges.[780] AT&T also states that Qwest's NRCs include cost loading, such as product management and sales expenses, that should not be attributed to non-recurring functions.

222. The Commission's TELRIC rules provide general guidance with respect to whether costs should be recovered through recurring charges **or** NRCs. but they do not specifically address the issue raised by AT&T.[781] While we prohibit states from permitting incumbent LECs to recover recurring costs through NRCs, AT&T has not argued that any **of** the costs Qwest seeks to recover through NRCs are in fact recurring costs. Rather, AT&T is arguing that these non-recurring costs are more appropriately recovered through a recurring charge because of the nature of the cost (i.e., because the benefit lasts longer than one year).[782] Our rules do give states the authority to require that non-recurring costs be recovered through recurring charges, but we have not mandated such treatment for any particular type of non-recurring cost.[783] Accordingly, we find that the decisions made by the Colorado Commission on these issues are within the discretion of the state commissions under our TELRIC rules.

223. We also disagree with AT&T's argument that the Colorado Commission committed clear TELRIC error by including cost loadings as pan **of NRCs.** The Commission's

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[778] Qwest I Thompson Reply Decl. at para. 17.

[779] For example, the Nebraska Commission included only 60 percent of disconnect costs in installation rates to reflect the fact that a customer may stay with the competitive LEC, and it discounted the cost over a five-year period to reflect that competitive LECs are paying today for activities that will be performed at some time in the future. See ***Nebraska Pricing Order*** at 48.

[780] AT&T Qwest I Weiss Decl. at paras. 34-35.

[781] 47 C.F.R. § 51.507(e) (2001); ***Local Competition First Report and Order.*** 11 FCC Rcd at 15875-76, paras 749-51.

[782] AT&T Qwest I Weiss Decl. at para. **35**

[783] 47 C.F.R. § 51.507(e) (2001); ***Local Competition First Report and Order,*** 11 FCC Rcd at 15875-76, paras **749-5**1.

rules specifically allow for recovery of forward-looking common costs, and there is no prohibition on recovering common costs through NRCs, as long as the total recovery does not exceed the forward-looking economic cost associated with an element.[784] As with the argument that certain costs should be recovered on a recurring basis, the position advocated by AT&T would extend our TELRIC rules beyond what they presently require. Therefore we defer to the decision made by the Colorado Commission.

224. ***Comparison to Other States***. AT&T states that the NRCs approved by the Colorado Commission are well in excess of comparable NRCs in states that have received section 271 approval. For example, AT&T states that Qwest charges $171.88 for coordinated installation with testing (a "hot cut") while Verizon charges $4.07 in Pennsylvania and $35 in New York and New Jersey.[785] AT&T states that this is an "apples-to-apples" comparison because the Qwest and Verizon NRCs both include testing. Similarly, AT&T states that Qwest charges $55.27 for a basic installation. According to AT&T, the corresponding rates in New York, New Jersey. Pennsylvania, and Georgia are $0.13, $23.15, $3.01, and $34.22 respectively.[786]

225. Qwest makes a number of points in response. First, Qwest provided information demonstrating that its rate for a hot cut is $59.81, and that this charge includes the same testing that Verizon provides with its hot cut.[787] According to Qwest, the $171.88 charge referenced by AT&T includes specialized testing that goes beyond what is provided with a basic hot cut.[788] In support of its position that the $59.81 charge is the relevant charge for comparison purposes, Qwest notes that in 2001 in Colorado, only 17 percent of all orders for installed loops included a competitive LEC request for cooperative testing. while the remaining 83 percent of orders did not include cooperative testing.[789] Based on this evidence, we agree with Qwest that its $59.81 charge is the NRC for a hot cut and the appropriate charge to consider for purposes of comparison to hot cut NRCs in states that already have obtained section 271 authority.

226. In its application, Qwest included an exhibit demonstrating that its $59.81 hot cut NRC was comparable to rates in previously approved states (primarily SWBT states).[790] Qwest argues that the charges AT&T identifies from other states do not include the same functionality as Qwest provides in its installation charges. For example, Qwest demonstrates that the $0.13 NRC for New York cited by AT&T only includes provisioning costs, and does not include

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[784] 47 C.F.R. § 51.505(c) (2001); 47 C.F.R. § 51.507(e) (2001).

[785] AT&T Qwest I Comments at 61.

[786] ***Id.***

[787] Qwest I Thompson Reply Decl. at para. 7

[188] Id. at para. 5.

[789] *Id.* at para. 9.

[790] Qwest I Application, App. A, Tab 29, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Colorado, Ex. JLT-CO-4 (Qwest I Thompson Colorado Decl.).

service order charges or central office wiring.[791] In its reply comments, Qwest provided additional information showing that its hot cut NRC compares favorably to similar NRCs in previously-approved states.[792]

227. AT&T argues that we should compare Qwest's hot cut NRC only with the comparable charges in Verizon states.[793] According to AT&T, competitive LECs only recently became concerned with hot cut charges and the comparisons relied on by Qwest are to states where the issue was not heavily litigated.[794] AT&T's suggestion that competitive LECs were unconcerned with the hot cuts in the SWBT states is inaccurate. Various aspects of the hot cut issue were litigated in most of these states, both at the state level and before this Commission in section 271 applications.[795] In conclusion, we find that Qwest's hot cut NRC is comparable to NRCs in other states for similar activities and is consistent with our TELRIC requirements.

d. Benchmark States

(i) TELRIC Analyses

228. In each of the eight benchmark states – Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming – Qwest, until recently, provided UNEs at rates established by the state commission in an arbitration or generic cost proceeding. Shortly before filing its section 271 application with the Commission, Qwest voluntarily reduced its recurring charges for loop and non-loop UNEs in each of the eight states, as well as many of its NRCs. Qwest reduced these rates with the specific intent of passing a benchmark comparison to rates in Colorado.[796] Qwest also argues, however, that the current rates are TELRIC-compliant because they are lower than the TELRIC-complaint rates established by the states.[797] In this section of the order, we describe the relevant state proceedings, and identify challenges to Qwest's claim that

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791 See Letter from David L. Sieradzki, Counsel, Qwest Communications International, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-148 at 19 (filed July 22, 2002) (Qwest July 22 *Ex Parte* Letter).

792 Qwest I Thompson Reply Decl., Reply Ex. JLT-I

793 AT&T Qwest I Reply at 56-57

794 Id

795 *SWBT Texas Order*, 15 FCC Rcd at 18486-95, paras. 259-77; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6336-40, paras. 200-07.

796 With respect to NRCs, Qwest reduced its installation NRCs to levels equal to the charges established by the Colorado Commission in recognition of the fact that the benchmark process, which reflects cost differences between states, has not been applied to NRCs. Qwest I Application at 166.

797 Qwest II Application at 160 ("The State Commissions of Montana , Utah, Washington and Wyoming each conducted pricing proceedings that were intended to, and did, produce TELRIC-compliant rates."); Qwest I Application at 162 ("The regulatory agencies for Idaho, Iowa, Nebraska and North Dakota each conducted thorough pricing proceedings that were intended to, and did, produce TELRIC-compliant rates.").

rates established in the state commission proceedings comply with our TELRIC pricing requirements. In the end, we need not decide whether the earlier state proceedings produced TELRIC-compliant rates, because we find that Qwest's current, voluntarily-reduced rates benchmark to the rates in Colorado. We do, however, resolve certain issues with respect to rates not included in our benchmark analysis, such as NRCs.

(a) Idaho

229. ***Background,*** The process leading to Qwest's current rates in Idaho began in a 1997 interconnection arbitration proceeding with AT&T. In this proceeding, the parties engaged in extensive discovery, briefing and the presentation of evidence at multiple arbitration hearings. The Arbitrator appointed by the Idaho Commission issued several orders resolving areas of dispute.[798] With respect to pricing, the Arbitrator adopted the Hatfield Cost Model, making adjustments to certain inputs and assumptions. The Arbitrator deemed the rates interim, noting that permanent UNE prices would be established in a separate UNE cost proceeding.[799] The Idaho Commission reviewed and modified the Arbitrator's orders after allowing additional opportunity for briefing and oral argument.[800] The rates established in this interconnection arbitration and approved on an interim basis by the Idaho Commission form the basis of Qwest's initial SGAT filed with the Idaho Commission. The Idaho Commission is currently conducting a separate cost proceeding to establish permanent UNE rates which it expects to complete before the end of this year.[801]

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[198] *See* Qwest I Application App. A, Tab 30, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Idaho, paras. 3-4 (Qwest I Thompson Idaho Decl.).

[7w] *See id.* at paras. 7-19. *See* also *AT&T Communications of the Mountain States, Inc. Petirionfor Arbitration Pursuant to Section 252(b) of the TelecommunicationsAct of 1996 of the Rates. Terms and Conditions of Interconnection with US West,* Case No. USW-T-96-15/ATT-T-96-2, First Arbitration Order at 38 (Idaho PUC Mar. 24, 1997) *(Idaho Commission First Arbitration Order); AT&T Communications of the Mountain Stares, Inc. Petition for Arbirration Pursuant to Section 252(b) of the TelecommunicationsAct of 1996 of the Rates, Terms and Conditions of Interconnection with US West,* Case No. USW-T-96-15/ATT-T-96-2, Second Arbitration Order at 41-42 (Idaho PUC June 6, 1997) *(Idaho Commission Second Arbiirarion Order).*

[800] *See AT&T Communications of the Mountain States, Inc. Petition for Arbitration Pursuant to Section 252(b) of the TelecommunicationsAct of 1996 of the Rates, Terms and Conditions of Interconnection with US Wesr,* Case No. USW-T-96-15/ATT-T-96-2, Order No. 27050 (Idaho PUC July 16, 1997) *(Idaho Commission July 16 Arbiiration Order); AT&T Communications of the Mountain States, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 of the Rates, Terms and Conditions of Interconnection with US West,* Case No. USW-T-96-15/ATT-T-96-2, Order No. 27236 (Idaho PUC Dec. I, 1997) *(Idaho Commission Dec. I Arbitration Order).*

[801] *See* Idaho Commission Qwest I Comments at 4. *See also* Idaho Commission Qwest III Comments (adopting and incorporating by reference its Qwest I Comments).

230. On February 8,2000, the Idaho Commission opened a separate proceeding to assess Qwest's compliance with the Commission's section 271 requirements?" On April 19, 2002, the Idaho Commission issued an order stating that "[t]here is no evidence showing that Qwest's UNE prices reached **through** an arbitration that occurred four years ago satisfy current FCC TELRIC pricing requirements," and that: "[t]he lack of UNE prices for Qwest remains a gap in Qwest's record for compliance with Section 271 requirements."[802] Subsequently, on May 24,2002, Qwest filed a revised SGAT with the ldaho Commission in which it made voluntary rate reductions based on its benchmark analysis against rates established by the Colorado Commission.[804] On June 10,2002, the Idaho Commission issued an order observing, without elaboration, that the revised prices for unbundled loops and local switching are "based on TELRIC prices established by the Colorado Commission" and concluding that "[i]n the words of AT&T, the resulting price adjustments are 'closer to being TELRIC compliant.'"[805] The Idaho Commission states that it "is satisfied with the interim UNE rates filed by Qwest [in Qwest's May 24,2002 SGAT] and expects to complete its UNE cost docket to establish permanent TELRIC rates before the end of the year."[806] On this basis, the Idaho Commission recommended that the Commission approve Qwest's section 271 application on July 3, 2002.[807] In an effort to address concerns raised by competitive LECs and the Department of Justice, Qwest made further rate reductions on August 5,2002 and on October 16,2002.[808]

231. *Discussion.* AT&T raises a number of concerns regarding Qwest's rates in Idaho established in the 1997 interconnection arbitration proceeding. AT&T specifically challenges the structure sharing assumptions and common cost factor used in the 1997 arbitration to establish loop and switching rates. With respect to structure sharing assumptions, AT&T argues that those adopted by the Arbitrator – 33 percent for aerial cable, 50 percent for buried cable, and 90 percent for underground cable – are "at odds with the forward-looking costs of an efficient provider" and conflict with the Commission's determination in the ***Inputs Order.***[809] With

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802 ***See US West Communications, Inc.'s Motion for an Alternative Procedure to Manage its Section 271 Application,*** Case No. USW-T-00-3, Order at 2 (Idaho PUC Apr. 19,2002) ***(Idaho Commission Apr. 19 Section 271 Order).***

803 ***See id.*** at 11.

804 Qwest I Thompson Idaho Decl. at para. 6. ***See also US West Communications, Inc.'s Motion for an Alternative Procedure lo Manage its Section 271 Application***, Case No. USW-T-00-3, Order at 7 (Idaho PUC June 10, 2002) ***(Idaho Commission June 10 Section 271 Order).***

805 ***Idaho Commission June 10 Section 271 Order*** **at** ***7.***

806 Idaho Commission Qwest I Comments at 4.

807 ***See*** Idaho Commission Qwest I Comments at 14

808 ***See*** Qwest Aug. 8 Pricing Ex *Parte* Letter, Idaho Attach. (08/08/02d); Qwest Oct. 7 Pricing Ex ***Parfe*** Letter; Qwest Nov. 12 *Ex* ***Parfe*** Letter, Idaho Attach.

809 ***See*** AT&T Qwest III Baker/Starr/Denney Decl. at para. 31; AT&T Qwest I Comments, Tab C, Declaration of Natalie J. Baker, Arleen M. Starr, and Douglas Denny **at** para. 31 (AT&T Qwest I Baker/Starr/Denny Decl.).