respect to common cost factor, AT&T argues that the 13 percent common cost factor set by the Arbitrator is far above forward-looking levels as evidenced by the fact that the average BOC (including Qwest) had an overhead of 10.5 percent in 1998 and 8.3 percent in 2000.[810] AT&T also argues that Qwest's 1997 loop and switching costs *are* not TELRIC-compliant because loop and switching costs have declined since 1997 due to the substantial growth in demand for local telecommunications services that has occurred since that time."'

232. AT&T also challenges Qwest's 1997 loop rates on the basis that they were not geographically deaveraged in accordance with the Commission's regulations?" Although the rates established by the Arbitrator in Qwest's 1997 interconnection arbitration with AT&T were not deaveraged, Qwest subsequently deaveraged its rates into three zones in compliance with Commission regulations and in coordination with the Idaho Commission staff. Therefore, because Qwest is now in compliance with Commission deaveraging regulations, and because the rates proposed by Qwest in this proceeding are deaveraged accordingly, the Arbitrator's decision not to deaverage rates in 1997 is not of concern in this proceeding. Because the rates before us were derived by benchmarking to new rates ordered in Colorado, we conclude that it is unnecessary to determine whether the Idaho Commission committed TELRIC errors in establishing **UNE** rates in the 1997 interconnection arbitration proceeding between Qwest and AT&T.

(b) Iowa

233. ***Background.*** In 1996, the Iowa Board conducted an arbitration proceeding involving Qwest, MCI and AT&T, under section 252(b) of the 1996 Act. In a preliminary arbitration decision, the Iowa Board established interconnection and **UNE** rates using rates proposed by AT&T (and accepted by MCI).[813] The Iowa Board made two additional pricing decisions in its final arbitration decision. First, the Iowa Board set collocation rates at levels that it had determined in a pre-1996 Qwest cost docket. Second, the Iowa Board did not require Qwest to provide zone pricing for loop and subloop rates?"

234. At the outset of the above-described arbitration proceeding, Qwest filed a tariff as required in response to a requirement that it file a local network interconnection tariff, using total

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[810] See AT&T Qwest III Baker/Starr/Denney Decl. at para. 32; AT&T Qwest I Baker/Starr/Denney Decl. at para. 32.

[811] See AT&T Qwest I Comments at **54;** AT&T Qwest I Lieberman Decl. at paras. 15-19.

[812] See AT&T Qwest III Baker/Starr/Denney Decl. at para. 30; AT&T Qwest I Baker/Starr/Denny Decl. at para. 30.

[813] Qwest I Application App. A, Tab 31, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements in Iowa, at para. ***6*** (Qwest I Thompson Iowa Decl.) (citing ***Arbitrution of AT&T Communications of the Midwest, Inc., and MCI Metro Access TransmissionServices, Inc. and U S WEST, Communications, Inc.***, Docket Nos. ARB-96-1 and ARB-96-2, Preliminary Arbitration Decision at 2 (Iowa Util. Bd. Oct. 18, 1996)).

[814] Qwest I Thompson Iowa Decl. at para. 7 (citing ***Iowa Board Final Arbitrution*** Decision at 8, 11-12)

service long-run incremental cost methodology (TSLRIC). containing UNE and interconnection charges.[815] When parties filed objections, the Iowa Board suspended Qwest's tariff and docketed it as Docket No. **RPU-96-9.** This docket lasted nearly *two* years and yielded *two* decisions that "include[d] a detailed analysis of the pricing issues presented to the Board, including the cost model to be used as the basis for pricing decisions, the key inputs to be used with that model, and the treatment of non-recurring costs."[816] While the Iowa Board subsequently deaveraged rates by defining three geographic areas, it refused to reconsider its previous UNE pricing determinations.[817]

235. On May 16 and May 21,2002, Qwest voluntarily lowered its rates in Iowa in anticipation of filing its section 271 application."' AT&T opposed Qwest's tariff revisions on the ground that they added "many" UNEs that might cause competitive LECs to pay higher overall wholesale rates, and voiced concern that the Exhibit **A** filed with Qwest's updated SGAT was inconsistent with Qwest's filed tariff because "there appeared to be many additional rate elements which are not contained in the [prior tariff, the] revised Iowa Tariff No. 5."[819] The Iowa Consumer Advocate objected because Qwest had not explained "whether and how the proposed rates [were] cost-based."[820] Despite these arguments, the Iowa Board approved Qwest's voluntary reductions, effective June 7, 2002, and noted that the lower rates would immediately benefit competitive LECs currently purchasing relevant services from Qwest.[821] The Iowa Board also noted that Qwest's new UNE rates appeared to be less than, or **equal** to, rates previously approved by the Iowa Board. with the exception of NRCs for DS3-type facilities?" On June 10, 2002, Qwest filed an updated SGAT setting forth new rates derived through benchmarking to Colorado rates. The Iowa Board found those rates to be in compliance with certain "conditional statements" the Iowa Board had issued to resolve impasse issues identified during a multi-state

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815 Qwest I Thompson Iowa Decl. at para. 8 (citing Tariff TF-95-280 (filed July 18, 1995))

816 Qwest I Thompson Iowa Decl. at para. 9 (citing ***US*** West ***Communications, Inc.,*** Docket No. RPU-96-9, Final Decision and Order, 14-15(Iowa Util. Bd. Apr. 23, 1998)(Iowa ***Board 1998 Pricing Order)*** and ***U S West Communications, Inc.***, Docket No. 96-9, Order Granting Rehearing in Part for Purposes of Clarification and Correction (Iowa Util. Bd. June 12, 1998)).

817 ***See Order Sustaining Objections to Consideration of Certain Remand Issues,*** Docket No. RPU-00-1, 9-10 (Iowa Util. Bd. Aug. 2,2000). ***See also*** Qwest I Thompson Iowa Decl. at para. 13.

818 *Qwest Corporation,* Docket No. TF-02-202, Order Approving Tariff, 1 (Iowa Util Bd. June 7,2002) (Iowa ***Board Rate-Reduction Order).***

819 *Iowa* ***Board Rote-Reduction Order*** at 2

820 ***Id.***

821 *Id.* at 4. The Iowa Board further noted that "there [was] no apparent harm in permitting these lower rates to become effective as of lune 7,2002." Id

822 ***Iowa Board Rate-Reduction Order*** at 4.

collaborative process concerning Qwest's anticipated section 271 application.[823] The Iowa Board also concluded that Qwest had adequately addressed each of the section 271 requirements and recommended that the Commission approve Qwest's section 271 application.[824] Qwest filed additional rate reductions on August 5,2002, and on October 18,2002, in response to concerns raised by commenters.[825]

236. ***Discussion.*** AT&T raises a number of concerns regarding Qwest's rates established in the Iowa Board's cost proceeding. AT&T generally claims that the Iowa Board "set rates for loop, switching and other critical elements on the basis of Qwest's 'actual' costs rather than efficient forward-looking costs as TELRIC requires."[826] More specifically, AT&T claims that Iowa's loop rates are inflated because loop-related costs have fallen 22 percent since the Iowa Board, using old data, held its cost proceedings.[827] AT&T argues that, even had the Iowa Board applied TELRIC principles, the cost proceedings relied on old data, and that, since these proceedings, Qwest's switching costs have fallen by 25 percent.[828] As noted above, because the rates before us were derived by benchmarking to the new rates ordered in Colorado, we conclude that it is unnecessary to determine whether the Iowa Board committed TELRIC errors in its cost proceeding.

(c) Montana

237. ***Background*** The Montana Commission initially established interim rates for UNEs, interconnection and collocation in 1997 as part of its decisions in the arbitration between AT&T and Qwest.[829] The Montana Commission generally relied on the Hatfield Model sponsored by AT&T, with some input adjustments, for setting UNE rates, and on the Qwest cost

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[823] ***See*** *U S* ***West Communications,*** *Inc., a/k/a Qwest Corporation*, Docket Nos. INU-00-2 & SPU-00-11, Final Statement Regarding Qwest Corporation's Compliance with 47 U.S.C. §§ 271 and 272 Requirements at 7 (Iowa Util. Bd. June 12,2002).

[824] Iowa Board Qwest I Comments at 1. See also Iowa Board Qwest III Comments at 1 (adopting by reference its Qwest 1 Comments).

[825] ***See*** Qwest Aug. *8* Pricing Ex ***Parte*** Letter (08/08/02); Qwest Oct. 7 Pricing *Ex Parte* Letter; Qwest Nov. 12 *Ex* ***Parte*** Letter, Iowa Attach.

[826] AT&T Qwest III Baker/Starr/Denny Decl. at para. 12; AT&T Qwest I Baker/Starr/Denney Decl. at paras. 12-14.

[827] AT&T Qwest 1 Comments at 54 (citing AT&T Qwest I Lieberman Decl. at Table 4).

[828] AT&T Qwest I Comments at 54 (citing AT&T Qwest I Lieberman Decl. at Table 6).

[829] ***The Petition of AT&T Communications of the Mountain States, Inc. Pursuant to 47 U.S.C. Section 252(b) for Arbitration of Rates, Terms and Conditions of Interconnection with U S West Communications, Inc.***, Montana Commission Docket No. D96.11.200, Arbitration Decision and Order, Order No. 5961b at 29-30, 43-49, 78-87, 92 (March 20, 1997) (***Montana Arbitration Order),*** Order on Petitions for Reconsideration, Order No. 5961c at 20, 22, 28-31, 38-44, 48 (July 9, 1997) (***Montana Arbitration Reconsiderntion Order);*** Qwest II Application App. A, Tab 28, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Montana, para. 3 (Qwest II Thompson Montana Decl.); AT&T Qwest II Comments at 75-76.

model for setting collocation rates.[830] The Montana Commission found that the cost studies filed by both Qwest and AT&T were flawed?]' The recurring loop rate in this proceeding was not deaveraged, but was set as a statewide-average rate.[832] In this proceeding, the Montana Commission stated that it would establish permanent rates in a future proceeding.[833]

238. The Montana Commission established deaveraged loop rates in December 2000.[834] The Montana Commission adopted a rate deaveraging structure proposed by Qwest, in which four rate zones were established. These rate zones were based on distance from each wire center, resulting in four concentric rate zones around each wire center.'"

239. On July 24,2000, the Montana Commission initiated a cost docket to establish permanent UNE, interconnection and collocation rates.[836] The Montana Consumer Counsel and several small competitive LECs intervened in the docket.'" On June 6,2001, after testimony had been filed in the cost docket, Qwest, Montana Wireless, Touch America, Avista and the Montana Consumer Counsel entered into a stipulation setting rates.[838] Loop rates were deaveraged pursuant to the methodology established in the *Montana Deaveraging Order*.[839] The Montana

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[830] ***Montana Arbitration Reconsideration Order*** at **42-44.** ***See also*** Qwest II Thompson Montana Decl. at para. 3; AT&T Qwest II Comments at **75-76.**

[831] ***Montana Arbitration Order*** at **81-83.** ***See also*** AT&T Qwest II Comments at **76**

[812] ***Montana Arbitration Order*** at **83.** ***See also*** AT&T Qwest II Comments at **76-77.**

[833] ***Montana Arbitration Order*** at **81-82.** ***See also*** AT&T Qwest II Comments at **76**

[834] ***Implementation of 47 C.F.R.§ 51.507(f), Establishing Different Rates for Network Elements in Different Geographic Areas Within the State,*** Montana Commission Docket Nos. **D99.12.277,** D96.11.200, Final Order, Order Nos. 6227b, 5961j (Dec. **18,2000)** ***(Montana Deaveraging Order). See also*** Qwest II Thompson Montana Decl. at para. **4.**

[835] ***Montana Deaveraging Order*** at **10-11, 20-21.** ***See also*** AT&T Qwest II Comments at **77.**

[836] Qwest II Thompson Montana Decl. at para. **5;** Montana Commission Qwest II Comments at **4.**

[837] ***Filing by Qwest Corporation, f/k/a U S West Communications, Inc. to Determine Wholesale Discounts, Prices for Unbundled Network Elements, Collocation. Line Shoring, and Related Matters,*** Montana Commission Docket No. **D2000.6.89,** Final Order on Stipulation, Order No. 6260b at **2** (Oct. **12,2001)** ***(Montana Rate Stipulation Order).*** The competitive LECs participating in the docket included ASCENT, Avista, McLeodUSA, Montana Wireless, New Edge Networks, Touch America and Western Wireless. AT&T and WorldCom did not participate in this proceeding.

[838] ***Montana Rote Stipulation Order*** at 2-4. ***See also*** Qwest II Thompson Montana Decl. at paras. **6-7;** Montana Commission Qwest II Comments at **56;** AT&T Qwest II Comments at **78.**

[839] ***Montana Rate Stipulation Order,*** Attach. at ***2.***

Commission conditionally approved the stipulation, expressly reserving its right to review the rates in the section 271 review proceeding."'

240. In its review of Qwest's section 271 application, the Montana Commission found that there was "no evidence to conclude that Qwest's [originally proposed] estimated loop UNE rate of $40.75 or the 33 percent lower stipulated rate is not within the range of reasonable TELFUC values."'' The Montana Commission noted that it has yet to pronounce judgment on numerous pricing issues, including approximately 100 UNE rate elements in Qwest's SGAT."' The Montana Commission required Qwest to initiate a new, generic cost docket to cure these potential pricing deficiencies,[843] and Qwest did *so* on July 8, 2002.[844]

241. On July 9,2002, Qwest reduced its loop, switch port, local switching usage and shared transport recurring rates pursuant to its benchmark analysis of UNE rates in Colorado, as well as certain installation non-recurring rates based on a comparison to Colorado rates, and revised its SGAT to incorporate these lower rates.[845] The Montana Commission allowed these revised rates to go into effect on July 10, 2002.[846] Qwest revised its Montana SGAT to reflect further rate reductions on August 30,2002 and on October 17, *2001.8*" The Montana Commission conditioned its recommendation that the Commission grant Qwest's section 271 application upon Qwest's filing of a new revenue requirement and rate design case to mitigate concerns about a possible price squeeze between Qwest's retail intrastate toll rates and intrastate

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[840] ***Montana Rate Stipulation Order*** at 3-4. ***See also*** Qwest II Thompson Montana Decl. at para. 7; Montana Commission Qwest II Comments at 4-5, 56; AT&T Qwest II Comments at 78.

[841] ***The Investigation into Qwest Corporation's Compliance with Section 271 of the TelecommunicationsAct of 1996,*** Montana Commission Docket No. D2000.5.70, Final Report on Qwest's Compliance with the Public Interest Requirement at 14-15 (July 5,2002) ***(Montana Commission Public Interest Report)***; Montana Commission Qwest II Comments at 56-57.

[842] ***Montana Commission Public Interest Report*** at 47-50.

[843] ***Montana Commission Public Interest Report*** at 47-50; Montana Commission Qwest II Comments at 4-5, 56-57.

[844] Montana Commission Qwest II Comments at 4-5; Letter from Peter A. Rohrbach, Mace J. Rosenstein and Brad C. Ceutsch, Attorneys for Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-189, Attach. 3 para. 23 (July 29,2002) (revising Qwest II Thompson Montana Decl. at para. 23) (Qwest July 29 Ex ***Parte*** Letter) (07/29/02e).

[845] Qwest I1 Thompson Montana Decl. at paras. 13-23; ***The Review of Qwest Communications' Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996***, Montana Commission Docket No. D2000.6.80, Order No. 6425 at 1 (July 9,2002) ***(Montana Cornmission SGAT Order).***

[846] ***Montana Commission SGAT Order*** at 1

[847] 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, Montana Attach. (filed Aug. 30, 2002) (Qwest Aug. 30 Pricing ***Ex Parte*** Letter) (08/30/02d); Qwest Oct. 7 Pricing Ex ***Parte*** Letter; Qwest Nov. 12 ***Ex Parte*** Letter, Montana Attach.

access charges."' On October 15,2002, the Montana Commission filed comments on Qwest's refiled section 271 application, noting that Qwest had failed to file the required intrastate case and recommending that the Commission, therefore, deny Qwest's application.[849] We discuss the Montana Commission's price squeeze concerns in the public interest section below.

242. ***Discussion.*** OneEighty and AT&T claim that the UNE rates in Montana are not TELRIC-compliant, and therefore that the Commission should reject Qwest's section 271 application for Montana?" First, OneEighty argues that Qwest's average loop rate in Montana of $23.72 is higher than the national average loop rate of $13.43.[851] Second, OneEighty claims that the Montana Commission's failure to evaluate the UNE rates in a contested proceeding requires that the Commission reject the section 271 application for Montana?" Similarly, AT&T claims that the Montana Commission never affirmatively found the UNE rates to be TELRIC-compliant, and therefore the Commission has no independent basis (absent benchmarking) to conclude that the rates comply with TELRIC.[853] The Montana Commission, moreover, noted that it had not ruled on numerous pricing issues.[854] Therefore, it required Qwest to initiate a new cost docket.[855]

243. To comply with checklist item two of section 271, an incumbent LEC must provide UNEs at rates and terms that are just, reasonable, and nondiscriminatory, and that allow the incumbent LEC to recover a reasonable profit.'" OneEighty's comparison between UNE loop rates in one state and a national average of UNE loop rates does not address whether the rates in a specific state are just, reasonable, **and** nondiscriminatory. Rather it simply compares rates in absolute terms, ignoring any cost differences between states.[857] Under the Commission's

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848 Montana Commission Qwest II Comments at 5-7

849 Montana Commission Qwest III Comments at 1

850 ***See*** OneEighty Qwest 111 Comments at 3; AT&T Qwest II Comments at 75-79; OneEighty Qwest II Comments at 4-5.

851 OneEighty Qwest III Comments at 5; OneEighty Qwest II Comments at 4-5. Integra similarly argues that Qwest's average UNE loop rate in Washington of $14.56 is too high as compared to the national average loop rate of $13.43. Integra Qwest III Comments at 14-15; Integra Qwest II Comments at 9-10. Both OneEighty and Integra rely **on** the "Survey of Unbundled Network Element Prices in the United States (Updated July 1, 2002)", available at URLs: http://www.nrri.ohio-state.edu/programs/telecommunications.html and http://www.cad.state.wv.us/Intro%20to@20Matrix.htm#N_1_, as the source for the nationwide average UNE loop rate

852 OneEighty Qwest III Comments at 2-3; OneEighty Qwest II Comments at 2-3.

853 AT&T Qwest **II** Comments at 75-79. ***See*** also AT&T Qwest III Fassett/Mercer Decl. at para. 123 (loop rates); AT&T Qwest III Chandler/Mercer Decl. at para. 71 (switching rates).

854 ***Montana Commission Public Interest Report*** at 47-50; Montana Commission Qwest **II** Comments at 4-5.

855 ***Montana Commission Public Interest Report*** at ***50;*** Montana Commission Qwest II Comments at 4-5, 56

856 47 U.S.C. § 271(c)(2)(B)(ii) (citing 47 U.S.C. §§ 251(c)(3) and 252(d)(1)).

857 ***SWBT Kansas/Oklahoma Order,*** 16 FCC Rcd at 6277-6278, para. 84.

TELRIC analysis, we would expect that UNE loop rates in a state would exceed the national average if the forward-looking costs to provide access to unbundled loops in that state exceed those same costs on a national average. Indeed, this is the very sort of comparison that the Commission's benchmark analysis is designed to perform.[858] Therefore, we reject OneEighty's assertion that we must deny Qwest's section 271 application because the Montana UNE loop rates exceed the national average.[859]

244. As AT&T and OneEighty point out, however, the Montana Commission has yet to perform a full UNE cost analysis. Therefore, we are not able to rely on the underlying state analysis to determine that the rates contained in Qwest's Montana SGAT are TELFUC-compliant. Although Qwest contends that the stipulated rates adopted in the *Montana Rare Stipulation Order are* TELRIC-compliant,[860] we agree with AT&T that the Montana Commission did not make such a finding.[861] Qwest, however, does not rely on the stipulated recurring rates for loops, shared transport, and switching, but instead relies on voluntarily-reduced UNE rates benchmarked to Colorado rates, which the Montana Commission permitted to take effect on July 10,2002, and which were further adjusted by Qwest on August 30,2002 and on October 17, 2002.[862] Therefore, because we base our determination of compliance with checklist item two on the current rates, we need not decide the question of whether the stipulated rates in Montana are TELRIC-compliant. Rather, we review the current loop, shared transport, and switching charges Qwest now relies on to satisfy checklist item two using our benchmark analysis.[863] Because we are relying on these comparisons to Colorado costs and rates to determine whether Montana UNE rates are within the reasonable range of TELFUC, we disagree with OneEighty that the lack of TELRIC evaluation at the state level requires a rejection of Qwest's section 271 application in

858 *See SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6277-6278, para. 84. *See* also Pan IV.A.2.d.(ii)(c), *infra.*

859 The same reasoning we apply here in analyzing Qwest's UNE loop rates in Montana also applies to Integra's allegations that Qwest's UNE loop rates in Washington improperly exceed the national average. *See infra,* para. 262; Integra Qwest III Comments at 14-15; Integra Qwest II Comments at 9-10.

860 Qwest II Application at 161.

861 *Montana Rate Stipulation Order* at 1-5 and attached stipulation.

862 Qwest Aug. 30 Pricing *Ex Parte* Letter at Attach. (Montana SGAT) (08/30/02d); Qwest Oct. 7 Pricing *Ex Parte* Letter; Qwest Nov. 12 *Ex Parte* Letter, Montana Attach.

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

Montana.[864] Indeed, this is the same approach we took in evaluating switching rates in Rhode Island, which had been set without a rate proceeding.[865]

(d) Nebraska

245. ***Background.*** In September 1996, the Nebraska Commission opened a docket to investigate cost studies and establish rates for interconnection, UNEs, and resale services for Qwest.[866] On April 17,2001, the Nebraska Commission opened a separate docket to receive evidence on the same issues because the commission was concerned that the evidence in the previous docket was stale.[867] The Nebraska Commission allowed any interested parties to participate by filing cost models or methodologies, briefs, plans or recommendations regarding the pricing of UNE loops.[868] The Nebraska Commission divided the proceeding into three phases and received evidence and conducted hearings on August 8 and 9, September 19 and October 16, 2001.[869] After each phase, the Nebraska Commission reviewed and considered evidence and testimony presented by the parties?''

246. The Nebraska Commission issued a final order on April 23,2002, that established rates to become effective prior to August 8, 2002.[871] On May 3,2002, Qwest submitted a compliance filing reflecting adjustments mandated by the Nebraska Commission's April 23, 2002 order.[872] On May 24,2002, Qwest filed a revised SGAT with rates set forth in Exhibit A.[873]

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[864] *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri,* 16 FCC Rcd 20719,20746-20747,20752, paras. 56-57, 68 (2001) (*SBC Arkansas/Missouri Order*); *SWBT Kansas/Oklahoma Order,* 16 FCC Rcd at 6277-6279, paras. 84-89.

[865] *Verizon Rhode Island Order,* 17 FCC Rcd at 3316, 33 19, paras. 29, 36. *See also Verizon Maine Order,* 17 FCC Rcd at 11678-80, paras. 31-33; *SBC Arkansas/Missouri Order,* 16 FCC Rcd at 20744, 20751-20752, paras. 52, 67-68.

[866] *The Commission, on its Own Motion. to Investigate Cost Studies to Establish Qwest Corporation's Ratesfor Interconnection, Unbundled Network Elements, Transport and Termination, and Resale*, Application No. C-2516/PI-49, Order at 3 (Nebraska PSC Apr. 23,2002) *(Nebraska Commission April 23 Cosr Order).*

[867] *See id.* at 4. *See also* Nebraska Commission Qwest I Comments at *6.*

[868] *See Nebraska Commission April 23 Cost Order* at 4.

[869] *Id.* at 5.

[870] *Id.*

[871] *Id.* at 59. *See also The Commission, on its Own Motion, to Investigate Cost Studies to Establish Qwest Corporation's Ratesfor Interconnection. Unbundled Network Elements, Transport and Termination, and Resale,* Application No. C-2516PI-49, Order, I (Nebraska PSC June 5,2002) *(Nebraska Commission June 5 Cost Order).*

[872] *Nebraska Commission June 5 Cost Order* at 1

[871] Nebraska Commission Qwest I Comments at 6.

On May 31,2002, Qwest filed a substitute Exhibit A which included: (1) rates established by the Nebraska Commission in the UNE cost docket; (2) proposed rate reductions for several UNEs and local interconnection service elements previously established in the UNE cost docket; and *(3)* proposed rates for **new** UNEs developed subsequent to Qwest's proposed rate filing in the UNE cost docket?" On June 5,2002, the Nebraska Commission approved these rates and permitted them to ***go*** into effect **as** of June 7,2002, with the caveat that the rates **for** new UNEs would be subject to review in a separate cost proceeding?" 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 **18, 2002.**[876] The Nebraska Commission advised the Commission that it believes that Qwest has adequately addressed the section 271 requirements in Nebraska and recommends that the Commission grant Qwest's section 271 **application.**[877]

247. ***Discussion.*** **The** Nebraska Commission approved the rates set **forth** in the May 31, 2002 amendment to the May 24,2002 SGAT noting that "[t]he lower rates create no apparent harm and may actually provide a benefit to Qwest's wholesale customers through the opportunity to have lower rates.'"" The Nebraska Commission further noted that new rates contained in the May 24,2002 SGAT would be subject to comment by interested parties and review by the Nebraska **Commission.**[879] AT&T raises a number of concerns regarding Qwest's rates established by the Nebraska Commission in its recent cost proceeding. The Nebraska Commission determined that three cost models presented in the proceeding – the HCPM, BCPM and HAI – are TELRIC-compliant, and the Nebraska Commission took the average of the loop rates produced by the three models in setting loop rates for each zone in **Nebraska.**[880] AT&T states that the Nebraska Commission erred in relying on the BCPM.[881] AT&T argues that the BCPM is fully discredited and that the Commission criticized the BCPM's loop cost calculation methodology in its ***Platform Order,*** and rejected several of the BCPM's key inputs in its ***Platform Order*** and ***Inputs Order.*** AT&T argues that by averaging in the rates of a flawed cost model, the Nebraska Commission produced excessive, non-TELRIC-compliant loop rates."' For

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[874] ***Id.*** at 6-7

[875] ***Nebraska Commission June 5 Cost Order*** at *3*

[876] Qwest Aug. *8* Pricing ***Ex Parte*** Letter, Nebraska Attach.; Qwest Oct. *7* Pricing ***Ex Parte*** Letter; Qwest Nov. 12 Ex ***Parte*** Letter, Nebraska Attach.

[877] Nebraska Commission Qwest I Comments at 8. ***See also*** Nebraska Commission Qwest III Comments at **2** (readopting and reaffirming its Qwest I Comments).

[878] ***Nebraska Commission June 5 Cost Order*** at 3

[879] ***See id.*** at **2-3.**

[880] ***See Nebraska Commission April 23 Cost Order*** at 12-**13.21-22**

[881] ***See*** AT&T Qwest I Comments at 7, 56-58; AT&T Qwest III Baker/Starr/Denny Decl. at paras. *35-40.*

[882] ***See*** AT&T Qwest **111** Baker/Starr/Denney Decl. at para. 39-40; AT&T Qwest I Baker/Starr/Denny Decl. at para. *37.*

non-loop UNE rates, AT&T states that the Nebraska Commission erred in relying on Qwest's proprietary model, the ICM, which is not appropriately forward-looking and allows Qwest to recover actual costs of switching and interoffice transmission UNEs.[883] AT&T also states that certain default inputs are patently excessive and do not produce TELRIC-compliant rates. Specifically, AT&T challenges the inflation and overhead factors used in the cost model to establish switching rates.[884] As with the other benchmark states, we conclude that it is unnecessary to evaluate whether the Nebraska Commission committed TELRIC errors in establishing these recurring rates because the rates before us were derived by benchmarking to new rates ordered in Colorado.

(e) North Dakota

248. ***Background.*** Qwest's UNE prices in North Dakota, with the exception of deaveraged 2-wire unbundled loop UNE prices, originally were developed **through** arbitration between AT&T and Qwest.[885] AT&T proposed using the Hatfield model Version 2.2 and Qwest proposed using another model (the RLCAP model) that was based on Qwest's existing network, to provide estimates of the costs of unbundled loops, unbundled ports, and other network features.[886] The Arbitrator used the Hatfield Model cost estimates for the base line and adjusted these estimates using certain Qwest assumptions for inputs in the Hatfield Model that the Arbitrator believed were appropriate. The Arbitrator required that AT&T recalculate the Hatfield model using some of Qwest's assumptions and the results of the recalculation would serve as the interim TELRIC in North Dakota.[887] The arbitrated interconnection agreement was approved by the North Dakota Commission as interim rates subject to true-up upon the completion of a subsequent cost proceeding in 1997.[888]

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[883] *See* AT&T Qwest III Baker/Starr/Denny Decl. at paras. 41-42; AT&T Qwest I Baker/Starr/Denney Decl. at 41-42.

[884] *See* AT&T Qwest III Baker/Starr/Denney Decl. at para. 42-7; AT&T Qwest I Baker/Starr/Denny Decl. at para. 42.

[885] *See AT&T Communications of the Midwest Inc. Interconnection Arbitration Application,* Case No. PU-453-96-497, Order Approving Arbitrated Agreement (North Dakota PSC June 23, 1997); *Consultative Report of the North Dakota Public Service Commission,* Case No. PU-314-97-193, 261 (North Dakota PSC July 1,2002) *(North Dakota Commission Consultative Report).*

[886] *See AT&T Communications of the Midwest Inc. Interconnection Arbirration Application,* Case No. PU-453-96-497, Arbitrator's Decision (North Dakota PSC Mar. 26, 1997). *See also North Dakota Commission Consultative Report* at 262.

[887] *See North Dakota Commission Consultative Reporr* at 262

[888] *Id, See also AT&T Communicalions of the Midwest Inc. Interconnection Arbitration Application,* Case No. PU-453-93-497, Order Approving Arbitrated Agreement (North Dakota PSC June 23, 1997). On January 8, 1997, the North Dakota Cornmission opened Case No. PU-3 14-97-12 to determine the permanent rates for UNEs. Even though no permanent rates were determined in that proceeding, the North Dakota Commission considered the deaveraging of the existing interim prices for UNEs. The Case No. PU-3 14-97-12 was closed on March 28,2001 without further determination. *See North Dakota Commission Consultative Report* at 263.

249. In 2000, the North Dakota Commission approved a three-zone interim rate structure for 2-wire loops, based on a joint stipulation filed by interested parties, without adopting any particular cost methodology or price deaveraging mechanism.'" On June 9,2000, Qwest filed an SGAT, including all the interim prices set previously in the AT&T arbitration and the deaveraging docket, with the North Dakota Commission and the rates became effective by the operation of law on August 8, 2000.[890] On July 10,2001 in response to a Qwest petition requesting the review of its SGAT prices **for** interconnection, network elements and resale services, the North Dakota Commission opened a new cost proceeding.[891] In this proceeding, Qwest proposes prices based on the use of its Integrated Cost Model (ICM) and other cost models.[892] On May 16,2002, Qwest filed a revised SGAT, setting forth new lower rates for interconnection, UNEs and resale derived by benchmarking to new rates ordered in Colorado. The North Dakota Commission allowed the new rates to go into effect on June 7,2002, and stated that it will establish a procedural schedule in the new cost investigation in the near future.[893] The North Dakota Commission permitted rates set forth in the May 16,2002 SGAT to go into effect noting that all rates will be reviewed in the North Dakota Commission's new cost proceeding. Qwest further reduced its rates and filed a revised SGAT on October 16, 2002.[894] The North Dakota Commission filed comments recommending that the Cornmission grant Qwest's section 271 application.[895]

250. ***Discussion.*** AT&T raises a number of concerns regarding Qwest's rates established in the 1997 interconnection arbitration in North Dakota. AT&T argues that North Dakota's arbitrated rates cannot be found TELRIC-compliant on their **own** merits. Specifically, AT&T argues that these rates were interim rates, subject to true-up, established on the basis of old cost data, and have never been adjusted to reflect changes in Qwest's costs since 1997.[896] AT&T also argues that the arbitrated rates violate TELRIC because the North Dakota Commission relied on several of Qwest's unsupported claims in determining the appropriate cost

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889 See Qwest I Application App. A, Tab. 33, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements in North Dakota, para. I7 (Qwest I Thompson North Dakota Decl.); ***US West Communications, Inc. Interconnection/Wholesale Price Investigation,*** Case No. **PU-3**14-97-12, Findings of Fact, Conclusions of Law and Order (North Dakota PSC Apr. 27,2000) ***(North Dakota Commission Geographic Deaveraging Order).***

890 Qwest I Thompson North Dakota Decl. at para. 7

891 See ***North Dakota Commission Consultative Report*** at 264.

892 ***Id.***

893 ***Id.*** at 260 and 264. ***See also*** North Dakota Commission Qwest I Comments at 2

894 Qwest Oct. 7 Pricing Ex ***Parte*** Letter; Qwest Nov. 12 Ex ***Parte*** Letter, North Dakota Attach.

895 North Dakota Commission Qwest I Comments **at** 7-8. ***See also*** North Dakota Commission Qwest **111** Comments at 1 (reaffirming and incorporating by reference its Qwest I Comments).

896 AT&T Qwest I Comments at 58-59; AT&T Qwest III Baker/Starr/Denney Decl. at paras. 55-60; AT&T Qwest I Baker/Starr/Denney Decl at paras. 55-60.

of capital.[897] Because the rates before us were derived by benchmarking to new rates ordered in Colorado, we conclude that it is unnecessary to determine whether the North Dakota Commission committed TELRIC errors in the 1997 arbitration proceeding.

251. We **also** conclude that, based on the record before **us,** it is unnecessary to wait for the North Dakota Commission first to review the benchmarked rates to determine whether the prices charged to competitive LECs are just and reasonable, as proposed by Integra.[898] A state commission's full review of the prices, before our review of a section 271 application, is not a prerequisite for granting section 271 authority, or to fulfill our obligations under section 271. If we can conclude that rates are comparable to rates in another state that we have found has properly applied TELRIC, we do not need to require prior state review as a condition of granting section 271 authority.

(f) Utah

252. ***Background.*** In June 1999, the Utah Commission set permanent rates for unbundled loops and non-loop UNEs by averaging the costs derived from AT&T's HAI cost model and Qwest's ICM.[899] In averaging the results of the two models, the Utah Commission concluded that neither model was satisfactory by itself? The Utah Commission set rates for a number of other network UNEs, such as subloop elements (Network Interface Device, Loop Distribution, Loop Feeder, and Loop Concentrator/Digital Loop Carrier), local switch ports, unbundled local switching, and unbundled tandem switching, by a similar averaging of HAI and ICM costs.[901] The Utah Commission required vertical features (which it referred to as "Feature Groups") to be priced as a separate rate element, rather than including vertical features in the rate for the local switch port.[902] Finally, the Utah Commission geographically deaveraged prices for loops and unbundled switching, based on classifying Utah wire centers as urban, suburban **or** rural.[903]

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897 AT&T Qwest I Comments at **58-59;** AT&T Qwest III Baker/Starr/Denney Decl. at para. **57;** AT&T Qwest I Baker/Starr/Denney Decl. at para. **57.**

898 Integra Qwest III Comments at **3;** Integra Qwest I Comments at **3**

899 ***Investigation into Collocation and Expanded Interconnection, Phase III, Part C: USWC's Unbundled Network Element TELRIC Costs and Prices,*** Docket No. **94-999-01,** Report and Order (Pub. Serv. Comm'n of Ut. **1999)** (1999 ***Utah UNE Pricing Order).*** Phase I of the docket dealt with the setting of wholesale prices **for** resale services based on avoided retail costs. Phase II set interim rates for unbundled loops.

900 ***Id.*** at ***6***

901 ***Id*** at **8-9.**

902 ***Id.*** at **8-9**. The Utah Commission set the statewide average price for Feature Group I and Feature Group **2** at **$0.77** and **$3.71,** respectively.

903 *Id.* at **8.** For this deaveraging, the Utah Commission accepted the classification **of** Utah wire centers, based on the relationship of the host to the remote switch, proposed by the parties in a Joint Exhibit in the docket.

253. In June 2002, the Utah Commission set rates for NRCs and recurring charges not addressed previously.[904] The Utah Commission found AT&T's NRC cost model to be flawed, so it set NRCs based on Qwest's model with some adjustments.[905] The Utah Commission found that Qwest incurs the same costs in providing unbundled dedicated interoffice transport (UDIT) between two Qwest central offices as it does for entrance facilities linking a competitive LEC point of presence to a Qwest office, therefore it required Qwest to either remove the entrance facility charge or set the same price for both entrance facility and UDIT.[906] The Utah Commission also set the rate for line sharing (i.e., use of the high frequency portion of the loop) at $0.00, because it found that Qwest recovers all of its loop costs from the loop rates set in the *1999 Utah UNE Pricing Order*.[907]

254. In late 2001, the Utah Commission initiated a new UNE pricing investigation. On June 11,2002, the Utah Commission announced that the docket would again look at cost models and recurring charges for most unbundled loop and non-loop UNEs.[908] This proceeding is currently ongoing.[909]

255. On July 2,2002, in anticipation of filing its section 271 application, Qwest voluntarily reduced rates for a number of UNEs in Utah, based on a benchmark analysis to Colorado UNE rates.[910] Qwest reduced the recurring rates for all vertical features to $0.00.[911] Qwest did not reduce Utah NRCs because they were lower than the corresponding rates set by the Colorado Commission.[912] The Utah Commission allowed these benchmark reductions to

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904 *Application of Qwest Corporation for Commission Determination of Prices for Wholesale Facilities and Services,* Docket No. 00-049-105, Order (Pub. Serv. Comm'n of Ut. 2002) *(2002 Utah UNE Pricing Order).*

905 *2002 Utah UNE Pricing Order* at 9-11. The Utah Commission required Qwest to use the 26.7 percent general overhead factor the Utah Commission had set in Docket No. 00-049-106. The Utah Commission also reduced Qwest's labor price estimates by 40 percent and its total installation factor from 200 to 125 percent, while increasing Qwest's flow-through percentages from 85 to 90 percent. The Utah Commission ordered Qwest to remove disconnection charges from its installation NRCs.

906 *2002 Utah UNE Pricing Order* at 21. Qwest elected to remove the entrance facility charge from its Utah SGAT.

907 Id. at 15-16

908 *Determination of the Cost of the Unbundled Loop of Qwest Corporation,* Docket No. 01-049-85, Procedural Order (Pub. Serv. Comm'n of Utah 2002).

909 The Utah Commission has already received party-sponsored cost models and testimony; hearings are scheduled for November 19-21, 2002. *Id.* at 2.

910 Qwest II Application App. A, Tab 29, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Utah, paras. 37-47 (Qwest II Thompson Utah Decl.).

911 *Id.* at para. 45.

912 *Id.* at para. 46.

become effective on July 10, 2002.[913] Based on the record before it, the Utah Commission filed comments stating that it believes that Qwest has met the requirements of section **271,** which includes the pricing requirement for UNEs under checklist item two.[914] On August **30,2002** and October **16,2002,** Qwest revised its Utah SGAT to reflect further rate reductions?"

256. ***Discussion.*** AT&T argues that the Utah UNE loop and switching rates are significantly overstated because the Utah Commission did not use a TELRIC-compliant cost model to set them.[916] Specifically, AT&T notes that the Utah Commission "arbitrarily set rates on the basis of the simple average of the costs calculated by the HAI model and [Qwest's] embedded ICM model."[917] AT&T **further** notes that the Utah Commission had found AT&T's HAI model to be "appropriately forward looking," but did not rely solely on it because of concerns regarding its use of proxies to determine some customer locations.[918] AT&T observes that the Utah Commission found that Qwest's ICM "does not produce a forward-looking economically efficient network," relies on embedded costs and that it yields "overstated" rates.[919] AT&T contends that the Utah Commission's averaging of HAI-derived costs with ICM-derived costs only slightly reduced the overstatement of costs produced by using the non-TELRIC-compliant ICM.[920] Indeed, AT&T asserts that the TELRIC errors inflate Qwest's loop rates by more than $2.00.[921] AT&T further argues that federal courts have concluded that state commission processes that set rates by averaging non-TELRIC-compliant cost studies cannot yield TELRIC-based rates.[922] Integra goes further, arguing that by voluntarily reducing the loop

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913 ***Application of Qwest Corporationfor Approval of Compliance with*** *47 U.S.C. § 271(d)(2)(B)*, Docket No. **00-049-08,** Final Order Regarding Qwest **§ 271** Compliance, **4** (Pub. Serv. Comm'n of Utah **2002).**

914 Utah Commission Qwest II Comments at 5. See *also* Utah Commission Qwest III Comments at 1 (adopting and incorporating by reference its Qwest II Comments).

915 Qwest Aug. **30** Pricing *Ex Parte* Letter at Attach. (Utah SGAT) **(08/30/02d);** Qwest Oct. **7** Pricing *Ex Parte* Letter; Qwest Nov. 12 *Ex Parte* Letter, Utah Attach.

916 AT&T Qwest II Comments at **72-77;** AT&T Qwest III Chandler/Mercer Decl. at para. **62**

911 AT&T Qwest II Comments. at 73; AT&T Qwest III Chandlerhlercer Decl. at para. **63** (both citing *1999 Utah UNE Pricing Order* at **7).**

918 AT&T Qwest II Comments at **73;** AT&T Qwest III Chandler/Mercer Decl. at para. **62** (both citing *1999 Utah UNE Pricing Order* at **7).**

919 AT&T Qwest II Comments at **72;** AT&T Qwest III Chandlerhlercer Decl. at para. **59** (both citing *1999* Utah *UNE Pricing Order* at **6).**

920 AT&T Qwest II Comments at 73

921 AT&T Qwest II Comments at **52.**

922 AT&T Qwest II Comments at **74,** Tab F, Declaration of Richard Chandler and Robert Mercer, para. **36** (AT&T Qwest II Chandlerhlercer Decl.); AT&T Qwest 111Chandler/Mercer Decl. at para. **64** (both citing *AT&T of N.J. v. Bell Atlantic-N.J.*, Civ. No. **97-5762** (KSH), slip op. **(D.N.J**une **6, 2000)).**

rates under its benchmark analysis, Qwest has effectively admitted that the Utah loop rates are not TELRIC-compliant.[923]

257. AT&T also asserts that the Utah UNE rate for switch ports allows Qwest to over-recover some of its costs.[924] AT&T notes that the Utah Commission set charges for vertical features (referred to as "Feature Group 1" and "Feature Group 2") separate from the port charge,[925] even though the HAI cost model, on which the switching rates were based in part, incorporates vertical features in the functionality of the port and, thus, are included in the HAI port rate.[926] Indeed, AT&T argues that Qwest has admitted that the HAI includes vertical features by stating in its Qwest I reply that it cannot "refute AT&T's assertion that there is no need for the $0.38 adjustment that was incorporated into Qwest's Colorado switch rate in order to recover the cost of applications software used to provide vertical features."[927] AT&T argues that, given the amount of the charge, $3.71 per port for the most popular Feature Group 2, this over-recovery significantly disadvantages competitive LECs.[928] AT&T notes that Qwest has removed its separate vertical features charge from its Colorado rates and should do so in Utah as well.[929]

258. Qwest argues in its application that the loop and non-loop rates set by the Utah Commission are TELRIC-compliant,[930] but Qwest does not rely on those rates in this application.[931] Rather, Qwest relies on the voluntarily-reduced rates it filed with the Utah Commission on July 2,2002, and the revised rates filed on August 30,2002 and October 16, 2002.[932] With respect to its switching rates, Qwest reduced the charge for all vertical features to

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923 Integra Qwest II Comments at 4.

924 AT&T Qwest II Comments at 74; AT&T Qwest 111 Chandler/Mercer Decl. at para. 65.

925 AT&T Qwest II Comments at 74 (citing 1999 *Utah* UNE ***Pricing Order*** at II, Table A).

926 AT&T Qwest II Comments at 74; AT&T Qwest III Chandler/Mercer Decl. at para. 65 (both citing AT&T's Post-Hearing Brief in Docket *No. 94-999-01* at 21 (fled Feb. 17, 1999)).

927 AT&T Qwest 111 Chandler/Mercer Decl. at para. 65 (quoting Qwest I Thompson Reply Decl. at para. 38). AT&T states that Qwest's reply declaration recognizes that the switch maintenance factor used in the HAI model, 0.0558, is greater than the actual ARMIS-derived value of 0.04209 for Qwest in Colorado. AT&T further asserts that the contrast between the two values is even greater in Utah, where the ARMIS-based value is 0.01272, which is less than one-fourth the default value (also 0.0558) in the HAI model.

928 AT&T Qwest II Comments at 74; AT&T Qwest III Chandler/Mercer Decl. at para. 65. See *also 1999 Utah UNE* ***Pricing Order*** at *9*.

929 AT&T Qwest III Chandler/Mercer Decl. at para. 65

930 Qwest II Thompson Utah Decl. at para. 37.

931 See Qwest II Thompson Utah Decl. at paras. 40-45. See also Qwest Sixth Revised SGAT, Ex. A: Utah Rates.

932 Qwest II Thompson Utah Decl. at para. 37; Qwest Aug. 30 Pricing Ex *Parte* Letter (08/30/02d); Qwest Oct. 7 Pricing Ex *Parte* Letter; Qwest Nov. 12 *Ex Parte Letter,* Utah Attach.

$0.00.[933] In performing its benchmark analysis, Qwest states that it used a statewide average Utah port rate of $0.91.[934] Because we base our determination of compliance with checklist item two on Qwest's current, reduced rates, **we** need not decide whether the Utah Commission committed TELRIC errors. Rather, we review the current loop and switching charges Qwest now relies on to satisfy checklist item two using our benchmark analysis.[935]

(g) Washington

259. ***Background.*** The Washington Commission initiated a generic cost proceeding on November 21, 1996.[936] The Washington Commission conducted this proceeding in three phases: Phase I examined UNE costs and the wholesale discount applicable to resold services; Phase II addressed common costs and other loadings to establish permanent UNE rates, collocation rates and the recovery of certain OSS costs; and Phase III focused on deaveraging loop rates into five pricing zones.[937] More than twenty parties participated in the proceeding, which included extensive evidentiary hearings with cross-examination of witnesses.[938] The Washington Commission found that, while the models submitted by the parties, the RLCAP, Hatfield and BCPM models, each used TELRIC methods, each contained shortcomings.[939] The Washington Commission relied on an average of the adjusted results of the RLCAP, Hatfield. and BCPM models to determine loop costs, and of the Hatfield and Qwest models for tandem switching.[940] For local switching and analog ports, the Washington Commission relied on a Federal

933 Qwest II Thompson Utah Decl. at para. 45. ***See*** also Qwest's Sixth Revised SCAT, Ex. A: Utah Rates, Section 9.11.2, at 12-13.

934 *Id.* Qwest notes that the Utah Commission actually set deaveraged urban, suburban and rural port charges of $0.89, $0.90 and $1.02, respectively. ***See*** Qwest SCAT, Ex. A: Utah Rates, Section 9.11.1, at 11. ***See also 1999 UNE Pricing Order*** at 9, Table A.

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

936 ***Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale,*** Docket Nos. UT-960369, UT-960370, Order Instituting Investigations (Wash. UTC 1996).

937 ***Pricing Proceeding for Interconnection, Unbundled Elements. Transport and Termination, and Resale,*** Docket Nos. UT-960369, UT-960370, Eighth Supplemental Order at 2 (Wash. UTC 1998) ***(Washington Commission 8th Supp. Pricing Order); Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale***, Docket Nos. UT-960369, 960370,960371, Twenty-fourth Supplemental Order at 4 (Wash. UTC 2000) ***(Washington Commission 24th Supp. Pricing Order).***

938 Qwest II Application App. A, Tab 30, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Washington, para. 6 (Qwest II Thompson Washington Decl.).

939 ***Washington Commission 8th Supp. Pricing Order*** at 14-15.

940 ***Washington Commission 8th Supp. Pricing Order*** at 53-54, ***Pricing Proceeding for Interconnection. Unbundled Elements, Transport and Termination, and Resale,*** Docket Nos. UT-960369,960370,960371, Ninth Supplemental Order on Clarification at 7 (Wash. UTC 1998).

Communications Commission staff analysis **of** switching costs.'' The Washington Commission accepted Qwest's NRC cost studies, with some adjustments.[942]

260. On February 17,2000, the Washington Commission established an additional, concurrent docket to address cost and pricing issues that had not been addressed in other dockets, as well as new issues arising from more recent Commission orders, such as the ***UNE Remand Order*** and the ***Line Sharing Order***.[943] Sixteen different parties participated in this docket by filing opening and reply comments, propounding and responding to discovery requests, and conducting cross-examination **of** witnesses in hearings?''

261. On June 11,2002, Qwest filed a revised SGAT and tariffs that included reductions to loop rates under Qwest's benchmark analysis, and reductions to certain NRCs.[945] Qwest did not reduce the switch port, local switching usage, and shared transport rates in Washington because the combination of these rates was lower than in the anchor state of Colorado, and so would already meet a benchmark test with Colorado.[946] The Washington Commission allowed these rates to ***go*** into effect on **July** 10,2002.[947] On August 30,2002, and October 16,2002, Qwest revised its Washington SGAT to reflect further rate reductions.[948] In its comments on Qwest's application, the Washington Commission asserts that Qwest has satisfied the requirements of checklist item two and, therefore, recommends that the Commission grant Qwest's section 271 application.[949]

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941 ***Washington Commission 8th Supp. Pricing Order*** at 64.

942 ***Washington Commission 8th Supp. Pricing Order*** at 87-92

943 ***See Continued Costing and Pricing of Unbundled Network Elements, Transport, and Termination***, Docket No. UT-003013, Thirteenth Supplemental Order (Wash. UTC 2001) ***(Washington 13th Supp. Pricing Order).***

944 ***See*** Qwest II Thompson Washington Decl. at para. ***8.***

945 Qwest II Thompson Washington Decl. at paras. 9, 36.

946 ***Id.*** at para. ***36***

947 **On** June 20,2002, the Washington Commission issued an order setting forth additional requirements to be reflected by Qwest in a revised SGAT. ***Investigation into US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996***, Docket **Nos.** UT-003022, UT-003040, **37*** Supplemental Order at **33** (Wash. UTC 2002). Qwest filed a revised SGAT on June 25,2002, and the Washington Commission approved Qwest's request to let the SGAT become effective on July 10, 2002. ***Investigation into US West Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996,*** Docket Nos. UT-003022, UT-003040, 39'' Supplemental Order at 7, 13 (Wash. UTC 2002).

948 Qwest Aug. 30 Pricing *Ex **Parte*** Letter at Attach. (Washington SGAT) (08/30/02d); Qwest Oct. 7 Pricing *Ex **Parte*** Letter; Qwest Nov. 12 *Ex Parte* Letter, Washington Attach.

949 Washington Commission Qwest II Comments at **12.** ***See also*** Washington Commission Qwest III Comments at 2 (incorporating by reference its Qwest II Comments).

262. ***Discussion.*** AT&T argues that the Washington Commission did not adopt any of the three loop models presented, finding that they were not "open, reliable, and economically sound," but instead adjusted some inputs and averaged the three models' results to derive loop costs.[950] AT&T also alleges that the Washington Commission did not explain its method of averaging the loop cost model results, and the loop cost adopted by the Washington Commission was higher than any of the three individual models' results."' Integra's argument that Washington's loop rates exceed the national average is identical to OneEighty's argument with respect to Montana's loop rates, so we reject it for the same reasons set forth above?"

263. AT&T also challenges Qwest's Washington switching rates, stating that for Qwest, the Washington Commission adopted, in its May 11, 1998 order, GTE's 1995 embedded switching cost estimate with no forward-looking adjustment, and no time-of-purchase adjustment to make the number representative **of** the then-current price.[953] AT&T also argues that the switching cost figure adopted by the Washington Commission erroneously assumes a fixed cost for all switch sizes.[954] According to AT&T, switch costs, when expressed per line, fall as a function of switch size, because a sizeable "getting started" cost can be spread over a greater number of lines?" AT&T states that, on average, Qwest's switches are larger and serve more lines than Verizon's switches in Washington.[956] Furthermore, AT&T asserts that, except for the very smallest switches, the per-line costs adopted by the HAI Model and the Commission's Synthesis Model are well below the $150 amount adopted for Qwest by the Washington Commission.[957]

264. Although Qwest asserts that the rates set by the Washington Commission are TELRIC-compliant,[958] it does not rely on those loop rates in this proceeding. Rather, Qwest relies on voluntarily-reduced loop rates filed with the Washington Commission on August **30,** 2002.[959] Because we base our determination of compliance with checklist item two on the

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950 AT&T Qwest II Comments at **62-65;** AT&T Qwest III Fassett/Mercer Decl. at paras. **76-84;** AT&T Qwest II Comments, Tab E, Joint Declaration of Dean Fassett and Robert Mercer, paras. **16-24** (AT&T Qwest II Fassett/Mercer Decl.).

951 AT&T Qwest II Comments at **65-66;** AT&T Qwest III Fassett/Mercer Decl. at paras. **85-86;** AT&T Qwest II Fassett/Mercer Decl. at paras. **25-26.**

952 Integra Qwest III Comments **at 14-15;** Integra Qwest II Comments at 9-10. See paras. 242-43, *supra.*

953 AT&T Qwest II Comments at 70; AT&T Qwest III Chandlermercer Decl. at para. **52;** AT&T Qwest II Chandlermercer Decl. at paras. **23-24.**

954 AT&T Qwest III Chandler/Mercer Decl. at para. **53;** AT&T Qwest II Chandlermercer Decl. at paras. **25-26.**

955 AT&T Qwest III Chandlermercer Decl. at para. **53;** AT&T Qwest II Chandler/Mercer Decl. at paras. **25-26.**

956 AT&T Qwest III Chandlermercer Decl. at para. **53;** AT&T Qwest II Chandlerhlercer Decl. at para. **25.**

957 AT&T Qwest III Chandler/Mercer Decl at paras. **53-54;** AT&T Qwest II Chandler/Mercer Decl. at para. **26**

958 See Qwest II Application at 159-60.

959 See Qwest II Application at **163;** Qwest II Thompson Washington Decl. at paras. **36-43.**

current rates, we need not decide the question of whether Qwest's Washington loop rates set in the state proceeding are TELRIC-compliant. Instead, we review the current Washington loop rates and non-loop rates using our benchmark analysis.[960]

(h) Wyoming

265. Background. On November 22, 1996, AT&T filed a petition with the Wyoming Commission for arbitration to establish rates for interconnection, UNEs, and resale pursuant *to* section 252 of the Communications Act, as amended.[961] On April 23, 1997, the Wyoming Commission issued an order establishing interim rates at the average of rates generated by AT&T's and Qwest's cost models, after adjusting for certain cost inputs.[962]

266. In a rehearing order issued on March 22, 1999, the Wyoming Commission adopted Qwest's proposed rate structure, which consists of four concentric zones around each central office, and adopted Qwest's RLCAP model." On June **30,** 1999, the Wyoming Commission issued a further rehearing order reaffirming these decisions, and clarifying that it approved the entire suite *of* cost models that Qwest used to develop its UNE costs.[964]

267. On July 31,2001, Qwest initiated a generic cost proceeding before the Wyoming Commission.[965] AT&T, Contact Communications, and the Consumer Advocate Staff intervened, although AT&T withdrew without filing testimony.%"On June 19,2002, Qwest, Contact Communications, and the Consumer Advocate Staff settled outstanding disputes by stipulation.[967]

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

961 ***See*** Qwest II Application App. A, Tab 31, Declaration ***of*** Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Wyoming, para. 3 (Qwest II Thompson Wyoming Decl.)

962 ***See Arbitration by the Public Service Commission of an Interconnection Agreement between U S West Communications, Inc., and AT&T Communicaiions of the Mouniain States, Inc., under 47 USC $252,*** Docket Nos. 70000-TF-319 and 72000-TF-96-95, Order, 19-20 (Wyoming Commission 1997) ***(Wyoming Arbitration Order).***

963 ***See Arbitration by the Public Service Commission of an Interconnection Agreement between U S West Communications, Inc., and AT&T Communications of the Mountain States, Inc., under 47 USC § 252,*** Docket Nos. 70000-TF-319 and 72000-TF-96-95, Order on Rehearing, 41 (Wyoming Commission 1999) ***(Wyoming Rehearing Order).***

964 ***See Arbitration by ihe Public Service Commission of an Interconnection Agreement between U S West Communicaiions, Inc., and AT&T Communicaiions of the Mountain States, Inc., under 47 USC § 252,*** Docket Nos. 70000-TF-319 and 72000-TF-96-95, Order on Petitions for Rehearing of U S West Communications, Inc., and AT&T Communications of the Mountain States, Inc., and Amending Previous Orders, 21 (Wyoming Commission 1999) ***(Wyoming Further Rehearing Order).***

965 ***See*** Qwest II Thompson Wyoming Decl. at para. 4. See also *Qwest's Request* io ***Open an Unbundled Network Elements TELRIC Cost Docker,*** Docket No. 7000-TA-01-700 (Record No. 6768), Stipulation and Agreement dated June 19,2002, 1 ***(Wyoming Stipulation Agreement).***

966 See Qwest II Thompson Wyoming Decl. at para. 4.

967 ***Wyoming Stipulation Agreement*** at 5

The parties jointly adopted UNE and interconnection rates proposed by the Consumer Advocate Staff, and stipulated to collocation rates and certain NRCs relating to loop provisioning that mirror the rates established by the Colorado Commission.[968] Qwest also stipulated that it would file new rates within two years with the Wyoming Commission for approval.[969] On June 28, 2002, the Wyoming Commission approved the stipulation agreement and adopted the stipulated rates as TELRIC-compliant in its regular open meeting.[970] The approved stipulation retained the Wyoming Commission's earlier adopted concentric zone deaveraging scheme.[971]

268. On July 1,2002, Qwest filed revised SGAT rates in compliance with the stipulation agreement, and voluntarily reduced five non-loop rates to meet a benchmark comparison with the rates established by the Colorado Commission?" On July 9,2002, the Wyoming Commission approved the SGAT, with the exception of certain rates that were not addressed in the stipulation agreement, as TELRIC-compliant.[973] The Wyoming Commission allowed these rates to go into effect as of July 10, 2002.[974] On August 29,2002 and October 16, 2002, Qwest revised its Wyoming SGAT to reflect further rate reductions.[975] The Wyoming Commission found that Qwest met the pricing requirements for UNEs under checklist item two and recommended that the Commission grant Qwest's section 271 application.[976]

269. ***Discussion.*** AT&T asserts that Wyoming's recurring loop and switching charges are not TELRIC-compliant.[977] AT&T contends that Wyoming's UNE loop rates are inflated

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968 Qwest II Thompson Wyoming Decl. at para. 6.

969 ***Wyoming Stipulation Agreement*** at 3.

970 ***Application of Qwest Corporation Regarding Relief Under Section 271 Process and Approval of its Statement of Generally Available Terms,*** Docket No. 7000-TA-00-599 (Record No. 5920), Order on SGAT Compliance, I (Wyoming Commission **2002)** ***(Wyoming Order on SCAT Compliance).***

971 Qwest II Thompson Wyoming Decl. at para. 11

972 Qwest II Thompson Wyoming Decl. at para. 10. The rate elements are End Office Call Termination: per minute of use; Tandem Switched transport: Tandem Switching, per minute of use; Shared Transport: per minute of use – TELRIC based rate; Local Tandem Switching: per minute of use: and Local Switching: Local Usage: per minute of use. See ***Wyoming Order on SGAT Compliance*** at 2.

973 ***Wyoming Order on SGAT Compliance*** at **2.** Certain rates in the Wyoming **SGAT** were not addressed in the ***Wyoming Stipulation Agreement,*** and the Wyoming Commission stated that it expresses no opinion about the TELRIC-compliance of **these** rates. See Wyoming Commission Qwest II Comments at 7. See ***also*** "footnote 1" identifier of the Wyoming SGAT, **Ex.** ***A*** dated July **1,2002.**

974 ***Wyoming Order on SCAT Compliance*** at 3.

975 Qwest ***Aug.*** 30 Pricing ***Ex Parte*** Letter at Attach. (Wyoming ***SGAT)*** **(08/30/02d);** Qwest Oct. 7 Pricing *Ex* ***Parte*** Letter; Qwest ***Nov.*** 12 ***Ex Parte*** Letter, Wyoming Anach.

976 Wyoming Commission Qwest II Comments at 7. See ***also*** Wyoming Commission Qwest III Comments at 1-2 (adopting and incorporating by reference its Qwest II Comments).

977 AT&T Qwest II Comments at 81-85

because the Wyoming Commission improperly adopted Qwest's RLCAP cost model.[978] According to AT&T, this model replicates Qwest's embedded network costs, rather than relying on forward-looking network costs, and is a "black-box," filled with inaccessible and unverifiable Qwest-specific information.[979] As support, AT&T asserts that the Wyoming Commission seemingly reversed its earlier decision that rejected RLCAP after acknowledging that the model relies on Qwest's embedded costs.[980] Furthermore, AT&T asserts that the RLCAP model accommodates the allegedly improper deaveraging scheme that the Wyoming Commission also adopted.[981]

270. AT&T also asserts that the Wyoming switching rates are non-TELRIC compliant because the Wyoming Commission improperly adopted Qwest's switching model (SCM) that calculates investments associated with switching based on Qwest's embedded costs.[982] AT&T states that critical investment inputs are buried in password-protected database files and the SCM does not show fundamental calculations used to compute switching investments.[983] AT&T further asserts that Qwest's last-minute reduced rates are not TELRIC-compliant because the Wyoming Commission failed to conduct any adversarial proceeding or make any findings concerning their compliance with TELRIC, and these reductions demonstrate that Qwest recognizes that its switching rates *are* inflated.'"

271. Qwest states that its UNE rates are TELRIC-compliant.[985] The Wyoming Commission states that the generic cost proceeding involved thousands of pages of cost studies and testimony from Qwest and intervening parties to establish TELRIC rates.[986] We note that Qwest's Wyoming loop rates are mainly stipulated rates resulting from that proceeding, and the current Wyoming switching rates include stipulated rates and certain voluntarily-reduced rates that Qwest filed with the Wyoming Commission on July 1, 2002 and revised on August 29,

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978 AT&T Qwest II Comments at 81-84; AT&T Qwest III Fassett/Mercer Decl. at paras. 104-122; AT&T Qwest II Fassett/Mercer Decl. at paras. 4 1-58.

979 AT&T Qwest II Comments at 81, 83-84; AT&T Qwest III Fassett/Mercer Decl. at para. 105; AT&T Qwest II Fassett/Mercer Decl. at paras. 45-57.

980 AT&T Qwest II Comments at 83; AT&T Qwest III Fassett/Mercer Decl. at 105, 114; AT&T Qwest II Fassett/Mercer Decl. at paras. 54-58.

981 AT&T Qwest II Comments at 83-84; AT&T Qwest III Fassett/Mercer Decl. at paras. 113-117; AT&T Qwest II Fassett/Mercer Decl. at paras. 53-57. We discuss the Wyoming deaveraging scheme at Part IV.A.2.d.(i)(i), *infra.*

982 AT&T Qwest II Comments at 49, 85; AT&T Qwest 111 Chandler/Mercer Decl. at para. 67-68; AT&T Qwest II Chandler/Mercer Decl. at paras. 39-40.

983 AT&T Qwest III Chandler/Mercer Decl. at para. 67; AT&T Qwest II Chandler/Mercer Decl. at paras. 39-40.

984 AT&T Qwest II Comments at 85; AT&T Qwest 111 Chandler/Mercer Decl. at para. 69; AT&T Qwest II Chandler/Mercer Decl. at para. 41.

985 Qwest II Thompson Wyoming Decl. at para. 2.

986 Wyoming Commission Qwest II Reply at 2

2002, and October **16,2002,** to meet a benchmark test with the Colorado rates.[987] As discussed below, however, these rates pass a benchmark analysis and fall within the reasonable range of rates that a TELRIC-based proceeding would produce.[988]

(i) Deaveraged Rate Zones

272. AT&T asserts that the deaveraged rate zones in Montana and Wyoming are not cost-based, and the Department of Justice urges the Commission to take notice of the unusual rate zones in these states.'" The deaveraged rate zones in these states are based on the distance of a customer from the wire center, and consist of four concentric circles around each wire center.[990] AT&T argues that the Montana and Wyoming state commissions did not adopt deaveraged zones to reflect the density-based cost differences between urban, suburban and rural wire centers as contemplated by the Commission's rules.[991] Because the customer costs of a wire center vary significantly with physical location and demographic characteristics, AT&T contends that Qwest's Montana and Wyoming loop rates are not cost-based in compliance with checklist item two.[992] AT&T further argues that the Commission's benchmarking analysis aggregates UNE rates for all UNE zones, so benchmarking does not reveal TELRIC errors in the deaveraging process.[993]

273. In response, Qwest argues that distance from the wire center and density are the most significant factors driving loop costs, and in states with relatively few high-density areas, such as Montana and Wyoming, it is appropriate to base rate zones on distance.[994] According to

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987 *Wyoming Order on SGAT Compliance* at 2-3. *See* also Qwest II Thompson Wyoming Decl. at para. 12; Qwest Aug. 30 Pricing Ex *Parte* Letter (08/30/02d); Qwest Oct. 7 Pricing Ex *Parte* Letter; Qwest Nov. 12 Ex *Parte* Letter, Wyoming Attach. The Wyoming Commission states that only five non-loop rates were "accepted as benchmarks" that were not part of the Wyoming TELRIC (generic cost) proceeding. See Wyoming Commission Qwest II Reply at **3.** There were also **38** elements out of more than 900 elements, approximately three percent of Qwest's total rates for interconnection, collocation, wholesale discounts and UNEs, that were not specifically addressed by the Wyoming Commission. See Wyoming Commission Qwest II Reply at **4.** *See* also "footnote 1" identifier of the Wyoming SGAT, **Ex.** A.

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

989 Department of Justice Qwest II Evaluation at 20-21; AT&T Qwest II Comments at **54, 77, 83;** AT&T Qwest III Fassett/Mercer Decl. at paras. 113, 125; AT&T Qwest II Fassett/Mercer Decl. at paras. 53, 65; AT&T Qwest II Lieberman/Pitkin at para. **7.**

990 AT&T Qwest II Comments at **77, 83;** AT&T Qwest III Fassett/Mercer Decl. at paras. **113,** 125; AT&T Qwest II Fassett/Mercer Decl. at paras. 53, 65.

991 AT&T Qwest II Comments at **54, 77, 83;** AT&T Qwest III Fassett/Mercer Decl. at paras. **113, 124** (citing **47** C.F.R. § 51.507(f)); AT&T Qwest II Fassett/Mercer Decl. at paras. **53.65** (citing **47** C.F.R. § 51.507(f)).

992 AT&T Qwest II Comments at **54;** AT&T Qwest II Lieberman/Pitkin Decl. at para. **7.**

993 AT&T Qwest II Comments at **54;** AT&T Qwest II Lieberman/Pitkin Decl. at para. **7.**

994 Qwest II Reply at 99; Qwest II Reply, Reply Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection, para. **45** (Qwest II Thompson Reply Decl.).

Qwest, density-based rate zones do not account for the distance-based differences in loop costs within a given wire center, or differences in costs between wire centers in the same zones.[995] Qwest asserts that the distance-based rate zones in Montana and Wyoming, however, account for cost differences in both distance and density.[996] Qwest argues that in sparsely-populated, rural states such as Montana and Wyoming where one switch may serve a large community, the density of the serving area tends to decrease as the distance from the wire center increases.[997] Therefore Qwest claims that the distance-based rate zones also reflect density cost differences, while density-based rate zones would not reflect distance-related costs.[998] In addition to this implicit density-based component, Qwest notes that the Wyoming Commission added an explicit density-based component to the rate zones in that state.[999] The Wyoming Commission established pricing zones with different distances based on the population densities of the wire centers.[1000] Qwest also notes that the Commission's former Common Carrier Bureau (now the Wireline Competition Bureau) granted a waiver to allow the calculation of universal service support on the basis of the distance-based rate zones in Wyoming.[1001]

274. We disagree with AT&T that the rate zone structures in Montana and Wyoming violate our rules. Section 51.507(f) allows state commissions to rely on density-related zone pricing plans, "or other such cost-related zone plans established pursuant to state law."[1002] Therefore, AT&T is incorrect in asserting that rate zones must be based on density. Further, Qwest has adequately demonstrated that zones based on distance are cost-related. As Qwest explains in its reply, the two primary factors that drive loop costs are density of customers within an area, and customers' distance from the wire center.[1003] AT&T agrees that distance from the wire center is an important factor in determining loop costs.[1004] We find that the distance-based rate zone structures adopted by the Montana and Wyoming Commissions are cost-related as required by our rules.

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995 Qwest II Thompson Reply Decl. at para. 46.

996 Qwest II Thompson Reply Decl. at para. 41.

997 Qwest II Thompson Reply Decl. at paras. 47-48.

998 Qwest II Thompson Reply Decl. at paras. 47-48.

999 Qwest II Thompson Reply Decl. at para. 49.

1000 In wire centers with greater population densities (determined based on the number of lines served by the switch), the Wyoming Commission established pricing zones based on longer distances than in smaller, less dense wire centers. The zones will have smaller widths for switches that serve fewer lines and will have larger widths for switches that serve more lines. Qwest II Thompson Reply Decl. at paras. 49-50.

1001 Qwest II Reply at 99-100 n.72; Qwest II Thompson Reply Decl. at para. 54 (citing *Wyoming Public Service Commission*, CC Docket No. 96-45, Order, 16 FCC Rcd 5350 (Comm. Carr. Bur. 2001)).

1002 47 C.F.R. § 51.507(f) (2001).

1003 Qwest II Thompson Reply Decl. at para. 45.

1004 AT&T Qwest II Reply, Declaration of Brian F. Pitkin at para. 6 (AT&T Qwest II Pitkin Reply Decl.).

275. AT&T argues that, because the Commission's benchmark analysis examines aggregate loop costs, it does not account for errors in disaggregating those costs among rate zones.[1005] Specifically, AT&T asserts that Qwest's deaveraging methodology in Montana and Wyoming artificially inflates the costs of higher-density areas by averaging them with costs of more rural areas.[1006] First, we note that, unless each loop is priced individually, any method of deaveraging contains some amount of averaging higher and lower cost loops. The more traditional density-based rate zones average different loop costs within wire centers,[1007] and average the different costs between wire centers in the same zones. Second, we find that the Wyoming Commission took both distance and density into account in establishing different zone sizes. Indeed, because the Wyoming Commission took both factors into account, it is possible that Wyoming's rate deaveraging zones may even be more closely tied to cost than are density-based zones. Finally, although the Montana Commission did not provide the same safeguards as did the Wyoming Commission to account for cost differences based on wire center densities, we find that the statewide average loop rates in Montana are cost-based pursuant to a benchmark comparison with Colorado, and, as discussed above, the Montana rate zone structure is cost-related as required by our rules. Therefore, even if the Montana Commission could have adopted a deaveraging method that better reflected differences in loop costs, the current rate zone structure complies with our rules.[1008]

(j) Line Sharing

276. Qwest charges positive rates for the HFPL that carriers purchase under the Commission's line sharing requirements in three of the benchmark states, Montana, Washington and Wyoming.[1009] Qwest filed amendments to its SGATs in Montana and Wyoming on August 30,2002 and August 29,2002, respectively, so that the average HFPL rates are at or below the Colorado HFPL rate, and are deaveraged across zones.[1010] In Washington, Qwest reduced its HFPL rate from $4.00 to $2.00, but did not deaverage the rate.[1011] Covad and WorldCom argue that, as in Colorado, Qwest's positive HFPL charges in these states violate the ***Line Sharing***

1005 AT&T Qwest II Comments at 54; AT&T Qwest II Lieberman/Pitkin Decl. at para. 7.

1006 AT&T Qwest II Pitkin Reply Decl. at para. 7.

1007 For example, if two customers are in the same wire center, but one is 500 feet from the central office while the other is 12,000 feet away, a density-based rate zone structure will establish identical loop rates for the two, even though the cost of serving the first customer is significantly less than the cost of serving the second customer.

1008 Because some universal service support is distributed on a different disaggegated basis, we note that even though Montana's rate zone structure complies with our rules, it creates arbitrage opportunities for competitive LECs in certain high-cost wire centers.

1009 See Qwest II Thompson Montana Decl. at para. 12; Qwest II Thompson Washington Decl. at para. 35; Qwest II Thompson Wyoming Decl. at para. 9.

1010 See Qwest Aug. 30 Pricing *Ex* Parte Letter at Attach. (08/30/02d). In Montana, Qwest reduced the HFPL rate to $4.76 in zone 1 and $4.89 in zones 2 through 4. In Wyoming, Qwest reduced the HFPL rate to $4.16 in the base rate area and retained the $4.89 rate in zones 1 through 3.

1011 See Qwest III Application, Tab 10 at 4; Qwest Nov. 12 Ex *Parte* Letter, Washington Attach.

Order and our TELRIC pricing requirements.[1012] For the reasons stated above in our discussion of the positive HFPL rate in Colorado, we decline to reach these arguments in the context of a section 271 application and we intend to address this issue in our pending proceeding on line sharing.[1013]

(k) Non-Recurring Charges

277. AT&T argues that Qwest's NRCs in the benchmark states are based on the same NRC model on which Qwest's Colorado NRCs are based.[1014] AT&T argues that Qwest's NRC model contains TELRIC errors, including (1) improper collection of disconnect charges as part of installation charges; (2) recovery of costs for manual work that should be performed electronically; (3) recovery of unnecessary costs; (4) reliance on improper time estimates; (5) recovery of non-recurring costs that should be collected as recurring charges; and (6) allocation of network-related costs that are not properly attributable to NRCs.[1015] AT&T's raises the same arguments here that we have already rejected with respect to Qwest's Colorado NRCs.[1016] We found that the Colorado Commission's use of the model to set NRCs resulted in TELRIC-based rates.[1017] In the instant application, Qwest relies on a comparison of its NRCs in the benchmark states to the Colorado NRCs.[1018] We find this comparison reasonable, and AT&T has not produced any evidence that it is not. Therefore, because we have determined that the Colorado NRCs are consistent with TELRIC requirements, and because the rates for NRCs in Montana, Utah, Washington, and Wyoming are comparable to the rates for NRCs in Colorado, we reject AT&T's arguments and reach the same conclusion with respect to the NRCs in these states.[1019]

278. AT&T also challenges Qwest's NRCs in Nebraska. AT&T asserts that the Nebraska Commission improperly calculated NRCs by relying on embedded costs, specifically, by multiplying the amount of time Qwest's employees spend on a particular activity (using largely manual processes), by the existing labor rate.[1020] AT&T argues that the Nebraska

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1012 Covad Qwest III Comments at 3; Covad Qwest II Comments at 3; WorldCom Qwest II Reply at 19-20

1013 See Part IV.A.2.c.(ii)(c), *supra*.

1014 AT&T Qwest II Comments at 70, 75; AT&T Comments, Tab G, Declaration of Thomas H. Weiss, para. 8 (AT&T Qwest II Weiss Decl.). See *also* AT&T Qwest III Comments, Tab J, Declaration of Thomas H. Weiss (AT&T Qwest III Weiss Decl.) (stating that his testimony in the Qwest II declaration remains accurate).

1015 AT&T Qwest II Weiss Decl. at paras. 11-36

1016 See Part IV.A.2.c.(iii), supra

1017 *See* Part IV.A.2.c.(iii), supra

1018 Qwest II Application at 165; Qwest II Thompson Montana Decl. at para. 15; Qwest II Thompson Utah Decl. at para. 46; Qwesf II Thompson Washington Decl. at paras. 47-48; Qwest II Thompson Wyoming Decl. at para. 17.

1019 AT&T Qwest II Weiss Decl. at paras. 38-44. See Part IV.A.2.c.(iii), *supra*

1020 AT&T Qwest III Baker/Starr/Denney Decl. at para. 49; AT&T Qwest I Baker/Starr/Denny Decl. at para 49

Commission improperly labeled NRCs forward-looking finding that they "reflect all planned improvements due to additional mechanization of the service order process."[1021] AT&T states that the Federal District Court in Delaware rejected such an argument in *Bell Atlantic-Delaware, Inc. v. McMahon*.[1022] AT&T argues that ***this*** precedent and TELRIC principles require a "blank slate approach that disregards Qwest's existing processes and looks to determine the 'most efficient, currently available' methods for provisioning UNEs."[1023] AT&T also asserts that the Nebraska Commission improperly included ***60*** percent of the costs of disconnecting a competitive LEC customer in its initial billing charge."" AT&T argues that the effect of including these costs is to create a huge competitive disadvantage in winning the customer in the first place.[1025] Specifically, AT&T opposes recovery of any disconnection charge as part of an initial billing charge. AT&T argues that imposing such charges creates a barrier to entry.

279. AT&T's challenges to the NRCs established in Nebraska are similar to arguments raised with respect to NRCs in Colorado. As we concluded in our discussion of Colorado NRCs, we will examine state decisions to determine if there are clear TELRIC errors, but we typically will defer to a state commission's assessment of the record before it with respect to detailed factual determinations, such **as** how many minutes a particular activity should take or how frequently it will occur. In its April 23, 2002 order, the Nebraska Commission took steps to minimize the impact of disconnection costs on competitive LECs, such as reducing the costs by 40 percent to reflect the fact that a customer may stay with a competitive LEC, and discounting the costs over **five** years to reflect the time value of money.[1026] In any event, in Qwest's May 31, 2002 amendment to its May 24, 2002 SGAT, Qwest reduced certain installation NRCs to the levels adopted by the Colorado Commission for corresponding services.[1027] Because we find that the Colorado NRCs are consistent with TELRIC requirements, we reach a similar conclusion with respect to the Nebraska NRCs. Similarly, in discussing the issue of disconnection costs in Colorado, we stated that states have discretion in protecting incumbent LECs against the risk **of**

[1021] AT&T Qwest III Baker/Starr/Denney Decl. at para. 49; AT&T Qwest I Baker/Starr/Denney Decl. at para. 49 (both citing, ***Nebraska Commission April 23 Cost Order*** at paras. 179-180).

[1022] 80 F. Supp. 2d 218, 250-51 (D. Del. 2000); AT&T Qwest III Baker/Starr/Denney Decl. at para. 50; AT&T Qwest I Baker/Starr/Denny Decl at para. 50.

[1023] AT&T Qwest III Baker/Starr/Denney Decl. at para. 52; AT&T Qwest I Baker/Starr/Denney Decl. at para. 52. ***See also*** AT&T Qwest I Weiss Decl. at para. 17 ("A TELRIC-compliant non-recurring cost study would compute NRCs on the most efficient forward-looking technology available to the ILEC.").

[1024] AT&T Qwest III Baker/Starr/Denney Decl. at para 53; AT&T Qwest I Baker/Starr/Denney Decl. at para. 53.

[1025] AT&T Qwest III Baker/Starr/Denney Decl. at para. 53; AT&T Qwest I Baker/Starr/Denney Decl. at para. 53; AT&T Qwest I Weiss Decl. at para. 12.

[1026] ***See Nebraska Commission April 23 Cost Order*** at 48.

[1027] ***See*** Qwest I Application App. A., Tab 32, Declaration of Jerrold L. Thompson, Cost-Based Rates for Unbundled Network Elements and Interconnection in Nebraska, para. 39 (Qwest I Thompson Nebraska Decl.).

non-payment by competitive LECs.[1028] Thus, we conclude that recovering disconnection costs at the time of installation is not necessarily a TELRIC violation.[1029]

(ii) Benchmark Analysis

(a) Introduction

280. The comments raise a number of concerns with respect to **the** ratesetting process in Iowa, Idaho, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming. **As** noted above, we will not reject an application "because isolated factual findings by a commission might be different from what we might have found if we were arbitrating the matter. . . ."[1030] Rather, when a state commission does not apply TELRIC principles or does so improperly (e.g., the state commission made a major methodological mistake or used an incorrect input or several smaller mistakes or incorrect inputs that collectively could render rates outside the reasonable range that TELRIC would permit), we will look to rates in other section 271-approved states to see if the rates nonetheless fall within the range that a reasonable TELRIC-based rate proceeding would produce.''''

281. With respect to rates for the loop and switching-related elements, the Commission has used its Synthesis Model to take into account the differences in the underlying costs between the applicant state and the comparison state.''''[1031] To determine whether a comparison with a particular state is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the comparison state to be TELRIC-compliant.[1033] For elements or services not included in the Synthesis Model, such as collocation or NRCs, the Commission compares rates in the applicant state to rates in an approved state to ensure that the

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1028 See *Part* IV.A.2.c.(iii), ***supra.***

1029 ***See id.***

1030 *Bell Atlantic* ***New York Order,*** 15 FCC Rcd at 4084, para. 244, *aff'd. AT&T Corp* ***v. FCC,*** 220 F.3d at 615-16.

1031 ***See Verizon Rhode Island Order,*** 11 FCC Rcd at 3320, para. 38; *Verizon* ***Pennsylvania Order,*** 16 FCC Rcd at 17456-57, para. 63; see ***also SWBT Kansas/Oklahoma Order,*** 16 FCC Rcd at 6216, para. 82.

1032 See ***Verizon Massachusetts Order,*** 16 FCC Rcd at 9000, para. 22; ***SBC Arkansas/Missouri Order,*** 16 FCC Rcd at 20146, para. 57; ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17457, para. ***65;SWBT Kansas/Oklahoma Order,*** 16 FCC Rcd at 6211, para. 84.

1033 ***See Verizon Rhode Island Order,*** 17 FCC Rcd at 3320, para. 38; ***SBC Arkansas/Missouri Order*** 16 FCC Rcd at 20146, para. 56; ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17457, para. 63; ***Verizon*** Massachusetts ***Order,*** 16 FCC Rcd at 9002, para. 28; ***SWBT Kansas/Oklahoma Order,*** 16 FCC Rcd at 6216, para. 82. We note, however, that in the ***Verizon Pennsylvania Order,*** we found that several of these criteria should be treated as indicia of the reasonableness of the comparison. ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17457, para. 64.

rates in the applicant state are in the range that TELRIC would be expected to produce.[1034] If the rates in the applicant state do not pass a benchmark analysis or other comparison, and 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," then we will reject the application.[1035]

282. The Commission's benchmark process considers separately the reasonableness of loop and non-loop rates.[1036] When we benchmark both loop and non-loop rates, both sets of rates are benchmarked to the same anchor state's rates."" Key non-loop rate elements (line port, end office switch usage, transport, and signaling) are benchmarked collectively, rather than rate element by rate element.[1038] We have allowed use of both standard and state-specific assumptions regarding minutes of use (MOUs) in performing the non-loop rate benchmark analysis.[1039] The Commission has not used a benchmark analysis to review NRCs, but it has compared NRC costs between states.[1040] We have followed a similar approach with respect to charges for a Daily Usage File (DUF).[1041] We consider these items outside of the benchmark process because the Synthesis Model does not consider underlying costs associated with these items.[1042]

283. Qwest voluntarily reduced its rates in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming prior to filing its application, and made further reductions in revised SGATs that were filed October 16-18, 2002.[1043] These reductions were calculated to produce rates that would satisfy a benchmark comparison to the rates in Colorado.

1034 *See SBC Arkansas/Missouri Order,* 16 FCC Rcd at 20755-56, paras. 74-75; *Verizon New Jersey Order,* 17 FCC Rcd at 12303-04, para. 66.

1035 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17453, para. 55

1036 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17458, para. 67; *Verizon Maine Order,* 17 FCC Rcd at 11673, para. 25; *SBC Arkansas/Missouri Order,* 16 FCC Rcd at 20747, para 58; *Verizon Rhode Island Order,* 17 FCC Rcd at 3320, para. 40.

1031 *SBC Arkansas/Missouri Order,* 16 FCC Rcd at 20747, para. 58; *Verizon Rhode Island Order,* 17 FCC Rcd at 3320-21, para. 40. In other words, we do not benchmark loop rates to one state and non-loop rates to a different state.

1038 *Verizon New Jersey Order,* 17 FCC Rcd at 12297, para. 52

1039 *Verizon Rhode Island Order,* 17 FCC Rcd at 3327, para. 55 n. 149; *Verizon New Jersey Order,* 17 FCC Rcd at 12297-98, para. 53.

1040 *SBC Arkansas/Missouri Order,* 16 FCC Rcd at 20755-56, paras. 74-75; *Verizon New Jersey Order,* 17 FCC Rcd at 12303-04, para. 66.

1041 *See BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9062, para. 86

1042 Verizon *Pennsylvania Order,* 16 FCC Rcd at 17458, para. 65 n.248

1043 Qwest III Thompson/Freeberg Reply Decl. at para. 4 n.6; Qwest Oct. 7 Pricing *Ex Parte* Letter.

Notwithstanding these reductions, a number of parties argue that Qwest has not performed the benchmarking analysis properly, and the rates it relies on here do not pass a benchmark comparison to Colorado. We address these arguments below.

(b) Challenges to Benchmarking

(i) Standard vs. State-Specific Usage

284. Qwest states that it followed the Commission's standard benchmarking methodology to develop a composite per-line rate for the non-loop portion of the UNE platform (UNE-P) for Colorado and each **of** the other states, combining per-line and usage-sensitive rate elements.[1044] Both WorldCom and AT&T challenge this approach, arguing that Qwest should have used state-specific data in its benchmark analysis. WorldCom argues that Qwest's assumption of 1200 originating and terminating local minutes, and **370** toll and access minutes is inconsistent with the Commission's prior benchmark analyses.[1045] Specifically, WorldCom argues that computation **of** a non-loop benchmark requires a combination of several rate elements with different demand units, yet Qwest uses a constant set **of** demand in all states. WorldCom claims that this contradicts the Commission's use of state-specific demand data in New York and New Jersey.[1046]

285. Similarly, AT&T argues that Qwest's non-loop benchmark analysis is flawed because it is based on national average "minutes of use" (MOU) estimates.[1047] AT&T contends that the ***Verizon New Jersey Order*** rejected arguments that a benchmarking analysis should be based on national averages.[1048] AT&T claims that Qwest has state-specific MOU data and must use them, otherwise Qwest could unilaterally determine which MOU data to use in its benchmark analysis.[1049] AT&T claims that the Commission has determined that state-specific data more accurately reflect relative cost and rate differences among states.[1050] AT&T proposes that the Commission conduct its benchmarking analysis using state-specific MOU data where available,

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1044 Qwest II Application at **164;** Qwest I Application at 165.

1045 WorldCom Qwest II Comments at **32** and n.31; WorldCom Qwest I Comments at 31 n. **13.** ***See*** *also* WorldCom Qwest III Comments at **25-26** (incorporating same argument).

1046 WorldCom Qwest II Comments at **32** (citing ***Verizon New Jersey Order,*** 17 FCC Rcd at **12297-98,** para. 53); WorldCom Qwest I Comments at **31** (citing ***Verizon New Jersey Order,*** **17** FCC Rcd at **12297-98,** para. **53).** ***See also*** WorldCom Qwest III Comments at **25-26** (incorporating same argument).

1047 AT&T Qwest III Comments at **73-76;** AT&T Qwest II Comments at **55-58;** AT&T Qwest I Comments at ***52;*** AT&T Qwest III Comments, Tab L, Declaration of Michael R. Lieberman and Brian **F.** Pitkin, paras. **8-13** (AT&T Qwest III Lieberman/Pitkin Decl.); AT&T Qwest II Lieberman/Pitkin Decl. at para. 10; AT&T Qwest I Lieberman Decl. at para. **12.**

1048 AT&T Qwest I Comments at **52-53.**

1049 AT&T Qwest III Comments at **75-76;** AT&T Qwest II Comments at **57;** AT&T Qwest I Comments at **53.**

1050 AT&T Qwest III Comments at **75-76;** AT&T Qwest II Comments at **57;** AT&T Qwest I Comments at **53.**

and standard MOU estimates where state-specific data is not available.'"' AT&T argues that a benchmarking analysis using state-specific MOU estimates yields switching rates in five states, and total non-loop rates in two states, that fail the Commission's benchmarking test.""

286. AT&T and WorldCom are correct that the ***Verizon New Jersey Order*** identified a number of reasons why the use of state-specific data might be appropriate in conducting a benchmark analysis. The Commission noted, for example, that state commissions may establish rates by dividing a carrier's costs by state-specific estimates of demand, and therefore we concluded the use of state-specific data was appropriate for purposes of comparing New Jersey rates with New York rates.[1053] The ***Verizon New Jersey Order*** did not, however, mandate the use of state-specific data or establish only a limited exception to such a requirement. We specifically stated that there might be other reasons to use standard assumptions, including, but not limited to, the absence of the relevant state-specific data.[1054] Indeed, in prior section 271 decisions we have allowed carriers to use either state-specific data or standard assumptions for the purpose of demonstrating that a particular set of rates is in the range that a proper application of TELRIC principles would produce.[1055] Implicit in these decisions is the notion that neither TELRIC generally, nor benchmarking in particular, is an exact science. The fact that Qwest's rates might be lower in some states had it used state-specific data in calculating its rates does not in itself mean that rates calculated using standard assumptions are outside the range that TELRIC would produce.

287. In light of the benefits of using state-specific data that we identified in the ***Verizon New Jersey Order,*** the question in this case is whether Qwest has provided sufficient support **for** its decision to use standard assumptions. We conclude that it has. **As** an initial matter, Qwest has stated that it will use standard assumptions for all benchmark states in its region.[1056] Qwest argues that while Verizon filed section 271 applications for single states ***seriatim*** (or at most, two states simultaneously), Qwest from the beginning made clear its intent to file section 271 applications for as many of its fourteen states as possible within a short time period."" Qwest states that the use of standardized assumptions is the most straightforward and predictable approach for such region-wide analysis, and will best avoid controversy over which state-specific

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1051 See AT&T Qwest III Comments at 75. State-specific data delineating the number or percentages of originating and terminating intraLATA toll, intrastate interLATA, and interstate interLATA minutes per line per month, broken down on an intra-switch, inter-switch, and tandem-routed basis, is not available. Qwest II Application at 164 n.79.

1052 AT&T Qwest III Comments at 73-76; AT&T Qwest III Lieberman/Pitkin Decl. at paras. 8-20.

1053 ***Verizon New Jersey Order,*** 17 FCC Rcd at 12297-98, para. 53.

1054 ***Id.***

1055 See ***id.*** (applying state-specific assumptions); ***Verizon Maine Order,*** 17 FCC Rcd at 11679-80, para. 33 (applying standard assumptions).

1056 See Qwest I Thompson Reply Decl. at para. 84; Qwest July 22 Ex ***Parte*** Letter at 4.

1057 See Qwest I Thompson Reply Decl. at para. 84; Qwest July 22 Ex ***Parte*** Letter at 4.

data to use in the analysis.[1058] We agree with Qwest that the use of standard assumptions simplifies the comparison **of** switching rates across multiple states.

288. AT&T argues that allowing a BOC to choose whether it will use state-specific data or standard assumptions gives the BOC "unilateral power" to select the approach that is most beneficial. In this case, we are convinced that the use of standard assumptions is not an effort by Qwest to "game" the system. In fact, the use of standard assumptions may be necessary for certain states in this region, due to the distortive effect that sales of exchanges can have **on** a benchmark analysis.[1059] In addition, Qwest has demonstrated that in some of these states the use of standard assumptions will result in lower rates than would the use of state-specific data.[1060] Qwest conducted this analysis by comparing the approach used in its applications (i.e., the Commission's standardized assumptions for both MOU and traffic pattern data) and the "hybrid" approach advocated by AT&T and WorldCom (i.e., mixing state-specific MOUs with the Commission's standardized assumptions for traffic patterns.)[1061] Conducting these analyses using three separate years of state-specific MOU data, Qwest determined that use of the Commission's standardized assumptions for both MOUs and traffic patterns (as compared with the use of AT&T and WorldCom's hybrid approach) produced lower benchmarks in eight, four, and five of Qwest's thirteen states for the years 1999, 2000, and 2001, respectively.[1062]

289. WorldCom takes issue with "Qwest's implicit claim that the use of standard assumptions throughout **its** region would result in roughly the same rates overall" because the use of state-specific minutes would require large rate reductions in **five** states, Montana, Nebraska, North Dakota, Utah. and Washington, but only ***de minimis*** increases in the other three states, Idaho, Iowa, and Wyoming.[1063] We note that WorldCom's analysis was conducted prior to Qwest's recent rate reductions, therefore it is not clear how the rate changes would affect WorldCom's analysis. Qwest provided information about these rate changes on day seven of this 90-day application period, therefore, WorldCom has had ample time **to** update its analysis. Because WorldCom has not updated this information in light of the current rates, we cannot rely on WorldCom's analysis.

1058 See Qwest I Thompson Reply Decl. at para. **84;** Qwest July 22 *Ex Parte* Lener at **4**.

1059 I.e., in North Dakota, Qwest's exchange sales resulted in MOU data that included traffic from lines **no** longer present in the line counts, thereby creating a mismatch of data. Qwest I Thompson Reply Decl. at para. **88.** Similarly, Qwest's exchange sales in Idaho, Iowa, and Utah may have artificially lowered the benchmark rates in these states when state-specific MOU data are used.

1060 See Qwest I Thompson Reply Decl. at para. **86-88;** Qwest July **22** *Ex Parte* Lener at **4**

1061 See Qwest I Thompson Reply Decl. at para. **86,** Reply Ex. JLT-7; Qwest July 22 *Ex Parte* Letter at **4**

1062 See Qwest I Thompson Reply Decl. at para. **87.** See *also* Qwest July 22 *Ex Parte* Letter at **4** (slightly different results, but supporting Qwest's conclusions).

1063 See WorldCom Qwest II Comments at 35; WorldCom Qwest I Reply, Reply Declaration of Chris Frentrup, para, 7 (WorldCom Qwest I Frentrup Reply Decl.).

290. We also agree with Qwest that the certainty associated with our standard assumptions is beneficial. In this case, Qwest has stated that it does not possess state-specific data on traffic patterns, such as interswitch versus intraswitch calls.[1064] Qwest **asserts** that while standardized data regarding traffic patterns and state-specific data regarding total *MOUs* could be combined in theory, such an approach would not necessarily be valid.[1065] We are concerned that requiring an applicant to mix state-specific MOU data and standard assumptions regarding other elements **of** the analysis (e.g., percentage of intraswitch calls) introduces unnecessary complexity without any demonstrated increase in the accuracy of the results.[1066]

(ii) Rate Structure/Charges to be Included

291. ***Non-Recurring OSS Charges.*** AT&T challenges several of Qwest's *OSS* NRCs, including an increased NRC from $0.36 to $1.38 in Iowa, a $14.44 and a $1.41 charge per order in Montana, a $14.65 and a $2.52 charge in Nebraska, and a $3.49 charge in North Dakota.[1067] AT&T argues, "Qwest bears the burden of proving that its **OSS** costs are in fact appropriately recovered as a one-time expense, and that the new NRC is TELRIC-compliant."[1068] Further, AT&T asserts that Qwest must explain why these *OSS* NRCs are appropriate in some **of** its states, but not in others.[1069]

292. In response, Qwest explained that it is not actually imposing any of these NRCs at the present time, and that it only will impose such charges with affirmative approval from the state commissions.[1070] The Montana, Nebraska, and North Dakota commissions have not

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[1064] Qwest I Thompson Reply Decl. at para. 81.

[1065] Qwest I Thompson Reply Decl. at paras. 81-83

[1066] ***Id.*** at **3-4** (AT&T's "mix and match methodology is based on subjective selection and undocumented data," "combines apples and oranges," and is "less reliable than either consistent **use** of standardized assumptions or consistent use of actual state-specific data (when the complete set of information is available).").

[1067] AT&T Qwest I Comments at 52; AT&T Qwest II Lieberman/Pitkin Decl. at para. 26; AT&T Qwest I Lieberman Decl. at para. 10 and **Ex.** A-I.

[1068] AT&T Qwest I Reply, Reply Declaration of Michael Lieberman, para. I3 (AT&T Qwest I Lieberman Reply Decl.).

[1069] ***Id.***

[1070] Qwest II Thompson Reply Decl. at para. 4; Letter from David L. Sieradzki, Counsel for Qwest Communications International Inc., *to* Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-148, Attach. at 2 (tiled Aug. 5, 2002) (Qwest Aug. 5 Pricing *Ex* ***Porte*** Letter) (08/05/92a); Letter from David L. Sieradzki, Counsel for Qwest Communications International Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-189, Attach. at 10 (tiled Aug. 15,2002) (Qwest Aug. 15 Pricing *Ex* ***Porte*** Letter) (08/15/02c); Letter from David L. Sieradzki, Counsel for Qwest Communications International Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-189 (filed Aug. 21,2002) (Qwest Aug. **21** Pricing *Ex Parte* Letter) (08/21/02b). Qwest also clarified that it similarly will not apply NRCs for ***OSS*** in Utah or Wyoming until those state commissions approve such charges. Qwest II Thompson Reply Decl. at para. **4.**

addressed *this* issue yet, and these commissions have pending cost proceedings in which AT&T and other competitive LECs may challenge Qwest's OSS charges.[1071] We believe that fact-specific determinations, such as the costs associated with providing access to OSS, are more appropriately made by the state commission in the first instance. Because the proposed NRCs are not yet being imposed by Qwest and will not be imposed until they are approved by the state commissions, we believe it is unnecessary for the Commission to address this issue here. We are confident that these state commissions will apply TELRIC principles in their review of these proposed charges.

293. The factual situation is slightly different with respect to Iowa because the Iowa Board approved Qwest's imposition of **an** OSS charge in its April 23,1998 cost order.[1072] Although Qwest is not actually imposing an **OSS** charge at the present time, it has indicated that it plans to impose a charge of $0.36 in the near future. In addition, Qwest had proposed an additional OSS charge of $1.02, but it has stated that it will not impose any additional charge without further approval from the Iowa Board.[1073] We expect the Iowa Board to apply TELRIC principles in its review of any additional OSS charge. **As** to the $0.36 NRC previously approved by the Iowa Board, we trust that the Iowa Board, in its consideration of any additional **OSS** charges, will modify this charge if it concludes that it is not justified under TELRIC principles. Moreover, we find the amount of the charge to be *de minimis* and not to impose any type of barrier to entry. Accordingly, we do not find the previously approved, but not yet imposed, charge of $0.36 per order to constitute a checklist violation.

294. *Grooming Charges.* At the time Qwest filed its first section 271 application, Qwest's SGAT for Nebraska included a grooming charge of $1.17 per month.'"' AT&T states that Qwest added a new recurring rate for grooming in North Dakota of $1.35. AT&T states that Qwest's benchmarking analysis is flawed because Qwest failed to account for these grooming charges. **If** these charges are included in the benchmark analysis, AT&T argues that both states would have higher loop rates than Colorado.[1075]

295. Qwest argues that grooming charges are akin to daily usage file (DUF) charges that the Commission has not included in the benchmark comparisons in prior section 271

[1071] ***See*** **Qwest July 29** ***Ex Parte*** **Letter (07/29/02e);** ***Nebraska Commission June 5 Cost Order*** **at 2-4;** ***North Dakota Commission Consultative Report*** **at 264; North Dakota Commission Qwest I Comments at 2.**

[1072] ***See*** **Qwest I Thompson Reply Decl. at para. 90 n.118.** ***See also*** **Iowa** ***Board 1998 Pricing Order*** **at 39.**

[1073] ***See*** **Qwest Aug. 8 Pricing** ***Ex Parte*** **Letter, Iowa Attach., SGAT Ex. A, § 12.1, 12.2 (08/08/02d).**

[1074] **Grooming charges recover "the incremental costs that would be incurred by the [incumbent] LEC, with integrated digital loop carrier [IDLC], to separate a DS-1 signal into individual DS-0 analog signals if the [competitive] LEC is unwilling to take a full DS-I digital signal from the [incumbent] LEC switch to its collocation area."** ***See*** **AT&T Qwest I Liebennan Decl. at para. 10 n.5.**

[1075] **Colorado has a grooming charge of $2.06, but it only applies to loops that are actually groomed.**

proceedings.[1076] In order to minimize controversy over this issue and ensure comparability, Qwest subsequently reduced its grooming charges in Nebraska and North Dakota.[1077] These new grooming charges were derived by multiplying the grooming charge in Colorado ($2.06) by the proportion of loops served by IDLC (9 percent).[1078] Because Qwest's reduced grooming charges are plainly comparable to those in Colorado, we find no TELFUC violation as a result of these charges, whether they are considered as part of the benchmark analysis or separately.

296. Integra argues that Qwest, in performing its benchmark analysis, improperly compared the Washington UNE-P loop rate, rather than the stand-alone UNE loop rate, to the Colorado stand-alone UNE loop rate.[1079] Integra claims that the Washington UNE-P loop rate is lower than the Washington stand-alone loop rate, and therefore the difference between the Washington rate and the Colorado rate is smaller and the benchmarked Washington loop rate is too high.[1080] We note that the stand-alone UNE loop rate in Colorado does not include a grooming charge, but that the stand-alone UNE loop rate in Washington includes a $0.55 grooming charge.'"' This charge is not included in the Washington UNE-P loop rate. Therefore, when performing a benchmark analysis, Qwest appropriately compared the Colorado and Washington loop rates that exclude grooming charges.

297. Using the same methodology it used to adjust the grooming charges in Nebraska and North Dakota, Qwest reduced the Washington stand-alone loop rate so that the difference between it and the UNE-P loop rate is now $0.19.[1082] Because Qwest's reduced stand-alone loop rate in Washington is comparable to the sum of the loop rate plus the grooming charge in Colorado, we find no TELRIC violation as a result of this charge. whether this charge is considered part of the benchmark analysis or separately.[1083]

1076 See Qwest I Thompson Reply Decl. at para. 93 (citing *BellSouth Georgia/Louisiana Order,* 17 FCC Rcd at 9062, para. 86). Qwest further argues that even if it were appropriate to account for grooming costs in the benchmark analysis, doing so would not produce significantly different loop rates among the states. See Qwest I Thompson Reply Decl. at para. 93.

1077 Qwest reduced 2-wire and 4-wire grooming charges to $0.19 and $0.38 in Nebraska and North Dakota. See Qwest Aug. 8 Pricing *Ex Parte* Letter, Nebraska and North Dakota Atts.. Section 9.2.1 (08/08/02d).

1078 See Qwest I Thompson Reply Decl. at paras. 95-97.

1079 Integra Qwest III Comments at 12-14; Integra Qwest II Comments at 7-9.

1080 Integra Qwest III Comments at 12; Integra Qwest II Comments at 7-8

1081 See Qwest II Thompson Washington Decl. at para. 18; Qwest II Thompson Reply Decl. at para. 42.

1082 See Qwest II Thompson Reply Decl. at paras. 40-43 (*citing* Qwest I Thompson Reply Decl. at para. 97); Qwest Aug. 15 Pricing *Ex Parte* Letter, Attach. at 10 (08/15/02c).

1083 See Qwest Aug. 30 Pricing *Ex Parte* Letter at Attach. (Washington SGAT) (08/30/02d).

298. *Cross-connect* ***Charges.*** In its comments on the Qwest I section 271 application, AT&T states that Qwest added cross-connect charges in certain, unspecified Qwest I states.[1084] AT&T argues that Qwest's benchmarking analysis is flawed because Qwest failed to account for these cross-connect charges.[1085]

299. Qwest states that it did not add new cross-connect charges in its May 24,2002 SGAT.[1086] A review of AT&T's own exhibit on this issue reflects that Qwest's cross-connect charges were not added by Qwest in its May **24,2002** SGATs and **thus,** previously were approved by the Iowa, Idaho, Nebraska and North Dakota commissions.[1087] In its reply comments, Qwest argues that the cross-connect charge is a "collocation-related rate that is associated with establishing a cross-connection for the [competitive] LEC from the intermediate distribution frame to the main distribution frame."[1088] Because the charge is collocation-related and not loop-related, Qwest asserts that it would be inappropriate to include this rate in a loop-rate comparison.[1089]

300. The cross-connect charges in these states are all within pennies of the Colorado charge, which is not challenged here. As discussed in the benchmarking analysis discussion below, including these charges in the benchmark analysis would not cause Qwest to fall out of compliance with this checklist item. Alternatively, if we considered these charges as part of collocation, as Qwest advocates, we also would find no TELRIC violation because there is ***so*** little difference between these charges and the charge in Colorado.

(iii) Benchmarking Criteria

301. Integra and OneEighty argue that Qwest has not demonstrated that Colorado is an appropriate state against which to benchmark rates in the states of Montana, **North** Dakota, Utah, and Washington.'''' Integra and OneEighty claim that the Commission established a four-part test to determine when benchmarking is appropriate: (1) the states have the same BOC; (2)

1084 See AT&T Qwest I Comments at 8, 49 and 52; AT&T Qwest I Lieberman Decl. at para. I0, *Ex.* A-I.

1085 ***See id.***

1086 See Qwest I Thompson Reply Decl. at para. 90 n.118

1087 See AT&T Qwest I Lieberman Decl. *Ex.* A-I.

1088 Qwest I Thompson Reply Decl. at para. 92

1089 See Qwest I Thompson Reply Decl. at para. 92. Qwest notes that, in any event, Qwest's cross-connect charges are essentially equivalent in all states in the benchmarking analysis, and thus have almost no impact on the benchmarking analysis. See ***id.***

1090 Integra Qwest III Comments at 2, 5-6 (North Dakota, Utah, and Washington); OneEighty Qwest III Comments at 4-5; Integra Qwest II Comments at 5-7 (Utah and Washington); OneEighty Qwest II Comments at **4** (Montana). Because neither Integra nor OneEighty discuss rates in any of the other Qwest states in this application, our discussion only includes Montana, North Dakota, Utah, and Washington. The substance of the analysis, however, applies equally to the applicability of benchmarking in the other states.

geographic similarities exist between the states; (3) rate structure similarities exist between the states; and (4) the Commission has found the rates in the comparison state to be reasonable.[1091] Integra and OneEighty allege that, other than showing that the same BOC serves these states, Qwest has not demonstrated any of the necessary criteria.[1092] Qwest responds by claiming that each criterion is satisfied and that the Commission has previously found that the only criterion that unequivocally must be satisfied is that the rates in the comparison state are reasonable.[1093]

302. We find that Colorado is a permissible state for comparison purposes.[1094] In the *Verizon Pennsylvania Order,* the Commission determined that the only mandatory benchmarking criterion is that the comparison state's rates must be found to be reasonable.[1095] The remaining criteria are not absolute requirements, but rather "should be treated as indicia of the reasonableness of the comparison."[1096] Notably, after reaching this determination, the Commission approved the use of a state as the benchmark state when only three of the four criteria were met.[1097]

303. Contrary to the assertions of Integra and OneEighty, the Commission has determined that the rates in Colorado *are* reasonable.[1098] Accordingly, Qwest's reliance on Colorado as the anchor state satisfies our sole mandatory benchmarking criterion. Qwest, moreover, satisfies at least two of the other three criteria. Qwest is the BOC in Colorado, Montana, North Dakota, Utah, and Washington, and, contrary to the commenters' claims, Qwest has similar wholesale rate structures in Colorado and in Montana, North Dakota, Utah, and

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1091 Integra Qwest III Comments at 5-6 (citing *Verizon Pennsylvania Order,* 16 FCC Rcd at 17456-17457, para. 63); OneEighty Qwest III Comments at 4-5 (citing same); Integra Qwest II Comments at 5-7 (citing same); OneEighty Qwest II Comments at 4 (citing same).

1092 Integra Qwest III Comments at 5-6; OneEighty Qwest III Comments at 4-5; Integra Qwest II Comments at 5; OneEighty Qwest II Comments at 4.

1093 Qwest II Reply at 91-92 n.67 *(citing Verizon Pennsylvania Order,* 16 FCC Rcd at 17457, para. 64); Qwest II Thompson Reply Decl. at paras. 8-10.

1094 As a preliminary matter, we note that while Integra and OneEighty allege that Qwest failed to demonstrate that it satisfies three of the benchmarking criteria, neither commenter introduced factual evidence of any kind, including evidence showing that Colorado is an inappropriate state to anchor the benchmarking analysis. *See Updated Section 271 Filing Requirements Public Notice,* 16 FCC Rcd 6923. Nevenheless, to ensure the completeness of this order, we address the substance of the commenters' claim.

1095 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17457, para. 64. *See also* Qwest II Reply at 91-92 n.67; Qwest II Thompson Reply Decl. at para. 9 (citing same).

1096 *Verizon Pennsylvania Order,* 16 FCC Rcd at 17457, para. 64. *See also* Qwest II Reply at 91-92 n.67; Qwest II Thompson Reply Decl. at para. 9 (citing same).

1097 *See Verizon Pennsylvania Order,* 16 FCC Rcd at 17457, para. 64

1098 *See* Part IV.A.2.c., *supra.*

Washington.[1099] On the final criterion, geographic similarity between the states, Qwest claims that all of the states in this application are geographically similar because they are collectively contiguous, located in the western United States, and are large states with geographically dispersed populations.[1100] We note that the Commission has repeatedly found that the Synthesis Model provides a reasonable basis for comparing cost differences between states.[1101] In this instance, therefore, we find that Colorado is a reasonable anchor state for benchmark comparisons of the other application states.""

(iv) "Bottom Up" Approach

304. Integra and OneEighty argue that UNE rates must be established by the state commission from the "bottom up," based on the BOC's forward-looking costs, plus a reasonable profit."" Because the rates in Montana, North Dakota, Utah, and Washington were established using a benchmarking analysis rather than a bottom-up analysis, Integra and OneEighty claim that Qwest's benchmarking efforts do not show that its rates conform to TELRIC.[1104]

305. In evaluating section **271** applications, the Commission examines rates to determine if they fall within the range that a reasonable TELRIC-based rate proceeding would produce.[1105] When a state commission does not apply TELRIC principles or does so improperly, we apply our benchmark analysis to determine whether the rates fall within the reasonable range that TELRIC would permit, an approach that has been upheld on appeal. "To create a distinction between properly derived cost-based rates and rates that were equal to them . . . 'would promote form over substance, which, given the imprecise nature of setting TELRIC-based pricing, is

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1099 ***Compare*** Qwest Aug. 8 Pricing *Ex* ***Parte*** Letter (08/08/02d) ***with*** Qwest Aug. 30 Pricing *Ex* ***Parte*** Letter at Attach. (state SGATs) (08/30/02d).

1100 Qwest II Reply at 91-92 n.67; Qwest II Thompson Reply Decl. at para. 8

1101 ***See, e.g., Federal-State Joint Board on Universal Service,*** CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd at 20456, para. 42 (1999) ***(Universal Service Ninth Report and Order), aff'd in pertinent part and rev'd in part on other grounds, Qwest Corp. v. FCC,*** 258 F.3d 1191 (10th Cir. 2001).

1102 ***See Verizon Pennsylvania Order,*** 16 FCC Rcd at 17457, para. 64. Furthermore, we note that the D.C. Circuit has afforded the Commission "special deference" in examining whether state rates are TELRIC-compliant in a section 271 proceeding. ***AT&T Corp. v. FCC,*** 220 F.3d 607, 616 (D.C. Cir. 2000); ***WorldCom, Inc. v. FCC,*** 308 F.3d 1 (D.C. Cir. 2002).

1103 Integra Qwest III Comments at 4, 11 (citing ***BellSouth Georgia/Louisiana Order,*** 17 FCC Rcd at 9180, para. 287); OneEighty Qwest III Comments at **4,** 11 (citing same); Integra Qwest II Comments at **3-4** (citing same); OneEighty Qwest II Comments at **3-4** (citing same).

1104 Integra Qwest III Comments at **3-4,** 11 (North Dakota and Washington); OneEighty Qwest II Comments at **3-4** (Montana); Integra Qwest II Comments at 3-4, 6-7 **(Utah** and Washington); OneEighty Qwest **II** Comments at 3-4 (Montana). Neither Integra nor OneEighty makes any comments regarding the other application states.

1105 ***See, e.g., Verizon Rhode Island Order,*** 17 FCC Rcd at 3315, para. 27

wholly unnecessary.'"[1106] Here, we have found the anchor state's rates to be TELRIC-compliant. Therefore, it is appropriate to conduct a benchmark analysis to review the remaining states' rates.

(v) Temporary Rates in Utah

306. AT&T expresses concern that the UNE rate reductions Qwest made in Utah on July 2,2002 are only temporary, for purposes of obtaining section 271 approval, and that Qwest will subsequently raise them to their previous, non-TELRIC-compliant levels.[1107] AT&T asserts that, in the ongoing Utah UNE rate proceeding, Qwest has "proposed to set rates that are at the same levels as the rates that were in place prior to the [July 2] reductions."[1108] On June 21,2002, Qwest submitted direct testimony, in which it asked the Utah Commission to set UNE rates on the basis of Qwest's cost model.[1109] In its application, Qwest states that it has committed to keep the lower rates in effect until the Utah Commission establishes different rates in a cost docket; Qwest and a given competitive LEC negotiate mutually-acceptable, lower rates; or a change in law triggers a rate change.[1110]

307. The existence of a pending UNE rate investigation in Utah does not lead us to conclude that Qwest's current Utah rates are impermissibly temporary. As we have noted previously, we perform our section 271 analysis on the rates before us.'" If we find these rates to be TELRIC-compliant, then Qwest has met its obligation to price UNEs in compliance with checklist item two. If, in the future, Qwest were to raise those rates above the range that a reasonable application of TELRIC principles would produce, Qwest would, arguably, contravene the requirements of section 271. We cannot now assume that the proposed rates Qwest has filed with the Utah Commission *are* not cost-justified or that, if they are not justified, that the Utah Commission would approve them. Section 271 provides a mechanism, section 271(d)(6)(B), to challenge any UNE rates as not being TELRIC-based.[1112] Under section 271(d)(6)(A), the Commission has the authority to review future Qwest rate increases and, upon determining that

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[1106] ***Sprint v.*** FCC, 274 F.3d 549,561 (D.C. Cir. 2001) ***(quoting SWBT Kansas/Oklahoma Order,*** 16 FCC Rcd at 6276, para. 82). See also ***Verizon Rhode Island Order,*** 17 FCC Rcd at 3319-3320, paras. 37-38; ***Verizon Pennsylvania Order*** at 17456-17457, para. 63. See also *WorldCom Inc.* ***v.*** FCC, 308 F.3d 1 (D.C. Cir. *2002)* (the Commission may accept states' rates based on a benchmark analysis without independently examining those rates).

[1107] AT&T Qwest II Comments at 50.

[1108] ***Id.***

[1109] Qwest Aug. **21** Pricing ***Ex Parte*** Letter at Attach. (08/21/02b).

[1110] Qwest II Thompson Utah Decl. at para. 38.

[1111] See ***BellSouth Georgia/Louisiana Order,*** 17 FCC Rcd at 9066-67, para. 97 (citing ***Verizon*** Rhode ***Island Order,*** 17 FCC Rcd at 3317, para. 31).

[1112] 47 **U.S.C.**§ 271(d)(6)(B)

such increases are not TELRIC-based in compliance with checklist item two, the Commission may suspend or revoke Qwest's section 271 authority or impose other penalties.[1113]

(vi) Benchmarking Switching on a Stand-Alone Basis

308. AT&T argues that the Synthesis Model overstates transport and tandem switching costs, and thus aggregate non-loop costs, in less densely populated states relative to more densely populated areas, and therefore the Commission should exclude transport and tandem switching from its benchmark analysis of non-loop elements.[1114] AT&T claims that such an approach, and the use of state-specific MOU data, demonstrates that Montana, Nebraska, North Dakota, Washington, and Wyoming non-loop rates exceed Colorado non-loop rates on a cost-adjusted basis.[1115] Also using its own analysis (with state-specific MOUs), AT&T further concludes that Qwest's Montana and Wyoming switching rates do not pass a benchmark comparison with Colorado's switching rates.[1116] AT&T also argues that TELRIC rates are calculated on the basis of individual elements and that Qwest must show that the rates for ***each*** of its UNEs complies with TELFUC principles.[1117] According to AT&T, because Qwest's switching rates cannot be justified based on a valid benchmark comparison, Qwest must prove that its Montana and Wyoming switching rates are TELRIC-compliant using a stand-alone analysis, which Qwest has failed to do.[1118]

309, We note that, in response to AT&T's argument, Qwest has voluntarily lowered its switching usage rates in seven states (Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, and Wyoming), and reduced its transport rate in Washington.[1119] After these reductions, in each state Qwest's switching rates and transport rates separately, as well as its aggregated non-loop rates,

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1113 47 U.S.C. § 271(d)(6)(A).

1114 See AT&T Qwest III Comments at 76-77; AT&T Qwest III Lieberman/Pitkin Decl. at paras. 14-20.

1115 AT&T Qwest III Comments at 77; AT&T Qwest III Lieberman/Pitkin Decl. at para. 20. AT&T claims that a "properly applied" non-loop benchmarking analysis using state-specific MOUs demonstrates that Qwest's North Dakota and Washington cost-adjusted non-loop rates exceed those of Colorado. AT&T Qwest III Lieberman/Pitkin Decl. at para. 13.

1116 AT&T Qwest II Comments at 59; AT&T Qwest II Lieberman/Pitkin Decl. at paras. 22-25; AT&T Qwest II Reply at 56.

1117 AT&T Qwest II Comments at 59-60; AT&T Qwest II Reply at 56 n.190. In support of its argument that the Commission must look at the rates for each individual element, AT&T cites section 252(d)(1), which states that a BOC's rates for a network element comply with checklist item two only if they are "based on the cost . . . of providing . . . the network element." AT&T Qwest II Comments at 59 (citing 47 U.S.C. § 252(d)(1)) (emphasis in AT&T Qwest II Comments).

1118 AT&T Qwest II Comments at 58-60; AT&T Qwest II Reply at 57-58.

1119 Qwest Oct. 7 Pricing Ex Parte Letter at Attach. 1; Letter from David L. Sieradzki, Counsel for Qwest Communications International Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314, Attach. 4 (filed Oct. 11,2002) (Qwest Oct. 11 Pricing Ex Parte Letter).

benchmark to the corresponding Colorado rates, using standard MOU assumptions.[1120] Therefore, AT&T's argument regarding benchmarking the switching elements separately from transport is moot.

(c) Analysis

310. Having determined that the Colorado rates are appropriate rates for the benchmark comparison, we compare Qwest's Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming rates to the Colorado rates under our benchmark analysis, using our standard assumptions for weighting rates.[1121] As shown in the tables below, we compare the difference between the benchmark state's rates and Colorado's rates to the difference between the benchmark state's and Colorado's costs according to the Synthesis Model. We compare rates and costs for loops and for aggregated non-loop elements. We have also compared rates and costs for the switching elements[1122] and for transport separately.[1123] Because the percentage differences between Qwest's Colorado rates and the benchmark state rates do not exceed the percentage differences between Qwest's Colorado costs and the benchmark state's costs according to the Synthesis Model, we find that Qwest's rates in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming satisfy our benchmark analysis.

Loop Analysis[1124]		
State vs. Colorado	Rates Percentage Difference	Synthesis Model Costs Percentage Difference
Idaho vs. Colorado	28%	28%
Iowa vs. Colorado	1%	1%
Montana vs. Colorado	50%	50%

[1120] Part IV.A.2.d.(ii)(c), *infra*

[1121] See *Verizon Pennsylvania* Order, 16 FCC Rcd at 17458, para. 65 (describing our standard assumptions)

[1122] Qwest's switching element rates, excluding transport rates, include rates for the port, unbundled switching usage, and signaling.

[1123] AT&T's analysis is premised on the use of state-specific MOU data, where available, and standard assumptions where the data is not available. As discussed above in Part IV.A.2.d.(ii)(b)(i), we have declined to require Qwest to use AT&T's MOU assumptions, and find that use of standard MOU assumptions is appropriate. Using standard assumptions, Qwest's switching element rates and transport rates benchmark to the corresponding Colorado rates.

[1124] If cross-connect charges were included, the results would be as follows: Qwest's loop rates in Idaho, Iowa, Nebraska and North Dakota are higher than Qwest's loop rates in Colorado by 26.5 percent, 0.5 percent, 10.2 percent, and 2.7 percent, respectively. Comparing the costs, we find that the Idaho, Iowa, Nebraska and North Dakota loop costs are higher than the Colorado loop costs by 28.8 percent, 3.9 percent, 10.5 percent, and 12.2 percent, respectively. Because the percentage differences between Qwest's Colorado loop rates and Qwest's loop rates in each of the other states do not exceed the percentage differences between Qwest's loop costs in Colorado and Qwest's costs in each of the other states, we conclude that Qwest's Idaho, Iowa, Nebraska and North Dakota recurring loop rates satisfy our benchmark analysis.

Nebraska **vs.** Colorado	10%	10%
North Dakota **vs.** Colorado	3%	3%
Utah **vs.** Colorado	(18%)	(18%)
Washington **vs.** Colorado	(12%)	(12%)
Wyoming **vs.** Colorado	48%	71%

Non-Loop Analysis		
State vs. Colorado	Rates Percentage Difference	Synthesis Model Costs Percentage Difference
Idaho vs. Colorado	(8%)	1%
Iowa vs. Colorado	(2%)	2%
Montana vs. Colorado	5%	50%
Nebraska vs. Colorado	7%	28%
North Dakota vs. Colorado	(4%)	10%
Utah vs. Colorado	(9%)	(8%)
Washington vs. Colorado	(20%)	(14%)
Wyoming vs. Colorado	(4%)	26%

Switching Elements Analysis		
State vs. Colorado	Rates Percentage Difference	Synthesis Model Costs Percentage Difference
Idaho **vs.** Colorado	(9%)	(7%)
Iowa **vs.** Colorado	(3%)	(1%)
Montana **vs.** Colorado	7%	7%
Nebraska **vs.** Colorado	9%	9%
North Dakota **vs.** Colorado	(4%)	(3%)
Utah **vs.** Colorado	(9%)	(8%)
Washington vs. Colorado	(17%)	(12%)
Wyoming **vs.** Colorado	(4%)	(4%)

Transport Analysis		
State vs. Colorado	Rates Percentage Difference	Synthesis Model Costs Percentage Difference
Idaho **vs.** Colorado	0%	69%
Iowa vs. Colorado	0%	29%
Montana **vs.** Colorado	0%	393%
Nebraska vs. Colorado	0%	182%
North Dakota **vs.** Colorado	0%	111%
Utah **vs.** Colorado	(11%)	(7%)
Washington **vs.** Colorado	(32%)	(31%)
Wyoming **vs.** Colorado	0%	264%

311. These conclusions eliminate any remaining concerns as to whether Qwest's Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming UNE rates fall within a range of rates that a reasonable application of TELRIC would produce. For the foregoing reasons, we find that Qwest has demonstrated that its Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming UNE rates satisfy the requirements of checklist item two.

V. OTHER CHECKLIST ITEMS

A. Checklist Item 1 – Interconnection

312. Section 271(c)(2)(B)(i) requires a BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251 and 252.[1125] Based on our review of the record, we conclude, as did each state commission,[1126] that Qwest complies with the requirements of this checklist item.[1127] In reaching this conclusion, we have examined Qwest's performance in providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings.[1128]

313. ***Interconnection Quality and Timeliness.*** We find, based on the record, that Qwest's performance for trunk blockage satisfies its statutory obligations regarding interconnection quality and timeliness.[1129] Although AT&T claims that Qwest's ***trunk*** blockage performance could be indirectly affected "if CLECs did not contain their growth as a result of Qwest's trunk forecasting policies, AT&T does not contend that Qwest's performance is currently affected in this manner.[1130] Accordingly, we dismiss AT&T's comments in this regard as speculative.

1125 47 U.S.C. § 271(c)(2)(B)(i); see also Appendix K at paras. 17-24.

1126 Qwest I Colorado Commission Comments at 13-15; Qwest I Idaho Commission Comments at 14; Qwest I Iowa Commission Comments at 24; Qwest II Montana Commission Comments at 13-17; Qwest I Nebraska Commission Comments at 8; Qwest I North Dakota Commission Comments at 46, 64; Qwest II Utah Commission Comments at 1; Qwest II Washington Commission Comments at 11-12; Qwest II Wyoming Commission Comments at 2.

1127 Qwest II Application App. A., Tab 6, Declaration of Thomas R. Freeberg (Qwest II Freeberg-Interconnection Decl.) at paras. 13-112; Qwest 1 Application App. A., Tab 7, Declaration of Thomas R. Freeberg (Qwest I Freeberg-Interconnection Decl.) at paras. 13-142.

1128 ***See, e.g., BellSouth Georgia/Louisiana Order,*** FCC 02-147, 17 FCC Rcd at 9133-9137, paras. 201-206; ***Verizon Massachusetts Order,*** 16 FCC Rcd at 9092-95,9098, paras. 183-87, 195.

1129 See 47 U.S.C. § 271(c)(2)(B)(i).

1130 See AT&T August 21,2002 Ex ***Parte*** Letter at 2. We further discuss Qwest's trunk forecasting policies below. AT&T also notes that the NI-I PID is deficient as a performance measure in that it "is an aggregate blocking number, which can hide serious blocking problems on individual trunks." AT&T August 21,2002 Ex ***Parte*** Letter at (continued.. ..)

314. ***Collocation.*** We conclude that Qwest meets its collocation obligations.[1131] Eschelon, however, asserts that Qwest's collocation performance is inadequate due to its refusal to provide "off-site adjacent collocation."[1132] Without elaborating, Eschelon cites to correspondence between Qwest and Eschelon regarding an impasse on collocation issues,"" in which Eschelon "proposes that Qwest permit Eschelon to collocate on property next to Qwest's premises."[1134] Eschelon's unsupported assertion here is insufficient to establish a violation of this checklist item as Qwest's SGATs specifically require Qwest to permit competitive LECs to place equipment in adjacent facilities when space is unavailable in the Qwest premise and provide "physical Collocation services and facilities."""" In addition, to the extent that Eschelon is asking Qwest to provide collocation space in or on a third party's property, the Commission's rules state that "[a]n incumbent LEC must make available . . . collocation in adjacent controlled environmental vaults, controlled environmental huts, or similar structures ***located at rhe incumbent LEC premises***."[1136] Consequently, we find Eschelon's argument here unavailing.

315. ***Interconnection Terms.""*** AT&T claims that Qwest imposes a 50-mile limitation on interconnection trunking that unlawfully limits a competitive LEC's ability to choose its own point of interconnection."" **We** disagree, and find that Qwest provides competing LECs with interconnection arrangements that satisfy the Commission's rules. AT&T objects to language

(Continued from previous page)
2. We reject AT&T's concern here and note that the development of the commercial performance measurements was subject to participation by all interested parties.

[1131] We also conclude that Qwest provides legally binding terms and conditions for collocation in its interconnection agreements and SGATs. See Colorado SGAT § 8.0; Idaho SGAT § 8.0; Iowa SGAT § 8.0; Montana SGAT § 8.0; Nebraska SGAT § 8.0; North Dakota SGAT § 8.0; Utah SGAT § 8.0; Washington SGAT § 8.0; and Wyoming SGAT § 8.0. See *also* Qwest II Application App. A., Tab 7. Declaration of Margaret S. Bumgarner (Qwest II Bumgarner Collocation Decl.) at para. 15; Qwest I Application App. ***A.***. Tab 8, Declaration of Margaret S. Bumgarner (Qwest I Bumgamer-Collocation Decl.) at para. 15.

[1132] Eschelon Qwest II Comments at 41-42; Eschelon Qwest I Comments at 27

[1133] Eschelon Qwest II Comments at 42, Ex. 13; Eschelon Qwest I Comments at 27. **Ex.** 6 at 1

[1134] Eschelon Qwest I1 Comments at 42, Ex. 13; Eschelon Comments at 27. Ex. 6 at I.

[1135] Colorado SGAT § 8.1.1.6; Idaho SGAT § 8.1.1.6; Iowa SGAT § **8.1.1.6**Montana SGAT § 8.1.1.6; Nebraska SGAT § 8.1.1.6; North Dakota SGAT § 8.1.1.6; Utah SGAT § 8.1.1.6: Washington SGAT § 8.1.1.6; and Wyoming SGAT § 8.1.1.6.

[1136] 47 **C.F.R.**§ 51.323(k)(3)(emphasis added)

[1137] AT&T argues that Qwest's "entrance facility" charges are "anticompetitive and inconsistent with the statute's requirement that the rates for interconnection be nondiscriminatory,just, and reasonable." AT&T Qwest **11** Wilson Decl. at para. 7; AT&T Qwest I Wilson Decl. at para. 7. In particular, AT&T claims that Qwest's flat-rated and non-distance sensitive entrance facility is really a loop charge and is unlawful because it fails to reflect the way these costs are incurred. Id. at paras. 9-10. AT&T's concerns are addressed in our discussion of unbundled local transport under checklist item 5 below, where we conclude that Qwest's policies do not represent a violation of our existing rules.

[1138] See AT&T Qwest II Wilson Decl. at para. **38**; AT&T Qwest I Wilson Decl. at para. 36.

contained in Qwest's SGATs in the application states regarding Qwest's provisioning of direct trunked transport (DTT) (*i.e.,* transport between two Qwest switches).'"" Specifically, if facilities are not available, and the distance between the switches is greater than 50 miles, then (depending on the specific language in each state) the competing LEC may have to pay a portion **of** the construction costs."'' AT&T states that this policy compromises a competitive LEC's ability to choose its own point of interconnection because "it must either pay **for** the expansion of Qwest's network, **or** it must build to a meet-point and establish a point of interconnection that it does not necessarily want **or** need."'''' AT&T also argues that it is Qwest's responsibility to carry traffic to and from a competing LEC's point of interconnection, and to build whatever additional trunking is necessary to meet those obligations.[1142]

316. Except in Montana, each of the state commissions have approved Qwest's SGAT language.[1143] We note that these states approved cost-sharing only where existing facilities are unavailable and where the trunk length is greater than 50 miles. We also note that the issue presented by AT&T—which party should bear the costs of transport to distant POIs—is an open issue in a pending rulemaking proceeding before this Commission.[1144] In light of the states' approval and because the issue is open in our ***Intercarrier Compensation NPRM,*** we find that Qwest's cost-sharing approach does not violate our rules and thus does not warrant a finding of checklist noncompliance.''''

[1139] See AT&T Qwest II Wilson Decl. at para. 35; AT&T Qwest I Wilson Decl. at para. 33; Colorado SGAT § 7.2.2.1.5; Idaho SGAT § 7.2.2.1.5; Iowa SGAT § 7.2.2.1.5; Nebraska SGAT § 7.2.2.1.5; North Dakota SGAT § 7.2.2.1.5; Utah SGAT § 7.2.2.1.5; Washington SGAT § 7.2.2.1.5; and Wyoming SGAT § 7.2.2.1.5. The Montana SGAT contains no 50-mile limitation on direct trunked transport.

[1140] In Colorado, Iowa, and Washington, Qwest will construct the facilities and charge the competing LEC half the cost, or will require the competing LEC to build to a meet-point. See Qwest I Reply Declaration of Thomas R. Freeberg (Qwest I Freeberg-Interconnection Reply Decl.) at para. 24; Colorado SGAT § 7.2.2.1.5; Iowa SGAT § 7.2.2.1.5; and Washington SGAT § 7.2.2.1.5. In Idaho, Nebraska, North Dakota, Utah, and Wyoming, when the parties cannot agree on a cost-sharing arrangement, the issue may be submitted to the particular state commission for resolution. See Qwest I Freeberg-Interconnection Reply Decl. at para. 23; Idaho SGAT § 7.2.2.1.5; Nebraska SGAT § 7.2.2.1.5; North Dakota SGAT § 7.2.2.1.5; Utah SGAT § 7.2.2.1.5; and Wyoming SGAT § 7.2.2.1.5.

[1141] AT&T Qwest II Wilson Decl. at para. 38; AT&T Qwest I Wilson Decl. at para. 36

[1142] AT&T Qwest II Wilson Decl. at para. 57; AT&T Qwest I Wilson Decl. at para. 35

[1143] Qwest II Freeberg-Interconnection Reply Decl. at paras. 23-24; Qwest I Freeberg-Interconnection Reply Decl. at paras. 23-24.

[1144] Developing a Unified Intercarrier Compensation Regime, FCC 01-132, ***Notice of Proposed Rule Making,*** 16 FCC Rcd 9610,9652, para. 114 (2001).

[1145] ***See Verizon Pennsylvania Order,*** FCC 01-269, 16 FCC Rcd 17419, 17474-14475, para. 100 (2001) (noting that the ***Intercarrier Cornpensation*** rulemaking proceeding would resolve certain financial responsibility issues). We note, however, that Qwest will have to comply with any rule adopted in the ***Intercarrier Compensation*** proceeding to remain in compliance with section 271.

317. We also reject AT&T's contention that, in seven of the nine application states (excluding Colorado and Washington), terms in Qwest's SGATs are unlawful and discriminatory in that they prohibit competitive LECs from combining local and toll traffic onto a single trunk group."[1146] The Utah SGAT allows for *the* combining **of** traffic that AT&T seeks."[1147] In Montana, AT&T's interconnection agreement with Qwest contemplates the combining of traffic on interconnection trunks.[1148] In Wyoming, Qwest states that its SGAT is nondiscriminatory because Qwest has long maintained one set of trunk groups **to** carry exchange access traffic for interexchange carriers and a second set for its own local traffic.[1149] Although Qwest's SGATs in Idaho, Iowa, Nebraska, and North *Dakota* prohibit the combination of local exchange service traffic with switched access traffic on the same trunk group,[1150] existing interconnection agreements in those states between Qwest and competitive LECs that do not prohibit such combinations are available for adoption by other competitive LECs under section 252(i) of the Commission's rules.[1151] Consequently, we find that AT&T's allegations here do not establish that Qwest has failed to meet its obligation to provide nondiscriminatory access to interconnection.

318. Similarly, we find no merit in AT&T's assertion that Qwest fails to provide reasonable and nondiscriminatory terms for interconnection because it does not permit competitive LECs to use the same facilities for both private line and interconnection trunks. AT&T states that it leases special access facilities (also called private line facilities), such as **DS3** or OCn, from Qwest to transport end-user traffic directly to the competitive LEC wire center.[1152] AT&T alleges that while Qwest allows AT&T to use the private line facility for interconnection, it charges for the facility as if the facility were entirely private line."[1153]

[1146] AT&T Qwest III Comments at 80; AT&T Qwest II Wilson Decl. at paras. 13-14; AT&T Qwest I Wilson Decl. at paras. 26-28.

[1147] Qwest II Freeberg-Interconnection Reply Decl. at para. 18; Qwest II Reply at 67; Utah SGAT § 7.2.2.9.3.2

[1148] Qwest II Reply at 67; Qwest II Freeberg-Interconnection Reply Decl. at 19; Qwest II Application App. L, Qwest/AT&T Montana Interconnection Agreement, Attach. 5 at § 8.2.1 ("If Local Traffic and Toll Traffic are combined into one (1) group, AT&T shall provide a measure of the amount of Local and Toll traffic relevant for billing purposes to US WEST.").

[1149] Qwest II Reply at 67; Qwest II Freeberg-Interconnection Reply Decl. at para 20.

[1150] Idaho SGAT § 7.2.2.9.3.2; Iowa SGAT § 7.2.2.9.3.2; Nebraska SGAT § 7.2.2.9.3.2; North Dakota SGAT § 7.2.2.9.3.2.

[1151] Qwest I Freeberg-Interconnection Reply Decl. at paras. 17-19; Qwest I Freeberg-Interconnection Decl. at paras 17-19.

[1152] AT&T Qwest III Comments at 80; AT&T Qwest II Wilson Decl. at para. 32; AT&T Qwest I Wilson Decl. at para 30.

[1153] AT&T Qwest II Wilson Decl. at para. 32; AT&T Qwest I Wilson Decl. at para 30.

319. We find that AT&T is actually challenging Qwest's policy involving its tariffed private line service. **As** we have explained in prior section 271 orders, the terms and conditions of special access services such as this are not properly the subject of a section 271 inquiry.[1154] We do not believe that checklist compliance is intended to encompass the provision of tariffed interstate access services simply because these services use some form of the same physical facilities as a checklist item.[1155] Nevertheless, to the extent that parties are experiencing problems in the provisioning of special access services ordered from Qwest's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process.[1156]

320. *Other* ***Issues.*** AT&T also takes issue with the trunk forecasting and utilization provisions found in Qwest's SGATs.[1157] Specifically, AT&T states that it is "unreasonable and discriminatory" for Qwest to require a construction deposit before building competitive LEC-requested local interconnection service (LIS) trunks.[1158] The deposit would be forfeited if the competitive LEC's utilization does not reach fifty percent of the forecasted amount within six months.[1159] We do not find that Qwest's trunk forecasting and utilization policies run afoul of our requirements for this particular checklist item. In addition, AT&T has provided no evidence that Qwest's policies here have resulted in decreased trunk blockage performance.[1160] We also note that the Colorado Commission has found that Qwest should be allowed to require a deposit as a form of protection against the "over forecasting" of trunks.[1161]

1154 ***See*** *SBC Texas* ***Order,*** 15 FCC Rcd at **18520,** para. 335; ***Bell Atlantic New York Order,*** 15 FCC Rcd at **4126-27,** para. **340.**

1155 ***See*** *SBC* ***Texas Order,*** 15 FCC Rcd at **18520,** para. 335; ***Bell Atlantic New York Order,*** 15 FCC Rcd at **4126-27,** para. **340.**

1156 ***See*** *SWBT* ***Texas Order,*** 15 FCC Rcd at **18520,** para. 335; Bell ***Atlantic New York Order,*** 15 FCC Rcd at **4127,** para. **341.**

1157 AT&T Qwest III Comments **at** 80; AT&T Qwest II Wilson Decl. at pan 14; AT&T Qwest I Wilson Decl. at para. 13; AT&T August **21,2002** ***Ex Parte*** Letter. PageData also references an agreement involving US West/New Vector. PageData Reply at 5. Qwest states that it has explained in proceedings before **the** Idaho Commission that this agreement is not designed for paging interconnection. Qwest III Reply at **61, n.69.**

1158 AT&T Qwest II Wilson Decl. at para. **17;** AT&T Qwest I Wilson Decl **at** para **16.** The deposit is only required whenever competitive LEC forecasts exceed Qwest forecasts and when in each of the preceding eighteen months, the trunks required by a competitive LEC constitute less than fifty percent of **trunks** in service. See Qwest II Freeberg-Interconnection Reply Decl. at **4-5,** paras. 8-9; Qwest I Freeberg-Interconnection Reply Decl. at **4-5,** paras. **8-9.** ***See also*** Colorado SGAT § 7.2.2.8.6.1; Iowa SGAT § 7.2.2.8.6.1; Idaho SGAT § **7.2.2.8.6.1,** Nebraska **SGAT** § 7.2.2.8.6.1; North Dakota SGAT § 7.2.2.8.6.1; Montana SGAT § 7.2.2.8.6.1; Utah SGAT § 7.2.2.8.6.1; Washington SGAT § **7.2.2.8.6-7.2.2.8.6.1;** and Wyoming SGAT § 7.2.2.8.6.1.

1159 AT&T Qwest II Wilson Decl. at para. **16;** AT&T Qwest I Wilson Decl. at para. 15

1160 *See* NI-1 (Trunk Blocking).

1161 Qwest I Colorado Commission Comments at **14.**

321. Except in Washington, AT&T also criticizes Qwest for its policy of unilaterally reclaiming trunks from competitive LECs where usage is less than fifty percent of that forecasted for any consecutive three-month period.[1162] Qwest states that while trunk reductions may occur when there is a need for such facilities, Qwest reclaims such trunks only after the competitive LEC has agreed to the reduction.[1163] We find Qwest's policy, particularly in light of its explanation that it would work closely with an affected competitive LEC prior to taking any action, to be reasonable. We further note that no competing LEC, including AT&T, has alleged that it has been specifically harmed by Qwest's policy, and that a unilateral reclamation of trunks by Qwest has not occurred in any of the application states.[1164]

322. Interconnection Pricing. Checklist item one requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[1165] Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[1166] Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.[1167] The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation at prices that are based on TELRIC.[1168]

323. Level 3 contends that Qwest violates checklist item one by requiring Level 3 to pay Qwest for the interconnection facilities that transport Qwest-originated traffic to Level 3 for termination.[1169] Level 3 alleges that Qwest violates the Commission's interconnection rules by excluding Internet traffic originated by Qwest end users in calculating the relative use of the shared facilities carrying that traffic to Level 3 for termination. Specifically, Level 3 argues that,

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1162 AT&T Qwest II Wilson Decl. at para. 23; AT&T Qwest I Wilson Decl. at para. 25. *See* Colorado SGAT § 7.2.2.8.13; Idaho SGAT § 7.2.2.8.13; Iowa SGAT § 7.2.2.8.13; Nebraska SGAT § 7.2.2.8.13; North Dakota SGAT § 7.2.2.8.13; Montana SGAT § 7.2.2.8.13; Utah SGAT § 7.2.2.8.13; and Wyoming SGAT § 7.2.2.8.13. In Washington, a competitive LEC may prevent Qwest from reclaiming unused facilities by providing reasons why it needs to retain the excess capacity. Washington SGAT § 7.2.2.8.13.

1163 *See* Qwest II Freeberg-Interconnection Reply Decl. at para. 14; Qwest I Freeberg-Interconnection Reply Decl. at para 13.

1164 *See* Qwest II Freeberg-Interconnection Reply Decl. at para 14; Qwest I Freeberg-Interconnection Reply Decl. at para. 13.

1165 47 U.S.C. § 271(c)(2)(B)(i).

1166 *Id.* § 251(c)(2)

1167 *Id.* § 252(d)(1)

1168 *See* 47 C.F.R. §§ 51.501-07, 51.509(g) (2001); Local *Competition First Report and Order,* 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

1169 Level 3 Qwest III Comments at 1.

although the Commission concluded that Internet traffic is not subject to reciprocal compensation, it did not alter other regulatory obligations of the originating LEC, including the obligation to carry traffic to a single point of interconnection.[1170] Furthermore, Level 3 claims that the plain language of section 51.703(b) of the Commission's rules prohibits Qwest from imposing such charges.[1171] According to Level 3, Qwest's policy of excluding Internet traffic when calculating its relative use of shared transport facilities requires Level 3 to bear the cost of transport for Qwest-originated calls.[1172]

324. In response, Qwest claims that the dispute should be decided under checklist item 13, where we have previously determined that Internet traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and 252(d)(2) of the Act.[1173] Qwest contends that the Commission's rules that exempt Internet-related traffic for reciprocal compensation purposes also exempt such traffic in the calculation of relative use. Specifically, Qwest claims that section 51.709(b) of the Commission's rules establishes that Internet traffic should be excluded from the relative use calculations that determine Qwest's proportionate financial responsibility for its interconnection trunks.[1174] Qwest states that, under this rule, carriers allocate the costs for the interconnection trunks connecting their networks based on the amount of traffic each carrier originates over the trunks.[1175] Furthermore, Qwest claims this traffic excludes interstate or intrastate exchange access by virtue of section 51.701(b)(1).[1176] Because Internet traffic is interstate access, Qwest claims it is excluded from the determination of relative use of interconnection trunks.[1177]

325. We recognize that the relative use issue has been arbitrated by Level 3 and Qwest before various state commissions with different outcomes, and is the subject of two court proceedings.[1178] As we noted in the *SWBT Texas Order*, the 1996 Act authorizes the state

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[1170] Level 3 Qwest III Comments at 7 (citing ***Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic***, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9187, para. 78 n.149 (2001) (***ISP Remand Order***)).

[1171] Level 3 Qwest III Reply at 2.

[1172] Level 3 Qwest III Comments at 5

[1173] Qwest III Thompson/Freeberg Reply Decl. at para. 29; ***BellSouth Georgia/Louisiana Order***, 17 FCC Rcd at 9172, para. 272.

[1174] Qwest III Thompson/Freeberg Reply Decl. at para. 30

[1175] *Id.*

[1176] Id.

[1177] *Id*

[1178] Level 3 Qwest II Comments at 2. The Arizona Commission decided in favor of Level 3, while the Colorado and Oregon commissions decided for Qwest. Level 3 has appealed the Oregon and Colorado state commission decisions on relative use to the relevant federal district courts. ***See id.*** n.2. Level 3 is also engaged in arbitration proceedings with Qwest in Minnesota, Washington, New Mexico, and Nebraska on this issue. The Administrative Law Judge presiding over the Minnesota arbitration proceeding has decided that relative use is not covered under (continued.. ..)

commissions to resolve specific carrier-to-carrier disputes, and it authorizes federal courts to ensure that the results of the state arbitration process are consistent with federal law.[1179] We find that this issue is part of a carrier-to-carrier dispute that is appropriately addressed through state commission and federal court proceedings. Moreover, the Commission has not clearly addressed the issue raised here – the treatment of Internet-related traffic in the intercarrier allocation of shared facilities costs."" Level 3 relies on footnote 149 of the *ISP* ***Remand Order,*** which provides, "This interim regime affects only the intercarrier ***compensation*** (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part ***51,*** **or** existing interconnection agreements, such **as** obligations to transport traffic to points of interconnection."""" This language suggests that the Commission was concerned only with the intercarrier compensation ***rate*** for ISP-bound traffic and did not intend to alter any other obligations. On the other hand, Qwest relies on section 51.701(b)(1), which the Commission revised so **as** to exclude "information access" (ISP-bound traffic) from the scope of subpart H of part 51 of the Commission's rules.[1182] Subpart H includes section 51.703(b), upon which Level 3 relies.[1183] It is not clear, therefore, whether the rule section relied upon by Level 3 (section 51.703(b)) represents "compensation" obligations that were modified by the *ISP* ***Remand Order,*** or whether they are "other obligations under out Part 51 rules" that were unaffected by the ***ISP Remand Order.*** **As** we previously stated, "new interpretive 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."""" We note that Level 3 may raise these issues in another Commission proceeding, such as the ***Intercarrier Compensation*** *NPRM*, which would provide a more appropriate forum for Level 3's concerns.[1185] Therefore, we decline to find Qwest out of compliance with checklist item one on this basis.

(Continued from previous page)
reciprocal compensation rules. Letter from Staci L. Pies, Director, Federal Regulatory Affairs, Level 3 Communications, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314, Attach. (filed Nov. 5,2002) (Level 3 Nov. 5 Ex ***Parte*** Letter).

1179 ***SWBT Texas Order,*** 15 FCC Rcd at 18541, para. 383.

1180 See *ISP Remand Order*, 16 FCC Rcd at 9169-72,9187, paras. 35, 36, 39, 42-43.

1181 ***ISP Remand Order,*** 16 FCC Rcd at 9187, para. 78 n.149 (emphasis in original)

1182 47 C.F.R. § 51.701(b)(1) (2001).

1183 47 C.F.R. § 51.703(b) (2001).

1184 ***Joint Application*** by ***BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi. North Carolina. and South Carolina,*** WC Docket No. 02-150, Memorandum Opinion and Order, 17 FCC Rcd 17595,17721-22, para. 227 (2002) ***(BellSouth Multistate Order)*** (quoting ***Verizon Pennsylvania Order,*** 16 FCC Rcd at 17470, para. 92).

1185 ***Intercarrier Compensation NPRM***, 16 FCC Rcd 9610; Qwest III Thompson/Freeberg Reply Decl. at para. 31 n. 63.

326. In two states, Idaho and Nebraska, AT&T asserts that the collocation rates set by the state commissions do not comply with TELRIC requirements. In Idaho, AT&T states that the Arbitrator expressly disclaimed setting TELRIC-compliant collocation charges and set interim rates based on Qwest's tariff rates for collocation because neither Qwest nor AT&T "proposed collocation prices that [were] supported by sound cost analysis."[1186]

327. In Nebraska, AT&T asserts that the Nebraska Commission erroneously adopted Qwest's proposed rates despite expressing concerns about Qwest's cost study, and absent a finding of TELRIC compliance.[1187] According to AT&T, the Nebraska Commission noted, among other deficiencies, that certain costs such as engineering may be incurred once but charged to more than one job, thereby allowing for multiple recovery.[1188] Nonetheless, the Nebraska Commission adopted Qwest's proposed rates as a "starting point for determining the appropriate TELRIC compliant rates."[1189] Qwest notes that AT&T did not challenge the collocation rates proposed by Qwest during the state proceeding, nor did it seek reconsideration of the Nebraska Commission's decision.[1190] Although we prefer that parties raise their concerns to the state in the first instance, in this case AT&T is alerting the Commission to findings made by the state commission and therefore it is appropriate for us to consider these claims.

328. We have concerns about the manner in which collocation rates were established in both of these states. A review of the Idaho record reveals that, while the Arbitrator initially adopted Qwest's tariff rates for collocation subject to a true-up provision, subsequently the Arbitrator reduced these rates to the levels proposed by Qwest in the arbitration proceeding.""[1191] In any event, it appears that neither the Arbitrator nor the Idaho Commission made a determination that Qwest's collocation rates are TELRIC-compliant. In Nebraska, we believe the concerns identified by the Nebraska Commission about Qwest's cost study raise doubts as to whether the process used to establish rates was TELRIC-compliant.

329. Where the process used by a state commission may not be consistent with TELRIC, the Commission nevertheless may approve rates that are in the range of rates that a proper application of TELRIC would produce. In this case, we perform a facial comparison of the collocation rates in Nebraska and Idaho to the rates in Colorado, which were thoroughly litigated before the Colorado Commission and are not challenged here. As noted by Qwest, there is no reason to believe that there are significant differences in collocation costs among Qwest's states. Specifically, the types of facilities to be constructed do not vary by state, and Qwest has

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1186 AT&T Qwest I Baker/Starr/Denney Decl. at para. 33; ***Idaho First Arbitration Order*** at 34

1187 AT&T Qwest I Baker/Starr/Denney Decl. at para. **54.**

1188 ***Nebraska April*** 23 ***Cost Order*** at *53*

1189 ***Nebraska April*** 23 ***Cost Order*** at 53.

1190 Qwest I Thompson Reply Decl. at 63 n.132.

1191 ***Idaho Fifth Arbitration Order*** at 6-7

centralized procurement and standard vendor contracts across its region.[1192] No commenter has demonstrated that cost differences between Colorado, on the one hand, and Nebraska and Idaho, on the other hand, undermine the usefulness of such a comparison.

330. Qwest has provided evidence comparing the rates it charges for collocation in Nebraska and Idaho to the rates in Colorado. For Nebraska, Qwest demonstrates that the total NRCs are substantially less than the total NRCs in Colorado, and the recurring rates are less than the corresponding rates in Colorado, with the exception of charges for power consumption.[1193] Because the Nebraska Commission has expressed its willingness to reconsider Qwest's collocation rates, and because the substantially lower NRCs more than compensate for the slightly higher recurring charges, we do not believe that the power charges in Nebraska require us to find that Qwest is not in compliance with this checklist item.[1194] We encourage the Nebraska Commission to focus on this issue in any future proceeding regarding collocation rates.

331. The comparison is similar with respect to Idaho, in that the total NRCs are **less** than the total NRCs in Colorado, but the recurring charges for power consumption are much higher than those for Colorado.[1195] Qwest explains that the rates in its SGAT were ordered by the Idaho Commission in its arbitration with AT&T in 1997, and that it has proposed significantly lower rates in the pending Idaho cost docket.[1196] On August 5,2002, Qwest filed a revised SGAT with the Idaho Commission that offers the lower rates proposed in the cost docket on a going-forward basis.[1197] Based on this reduction, we conclude that the collocation rates in Idaho are comparable ***to*** Colorado and therefore consistent with our TELRIC requirements.

332. OneEighty challenges Qwest's NRCs for engineering in collocation facilities in Montana. OneEighty states that Qwest violated checklist item one by imposing unjust, unreasonable, and discriminatory charges for allowing OneEighty to put cable between two bays.[1198] Specifically, OneEighty challenges Qwest's imposition of a $1,043 CLEC to CLEC Quote Preparation Fee (QPF) and a **$3,735** Design Engineering & Installation – No Cables flat charge.[1199] OneEighty claims that Qwest's actual work that formed the basis for imposing these

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1192 See Qwest Aug. 5a Pricing *Ex* Parte Letter at 4.

1193 Qwest 1 Thompson Reply Decl. at Ex. JLT-9.

1194 The NRCs for cageless collocation are $37,085 in Nebraska, as compared to $44,216 in Colorado. The NRCs for caged collocation are $56,993 in Nebraska, as compared to $66,019 in Colorado. See Qwest I Thompson Reply Decl. at Ex. JLT-9. In contrast to these significant differences, the total recurring charges in Nebraska are only $115 per month higher than Colorado for cageless collocation, and only $31 per month higher for caged collocation. Id.

1195 Qwest 1 Thompson Reply Decl. at Ex. JLT-9.

1196 ***Id.***

1197 See Qwest Aug. 8d Pricing *Ex* Parte Letter.

1198 See OneEighty Qwest II Comments at 7-8.

1199 *See id.*

charges on OneEighty consisted of approximately fifteen minutes of measuring in the collocation space and noting the results in a spreadsheet.[1200] OneEighty notes that charges for "engineering labor, per half hour" elsewhere in Qwest's Montana SGAT reflect engineering rates of about $35.00.[1201] OneEighty also claims that Qwest's imposition of two $3,500 charges for changing the name of its predecessor to its name on the same two collocation facilities is unreasonable and discriminatory.[1202]

333. In response, Qwest states that the charges were agreed upon, included in the stipulation signed by Avista, a company acquired by OneEighty, and approved by the Montana Commission.[1203] Qwest contends that provisioning of this service includes many other activities than those identified by OneEighty, and that the rates are TELRIC-compliant.[1204] Nevertheless, Qwest has recently implemented an augment QPF in Montana that offers collocation augments to a competitive LEC's facilities at lower rates than those charged to OneEighty for this service.'"' In regard to the name change charge, Qwest responds that this "change of responsibility" was not a standard service at the time of the request, but that OneEighty negotiated an amendment to its agreement for a lower rate, and is entitled to a credit for the difference from the quoted amount.""

334. On August 29,2002, Qwest filed a revised SGAT in Montana to include the new augment fee.[1207] We find that these measures address OneEighty's concerns regarding the collocation engineering charges. We also find that the issues regarding the name change, or "change of responsibility" rates and credit are part of a carrier-to-carrier dispute that is being resolved by the Montana Commission,

335. ***Interconnection Pricing.*** Checklist item one requires a BOC to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[1208] Section 251(c)(2) requires incumbent LECs to provide interconnection "at any technically

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12M *See id.*

1201 See *id.* at *8*

1202 See *id.*

1203 Qwest II Thompson Reply Decl. at para. 66

1204 *Id.*

1205 See Qwest Aug. 30d Pricing Ex Parte Letter at 3.

1206 Qwest 11 Thompson Reply Decl. at para. 66. Qwest asserts that OneEighty negotiated a rate of $2,721 for the "change of responsibility" service. This rate has been reviewed by the competitive LECs participating in the Change Management Process in Montana.

1207 See Qwest Aug. 30d Pricing Ex Parte Letter. Currently, the "Augment Quote Preparation Fee" is $1,412.96 in Montana.

1208 47 U.S.C. § 271(c)(2)(B)(i).

feasible point within the carrier's network . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."""" Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit."" The Commission's pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation at prices that are based on TELRIC.[1211]

336. Level 3 contends that Qwest violates checklist item one by requiring Level 3 to pay Qwest for the interconnection facilities that transport Qwest-originated traffic to Level 3 for termination.[1212] Level 3 alleges that Qwest violates the Commission's interconnection rules by excluding Internet traffic originated by Qwest end users in calculating the relative use of the shared facilities carrying that traffic to Level 3 for termination. Specifically, Level 3 argues that, although the Commission concluded that Internet traffic is not subject to reciprocal compensation, it did not alter other regulatory obligations of the originating LEC, including the obligation to carry traffic to a single point of interconnection.[1213] Furthermore, Level 3 claims that the plain language of section 51.703(b) of the Commission's rules prohibits Qwest from imposing such charges.[1214] According to Level 3, Qwest's policy of excluding Internet traffic when calculating its relative use of shared transport facilities requires Level 3 to bear the cost of transport for Qwest-originated calls.[1215]

337. In response, Qwest claims that the dispute should be decided under checklist item 13, where we have previously determined that Internet traffic is not subject to the reciprocal compensation provisions of sections 251(b)(5) and 252(d)(2) of the Act.[1216] Qwest contends that the Commission's rules that exempt Internet-related traffic for reciprocal compensation purposes also exempt such traffic in the calculation of relative use. Specifically, Qwest claims that section 51.709(b) of the Commission's rules establishes that Internet traffic should be excluded from the relative use calculations that determine Qwest's proportionate financial responsibility for its

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1209 *Id.* § 251(c)(2).

1210 *Id.* § 252(d)(1).

1211 *See* 47 C.F.R. §§ 51.501-07, 51.509(g) (2001); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

1212 Level 3 Qwest III Comments at 1.

1213 Level 3 Qwest III Comments at 7 (citing *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, 16 FCC Rcd 9151, 9187, para. 78 n.149 (2001) (*ISP Remand Order*)).

1214 Level 3 Qwest III Reply at 2

1215 Level 3 Qwest III Comments at 5

1216 Qwest III Thompson/Freeberg Reply Decl. at para. 29; *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9018, para. 272.

interconnection trunks.[1217] Qwest states that, under this rule, carriers allocate the costs for the interconnection trunks connecting their networks based on the amount of traffic each carrier originates over the trunks.[1218] Furthermore, Qwest claims this traffic excludes interstate or intrastate exchange access by virtue of section 51.701(b)(1).[1219] Because Internet traffic is interstate access, Qwest claims it is excluded from the determination of relative use of interconnection trunks.[1220]

338. We recognize that the relative use issue has been arbitrated by Level 3 and Qwest before various state commissions with different outcomes, and is the subject of two court proceedings.[1221] As we noted in the *SWBT Texas Order,* the 1996 Act authorizes the state commissions to resolve specific carrier-to-carrier disputes, and it authorizes federal courts to ensure that the results of the state arbitration process are consistent with federal law."" We find that this issue is part of a carrier-to-carrier dispute that is appropriately addressed through state commission and federal court proceedings. Moreover, the Commission has not clearly addressed the issue raised here – the treatment of Internet-related traffic in the intercarrier allocation of shared facilities costs.[1223] Level 3 relies on footnote 149 of the *ISP Remand Order,* which provides, "This interim regime affects only the intercarrier *compensation* (*i.e.*, the rates) applicable to the delivery of ISP-bound traffic. It does not alter carriers' other obligations under our Part 51 rules, 47 C.F.R. Part 51, or existing interconnection agreements, such as obligations to transport traffic to points of interconnection."[1224] This language suggests that the Commission was concerned only with the intercarrier compensation *rate* for ISP-bound traffic and did not intend to alter any other obligations. On the other hand, Qwest relies on section 51.701(b)(1), which the Commission revised so as to exclude "information access" (ISP-bound traffic) from the scope of subpart H of part 51 of the Commission's rules.[1225] Subpart H includes section

[1217] Qwest 111 Thompson/Freeberg Reply Decl. at para. 30

[1218] *Id.*

[1219] *Id.*

[1220] *Id.*

[1221] Level 3 Qwest II Comments at 2. The Arizona Commission decided in favor of Level 3, while the Colorado and Oregon commissions decided for Qwest. Level 3 has appealed the Oregon and Colorado state commission decisions on relative use to the relevant federal district courts. *See id.* n.2. Level 3 is also engaged in arbitration proceedings with Qwest in Minnesota, Washington, New Mexico, and Nebraska on this issue. The Administrative Law Judge presiding over the Minnesota arbitration proceeding has decided that relative use is not covered under reciprocal compensation rules. Letter from Staci L. Pies, Director, Federal Regulatory Affairs, Level 3 Communications, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-3 14, Attach. (filed Nov. 5,2002) (Level 3 Nov. 5 *Ex Parte* Letter).

[1222] *SWBT Texas Order,* 15 FCC Rcd at 18541 at para. 383.

[1223] *See ISP Remand Order,* 16 FCC Rcd at 9169-72, 9187, paras. 35, 36, 39, 42-43

[1224] *ISP Remand Order,* 16 FCC Rcd at 9187, para. 78 n.149 (emphasis in original).

[1225] 47 C.F.R. § 51.701(b)(1) (2001).

51.703(b), upon which Level 3 relies.[1226] It is not clear, therefore, whether the rule section relied upon by Level 3 (section 51.703(b)) represents "compensation" obligations that were modified by the *ISP Remand Order,* or whether they are "other obligations under out Part 51 rules" that were unaffected by the *ISP Remand Order.* As we previously stated, "new interpretive 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."[1227] We note that Level 3 may raise these issues in another Commission proceeding, such as the *Intercarrier Compensation NPRM*, which would provide a more appropriate forum for Level 3's concerns.[1228] Therefore, we decline to find Qwest out of compliance with checklist item one on this basis.

339. In two states, Idaho and Nebraska, AT&T asserts that the collocation rates set by the state commissions do not comply with TELRIC requirements. In Idaho, AT&T states that the Arbitrator expressly disclaimed setting TELRIC-compliant collocation charges and set interim rates based on Qwest's tariff rates for collocation because neither Qwest nor AT&T "proposed collocation prices that [were] supported by sound cost analysis."[1229]

340. In Nebraska, AT&T asserts that the Nebraska Commission erroneously adopted Qwest's proposed rates despite expressing concerns about Qwest's cost study, and absent a finding of TELRIC compliance.[1230] According to AT&T, the Nebraska Commission noted, among other deficiencies, that certain costs such as engineering may be incurred once but charged to more than one job, thereby allowing for multiple recovery."[1231] Nonetheless, the Nebraska Commission adopted Qwest's proposed rates as a "starting point for determining the appropriate TELRIC compliant rates."[1232] Qwest notes that AT&T did not challenge the collocation rates proposed by Qwest during the state proceeding. nor did it seek reconsideration of the Nebraska Commission's decision."[1233] Although we prefer that parties raise their concerns

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1226 47 C.F.R. § 51.703(b) (2001).

1227 *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina,* WC Docket No. 02-150, Memorandum Opinion and Order, 17 FCC Rcd 17595, 17721-22, para. 227 (2002) *(BellSouth Multistate Order)* (quoting *Verizon Pennsylvania Order*, 16 FCC Rcd at 17470, para. 92).

1228 *Intercarrier Compensation NPRM*, 16 FCC Rcd 9610; Qwest III Thompson/Freeberg Reply Decl. at para. 31 n. 63.

1229 AT&T Qwest I Baker/Starr/Denney Decl. at para. 33; *Idaho First Arbitration Order* at 34

1230 AT&T Qwest I Baker/Starr/Denney Decl. at para. 54.

1231 *Nebraska April 23 Cost Order* at 53.

1232 *Nebraska April 23 Cost Order* at 53

1233 Qwest I Thompson Reply Decl. at 63 n.132

to the state in the first instance, in this case AT&T is alerting the Commission to findings made by the state commission and therefore it is appropriate for us to consider these claims.

341. We have concerns about the manner in which collocation rates were established in both of these states. A review of the Idaho record reveals that, while the Arbitrator initially adopted Qwest's tariff rates for collocation subject to a true-up provision, subsequently the Arbitrator reduced these rates to the levels proposed by Qwest in the arbitration proceeding."" In any event, it appears that neither the Arbitrator nor the Idaho Commission made a determination that Qwest's collocation rates are TELRIC-compliant. In Nebraska, we believe the concerns identified by the Nebraska Commission about Qwest's cost study raise doubts as to whether the process used to establish rates was TELRIC-compliant.

342. Where the process used by a state commission may not be consistent with TELFUC, the Commission nevertheless may approve rates that are in the range of rates that a proper application of TELRIC would produce. In this case, we perform a facial comparison of the collocation rates in Nebraska and Idaho to the rates in Colorado, which were thoroughly litigated before the Colorado Commission and are not challenged here. **As** noted by Qwest, there is no reason to believe that there are significant differences in collocation costs among Qwest's states. Specifically, the types of facilities to be constructed do not vary by state, and Qwest has centralized procurement and standard vendor contracts across its region.[1235] No commenter has demonstrated that cost differences between Colorado, on the one hand, and Nebraska and Idaho, on the other hand, undermine the usefulness of such a comparison.

343. Qwest has provided evidence comparing the rates it charges for collocation in Nebraska and Idaho to the rates in Colorado. For Nebraska, Qwest demonstrates that the total NRCs are substantially less than the total NRCs in Colorado, and the recurring rates are less than the corresponding rates in Colorado, with the exception of charges for power consumption.[1236] Because the Nebraska Commission has expressed its willingness to reconsider Qwest's collocation rates, and because the substantially lower NRCs more than compensate for the slightly higher recurring charges, we do not believe that the power charges in Nebraska require us to find that Qwest is not in compliance with this checklist item."" We encourage the Nebraska Commission to focus on this issue in any future proceeding regarding collocation rates.

344. The comparison is similar with respect to Idaho, in that the total NRCs are less than the total NRCs in Colorado, but the recurring charges for power consumption are much

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[1234] ***Idaho Fifth Arbitration Order*** at 6-7.

[1235] ***See*** Qwest Aug. 5 Pricing ***Ex Porte*** Letter at 4 (08/05/02a).

[1236] Qwest I Thompson Reply Decl. at **Ex.** JLT-9

[1237] The NRCs for cageless collocation are $37,085 in Nebraska, as compared to $44,216 in Colorado. The NRCs for caged collocation are $56,993 in Nebraska, as compared to $66,019 in Colorado. See Qwest I Thompson Reply Decl. at **Ex.** JLT-9. In contrast to these significant differences, the total recurring charges in Nebraska are only $115 per month higher than Colorado for cageless collocation, and only $31 per month higher for caged collocation. ***Id.***

higher than those for Colorado.[1238] Qwest explains that the rates in its SGAT were ordered by the Idaho Commission in its arbitration with AT&T in **1997,** and that it has proposed significantly lower rates in the pending Idaho cost docket.[1239] On August 5,2002, Qwest filed a revised SGAT with the Idaho Commission that offers the lower rates proposed in the cost docket on a going-forward basis.[1240] Based on this reduction, **we** conclude that the collocation rates in Idaho *are* comparable to Colorado and therefore consistent with our TELRIC requirements.

345. OneEighty challenges Qwest's NRCs for engineering in collocation facilities in Montana. OneEighty states that Qwest violated checklist item one by imposing unjust, unreasonable, and discriminatory charges for allowing OneEighty to put cable between two bays.[1241] Specifically, OneEighty challenges Qwest's imposition of a $1,043 CLEC to CLEC Quote Preparation Fee (QPF) and a $3,735 Design Engineering & Installation – No Cables flat charge.[1242] OneEighty claims that Qwest's actual work that formed the basis for imposing these charges on OneEighty consisted of approximately fifteen minutes of measuring in the collocation space and noting the results in a spreadsheet.[1243] OneEighty notes that charges for "engineering labor, per half hour" elsewhere in Qwest's Montana SGAT reflect engineering rates of about $35.00.[1244] OneEighty also claims that Qwest's imposition of two $3,500 charges **for** changing the name of its predecessor to its name on the same two collocation facilities is unreasonable and discriminatory.[1245]

346. In response, Qwest states that the charges were agreed upon, included in the stipulation signed by Avista, a company acquired by OneEighty, and approved by the Montana Commission.[1246] Qwest contends that provisioning of this service includes many other activities than those identified by OneEighty, and that *the* rates are TELRIC-compliant.[1247] Nevertheless, Qwest has recently implemented an augment QPF in Montana that offers collocation augments to a competitive LEC's facilities at lower rates than those charged to OneEighty for this service."[1248] In regard to the name change charge, Qwest responds that this "change of responsibility" was not

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1238 Qwest I Thompson Reply Decl. at Ex. JLT-9.

1239 *Id.*

1240 See Qwest Aug. 8 Pricing *Ex Parte* Letter (08/08/02d).

1241 *See* OneEighty Qwest II Comments **at** 7-8.

1242 *See id.*

1241 *See id.*

1244 *See id.* at *8.*

1245 *See id.*

1246 Qwest II Thompson Reply Decl. at para. 66.

1247 Id.

1248 *See* Qwest Aug. **30** Pricing *Ex Parte* Letter at 3 (08/30/02d)

a standard service at the time of the request, but that OneEighty negotiated an amendment to its agreement for a lower rate, and is entitled to a credit for the difference from the quoted

347. On August 29,2002, Qwest filed a revised SGAT in Montana ***to*** include *the* new augment fee.[1250] We find that these measures address OneEighty's concerns regarding the collocation engineering charges. We also find that the issues regarding the name change, or "change of responsibility" rates and credit are part of a carrier-to-carrier dispute that is being resolved by the Montana Commission.

B. Checklist Item 4 – Unbundled Local Loops

348. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."""[1251] Based on the evidence in the record, we conclude, as did the commissions of the nine application states, that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules.""[1252] Our conclusion is based on our review of Qwest's performance for all loop types – which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, and high capacity loops – as well as hot cut provisioning and our review of Qwest's processes for line sharing and line splitting.[1253] **As** of September 30, 2002, competitors have acquired from Qwest and placed into use approximately 63.546 stand-alone unbundled loops in Colorado,[1254] 5,882 stand-alone unbundled loops in Idaho,[1255] 44,946 stand-alone

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[1249] Qwest II Thompson Reply Decl. at para. 66. Qwest asserts that OneEighty negotiated a rate of $2.72 I for the "change of responsibility" service. This rate has been reviewed by the competitive LECs participating in the Change Management Process in Montana.

[1250] See Qwest Aug. 30 Pricing Ex ***Parte*** Letter, (08/30/02d). Currently. the "Augment Quote Preparation Fee" is $1,412.96 in Montana.

[1251] 47 U.S.C. § 271(c)(2)(B)(iv); see ***also*** Appendix Kat paras. 48-52 (regarding requirements under checklist item four).

[1252] See Colorado Commission Comments at 21; Idaho Commission Comments **at** 14; Iowa Board Comments at 44-45; Montana Commission Comments at 28-29; Nebraska Commission Comments at 5; North Dakota Commission Comments at 5; Utah Commission Comments at 1; Washington Commission Comments at **19;** Wyoming Commission Comments at 7-8. The Department of Justice concluded that Qwest has succeeded in opening its local markets in the applicant states in many respects. See Department of Justice Qwest I Evaluation at 2, 33; Department of Justice Qwest II Evaluation at 2, 21. The Department of Justice further concluded that the record has improved with respect to issues about which it previously expressed some reservation. and it recommended approval of Qwest's application, subject to the Commission's assuring itself that all concerns raised have been resolved. See Department of Justice Qwest III Evaluation at 4, 10.

[1253] We note that our review encompasses Qwest's performance and processes for all loop types, but **as** noted below, our discussion does not address every aspect of Qwest's loop performance where our review of the record satisfies us that Qwest's performance is in compliance with the applicable parity and benchmark measures.

[1254] See Letter from Hance Haney, Executive Director – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 02-314 at 2 (dated November 7c, 2002) (Qwest Nov. 7c *Ex* ***Parte*** Letter). In Colorado, as of September 30,2002, Qwest had in service 53,138 unbundled voice (continued.. ..)

unbundled loops in Iowa.[1256] 3,293 stand-alone unbundled loops in Montana,[1257] 18,662 stand-alone unbundled loops in Nebraska,[1258] 16,742 stand-alone unbundled loops in North Dakota,[1259] 31,290 stand-alone unbundled loops in Utah,[1260] 61,190 stand-alone unbundled loops in Washington,[1261] and 486 stand-alone unbundled loops in Wyoming.[1262]

349. Consistent with the Commission's prior section 271 orders, we do not address every aspect of Qwest's loop performance where our review of the record satisfies us that Qwest's performance is in compliance with the parity and benchmark measures established in the nine application states.[1263] Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Qwest and its competitors. In making our assessment, we review performance measurements comparable to those the Commission has

(Continued from previous page)
grade analog loops, 9,322 xDSL-capable loops, 1,086 high capacity loops, and 5,855 unbundled shared loops. *See id* at 2, 3.

1255 See Qwest Nov. 7c Ex *Parte* Letter at 2. In Idaho, as of September 30,2002, Qwest had in service 5,271 unbundled voice grade analog loops, 576 xDSL-capable loops, 35 high capacity loops, and 4 unbundled shared loops. *See id.* at 2, 3.

1256 See Qwest Nov. 7c *Ex Parte* Letter at 2. In Iowa, as of September 30, 2002, Qwest had in service 42,998 unbundled voice-grade analog loops, 1,916 xDSL-capable loops, 32 high capacity loops, and 312 unbundled shared loops. *See id.* at 2, 3.

1257 See Qwest Nov. 7c Ex *Parte* Letter at 2. In Montana, as of September 30,2002, Qwest had in service 1,725 unbundled voice grade analog loops, 1,351 xDSL-capable loops, 217 high capacity loops, and 309 unbundled shared loops. *See id.* at 2, 3.

1258 *See* Qwest Nov. 7c *Ex Parte* Letter at 2. In Nebraska, as of September 30,2002, Qwest had in service 16,465 unbundled voice grade analog loops, 2,180 xDSL-capable loops, 17 high capacity loops, and 126 unbundled shared loops. See *id.* at 2, 3.

1259 See Qwest Nov. 7c Ex *Porte* Letter at 2. In North Dakota, as of September 30,2002, Qwest had in service 12,704 unbundled voice grade analog loops, 3,951 xDSL-capable loops, 87 high capacity loops, and no unbundled shared loops. *See id.* at 2, 3.

1260 See Qwest Nov. 7c Ex *Porte* Letter at 2. In Utah, as of September 30,2002, Qwest had in service 27,352 unbundled voice grade analog loops, 3,677 xDSL-capable loops, 261 high capacity loops, and 1,858 unbundled shared loops. *See id.* at 2, 3.

1261 See Qwest Nov. 7c Ex *Parte* Letter at 2. In Washington, as of September 30,2002, Qwest had in service 47,186 unbundled voice grade analog loops, 10,941 xDSL-capable loops, 3,063 high capacity loops, and 5,850 unbundled shared loops. *See id.* at 2, 3.

1262 *See* Qwest Nov. 7c Ex *Porte* Letter at 2. In Wyoming, as of September 30,2002, Qwest had in service 5 unbundled voice grade analog loops, 475 xDSL-capable loops, 6 high capacity loops, and 95 unbundled shared loops. See *id.* at 2, 3.

1263 *See, e.g., Application by Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region InterLATA Services in Connecticut,* Memorandum and Order, 16 FCC Rcd 14147, 14151-52, para. 9 (2001) (*Verizon Connecticut Order*).

relied upon in prior section 271 orders, primarily those associated with measuring the timeliness and quality of loop provisioning and loop maintenance and repair.[1264] As in past section 271 proceedings, in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete.[1265] Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.[1266]

350. Finally, we note that order volumes with respect to certain categories of loops, or order volumes with respect to a specific metric for a certain category of loop, in a given month for one or more of the states included in this application may be too low to provide a meaningful result.[1267] As such, we may look to Qwest's performance in Colorado, where volumes are generally higher,[1268] to inform our analysis.

351. ***Voice Grade Loops.*** We find that Qwest provisions voice grade loops to competitors in a nondiscriminatory manner.[1269] Touch America argues that Qwest fails to achieve parity under the delayed days metric, which measures the average number of days that late orders are completed beyond the committed due date.[1270] We note, however, that Qwest only misses the parity standard in Colorado and Iowa for two of the relevant months from June to September, with performance improving to parity in September.[1271] As such, we disagree that Qwest has failed to achieve parity for the delayed days metric.

[1264] ***See 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) and Verizon Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts,*** Memorandum Opinion and Order, 16 FCC Rcd 8988, 9078-89, para. 162 (2001) ***(Verizon Massachusetts Order).***

[1265] ***See Verizon Massachusetts Order,*** 16 FCC Rcd at 9055-56, para. 122.

[1266] ***See Verizon Massachusetts Order,*** 16 FCC Rcd at 9055-56, para. 122.

[1267] Specifically, we note that order volumes are extremely low in Iowa and North Dakota for the Installation Commitments Met metric for conditioned loops. ***See*** Iowa OP-3 (Installation Commitments Met); North Dakota OP-3 (Installation Commitments Met).

[1268] ***See generally*** Colorado OP-3 (Installation Commitments Met); OP-4 (Average Installation Interval); OP-5 (New Service Installation Quality); MR-3 (Out of Service Cleared Within 24 Hours); MR-4 (All Troubles Cleared Within 48 Hours); MR-6 (Mean Time to Restore); MR-7 (Repair Repeat Report Rate); and MR-8 (Trouble Rate).

[1169] In the nine states included in this application, Qwest generally has met the benchmark and parity standards for provisioning quality, and the quality and timeliness of maintenance and repair functions. ***See generally*** OP-5 (New Service Installation Quality); MR-3 (Out of Service Cleared Within 24 Hours); MR-4 (All Troubles Cleared Within 48 Hours); MR-6 (Mean Time to Restore); MR-7 (Repair Repeat Report Rate); and MR-8 (Trouble Rate) for voice grade loops.

[1270] ***See*** Touch America Qwest II Comments at Exhibit A, A-3; Qwest III Comments at 26.

[1271] ***See*** OP-6A (Delayed Days) for analog loops, indicating a disparity in Colorado in July and August, with average competitive LEC results of 7.95 and 8.44 days, and Qwest results of 4.26 and 4.61 days. ***See also*** OP-6A (continued.. ..)

352. *xDSL-Capable* ***Loops.*** Qwest also demonstrates that it provides xDSL-capable loops in a nondiscriminatory manner. Touch America argues, however, that for several months Qwest fails to meet parity under the new installation quality measure for a subcategory of xDSL loops provided in Washington – ISDN capable loops.[1272] Although Qwest does miss parity under this measure for two months during the relevant period, we note that Qwest's performance improves to parity later during the relevant period.[1273] We also note that Qwest achieved parity under this measure for all relevant months with respect to 2-wire non-loaded loops, which constitute the majority of xDSL loops ordered by competitive LECs in Washington.[1274] We therefore find that Qwest performance with regard to ISDN loops in Washington does not result in a finding of checklist noncompliance. Eschelon asserts that 21 percent of its new DSL installations in September resulted in a repair before the DSL service would function for the end-user customer.[1275] Although the record is unclear regarding Eschelon's figures for the total percentage of troubles for new DSL installations, we find that Eschelon's assertions are not reflected in Qwest's general performance for new service installation quality.[1276] We therefore find that Eschelon's allegations do not result in a finding of checklist noncompliance. Finally, we recognize that Qwest does not meet parity for some months with respect to installation commitments met for conditioned loops.[1277] However, we do not find these performance disparities to be competitively significant.[1278]

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(Delayed Days) for analog loops, indicating a disparity in Iowa in July and August, with average competitive LEC results of 4.2 and 13.56 days, and Qwest results of 2.51 and 3.44 days. Qwest argues that these disparities should be evaluated in light of Qwest's performance under the primary installation metrics traditionally reviewed by the Commission. Qwest I Campbell Loops Decl. at para. 75. As stated above, isolated cases of performance disparity generally will not warrant a finding of checklist noncompliance.

[1272] See Touch America Qwest II Comments at Exhibit A, A-3. *See also* OP-5 (New Service Installation Quality) for ISDN capable loops in Washington, indicating a disparity in June and July with competitive LEC trouble free installation results of 88.17% and 92.39% compared to Qwest results of 96.23% and 98.02% respectively. Qwest states that its commercial performance under this metric was adversely affected by low provisioning volumes in June and July, and by the inclusion of trouble tickets in the OP-5 metric where Qwest's network was found not to be the cause of the trouble. *See* Qwest Nov. 7c *Ex Parte* Letter at 5. Qwest further notes that its performance improves to 91.40% in June, and 94.57% in July, when tickets are removed where the line tested ok, or no trouble was found. Id.

[1273] See *also* OP-5 (New Service Installation Quality) for ISDN capable loops in Washington.

[1274] Qwest states that 2-wire non-loaded loops comprise approximately 60 percent of the xDSL-capable loops ordered by competitive LECs in Washington. Qwest II Application App. A, Tab 13, Declaration of William M. Campbell (Qwest II Campbell Loops Decl.) at para. 81. *See* OP-5 (New Service Installation Quality) for 2-wire non-loaded loops in Washington.

[1275] Eschelon Qwest III Comments at 38-39.

[1276] See Qwest III Application Reply, Tab 1, Reply Declaration of Lori A. Simpson (Qwest III Lori Simpson Reply Decl.) at para. 7 (showing that Eschelon's trouble rate for new DSL installations is only 7.1 percent).

[1277] *See generally* OP-3 (Installation Commitments Met) for conditioned loops in Colorado, Iowa, North Dakota and Nebraska, indicating a disparity for two months each.

[1278] Although Qwest missed the 90% benchmark for installation commitments met for two months in Iowa, North Dakota, and Nebraska, the volumes of unbundled loops ordered in those states are very small. *See* OP-3 (Installation
(continued....)

353. With respect to maintenance and repair, Touch America notes that Qwest fails to achieve parity for several months under a measure of repair and maintenance quality that is similar to a measure we have relied upon in prior section 271 orders.[1279] Although Qwest's performance under the trouble rate metric in Iowa and Washington, in particular, indicates a disparity for several months with regard to ISDN-capable loops, we do not find that this disparity warrants a finding of checklist non-compliance. Given the evidence in all of these states of nondiscriminatory performance under this metric for other categories of xDSL-capable loops, and the relatively low competitive LEC trouble rate and slight disparity observed for the ISDN subcategory of xDSL loops, we find that these disparities are not competitively significant.[1280] We note that Qwest also fails to achieve parity in Colorado and Montana for some months during the relevant period under the mean time to restore metric.[1281] We note, however, that for most of the months missed in Colorado, the disparity was close to only one hour and thus not competitively significant, and that low competitive LEC volumes observed in Montana during those months make it difficult to draw strong conclusions regarding this data.

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Commitments Met) for conditioned loops in Iowa, North Dakota and Nebraska. In addition, if we look to Qwest's performance in Colorado, we note that Qwest missed the benchmark in September, but its performance for the previous three months showed no serious deficiencies. See OP-3 (Installation Commitments Met) for conditioned loops in Colorado.

[1279] See Touch America Qwest II Comments at Exhibit A, A-3; see *also* MR-8 (Trouble Rate) for ISDN-capable loops in Colorado, indicating a disparity in June and August with competitive LEC rates of 2.29% and 2.26% and Qwest rates of 1.31% and 1.69%; MR-8 (Trouble Rate) for ISDN-capable loops in Iowa, indicating a disparity in June, August and September with competitive LEC rates of 2.32%, 3.63%, and 1.84% and Qwest rates of 1.11%, 0.64% and 1.03%; MR-8 (Trouble Rate) for ISDN-capable loops in Montana, indicating a disparity in June and September with competitive LEC rates of 4.08% and 7.94% and Qwest rates of 0.75% and 1.13%; MR-8 (Trouble Rate) for ISDN-capable loops in Nebraska, indicating a disparity in August and September with competitive LEC rates of 1.67% and 1.17% and Qwest rates of 0.92% and 0.47%; MR-8 (Trouble Rate) for ISDN-capable loops in Utah, indicating a disparity in June and August, with competitive LEC rates of 1.70% and 2.93% and Qwest rates of 1.00% and 1.07% respectively; MR-8 (Trouble Rate) for ISDN-capable loops in Washington, indicating a disparity in June, July and August, with competitive LEC rates of 1.67%, 1.34%, and 1.33% and Qwest rates of 0.92%, 0.96%, and 0.99% respectively.

[1280] Qwest argues that some of these observed performance disparities are mitigated by the fact that the competitive LEC trouble rate was never higher than 2% during the relevant period. Qwest 11 Campbell Loops Decl. at paras, 82 (regarding performance in Washington). While troubles for competitive LECs in Colorado, Iowa and Utah were reported slightly more often for competitive LECs than for Qwest's retail customers, and sometimes at rates higher than 2%, the average in these states for the relevant period shows that this is still less than 3% of the time, which we have found to be acceptable in past section 271 orders. See *Verizon* **Maine Order,** 17 FCC Rcd at 11691, para. 49 n.209.

[1281] See MR-6 (Mean Time to Restore) for 2-wire non-loaded loops in Colorado, indicating a disparity in June and July with competitive LEC durations of 2:43 and 3:17, and Qwest durations of 1:51 and 2:14; MR-6 (Mean Time to Restore) for ISDN loops in Colorado, indicating a disparity in June and July with competitive LEC durations of 3:17 and 3:00, and Qwest durations of 1:51 and 2:14; MR-6 (Mean Time to Restore) for 2-wire non-loaded loops in Montana, indicating a disparity in June and July with competitive LEC durations of 4:00 and 2:30, and Qwest durations of 1:46 and 1:03, but with low competitive LEC volumes of 9 and 7 in June and July; MR-6 (Mean Time to Restore) for ISDN loops in Montana, indicating a disparity in July and September with competitive LEC durations of 3:38 and 2:44, and Qwest durations of 1:03 and 1:27, but with low competitive LEC volumes of 2 and 5 respectively.

We will monitor Qwest's performance after approval. If this situation deteriorates, we will not hesitate to take appropriate enforcement action pursuant to section 271(d)(6).

354. *High Capacity Loops.* Qwest demonstrates that it provides high capacity loops in a nondiscriminatory manner.[1282] Touch America, however, points out that Qwest does not achieve parity for several months under measures of maintenance and repair timeliness and quality.[1283] With respect to maintenance and repair timeliness, Qwest argues that in spite of the disparity under the mean time to restore metric, the average mean time to repair competitive LEC high capacity loops during the relevant period was still within the four hour target for such services.[1284] In addition, with respect to maintenance and repair quality, Qwest submits that a contributing factor to the disparity under the trouble rate metric is the disproportionate number of legitimate "no trouble found" (NTF) trouble reports received from competitive LECs.[1285] According to Qwest, when the performance results are recalculated to exclude trouble reports

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[1282] ***See generally*** OP-3 (Installation Commitments Met), OP-4 (Average Installation Interval), and OP-5 (New Service Installation Quality) for DS-I capable loops. From June through September, Qwest achieved parity performance under these metrics in all relevant states, except for Colorado and Iowa under OP-5 (Qwest missed in August with Colorado competitive LEC and Qwest results of 84.38% and 89.49%. and Iowa results (with a low competitive LEC volume of 5) of 60% and 93.69% respectively. See ***also*** OP-6A (Delayed Days for Non-Facility Reasons) for DS-1 capable loops, indicating parity performance in all relevant states except for Washington in June, where the delay for competitive LECs was recorded at 26.28 days compared to 14.4 days for Qwest.

[1283] ***See*** Touch America Qwest II Comments at Exhibit A, A-4; ***see also*** MR-6 (Mean Time to Restore) for DS-I capable loops in Washington, indicating a disparity in June with a competitive LEC result in hours and minutes of 2:43 compared to a Qwest result of 1:59; MR-8 (Trouble Rate) for DS-I capable loops in Utah, indicating a disparity in June and August, with competitive LEC rates of 4.19% and 3.97%. and Qwest rates of 1.97% and 1.79% respectively; MR-8 (Trouble Rate) for DS-I capable loops in Washington, indicating a disparity in June, July, and August with competitive LEC rates of 2.60%, 2.47%, and 2.19%, and Qwest rates of 1.75%, 1.87%. and 1.64% respectively. We also note that there are some disparities under maintenance and repair measures that Touch America does not specifically reference. ***See*** MR-5 (All Troubles Cleared Within 4 Hours) for DS-I capable loops in Colorado, Iowa, Montana and North Dakota, indicating a disparity for only one month during the relevant period in each state; MR-6 (Mean Time to Restore) for DS-I capable loops in Colorado, indicating a disparity in June and July with competitive LEC results in hours and minutes of 3:36 and 2:29, compared to Qwest results of 1:57 and 1:58; MR-6 (Mean Time to Restore) for DS-I capable loops in North Dakota, indicating a disparity in September with a competitive LEC result in hours and minutes of 16:40 (with low volume), compared to a Qwest result of 2:29; MR-6 (Mean Time to Restore) for DS-I capable loops in Utah, indicating a disparity in July with a competitive LEC result in hours and minutes of 6:01, compared to a Qwest result of 2:22; MR-8 (Trouble Rate) for DS-I capable loops in Colorado, indicating a disparity in June, July, August and September, with competitive LEC rates of 6.76%, 6.60%, 6.74% and 5.48%, and Qwest rates of 2.47%, 2.87%. 2.84%, and 2.56% respectively; and MR-8 (Trouble Rate) for DS-I capable loops in Iowa, Idaho, Montana, and North Dakota, indicating a disparity for only one month during the relevant period in each state.

[1284] ***See, e.g.,*** Qwest II Campbell Loops Decl. at para. 86. Qwest also cites to its performance under the metric measuring the rate at which trouble reports are cleared within the standard estimate for those services (MR-5 (All Troubles Cleared Within 4 Hours)). ***See, e.g.,*** Qwest II Campbell Loops Decl. at para. 86.

[1285] ***See. e.g.,*** Qwest I Williams Decl. at para. 213; Qwest II Campbell Loops Decl. at para. 86. Qwest states, for example, that for high capacity loops in Washington, it receives nearly two times as many NTF tickets from competitive LECs than for its retail comparative. ***See*** Qwest II Campbell Loops Decl. at para. 86; ***see also*** Qwest I Williams Decl. at para. 213.

for which no troubles are found, the trouble rates for competitive LECs are lower than the trouble rates before the recalculation.[1286] We recognize that some of the competitive LEC troubles reported under the trouble report rate may not entirely be attributed to Qwest's performance. Given Qwest's nondiscriminatory performance for all other categories of loops, and further recognizing that high capacity loops make up a very small percentage of overall loop orders in all of the relevant states,[1287] we find that Qwest's performance with respect to high capacity loops does not warrant a finding of checklist non-compliance.[1288]

355. ***Line Sharing** and Line **Splitting.*** We find that Qwest demonstrates that it provides nondiscriminatory access to the high frequency portion of the loop, and access to network elements necessary for competing carriers to provide line splitting.[1289] Qwest provides line

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[1286] ***See**, e.g.,* Qwest I Campbell Loops Decl. at para. ***85.*** Qwest has developed the MR-8* PID to track this trend. Qwest I Williams Decl. at para. 213. The MR-8* PID calculates the trouble rate by excluding all trouble reports that were originally coded to NTF because no trouble was found, and which after the first report was closed, received no other trouble report within 30 days of the original report. ***Id.*** We recognize that Covad challenges the accuracy of any data produced pursuant to the "*" PIDs, and argues that they have not been audited by a third party. ***See*** Covad Qwest I Comments at 33; Covad Qwest II Comments at 42-43. We note, however, that Qwest has stated that while the ROC TAG could not reach agreement on adopting the "*" PID approach for Qwest's modified versions of three PIDs, OP-5*, MR-7* and MR-8*, these results are reported as additional information to help explain apparent disparities, and to provide evidence that the apparent disparities are not due to discrimination. ***See*** Letter from R. Hance Haney, Executive Director - Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 02-148, 02-189 at I (dated August 29b, 2002) (Qwest Aug. 29b *Ex Parte* Letter). Qwest submits that these "*" PIDs provide data results where competitive LECs may be partially responsible for the troubles. ***See*** Qwest I Williams Decl. at para. 20. Thus, we find it appropriate to consider the adjusted results from the modified PIDs as part of Qwest's performance data. Qwest's performance for competitive LECs in Colorado under the MR-8* metric does appear to improve slightly in June and July with competitive LEC rates of 5.19% and 5.64% and Qwest rates of 1.58% and 1.84%. Performance in Utah under the MR-8' metric appears to improve slightly under available data for June with a competitive LEC rate of 2.02% and a Qwest rate of 1.38%. Qwest's performance in Washington under the MR-8* metric also indicates lower competitive LEC trouble rates under available data for June and July with competitive LEC rates of 1.96% and 1.72% compared to Qwest rates of 1.08% and 1.20%. ***See*** MR-8* (Trouble Rate) for DS-I capable loops in Colorado, Utah and Washington.

[1281] As of September 30,2002, Qwest had provisioned 1,086 high capacity loops in Colorado, which is approximately 1.7% of the total loops Qwest has in service for competitive LECs in Colorado. ***See*** Nov. 7c ***Ex Parte*** Letter at 2. Qwest had in service 35 high capacity loops in Idaho, 32 high capacity loops in Iowa, 17 high capacity loops in Nebraska, and 87 high capacity loops in North Dakota. High capacity loops comprise less than 1% (0.6%, 0.07%, 0.09%, and 0.5%, respectively) of the loops Qwest has in service for competitive LECs in those states. ***See id.*** Qwest also shows that, as of September 30,2002, high capacity loops only represent approximately 6.6% of the total competitive LEC loops in service in Montana, 0.8% in Utah, 5.0% in Washington, and 1.2% in Wyoming. ***See id.*** Qwest also states that, other than in Idaho where Qwest has one DS-3 loop in service, DS-1 loops comprise all of the unbundled high capacity loops in service in the applicant states. ***/d.***

[1288] ***See**, e.g., **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, 12349, at para. 150 (2002) (***Verizon New Jersey Order).***

[1289] As discussed in footnote 39, ***supra,*** the D.C. Circuit recently stated that "the ***Line Sharing Order*** must be vacated and remanded." ***USTA v. FCC***, 290 F.3d 415,429. The court also stated that it "grant[ed] the petitions for (continued.. ..)