

### III. QWEST'S OSS COMPLIES WITH THE REQUIREMENTS OF SECTION 271

Very few issues were raised in the comments with regard to Qwest's OSS. This makes sense. Just two months ago, the Commission found that Qwest's OSS (and related performance) satisfies the requirements of Section 271, and the same OSS the Commission evaluated then is being used in New Mexico, Oregon and South Dakota. Indeed, the commission in each of these states has endorsed Qwest's OSS in its comments. See NMPRC Comments at 36; OPUC Comments at 10; SDPUC Comments at 4, 7.

The Commission's earlier approval of Qwest's OSS has not prevented WorldCom from raising a few issues here. None of them, however, provides any basis for denying this application. For example, WorldCom alleges generally that Qwest's EDI documentation is flawed and then hypothesizes that the alleged flaws resulted in the rejection of a high percentage of its orders by Qwest's systems. But, as explained below, Qwest's EDI documentation is sufficiently detailed that other CLECs (as well as Hewlett-Packard ("HP"), the pseudo-CLEC in the Regional Oversight Committee's ("ROC's") Third Party Test) have been able to successfully implement systems to interface with Qwest's OSS. To the extent WorldCom experienced order rejections, it was, for the most part because Qwest's documentation was misinterpreted by WorldCom. Indeed, the Department of Justice recognized that "WorldCom's allegations do not directly contradict the evidence on which the Commission relied in approving Qwest's prior [Section 271] application." DOJ Evaluation at 8 n 32.

WorldCom's other OSS-related claims are equally minor and do not reflect systemic flaws in Qwest's OSS. For example, WorldCom complains that Qwest did not update certain back-end tables to accept the Universal Service Order Code ("USOC") for touch tone service in Oregon - but WorldCom then immediately acknowledges that this issue has since been

resolved WorldCom also complains about the processes it must use to validate addresses and submit subsequent orders for accounts that are in the process of being converted when the Customer Service Record (“CSR”) has not yet been updated. But these are the same complaints the FCC dismissed in Qwest III, and the processes about which WorldCom complains will soon be simplified further. That Qwest uses the same processes in its own retail operations is further evidence that they are not discriminatory. See *Qwest 27/ Order ¶ 59*. WorldCom’s statements regarding Qwest’s commercial performance also fail to demonstrate discrimination by Qwest.

AT&T complains of a minor omission from Qwest’s Oregon SGAT relating to loop qualification. However, as explained below, this omission has had no practical effect on CLECs because Qwest is providing the same loop qualification tools in Oregon that the FCC reviewed and approved in other states. Moreover, Qwest has amended its Oregon SGAT to resolve AT&T’s concerns.

In short, the issues raised by the parties are neither widespread nor systemic. They do not come close to being Section 271 affecting.

**A. Qwest’s EDI Documentation is Effective in Enabling CLECs to Build EDI Interfaces**

Despite the fact that the Commission already has examined and approved Qwest’s EDI documentation in the Qwest III proceeding, WorldCom continues to attack the adequacy of that documentation here. WorldCom relies on a few instances in which it alleges it experienced ordering problems because of problems with the documentation Qwest provided to guide WorldCom’s development of an EDI interface. See WorldCom Comments at 17-18, Lichtenberg Decl ¶¶ 29-31. As discussed in this section and those that follow (addressing WorldCom’s specific examples), Qwest’s EDI documentation fully satisfies Section 271.

First, the Commission already evaluated and approved the adequacy of Qwest's EDI documentation when it approved Qwest's nine-state Section 271 application. The Commission expressly concluded that "Qwest provides sufficient documentation to allow competitive LECs to design their OSS interfaces," *Qwest 271 Order* ¶ 144. The Commission based its conclusion in large part on the fact that a number of CLECs had successfully used Qwest's EDI documentation to build EDI interfaces for preordering and ordering transactions 28/

The commercial evidence of successful development of EDI interfaces by CLECs continues to provide a strong basis to conclude that Qwest's EDI documentation is effective for this purpose. As noted in the Declaration of Lynn M V Notarianni and Christie L. Doherty, Operations Support Systems ("OSS Decl."), as of December 1, 2002, a total of 31 individual CLECs (excluding two pseudo-CLECs) had successfully developed an EDI interface using Qwest's EDI documentation. OSS Decl. ¶¶ 612, 633; Confidential Exh. LN-OSS-138 (Number of CLECs Certification Testing, as of December 1, 2002). The Commission has held previously that such evidence is the best measure of whether EDI documentation is adequate for purposes of Section 271. See, e.g., *Texas 271 Order*, 15 FCC Rcd at 18411 ¶ 120; *Massachusetts 271 Order*, 16 FCC Rcd at 9049-50 ¶ 112.

HP, the pseudo-CLEC in the ROC Third Party Test, also built an EDI interface using Qwest's EDI documentation and EDI Implementation Team. HP conducted certification activities for a broad range of products (including UNE-P) over the EDI interface it had

28/ See Reply Decl. of Lynn M V Notarianni and Christie L. Doherty, Operations Support Systems, filed in WC Docket No. 02-314, October 25, 2002, ¶ 155, citing Qwest 11 Notarianni/Doherty OSS Decl., filed July 12, 2002, in WC Docket No. 02-189, Confidential Exh. LN-OSS-70.

constructed, across four IMA-EDI releases 29/ It is also noteworthy that at least one CLEC and a pseudo-CLEC have been able to construct and implement an EDI interface using Qwest's documentation in a relatively short time. See OSS Decl ¶ 633, Confidential Exh LN-OSS-155 (Experiences of Two CLECs in Implementing EDI Interfaces).

WorldCom suggests that its experience building and using an EDI interface is somehow different than that of the many CLECs preceding WorldCom, because WorldCom is providing UNE-P and is targeting mass market customers. WorldCom Comments at *i-ii*, 8-9, Lichtenberg Decl ¶ 2. WorldCom implies that the evidence that other CLECs have successfully built EDI interfaces using Qwest's documentation is not valid. *Id*. But reality does not bear out WorldCom's assertions. In fact, high volumes of EDI transactions previously have been successfully submitted. During the 12-month period ending November 30, 2002, 21 individual CLECs had submitted a total of 1,400,000 preorder transactions *via* EDI, and 22 individual CLECs had submitted a total of 700,000 order transactions *via* EDI. OSS Decl. ¶ 633, Confidential Exh LN-OSS-153 (CLEC Pre-Order Volumes); Confidential Exh LN-OSS-154 (CLEC Pre-Order Volumes). HP also submitted substantial volumes of EDI transactions during the Third Party Test. 30/

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29/ For three of the four releases, the products on which HP conducted certification activities included UNE-P. As noted in the OSS Declaration ¶ 639, the products on which HP conducted certification activities can be found in the *Final Report* at Table 12B-1 I (P-CLEC IMA-EDI Certified Functionality). During this test, HP certified 13 pre-order transactions, 16 products, and five post-order transactions. *Final Report* at 12-B-11 – 12 (HP); Interim Report of the P-CLEC, Version 2.0, March 31, 2001 ("HP Interim Report") (Attachment 5, Appendix G), at 63.

30/ For Test 12, the Pre-Ordering, Ordering and Provisioning (POP) Functional Evaluation, HP transmitted a total of 17,486 pre-order transactions via EDI and 9,656 order transactions over EDI. *Final Report*, Tables 12-8 and 12-15.

Moreover, many of the order transactions submitted during the past year were for resale or UNE-P Reply Declaration of Lynn M V Notarianni and Christie L. Doherty, Operations Support Systems (“OSS Reply Decl”), ¶ 8 During the 12 month period ending January 31, 2003, a total of over 69,000 EDI resale POTS and EDI UNE-P POTS conversion order transactions were submitted nationwide *id.* ¶ 31/ Thus, there does not appear to be anything about volumes or the nature of the product or target customer base that would explain why WorldCom’s experience in using Qwest’s EDI documentation would differ from that of the third party tester or other CLECs As the Department of Justice observed, “WorldCom neither presents detailed underlying data nor explains why its experience using its own systems appears to have been more negative than that using Z-Tel’s systems.” DOJ Evaluation at 8 n.32. Indeed, no CLEC challenged the adequacy of Qwest’s EDI documentation in the first two Qwest Section 271 applications, and it was not until WorldCom filed comments on October 15, 2002, in connection with the nine-state application, that *any* party took issue with Qwest’s showing. Nor did any other party in its initial comments on this application take issue with the adequacy of Qwest’s EDI documentation

Second, the findings of KPMG and HP in the ROC Third Party Test support the Commission’s prior conclusion on this point in the *Qwest 271 Order* As discussed in the OSS Declaration, the ROC Third Party Test evaluated the efficacy of Qwest’s EDI documentation in three reviews. (1) the Order and Transaction Creation Documentation Evaluation (Test 10); (2) the P-CLEC OSS Interface Evaluation (Test 12-B); and (3) the OSS Interface Development Review (Test 24 6) OSS Decl ¶¶ 636-643 Qwest satisfied each of these tests In particular,

31/ As explained in the OSS Reply Declaration, for purposes of EDI documentation and interface coding, resale and UNE-P orders are essentially the same OSS Reply Decl. ¶ 8 n 14

HP concluded that the IMA Disclosure documentation and the EDI Implementation Guidelines are readily available to CLECs, are comprehensive in detail, and can easily be understood by CLECs. *See Final Report* at IO-A-38 (HP). *See also* OSS Decl. ¶ 638. Qwest satisfied every one of the Third Party Test criteria regarding EDI documentation. OSS Decl. ¶¶ 636-643.

The specific EDI documentation issues cited by WorldCom do not undermine the Commission's prior conclusion that Qwest's EDI documentation is adequate under Section 271. *See* WorldCom Comments at 17. For the most part, the cited instances involved situations in which WorldCom interpreted the documentation and designed its EDI interface in a way that other CLECs had not, and that Qwest had not anticipated, as discussed in detail below and in the OSS Reply Declaration. Qwest's EDI implementation team has worked with WorldCom to clear up any confusion on WorldCom's part and has undertaken to clarify the documentation on a going-forward basis if necessary. *See* OSS Reply Decl. ¶ 10. This is a normal part of the CLEC EDI interface development and testing process. As described in the OSS Declaration, the EDI Implementation team works closely with CLECs to assist them in building their EDI interfaces and in using the documentation provided. OSS Decl. ¶¶ 613-615. The Commission itself recognized the importance of Qwest's responsiveness to CLEC documentation questions in the *Qwest 271 Order* ¶ 55 n 180.

Finally, Qwest's change management process, which the Commission approved in the *Qwest 271 Order*, provides procedures and a forum for making changes to EDI documentation. The change management procedures, which were jointly developed by CLECs and Qwest, provide a process for CLECs "to submit change requests to alter Qwest EDI

documentation, add additional features to IMA-EDI, or supplement its functionality -- 32/ The CMP procedures also provide for “advance notice of new releases, timeframes for issuance of documentation prior to implementation, opportunity for CLEC input into documentation, and prescribed content of documentation” OSS Decl. ¶ 630; *see also, e.g.*, Change Management Decl., Exh DLF-CMP-2 (CMP Framework) §§ 5, 8, 12. Finally, the CMP includes procedures that help ensure that when CLECs encounter troubles in production, or when problems are identified by Qwest, those troubles will be disclosed to other CLECs if those troubles affect them. *See* Change Management Decl. at Section V(D); CMP Framework § 12

WorldCom’s change request (“CR”) asking that Qwest adopt a single source of EDI documentation is currently being addressed through the change management process. 33/ In the January 28 meeting to discuss this **CK**, Qwest provided the CLECs with a “level of effort” for the change request, and offered to break it into parts so that it could be implemented over more than one EDI release. *Id.* (Minutes of January 28, 2003 Meeting). The most recent systems CMP meeting was held on February 20, 2003. There, the WorldCom CR and related EDI documentation suggestions were discussed. Next steps to make further progress on this subject were discussed and will be reflected in the minutes of that meeting, which will be available soon on the Qwest website. *See* [www.qwest.com/wholesale/downloads/2002/cmp/](http://www.qwest.com/wholesale/downloads/2002/cmp/)

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32/ *See* OSS Decl. ¶ 630, Declaration of Dana L. Filip on Change Management (“Change Management Decl.”), Exh DLF-CMP-2 (CMP Framework), § 5, *see also* Change Management Decl. § III(C)(4). As noted in the OSS Declaration, an example of this process is Change Request SCR I22701-1, which resulted in a new document, 9.0 Populated EDI X12 Mapping Examples (Exh LN-OSS-143). OSS Decl. ¶ 630 n. 111.

33/ *See* Reply Exh LN-OSS-I (Excerpt from Systems Interactive Report for SCR0903002-05, Single Source Document for Implementing EDI). This document may also be accessed at the following URL: [www.qwest.com/wholesale/downloads/2002/cmp/CLECOwestCMPSystemsInteractiveReport.PDF](http://www.qwest.com/wholesale/downloads/2002/cmp/CLECOwestCMPSystemsInteractiveReport.PDF).

CLECQwestCMP\_SystemsInteractiveReport.PDF The Commission acknowledged in the *Qwest 27/ Order* that WorldCom's change request was pending, yet did not find that its existence suggested that Qwest's EDI documentation was somehow inadequate, on the contrary, the Commission recognized that the CMP was the proper forum for considering WorldCom's requests for changes in EDI documentation. *Qwest 27/ Order* ¶ 5.5 n 180

WorldCom also cites ten principles that it believes should guide Qwest in its documentation going forward, asserting that Qwest has not agreed to and does not follow these principles. WorldCom Comments ¶ 18, Lichtenberg Decl ¶ 31. WorldCom cited these same principles during the CMP meeting discussion of its single source EDI documentation change request. Qwest has agreed to address these items when the WorldCom change request is worked. *See* January 28, 2003 Meeting Minutes, OSS Reply Exh LN-I (Excerpt from Systems Interactive Report for SCR0903002-05, Single Source Document for Implementing EDI). In fact, Qwest already does generally follow most if not all of these guidelines, and has for some time, when it revises or clarifies its EDI documentation. OSS Reply Decl ¶ 14. **As** the WorldCom CR and the related CMP forum discussions show, the change management process provides a vehicle for EDI documentation proposals to be considered by all affected CLECs and to be crafted to meet their sometimes different objectives.

In sum, WorldCom has provided no evidence that would cause the Commission to change its previous conclusion that Qwest's EDI documentation is effective in enabling CLECs to build EDI interfaces.

**B. The Instances of Order Rejects Cited by WorldCom Do Not Call Into Question the Efficacy of Qwest's EDI Documentation or the Adequacy of Its OSS**

**I. Feature Identification**

WorldCom claims that many of its orders were rejected during a three day period in January because Qwest's documentation failed to make certain distinctions between CSR formats for single- and multi-line accounts. See WorldCom Comment at 9-11, Lichtenberg Decl ¶¶ 6-12. But, as explained below, the distinctions between these types of accounts are entirely logical.

WorldCom correctly notes that conversion orders submitted through Qwest's OSS currently require a carrier to distinguish between the features the end user wishes to retain (based on its existing service) and new features the end user seeks to add. See *id*; see also OSS Reply Decl ¶ 15. This requires the carrier to identify the existing features on the end user's account by examining the CSR. See *id*. The CSR for a single line account typically identifies each feature without repeating the telephone number ("TN") after it because, by definition, each such feature is associated with that single line. <sup>34</sup> See *id*. But, for multi-line accounts, the CSR lists the TN after each feature so it is clear to which line that feature applies. See *id*.

WorldCom contends that Qwest's EDI documentation did not articulate a distinction between single- and multi-line accounts, and that, as a result, WorldCom designed its EDI interface to seek and extract feature information only when associated with a TN. See WorldCom Comments at 9-10, Lichtenberg Decl. ¶ 8. According to WorldCom, because feature

<sup>34/</sup> While it is possible for a single-line account to include the TN after feature information (if the order was coded that way), the absence of a TN after certain features does not mean that those features do not exist on the account. WorldCom programmed its EDI to treat only those features followed by TNs as existing features based on an erroneous assumption. See OSS Reply Decl ¶ 15 n 22.

information for single line accounts does not always include the TN after each feature, WorldCom's orders for single line accounts did not identify any existing features and thus designated all of the features the end user was ordering as new *See id.* This, in turn, prevented WorldCom's orders from correctly distinguishing between features the end user wished to retain and those it sought to add, resulting in a reject when the order **was** submitted. *See id*

Although Qwest's EDI documentation does not explicitly distinguish between the feature detail on the CSR for single- and multi-line accounts, the difference should have been taken into account by WorldCom's EDI development effort *See* OSS Reply Decl. ¶ 16 This is because Qwest's Developer Worksheets, which are part of the EDI Disclosure Document, identify feature detail as "optional," which means that a feature can appear on a CSR without additional detail such as a TN *See id*; LN-OSS-9 (IMA-EDI Appendix A – Developer Worksheets – Pre-Order) Disclosure Document) at App. A, p. 40. Indeed, Qwest has long been processing orders submitted by CLECs that have identified features properly

When WorldCom communicated to Qwest that it was experiencing these rejections, Qwest agreed to make its EDI Development Team available to assist WorldCom during the weekend it planned to code its changes. <sup>35/</sup> *See* OSS Reply Decl ¶ 18 But, instead of recognizing the efforts Qwest's EDI Development Team was willing to make on its behalf (WorldCom did not contact Qwest's EDI Development Team that weekend), WorldCom **now** alleges that Qwest "refused to announce" the difficulties WorldCom experienced to other CLECs *See* WorldCom Comments at 11, Lichtenberg Decl ¶ 12. In nearly the same breath,

<sup>35/</sup> Although Qwest's service manager at first indicated to WorldCom that she believed CSR distinctions between single- and multi-line accounts were limited to the Eastern region. she told WorldCom that she would have to investigate the matter further. The very next day, after receiving additional information from WorldCom, she notified WorldCom that the distinctions applied to all regions *See* OSS Reply Decl ¶ 18 n 25.

however, WorldCom concedes that “Qwest has agreed [to] change its documentation” to reflect the distinction between feature detail on CSRs for single- and multi-line accounts <sup>36/</sup> *See id.* Indeed, Qwest notified the CLEC community of a proposed change to the PCAT to add information about the difference between single- and multi-line accounts on February 17, 2003 *See* OSS Reply Decl ¶ 18. Based on CMP guidelines, the change will become effective no later than March 10, 2003, after CLECs have had an opportunity to comment. *See id.* Reply Exh LN-2 (Proposed Documentation Change for Feature Identification) at 3, *also available at* [www.uswest.com/wholesale/cmp/review.html](http://www.uswest.com/wholesale/cmp/review.html). So, contrary to WorldCom’s assertions, Qwest has made the distinction between single- and multi-line accounts in this context readily apparent to CLECs.

## 2. Area Codes on “Forward To” Numbers

WorldCom alleges that some of its orders were rejected because Qwest’s documentation did not specify that, when placing an order for call forwarding, the old “forward to” number (which currently must be provided) needs to include ten, not just seven, digits. *See* WorldCom at 13-14, Lichtenberg Decl ¶¶ 13-19. But Qwest’s documentation does, in fact, make this distinction. Specifically, the negotiated business rules in Qwest’s EDI Disclosure Document specify that feature identification detail accompanying call forwarding USOCs (CFN, CFNB and CFND) should include ten digits. *See* OSS Reply Decl 79, Qwest IV, Att. 5, App. P (Qwest EDI Disclosure Document) at Appendix C, p. 125, reference line 60, *also available at* [www.uswest.com/disclosures/netdisclosure409.html](http://www.uswest.com/disclosures/netdisclosure409.html).

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<sup>36/</sup> At WorldCom’s request, and in order to allow all CLECs to be able to comment on the proposed documentation update, Qwest issued a Level II product and process change notification rather than a Level I notification. A Level I notification would have enabled Qwest to effectuate the change more quickly because Level I changes do not require CLEC input. *See* OSS Reply Decl ¶ 18 n. 27.

Moreover, Qwest is implementing a CMP CR, with a target date of February 28, 2003, that will relax the edit that currently requires a ten digit telephone number. See OSS Reply Decl ¶ 20, Reply Exh LN-3 (Excerpt from Systems Interactive Report for SCR062702-09ES, Relaxing the Edit on Ten Digit “Forward To” Numbers), *also available at* [www.qwest.com/wholesale/cmp/changerequest.html](http://www.qwest.com/wholesale/cmp/changerequest.html). WorldCom claims that Qwest has “refused” to implement this simple work-around. See WorldCom at 13, Lichtenberg Decl ¶ 18. This clearly is not true. In June 2002, a different CLEC, Eschelon, submitted a request through CMP that old “forward to” numbers no longer require ten digits on orders for call forwarding. See OSS Reply Decl. ¶ 20. But, when this CR was discussed at a Change Management meeting in July 2002, it was prioritized as 36th (out of 60 CRs) by all CLECs, and, notably, even lower (42nd out of 60 CRs) by WorldCom. See *id.* Eschelon’s CR therefore did not qualify for EDI version 12.0 and instead became a candidate for EDI version 13.0. <sup>37/</sup> See *id.* Because this issue has since grown in importance to CLECs, Qwest is, as noted above, implementing the change on an expedited basis with a target date of February 28, 2003. See *id.* But this particular turn of events is nevertheless notable because it demonstrates that WorldCom clearly knew – or should have known – that a ten digit “forward to” number is needed.

Qwest’s implementation of a “Migrate-as-Specified” feature in EDI version 12.0 also should help resolve WorldCom’s concerns in this area, as CLECs will no longer have to distinguish between new and existing features, nor will CLECs have to identify the “change

37; Notably, when this CR was prioritized by CLECs for EDI version 13.0 on December 19, 2002 (which predated WorldCom’s initiation of new, conversion and disconnect orders in Qwest’s region by less than four weeks), WorldCom still prioritized it at a relatively low 14 (out of 50 CRs). See OSS Reply Decl ¶ 20 n 31.

from” existing feature detail when making changes (such as changing the call “forward to” number) on their conversion LSRs. <sup>38/</sup> See OSS Reply Decl. ¶ 21

**C. The Remaining OSS Issues Raised are Minor and Do Not Affect a Finding of Section 271 Compliance**

**I. Updating USOC Tables in Oregon**

WorldCom claims that its orders requiring a “Touch Tone Business” (“TTB”) USOC were rejected in Oregon because Qwest did not properly code its back-end tables to accept that USOC in that state. See WorldCom at 14-15, Lichtenberg Decl. ¶¶ 20-21. But WorldCom then concedes that this issue has been fully resolved and that it is no longer experiencing these rejects. See *id.* WorldCom’s experience therefore is isolated, at best, and has no bearing on whether Qwest’s OSS meets the requirements of Section 271

The majority of Qwest’s systems no longer require the submission of a TTB CSOC with an order because touch tone service is now standard in most states. See OSS Reply Decl ¶ 22. Nevertheless, the TTB USOC is required in certain areas, including locations in South Dakota. Qwest acknowledges that, initially, it incorrectly informed WorldCom that the TTR USOC was required in Oregon, but Qwest rectified the matter expeditiously. See *id.* ¶ 23. When WorldCom began submitting orders with TTB USOC based on information provided by Qwest, WorldCom experienced rejects and reported this to Qwest on January 21, 2003. See *id.* To resolve this, Qwest agreed to add the TTB USOC to the necessary tables in Oregon by January 27, 2003, in order to allow the LSRs to be accepted in that state. See *id.* As a result,

<sup>38/</sup> It is not clear to Qwest why WorldCom believes that the “Migrate-as-Specified” feature Qwest plans to implement in EDI version 12.0 will continue to require feature detail for “complex” features such as call forwarding. See WorldCom at 14, Lichtenberg Decl. ¶ 19. To be clear, carriers will not be required to specify an old “forward to” number when using “Migrate-as-Specified.” Only the new “forward to” number will, of course, be required. See OSS Reply Decl ¶ 21 n 32

WorldCom was able to continue ordering without modifying its internal procedures and without experiencing any affect on the provisioning process. *See id.*

Without providing any specifics, WorldCom claims that, beginning February 1, 2003, orders containing “RCU” <sup>39/</sup> and “NKS” <sup>40/</sup> USOCs were rejected in a manner “similar” to its TTB-related rejects. *See* WorldCom at IS, Lichtenberg Decl ¶ 22 But this is hardly surprising Qwest’s PCAT states clearly that Call Curfew – the feature associated with the RCU USOC – uses Qwest’s Advanced Intelligence Network and therefore is not available for UNE-P orders, which are the type of orders WorldCom submits. *See* OSS Reply Decl ¶ 24 <sup>41/</sup> Thus, to the extent WorldCom was submitting UNE-P orders with RCU USOCs, they could not have been accepted by Qwest’s systems and should have been – and indeed were – rejected. *See id.*

As for WorldCom’s claim regarding the NKS USOC, Qwest’s PCAT could have been clearer, but this issue affected only a small number of WorldCom orders. *See* OSS Reply Decl ¶ 25 Specifically, between January 18 and February 14, 2003, only four WorldCom orders were rejected because of the inclusion of an NKS USOC. *See id.* Both NKS and the USOC “NKM” represent the Caller ID Blocking feature; but service provisioned through UNE-P requires that the NKM USOC be used. *See id.* WorldCom, which uses UNE-P, submitted orders

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<sup>39/</sup> Qwest’s RCU USOC relates to a “Call Curfew” feature, which enables end users to set time-of-day restrictions on incoming and outgoing calls.

<sup>40/</sup> Qwest’s NKS USOC relates to a “Caller ID Blocking” feature.

<sup>41/</sup> *See also* Call Curfew Section of PCAT, available at [www.qwest.com/wholesale/clecs/features/call\\_curfew.html](http://www.qwest.com/wholesale/clecs/features/call_curfew.html). UNE-P Section of PCAT, available at [www.qwest.com/wholesale/pcat/uneppots.html](http://www.qwest.com/wholesale/pcat/uneppots.html) (noting that “products that are not available with UNE-P . . . [include] . . . Advanced Intelligent Network (AIN) services”)

for Caller ID Blocking with the NKS, not NKM, IJSOC, which is why those orders were rejected 42/ *See id.*

Qwest has notified CLECs that it has initiated a change to enable CLECs to use either the NKS or NKM USOC to request Caller ID Blocking. 43/ *See* OSS Reply Decl. ¶ 26; Reply Exh CLD-4 (CMP Notice on NKM/NKS USOC) Qwest also has made clear to CLECs that, in the interim, they should use only the NKM USOC to request this feature. *See id.* The change initiated by Qwest is expected to be in place by April 11, 2003, after CLECs have had an opportunity to comment on Qwest's proposed change and Qwest has had an opportunity to implement it. *See id.* The implementation of this change should resolve any concerns WorldCom may have had about which USOC it should be submitting. *See id.*

## 2. Address Validation for Second Lines

WorldCom contends that some of its orders are rejected because it is unable to validate addresses for second lines by inputting the end user's telephone number into PREMIS, which is the data source for Qwest's address validation tool. *See* WorldCom at 15-16, Lichtenberg Decl. ¶¶ 23-25. It is unclear to Qwest, however, why WorldCom insists on using Qwest's address validation tool in this manner. *See* OSS Reply Decl. ¶ 27. Qwest's documentation states explicitly that address validation by TN can only be performed on "Main" or "Billing" telephone numbers. *See id.*; *see also* Attachment 5, Appendix P (Qwest EDI Disclosure Document) at Chapter 4 |, page 2, first paragraph, *also available at*

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42/ Qwest learned that WorldCom was simply copying the USOCs from the existing account to the account it was converting. This resulted in WorldCom requesting the NKS USOC even though its use of UNE-P required it to use the NKM USOC. *See* OSS Reply Decl. ¶ 25 n 38.

43/ Either USOC will provide the Caller ID Blocking functionality. Allowing the use of either USOC will facilitate conversions to UNE-P when CLECs simply copy the USOC from the existing account.

[www.uswest.com/disclosures/netdisclosure409.html](http://www.uswest.com/disclosures/netdisclosure409.html); *see also* Pre-ordering Overview PCAT, Frequently Asked Questions (FAQs) No. 4, *available at* [www.qwest.com/wholesale/clecs/preordering.html](http://www.qwest.com/wholesale/clecs/preordering.html). Second lines do not qualify as “Main” or “Billing” telephone numbers, which is why they should be validated by address. *See id.*

Qwest’s address validation tool is not well-suited for address validation by TN because its source is an address database (PREMIS) that does not contain all working services or telephone numbers for a given address. *See id.* ¶ 28. Qwest’s documentation therefore informs CLECs to validate addresses by typing the end user’s address, rather than TN, into the tool. 44/ *See id.* Nevertheless, WorldCom seems to insist on attempting to validate end user address information by TN. But doing so, as WorldCom now realizes, is not optimal because not all TNs can be accommodated – and thus be read by – the address validation tool. *See id.*

WorldCom claims that the process of typing end user addresses (rather than TNs) into the address validation tool is cumbersome and prone to keystroke errors by its service representatives. *See* WorldCom at 15, Lichtenberg Decl ¶ 25. But such keystroke errors are equally possible when typing TNs, and WorldCom offers no evidence that the former would lead to fewer keystroke errors than the latter. *See* OSS Reply Decl ¶ 29. Regardless, the “near-match” capability of Qwest’s address validation tool – which results in multiple potential responses being returned when minor keystroke errors are made – renders WorldCom’s argument moot. *See id.* In fact, WorldCom can use the near match capability to select the correct address and then automatically populate the address fields on the LSR. *See* 44

44 Precise addresses may not be available for certain rural end users whose premises may, for example, be identified by milepost along a highway.

In light of the available documentation and guidance provided by Qwest, it is unclear why WorldCom insists on trying to validate addresses by TN. Nevertheless, even though the FCC has never required it, *see Qwest 27/ Order* ¶ 56, Qwest is scheduled to implement a Migrate-by-TN function in EDI version 12.0, which will enable CLECs to submit UNE-P conversion LSRs based on the TY and minimal address information. *See* OSS Reply Decl. ¶ 30.

### 3. Process for Updating CSRs

WorldCom complains that it takes Qwest too long to update CSR information, and that the requirements for submitting subsequent requests on a conversion LSR before the CSR has been updated is cumbersome. *See* WorldCom at 16-17, Lichtenberg Decl. ¶¶ 26-28. But this is virtually the same claim that WorldCom raised – and the FCC rejected – in *Qwest III*. *See Qwest 27/ Order* ¶ 59. The FCC has held that Qwest’s interval for updating CSRs “is the same for both [W]holesale and [R]etail accounts.” *Id.* 45/ Moreover, because CLECs use the same process as Qwest to submit subsequent orders before the CSR has been updated, the process cannot be – and is not – discriminatory. *See* OSS Reply Decl. ¶ 31.

Nevertheless, to improve the CLEC experience in this area, Qwest expects to implement an additional system capability in EDI version 12.0 to simplify the process for submitting subsequent LSRs for such orders. *See id.* ¶ 32. This change will create a new field to allow CLECs to specify that the LSR submitted is a subsequent change to a pending order. *See id.* This will prevent Qwest’s OSS from running an “ownership” check on such orders before processing, making the submission of such orders easier. *See id.*

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45/ *See also* Qwest November 22a 2002 *Ex Parte* Letter, WC Docket No. 02-3 14 (stating that, of the 10,000,000 service orders processed from June through September 2002, 96.53 percent of CSRs posted within five days and 87.12 percent of CSRs posted within 24 hours).

#### **4. Commercial Performance Results**

WorldCom claims that Qwest's commercial performance for, among other things, flow-through and billing accuracy reveals deficiencies in its OSS. *See* WorldCom at 18, Lichtenberg Decl. ¶ 32. But the performance results WorldCom cites to support its claim reflect region-wide results, not the results for the three application states. *See id.* Qwest's commercial performance results in New Mexico, Oregon and South Dakota—the only states at issue in this proceeding – demonstrate that Qwest provides CLECs with flow-through and accurate bills on a non-discriminatory basis. *See* Williams Decl. ¶¶ 212-276 (Flow-Through under PO-2B) and 303-308 (Billing Accuracy under BI-3A) <sup>46/</sup> Indeed, the Department of Justice notes that “the performance data submitted in support of this application appear generally consistent with those submitted in support of [the Qwest III] application,” which was approved. DOJ Evaluation at 2. WorldCom's performance-related claims have no merit.

#### **5. Loop Qualification Language in Oregon SGAT**

The only OSS-related issue raised by AT&T pertains to an SGAT provision on loop qualification. *See* AT&T Comments at 29-30. The provision, which, according to AT&T, can be found in all of Qwest's SGATs except Oregon, permits CLECs to obtain information on spare copper facilities where Qwest has deployed significant amounts of Integrated Digital Loop Carrier (“IDLC”) technology so they can determine whether there are facilities that can readily accommodate advanced services such as Digital Subscriber Line (“DSL”). *See, e.g.*, Qwest IV, App. B, Tab 1, NM SGAT at § 9.2.2.2.1.1

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<sup>46/</sup> In most of the instances in which Qwest missed the benchmark or parity standard under these PIDs, it missed by only a handful of orders or order volumes were low (preventing the result from being statistically significant). *See* Williams Decl. ¶¶ 212-276, 303-308

AT&T claims that Qwest's **SGAT** in Oregon should include this provision. See AT&T Comments at 29-30. We agree. We note that, in order to minimize confusion in the course of the Section 271 proceeding in Oregon, Qwest would modify its **SGAT** to reflect only (1) those terms agreed to by all parties, or (2) terms specified by the OPUC. See OSS Reply Decl. ¶ 34. As a result, it appears that this provision – which was neither subject to agreement by the parties (it was initially opposed by AT&T) nor specified by the OPUC for inclusion – was not added to Qwest's SGAT in Oregon. See *id.* Nevertheless, the option of obtaining this type of information has been available to CLECs in Oregon and elsewhere since August 2001. See *id.* Qwest now has added this reference to its Oregon SGAT by filing an amendment on February 21, 2003. See *id.* This amendment, assuming it is approved by the OPUC on March 31, will become effective on April 1, 2003. <sup>47/</sup> See *id.*

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

There is no merit to WorldCom's assertion that "Qwest's performance metrics show repeated failures to meet performance measures." WorldCom at 18 (citing Lichtenberg Decl. ¶ 32). As WorldCom acknowledges, its allegations are based solely on regionwide performance results rather than on data particular to the application states. *Id.* WorldCom's allegation is thus only tangentially relevant, at best, to the issue of whether Qwest satisfies performance obligations in New Mexico, Oregon and South Dakota. While the performance results for these three states contribute to Qwest's regionwide results, the company's regionwide

<sup>47/</sup> It also is worth noting here that Qwest successfully implemented router testing for line sharing on February 12, 2003, as promised in the Qwest IV Application. See Declaration of Karen A. Stewart, Line Sharing/Line Splitting ¶ 35.

results, standing alone, cannot overcome its demonstration that it satisfies each of the PIDs in the three application states

It is noteworthy in this regard that, as to each of the nine states for which Qwest received Section 7-71 authority in the *Qwest III* decision, the Commission found Qwest's performance sufficient to satisfy its obligations under the compliance checklist.<sup>48/</sup> That performance included all the months relied upon in the instant application, except for November 2002, and the nine states make up the majority of the 14 states contributing to Qwest's nationwide results cited by WorldCom. Taken with the three application states here, for which Qwest also meets its performance obligations, virtually all states in Qwest's region are represented and demonstrably satisfy each performance metric.

With respect to the three application states specifically, Qwest's performance for each PID WorldCom targets in its comments demonstrates that Qwest provides the checklist items at acceptable levels of quality. As set forth in the Declaration of Michael G. Williams ("Williams Decl."), Qwest performance on UNE-P repair satisfies the relevant performance metrics for each of New Mexico, Oregon and South Dakota. See Williams Decl. ¶¶ 331, 333, 335, 339, 342, 345, 347, 349. 352. Qwest's performance under its line sharing repair PIDs for New Mexico and Oregon also was generally strong.<sup>49/</sup> The trouble rate for 911/E911 was zero

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481 The Department of Justice has noted that "the performance data submitted in support of [the Qwest IV] application appear generally consistent with those submitted in support of [the Qwest III] application." DOJ Evaluation at 2.

<sup>49/</sup> See *id.* ¶¶ 391, 394. There were no CLEC orders for line sharing in South Dakota between August and November 2002. *Id.* ¶ 395. Thus, irrespective of WorldCom's claims regarding Qwest's nationwide performance, there can be no claim that Qwest failed to meet any performance metric with respect to line sharing. It also bears noting that WorldCom does not order line sharing from Qwest, so it is curious that WorldCom raises line sharing performance in its comments.

for New Mexico, *id* ¶ 413, and was nonexistent in South Dakota, *id* ¶ 418, and the four-month average trouble rate in Oregon was at parity in all four months and never higher than 0.79 percent. *Id* ¶ 416. Finally, Qwest had no performance results for EELs in New Mexico (and thus no performance deficiencies), in Oregon and South Dakota, where volumes are so low that even a single missed commitment can cause Qwest to miss its PID, Qwest exceeded the benchmark in three of the last four months for each state. *Id.* ¶ 355. Qwest's performance on each of these PIDs for December is generally consistent with its performance in August through November. *See generally* Qwest's *ex parte* submission 1/2903B.

Finally, even were the Commission to consider WorldCom's assertions based on Qwest's nationwide performance, there still would be no basis for the claim that Qwest experienced repeated failures to meet the PIDs to which WorldCom refers. In numerous instances, the statistical disparity cited does not equate to competitive disadvantage. In fact, WorldCom points out statistical differences in some cases where actual differences are so tiny that common sense dictates that they cannot impede the ability of CLECs to compete.

For example, with respect to OP-3C Installation Commitments Met - No Dispatches for Qwest DSL for October and November, Qwest's results were above 97 percent, with the statistical parity misses being due to retail results being above 99 percent, so the actual difference is not competitively significant. *See* Lichtenberg Decl., Att. Also in this category is OP-5 New Service Quality for Qwest DSL results for October through December, where the actual performance difference is under 1 percent in every month, and the results are at or above 99 percent in each case. *Id.* WorldCom's complaint about the MR-8 -Trouble Rate for UNE-P (Centrex) also is misplaced, as the actual trouble rate for October through December is less than 1 percent and the actual difference between CLEC and Qwest trouble rates is also less than

1 percent *Id.* Similarly, for MR-8 -Trouble Rate for UDIT above the DSI Level, the actual trouble rate is under 2 0 percent and the actual difference between the CLEC and Qwest trouble rates is less than 1 0 percent *Id.*

Moreover, with respect to the trouble rate for E911 (MR-8), which WorldCom claims Qwest missed in six of the last twelve months, the average rate for the most recent four months (September-December) was at parity regionwide in two of four months, and the CLEC trouble rate averaged a miniscule 0.21 percent versus 0 07 percent for Qwest retail – a competitively insignificant difference 50/ All E911 trouble reports cleared in less than two hours, well ahead of the four-hour target *See id.* at 286 (MR-6D)

With respect to the repair repeat report rate for UNE-P-POTS non-dispatch (MR-7C), Qwest's regional performance results for MR-7C\* (which tracks the actual repeat trouble rate by excluding all trouble reports where no trouble is found ("NTF") and no other report follows within 30 days of the original) shows Qwest performing at parity with like retail service if NTF reports are excluded 51/ There are legitimate explanations for all of the other alleged PID misses alleged by WorldCom, including instances where customers requested future appointment times. These explanations are set forth in the Williams Reply Declaration submitted in support of these reply comments

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50/ *See* January-December 2002 Regional Commercial Performance Results at 288 (MR-8) Moreover, Qwest's January 2003 regional performance results show the E911 trouble rate at parity, with CLECs experiencing a trouble rate of 0.03 percent versus 0 07 percent for Qwest *See* February 2002-January 2003 Regional Commercial Performance Results at 288 (MR-8)

51/ Reply Declaration of Michael G. Williams, Performance Measures Results ("Williams Reply Decl.") ¶ 10 Qwest also notes that MR-9, another PID for which WorldCom claims Qwest's performance is deficient, is a metric that the Commission has not analyzed in prior 271 applications. In any event, with respect to regionwide performance, Qwest met repair appointments at a level of 90% or greater each month throughout 2002 *Id.* ¶ 11

**V. QWEST'S NETWORK ELEMENTS AND OTHER CHECKLIST OFFEFUNGS COMPLY FULLY WITH TELRIC AND OTHER APPLICABLE RULES.**

**A. Qwest's Pricing and Rate Structure for Transport Entrance Facilities Satisfy TELRIC and Other Applicable Rules, as the Commission Has Already Found.**

In the *Qwest 271 Order*, the Commission rejected AT&T's argument concerning Qwest's rate structure for the entrance facilities (or "EUDIT") component of transport and interconnection trunks. The Commission found no TELRIC error in the state commissions' decisions to permit Qwest to charge flat-rate, non-distance-sensitive rates for entrance facilities transport, because "the Commission's TELRIC rules do not specify that such charges must be based on distance" *Qwest 271 Order* ¶ 365. The Commission also noted that it had approved numerous 271 applications in states that used the identical rate structure. *Id.* It "dismiss[ed] AT&T's argument that the charge for the link between a competitive LEC switch and a Qwest switch should be recovered in the same manner as links between Qwest switches," because, the Commission found, AT&T had failed to refute Qwest's showing that "there are both economic differences and engineering differences that warrant a different rate structure and different rates." *Id.* ¶ 366

Notwithstanding the Commission's clear holding, AT&T now repeats nearly identical arguments challenging the same rate structure for the same elements in New Mexico, Oregon, and South Dakota. AT&T Comments at 23-27, Wilson Decl. ¶¶ 7-19. To the extent AT&T's arguments are the same as those the Commission already rejected in the *Qwest 271 Order*, the Commission should reject them again here for the same reasons. The only "new" arguments AT&T raises here are factually unfounded, as explained in the Thompson/Freeberg Reply Declaration.

First, AT&T submits that some CLEC switches serve more lines than some Qwest switches, and argues that this refutes Qwest's contention that transmission facilities between CLEC points of interface and Qwest serving wire centers are typically lower capacity than transmission facilities among Qwest offices. AT&T Comments, Wilson Decl. ¶¶ 13-15. But AT&T is wrong as a factual matter. Interoffice circuits are used for multiple purposes (including carrying non-switched as well as switched traffic), and thus tend to be larger capacity trunks than entrance facilities, which serve only the single purpose of connecting a Qwest wire center with a CLEC point of interface. The size of a CLEC switch, in terms of the number of lines served, relative to the size of Qwest switches, thus is not necessarily indicative of the amount of traffic that is transported over the interoffice facilities versus the entrance facility. In fact, in Oregon, New Mexico and South Dakota, Qwest has not provisioned any entrance facilities to CLECs using a system with a capacity higher than OC-3. By contrast, in New Mexico and Oregon, 96% to 100% of Qwest's interoffice transmission facilities are at a OC-48 system capacity, and in South Dakota, about 65% of Qwest's interoffice facilities are at a OC-48 system capacity. The greater economies of scale and scope that are achieved by interoffice transport facilities means that, all else being equal, a given circuit at any given capacity level (e.g., a DSI) costs less to provide over interoffice facilities than over entrance facilities because the investment and other costs can be spread over a greater number of circuits. Thompson/Freeberg Reply Decl. ¶¶ 10-12.

Second, AT&T disputes Qwest's showing that, even apart from these differences in capacity, circuits combining entrance facilities with interoffice facilities are more costly (on average) than interoffice transport circuits alone because the former require additional electronics much more often than do the latter. AT&T Comments, Wilson Decl. ¶¶ 16-18. But AT&T's argument on this point fails as well. An interoffice transport circuit linking any two

Qwest central offices within a local calling area, more often than not, can be established without the need for any intermediate electronics. By contrast, in most cases dedicated circuits between CLEC points of interface and Qwest central offices must pass through an intermediate point (the Qwest serving wire center) and must be accompanied by *additional* multiplexers and other electronic equipment. This is due to the fact that the traffic on an entrance facility is destined for multiple Qwest wire centers and must be disaggregated and multiplexed to the higher interoffice transport level. Thompson/Freeberg Reply Decl. ¶¶ 13-14

The additional electronic equipment that is typically utilized at the serving wire center raises the cost of circuits combining interoffice facilities with entrance facilities relative to interoffice transport alone. Moreover, the non-distance-sensitive cost of the central office electronics is the dominant cost driver for relatively short (on average 2-3 mile) entrance facilities, accounting for 73% of total costs on average for DSI facilities and 80% for DS3 facilities. By contrast, for interoffice facilities, which tend to be significantly longer (10-20 miles on average), the distance-sensitive outside plant costs account for 55% to 90% of total costs on average for both DS1 and DS3 facilities (depending on the distance being traversed and the capacity of the circuit). Thompson/Freeberg Reply Decl. ¶¶ 8-9

Finally, and most significantly, contrary to AT&T's bottom-line argument, 52/ Qwest's rates for a representative composite of entrance facilities (EUDIT) and interoffice transport (UDIT) in the states at issue here are well within the zone of reasonableness established by the corresponding composite rates applicable in other states for which this Commission has granted section 271 authorization. The TELRIC-compliant transport rates in Oregon, New

52/ AT&T Comments, Wilson Decl. ¶ 10 ("The principal effect of these 'entrance facility' charges is dramatically to raise the price of interconnection .")

Mexico and South Dakota are not significantly higher than transport rates in other states that include only the AT&T-preferred distance-based rates, or comparable rates in other states. See Thompson/Freeberg Reply Decl ¶ 15; Reply Cxh JLT/TRF-1. The Commission should once again reject AT&T's challenge to Qwest's pricing and rate structure for entrance facilities.

**B. The Pricing-Related Arguments of AT&T, Integra and the Payphone Associations Are Not Appropriate for Consideration in this Section 271 Proceeding.**

Qwest demonstrated in its application that its existing rates for UNEs, interconnection, and reciprocal compensation comply with all applicable rules and policies, including the TELRIC pricing rules. No party submits any evidence refuting this showing. However, three parties – AT&T, Integra, and the Payphone Association – raise tangentially pricing-related arguments that the Commission has already held to be irrelevant to Section 271 proceedings.

AT&T raises – inappropriately, for the first time in this Section 271 proceeding – a complicated dispute relating to which rates – TELRIC reciprocal Compensation rates or access charges – should apply to certain local “transit” traffic carried over commingled Feature Group D trunks, pursuant to a New Mexico interconnection agreement between AT&T and Qwest. See Thompson/Freeberg Reply Decl ¶¶ 17-20. AT&T's arguments involve “a specific carrier-to-carrier dispute[ ]” on an issue “that our rules have not yet addressed and that do not involve *per se* violations of the Act or our rules” – and thus are not appropriately dealt with in the context of a section 271 proceeding.” <sup>53/</sup> Moreover, the dispute involves a *de minimis* amount of money and has absolutely no impact on competition. <sup>54/</sup>

<sup>53/</sup> *Qwest 271 Order* ¶ 325 (citing *BellSouth Five-State 271 Order*, 17 FCC Rcd 17721-22, ¶ 227); *Pennsylvania 271 Order*, 16 FCC Rcd at 17470, ¶ 92; *Texas 271 Order*, 15 FCC Rcd at

Both Integra and the Payphone Association raise issues that the Commission held in the *Qwest 271 Order* could not be addressed in Section 271 proceedings. Integra complains that Qwest is proposing UNE rates significantly higher than the currently effective rates in a pending rate proceeding in Oregon – a proceeding that Qwest does not expect to be completed until mid- to late 2004. Integra Comments at 2-4; Thompson/Freeberg Reply Decl ¶ 26. But the Commission has made it clear that “[t]he existence of a pending UNE rate investigation in [a state] does not lead us to conclude that Qwest’s current rates [in that state] 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” *Qwest 271 Order* ¶ 307 (citing *Georgia Louisiana 271 Order*, 17 FCC Rcd at 9066-67 ¶ 97 (citing *Rhode Island 271 Order*, 17 FCC Rcd at 3317 ¶ 31)). Similarly, as the Commission held in the *Qwest 271 Order*, the Payphone Association’s complaints about whether Qwest’s “payphone [access line] rates comply with our rules cannot, and should not, be decided in the context of this section 271 application.” 55/

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18541, ¶ 383, *see also AT&T Corp. v. FCC*, 220 F.3d 607, 621-22, 630-32 (D.C. Cir. 2000). In the recent Verizon Virginia arbitration proceeding, the Bureau confirmed that “the Commission has not had occasion to determine whether incumbent LECs have a duty to provide transit service [at TELRIC rates] under this provision of the statute, nor do we find clear Commission precedent or rules declaring such a duty.” *Petition of WorldCom, Inc. Regarding Interconnection Disputes with Verizon Virginia Inc.*, CC Docket No. 00-218, DA 02-1731, ¶ 117 (WCB rel. July 17, 2002).

54/ Although not relevant to the disposition of this proceeding, it should be noted that Qwest is prepared to resolve the matter amicably with AT&T. Thompson/Freeberg Reply Decl. at n 29.

55/ *Qwest 271 Order* ¶ 507. *See also* Thompson/Freeberg Reply Decl. ¶ 27. Notably, although this is not relevant to the disposition of this Section 271 application, on February 14, 2003, Qwest implemented significantly lower payphone access line rates in Oregon, pursuant to a stipulation negotiated with the Northwest Public Communications Council.

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

Various commenters raise miscellaneous other issues that they assert present grounds for denial of this application. Some of these matters already were addressed in the *Qwest 271 Order*. Others are pending in other fora and are not properly presented in the context of a Section 271 proceeding. None of them provide any basis for an adverse decision here.

**A. Touch America Has No Foundation for Its Allegations that Qwest Will Not Comply with Section 272.**

Only Touch America makes any substantial comment on Qwest's Section 272 showing, <sup>56</sup> and its comments raise no significant issues that were not considered and rejected by the Commission in the *Qwest 271 Order*. The application, including the declarations of Marie E. Schwartz, Judith L. Brunsting, and Jerome R. Mueller, shows that QC, QLDC, and QCC have the necessary controls in place to ensure that they will provide in-region interLATA services in compliance with Section 272. QLDC is compliant with Section 272 today and is in fact providing service pursuant to Commission authority. QCC will not provide in-region interLATA services until the completion of QCII's financial restatement process, at which time it will be beyond dispute that it is maintaining its books, records, and accounts in accordance with generally accepted accounting principles ("GAAP").

Touch America does not challenge the fact that QLDC is operating in compliance with Section 272 today or that it will continue to do so upon grant of this application. Nor does Touch America challenge in any substantive way Qwest's showing that QCC will be in a position to provide service in compliance with Section 272 upon completion of the pending

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<sup>56</sup> See 47 U.S.C. § 271(d)(3)(b) (providing that the Commission must find that "the requested authorization will be carried out in accordance with the requirements of section 272").

restatement process. At that time QCC will have made the accounting adjustments necessary to hold out its books, records and accounts for prior periods as compliant with GAAP. The application demonstrates that Qwest management is committed to GAAP compliance and that new controls are in place to assure compliance with Section 272 going forward. See Application at 158-59; Letter from Oren C. Shaffer to Marlene H. Dortch (August 26, 2002), Attachment 5, Appendix P, Volume 4c, Tab 1. Qwest management has shown its commitment to accurate bookkeeping and compliance with GAAP, and the enactment and implementation of the Sarbanes-Oxley Act of 2002 <sup>57/</sup> provides this Commission added assurance that compliance with GAAP will be a top priority of QCC. <sup>58/</sup>

In the face of this record, Touch America resorts only to rhetoric. It makes gross allegations challenging Qwest's accounting controls, simply ignoring all of the evidence that

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<sup>57/</sup> Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 16 Stat. 745 (to be codified in scattered sections of 15 U.S.C., 18 U.S.C., and 28 U.S.C.).

<sup>58/</sup> Among other things, this new statute requires any public company's chief executive officer and chief financial officer to certify, with respect to quarterly and annual reports filed after August 29, 2002, that to the officer's knowledge there are no material misstatements or omissions in the report and that the report fairly presents the company's financial condition, and to certify the quality of the company's internal controls and procedures that are intended to assure the quality of its financial reporting. *Id.* § 302, Certification of Disclosure in Companies' Quarterly and Annual Reports, 67 Fed. Reg. 57,276, 57,288 (to be codified at 17 C.F.R. § 240.13a-14). The Securities and Exchange Commission has stated that the certification that the report fairly presents the company's financial condition is not limited to, but is broader than, financial reporting requirements under generally accepted accounting principles. See *id.*, 67 Fed. Reg. at 57,279. A separate provision requires that each periodic report filed with the SEC be accompanied by a statement of the company's CEO and CFO that the report "fully complies" with the requirements of the Securities Exchange Act of 1934 and that the information in the report fairly presents, in all material respects, the company's financial condition and results of operations. *Id.* § 906 (to be codified at 18 U.S.C. § 1350(a)-(b)). This certification requirement is not limited to the officer's knowledge, and the "fully complies" statement is not limited to material compliance. The Act imposes criminal penalties if an officer knowingly or willfully makes a false certification. *Id.* § 906 (to be codified at 18 U.S.C. § 1350(c)). In light of the regulatory environment created by this statute and enforced by both the SEC and the Department of Justice, the FCC can be assured that Qwest's Section 272 affiliates will comply with GAAP.

Qwest, and its current management and new accountants, are committed to and have implemented appropriate controls and procedures. Similarly, Touch America alleges that Qwest's application somehow was not "complete when tiled." Touch America Comments at 3. Qwest has presented complete information on QLDC in its application, and Touch America does not address it. Qwest also has provided complete information on QCC, making clear that QCC also will operate in compliance with Section 272 upon completion of the pending restatement process. Touch America does not show otherwise. This record is sufficient for the Commission to make the predictive judgment called for in Section 271(d)(3)(b).

For all of these reasons, the Commission should reject Touch America's unfounded attacks and find that Qwest will comply with Section 272 in its provision of in-region interLATA services.

**B. The SDPUC Has Approved Qwest's QPAP and Recommended that Qwest's Application for interLATA Authority in South Dakota Be Granted**

The SDPUC initially declined to accept certain features of Qwest's proposed South Dakota QPAP, including Qwest's proposed annual cap on its potential financial liability and limitations on the ability of the SDPUC to require that Qwest make future changes to the QPAP. See SDPUC Comments at 8-16. On February 17, 2003, Qwest filed with the SDPUC a revised QPAP that included some changes to which Qwest had agreed in correspondence with the SDPUC staff in late January 2003, and others that the SDPUC noted in its Comments in this proceeding would be "acceptable" in order to resolve the remaining open issues regarding the QPAP. See SDPUC Comments at 11, 14, 16 <sup>59/</sup>. In addition, Qwest asked the SDPUC to accept

<sup>59/</sup> The SDPUC stated in its Comments that, "upon the making of [the QPAP changes specified in the Comments], the [SDPUC] would then recommend to the FCC that it would be in the public interest to grant Qwest section 271 approval." *Id.* at 16

the following provision in the six-month review section of the South Dakota QPAP, which is also included in other approved Qwest PAPs. The provision states:

16.1.2 Nothing in this PAP precludes the Commission from modifying the PAP based upon its independent state law authority, subject to judicial challenge. Nothing in this PAP constitutes a grant of authority by either party to this agreement nor does it constitute a waiver by either party to this agreement of any claim either party may have that the Commission lacks jurisdiction to make any modifications to this PAP, including any modifications resulting from the process described in Section 16.0.

On February 20, 2003, the SDPUC voted to accept the revised QPAP, including the additional language, and to recommend that the FCC approve Qwest's application for Section 271 authority for the State of South Dakota. The SDPUC's decision was embodied in its *Order Regarding Public Interest Compliance Filing and Final Recommendation to the FCC*, TCO1-165 (SDPUC Feb. 26, 2003), in which it concluded that "Qwest's entry into the interLATA market in South Dakota is in the public interest" and recommended that the FCC grant Qwest's application.

**C. The FCC and NMPRC Already Have Rejected AT&T's Argument that "Unfiled Agreements" Matters in New Mexico Prevent a Public Interest Finding Here**

AT&T once again argues that issues related to Qwest's past interpretation of Section 252 provide a basis for denying the company authority under Section 271 here. AT&T begrudgingly admits that the Commission already has rejected similar argumentation in the *Qwest 271 Order*. AT&T Comments at 31-32. Nevertheless, AT&T distorts the findings of the NMPRC in an attempt to argue that New Mexico is a different case. According to AT&T, the so-called "unfiled agreements" record in New Mexico presents a basis for finding that the public interest would not be served by granting 271 authority to Qwest here. *Id.* at 30-35. See *Qwest 271 Order* ¶¶ 466-91.

First of all, AT&T deliberately ignores the NMPRC's conclusion rejecting this very same argument based on that commission's own investigation. The NMPRC stated that it was "not persuaded that the unfiled agreements in issue have had the effect of significantly frustrating Congress' intent that local markets be open to competition." <sup>60/</sup> The NMPRC expressly concluded that the unfiled agreements matter does not provide a basis for rejecting 271 authority under the public interest standard. The NMPRC noted the remedial actions that Qwest had taken earlier in 2002, and concluded that these policies should prevent further compliance issues from arising in this area. *Id.* at paras. 302-04.

In its comments to the Commission here, the NMPRC has reaffirmed that the "unfiled agreements" issue does not provide a basis for challenging this application on public interest grounds.

Having reviewed the Commission's *Qwest 271 Order*, the NMPRC reports to the Commission that it stands squarely behind its recommendation that the Commission find that the local exchange market in Qwest's New Mexico territory is open to competition and there are no unusual circumstances that would make long distance entry contrary to the public interest under the particular circumstances of Qwest's section 271 application for New Mexico. [NMPRC Comments at 60 & n 223 (referencing, *inter alia*, "NMPRC findings and conclusions regarding its unfiled interconnection agreements investigation in Utility Case No. 3750") (citation omitted) ]

This is correct. As Qwest discussed in its application, the company has policies in place that are ensuring full compliance with Section 252 with respect to all new contracts with CLECs. Qwest

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<sup>60/</sup> NMPC Final *Order Regarding Compliance with the Remaining Aspects of Section 271* ¶ 302 (Oct. 8, 2002) ("NMPC Final Order"). It is disingenuous of AT&T to cite to other aspects of the NMPC Final *Order* without noting the commission's ultimate conclusion.

also has submitted for state commission review all previously unfiled contracts with CLECs containing current, ongoing obligations related to Sections 251(b) or (c) 61/

AT&T presents two arguments in its comments. First, AT&T speculates that additional agreements “may exist” that should be filed with the NMPRC. AT&T Comments at 31. However, AT&T fails to point to any such agreements, and Qwest has made clear that none exist. 62/

Second, AT&T claims that the Commission has made findings of intentional past discrimination that justify rejection of this application. *Id.* at 35. However, as noted above, the NMPRC in fact concluded - and has now reaffirmed in its comments - that its unfiled agreements record *does not* provide a public interest basis for denying Qwest Section 271 authority. Indeed, the NMPRC record underscores why the “unfiled agreements” matter should not be litigated in a Section 271 case. To begin with, the NMPRC has expressly contemplated further proceedings regarding the matter of any past non-compliance. *NMPRC Final Order* ¶ 302. This is consistent with the Commission’s view that such enforcement proceedings are not a matter for consideration in a Section 271 case. *Qwest 271 Order* ¶ 466.

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61/ Qwest Br. at 174-76. The previously-unfiled agreements were submitted in September 2002 and addressed by the relevant state commissions, including the NMPRC, in decisions issued in November and December. In addition, in January 2003 Qwest filed for state commission approval of various form contracts for standard product offerings which are and have been generally available to all CLECs. As Qwest explains in the application, it believes that these agreements are order form contracts exempt from Section 252. However, Qwest has no objection to filing them, and has done so given a question that arose in the *Qwest 271 Order* regarding the scope of the contract order form exception to Section 252. See Qwest Br. at 175-76.

62/ Nor has the NMPRC made any different finding. AT&T points to speculative language by the PRC in its order, based on issues that arose in the discovery process. However, the PRC has no basis for concern in this area, and Qwest reasserts that it has filed all contracts with New Mexico CLECs that require PRC approval under Section 252.

Furthermore, the record before the NMPRC itself demonstrates the legal confusion surrounding the interpretation of Section 252 prior to (and even after) the Commission's Declaratory Ruling on the subject, a matter directly relevant to a party's good faith <sup>63/</sup> The Declaratory Ruling was issued just two business days before the NMPRC's order. Perhaps understandably given the short interval, the latter is inconsistent with the Declaratory Ruling in important respects. For example, the NMPRC claims jurisdiction to approve backwards-looking dispute settlements that the Ruling excludes from Section 252. *NMPRC Final Order* ¶ 281. The NMPRC also claims the right to approve agreements with CLECs operating in other states but not in New Mexico. *Id.* ¶ 282. Qwest has filed for rehearing of the NMPRC ruling on these two issues, <sup>64/</sup> and the Commission does not need to address the contours of Section 252 here. For present purposes, these residual issues before the NMPRC only serve to further demonstrate the confusion regarding Section 252 in the past, and the reason why any past compliance matters do not justify an adverse public interest finding in a Section 271 application proceeding. The Commission reached this conclusion in the Qwest III proceeding, <sup>65/</sup> and it should do the same here.

AT&T also briefly references a potpourri of other arguments it made in the context of the Qwest III application, arguments that the Commission did not accept then and

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<sup>63/</sup> *Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, FCC 02-276 (Oct 4, 2002)

<sup>64/</sup> See Qwest Corporation's Motion For Rehearing Of The Final Order Limited To The Requirements To File Historical Settlement Agreements And Extraterritorial Agreements And Motion For Stay Of Those Requirements, Utility Case No. 3269 (filed Nov. 7, 2002).

<sup>65/</sup> See also *Qwest 271 Order* ¶ 499 ("Qwest responded to criticism in the Qwest I and Qwest II record by taking positive action to file agreements at a time when there was no Commission guidance on the definition of the statutory term 'interconnection agreement.'")

need not address now *Qwest 271 Order* ¶¶ 501-03 For all of AT&T's rhetoric, the bottom line is that Qwest's local markets are open in the states of New Mexico, Oregon and South Dakota. It follows that the public interest clearly is served by the new interexchange competition that Qwest will bring to consumers in those states

**D. The City of Portland's Allegations Regarding Access to UNEs Already Are Being Considered in an Appropriate Forum and Are Not Material to this Commission's Consideration of Qwest's Section 271 Application**

In its comments, the City of Portland, Oregon ("City of Portland" or "City") asks the Commission to reject Qwest's application for long distance authority in Oregon because Qwest allegedly is failing to honor the City's interconnection agreement. City of Portland Comments at 7-8 This is exactly the kind of interconnection dispute that the Commission has ruled does not belong in a Section 271 application proceeding. See, e.g., *Qwest 271 Order* ¶ 325 (citing *BellSouth Five-State 271 Order*, 17 FCC Rcd 17721-22, ¶ 227).

As background, Qwest is not refusing to honor the agreement; rather, the agreement is the subject of a pending arbitration proceeding in Oregon. The key issue in this arbitration is the understanding of the parties when they executed the interconnection agreement. Qwest believes the City's claims are unfounded, but in any event the arbitration is the proper place for the dispute to be resolved, not here

The City also criticizes Qwest for citing to its interconnection agreement with the City "in support of its application" and alleges that by doing so, Qwest "has misled the Commission." *Id.* at 5 This criticism is misguided. In the first place, Qwest does not rely on the City's interconnection agreement to support its application; Qwest has executed more than enough interconnection agreements in Oregon to satisfy Track A and, contrary to the City's allegation, does not refer to the City's interconnection agreement to demonstrate its compliance

with Checklist Item 1 66/ Furthermore, Qwest has made a concerted effort in its application to provide the Commission with a complete listing of its filed interconnection agreements in each state. Although the City criticizes Qwest for including an agreement that is the subject of pending arbitration proceedings, Qwest believes that the Commission benefits from seeing all of the agreements that the OPUC has approved. 67/

In short, the City's interconnection dispute is being addressed in the proper forum and is not properly considered in a 271 proceeding, especially when the City's complaints could have been but were not raised in the Oregon proceedings.

### CONCLUSION

The local exchange market in each of the application states is demonstrably open to competition. Qwest has satisfied its statutory checklist obligations and otherwise complied with the requirements of the 1996 Act, and it will continue to do so in the future. Its entry into the interLATA market in each of New Mexico, Oregon and South Dakota will ~~fulfill~~ the promise of competition for all the residents of these states.

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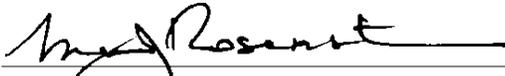
66/ Qwest's application does note that Qwest is providing the City with *collocation* under its interconnection agreement. but the City's comments do not allege that Qwest is failing to offer collocation.

67/ Presumably the City also would have complained had Qwest omitted listing its interconnection agreement in the application.

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

Respectfully submitted,

**QWEST COMMUNICATIONS  
INTERNATIONAL INC.**

By: 

R Steven Davis  
Dan L Poole  
Andrew D Crain  
John L Munn  
Lynn 4 Stang

Peter A Rohrbach  
Mace J Rosenstein  
Linda L Oliver  
David L Sieradzki

Qwest Communications  
International Inc  
1801 California Street  
Suite 4700  
Denver, CO 80202  
303-896-2794

Hogan & Hartson L L P.  
Columbia Square  
555 Thirteenth Street NW  
Washington, DC 20004  
202-637-5600

Counsel for Qwest Communications  
International Inc.

February 27, 2003

FEB 28 2003

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

**FEDERAL COMMUNICATIONS COMMISSION**  
**OFFICE OF THE SECRETARY**

In the Matter of )  
 )  
Qwest Communications )  
International **Inc.** )  
 )  
Consolidated Application for Authority )  
to Provide In-Region, InterLATA Services )  
in h'cw Mexico, Oregon and South Dakota )

**WC Docket No. 03-11**

To: The Commission

**REPLY COMMENTS OF  
QWEST COMMUNICATIONS INTERNATIONAL INC.  
IN SUPPORT OF CONSOLIDATED APPLICATION  
FOR AUTHORITY TO PROVIDE IN-REGION, INTERLATA SERVICES IN  
NEW MEXICO. OREGON AND SOUTH DAKOTA**

**Book 2 of 2**

Declaration of Gary L. Noble: Cricket Television Commercial	1
Rcply Declaration of Lynn MV Notnrinni and Christie L. Doherty: Checklist Item 2 (OSS)	2
Reply Declaration of Michael G. Williams: Performance Measures Results	3
Joint Rcply Declaration of Jerrold L. Thompson and Thomas R. Freeberg: Pricing and Checklist Item 13 (Reciprocal Compensation)	4