Director
Di Nunzio

Arizona Corporation Commission
DOCKETED
AUG 3 0 2001
DOCKETED BY

ARIZONA CORPORATION COMMISSION
RECEIVED
AUG 3 1 2001
Director of Utilities

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A.MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

IN THE MATTER OF U. S. WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. T-00000A-97-0238

DECISION NO. 63977

OPINION AND ORDER

Open Meeting
August 28 and 29, 2001
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. The Federal Telecommunications Act of 1996 ("1996 Act") added Section 271 to the Communications Act of 1934. The purpose of Section 271 is to specify the conditions that must be met in order for the Federal Communications Commission ("FCC") to allow a Bell Operating Company ("BOC"), such as Qwest Corporation ("Qwest" or the "Company"), formerly known as US WEST Communications, Inc. ("US WEST")[1] to provide in-region interLATA services. The conditions described in Section 271 are intended to determine the extent to which local phone service is open to competition.

2. Section 271 (c)(2)(B) sets forth a fourteen point competitive checklist which specifies the access and interconnection a BOC must provide to other telecommunications carriers in order to satisfy the requirements of Section 271. Section 271 (d)(2)(B) requires the FCC to consult with state commissions with respect to the BOC's compliance with the competitive checklist. Also, Subsection (d)(2)(A) requires the FCC to consult with the United States Department of Justice.

3. In Decision No. 60218 (May 27, 1997) the Commission established a process by

[1] For purposes of this Order, all references to US WEST have been changed to Qwest.

which Qwest would submit information to the Commission for review and a recommendation to the FCC whether Qwest meets the requirements of Section 271 of the 1996 Act.

4. On February 8, 1999, Qwest filed a Notice of Intent to File with the FCC and Application for Verification of Section 271(c) Compliance ("Application"), and a Motion for Immediate Implementation of Procedural Order. On February 16, 1999, AT&T Communications of the Mountain States, Inc. ("AT&T"), GST Telecom, Inc. ("GST"), Sprint Communications Company, L.P. ("Sprint"), Electric Lightwave, Inc. ("ELI"), MCI WorldCom, Inc., on behalf of its regulated subsidiaries ("MCIW"), and e-spire Communications, Inc. ("e-spire") filed a Motion to Reject Qwest's Application and Response to Qwest's Motion.

5. On March 2, 1999, Qwest's Application was determined to be insufficient and not in compliance with Decision No. 60218. The Application was held in abeyance pending supplementation with the Company's Direct Testimony, which was ordered pursuant to Decision No. 60218 and the June 16, 1998 Procedural Order. On March 25, 1999, Qwest filed its supplementation.

6. By Procedural Order dated October 1, 1999, the Commission bifurcated Operational Support System ("OSS") related Checklist Elements from non-OSS related elements. The Procedural Order categorized Checklist Items 3, 7, 8, 9, 10, 12 and 13 as being non-OSS related.

7. In its December 8, 1999 Procedural Order, the Commission instituted a collaborative workshop process to evaluate the non-OSS Checklist Items. The December 8, 1999 Procedural Order directed Staff to file draft proposed findings of fact and conclusions of law for review by the parties within 20 days of each Checklist Item being addressed. Within ten days after Staff filed its draft findings, the parties are to file any proposed additional or revised findings and conclusions. Staff has an additional ten days to issue its Final Recommended Report.

8. For "undisputed" Checklist Items, the Commission Staff was directed to submit its Report directly to the Commission for consideration at an Open Meeting. For "disputed" Checklist Items, Commission Staff submits its Report to the Hearing Division, with a procedural recommendation for resolving the dispute.

9. On February 17, 2000, the first Workshop on Checklist Item No. 13 ("Reciprocal Compensation") took place at the Commission's offices in Phoenix. Qwest filed testimony on its

compliance with Checklist Item No. 13 on March 25, 1999. On February 8, 2000 MCIW filed its comments and on February 10, 2000, AT&T and Cox Communications, Inc. filed their comments. Qwest filed reply comments on February 16, 2000. Parties appearing at the Workshop included Qwest, AT&T, MCIW, Sprint, Cox, e-spire and the Residential Utility Consumer Office ("RUCO").

10. On March 7, 2000, another Workshop convened to resolve outstanding issues regarding Checklist Item No. 13.

11. Although the parties were able to resolve many issues, they could not agree on four issues which were deemed "disputed" and went to impasse. Pursuant to the June 12, 2000, Procedural Order, Staff filed its Proposed Findings of Fact and Conclusions of Law ("Proposed Report") on May 15, 2001. On May 29, 2001, Qwest filed comments on Staff's Proposed Report and on June 8, 2001, MCIW and AT&T filed comments on the Proposed Report.

12. On June 26, 2001, Staff filed its Final Report that contains several revised Findings of Fact and Conclusions of Law based on the parties' comments. On June 27, 2001, Staff filed a revised Final Report that corrected several non-substantive errors in the June 26, 2001 Report and contained Staff's procedural recommendation. Staff recommends that the disputes on Checklist Item No. 13 be resolved based on the existing record, the parties' briefs and Staff's recommendations contained in its Final Report. A copy of Staff's revised Final Report is attached hereto as Exhibit A and incorporated herein by reference.

13. Following the workshops, the parties were unable to agree on four issues relating to Checklist Item No. 13. These issues went to impasse. In addition, at the time of the workshops on Checklist Item No. 13, the D.C. Court of Appeals had entered a decision that vacated and remanded the FCC's ISP Order back to the FCC for further review. The parties filed briefs on the effect of the D.C. Court of Appeal's order, which resulted in fifth impasse issue relating to reciprocal compensation for ISP-bound traffic.

14. The first disputed issue is whether the requirement in Qwest's Statement of Generally Available Terms ("SGAT"), that the Competitive Local Exchange Carriers ("CLECs") establish a Point of Interconnection ("POI") in each local calling area, is consistent with the 1996 Act and existing FCC decisions. The revised Final Report discusses this issue in paragraphs 49 through 58.

Subsequent to the Workshop on Checklist Item No. 13, Qwest eliminated its HUB/interLCA proposal and has agreed that CLECs may obtain a single point of interconnection in a LATA and pay Qwest TELRIC rates for the exchange of traffic to that single point. Consequently, the parties agree that this issue is no longer at impasse.

15. The second impasse issue is whether Qwest may charge private line rates for transport between local calling areas within a single LATA. The revised Final Report discusses the issue at paragraphs 59 through 66. This issue was resolved and no longer at impasse when Qwest agreed to revise its SGAT to allow a single POI in a LATA and eliminate the imposition of private line rates for transport between local calling areas within a single LATA.

16. The third impasse issue is whether a SGAT provision that requires CLECs to pay tandem transmission rates for trunking from Qwest's host switches to Qwest's remote offices is appropriate. The revised Final Report discusses this issue in paragraphs 67 through 71.

17. In Staff's opinion, Qwest has not supported its position for the application of tandem transmission rates in all host/remote scenarios. Staff believes that the application of tandem transmission rates in a host/remote situation would only be appropriate where the host and remote switching units are located in different wire centers. Staff recommended that Qwest be required to modify its SGAT to incorporate this restriction.

18. No party objected to Staff's proposed recommendation on this issue contained in its May 15, 2001 Proposed Report.

19. We concur with Staff's recommended resolution of this issue.

20. The fourth impasse issue is whether Qwest's definition of "tandem office switch" is appropriate. The revised Final Report addresses this issue at paragraphs 72 through 82.

21. All parties agree that a CLEC's switch will be considered a tandem when the switch serves the same geographic location as Qwest's tandem switch, and that Qwest's SGAT Section 4.11.2 should be modified as recommended by Staff in its revised Final Report.

22. We concur that the geographic scope test is the proper test for determining whether a CLEC's switch will be considered a tandem switch.

23. AT&T and MCIW object to Qwest's additional modification to SGAT Section

7.3.4.2.1 which states: "For traffic delivered through a Qwest or CLEC local tandem switch (as defined in this SGAT), the tandem switching rate and the tandem transmission rate . . . shall apply per minute in addition to the end office call termination rate described above so long as the terminating Party switches the traffic at both its tandem switch and separate end office switch. However, if CLEC or Qwest only switches the traffic once and this switch meets the definition of tandem switch in Section 4.11.2, then only the tandem switching rate shall apply." AT&T and MCIW believe that this proposed language improperly relies on the functionality (number of times traffic is switched) of the CLEC switch. They argue that the CLEC is entitled to receive the tandem interconnection rate as long as its switch meets the geographic scope test.

24. Staff concurs that the FCC has rejected the functional equivalency test, but believes that Qwest's proposed language was an attempt to recognize the FCC's symmetrical compensation rule and the tandem interconnection rate symmetry rule which provide that when Qwest does not charge a termination (local switching rate) or equivalent charge, the CLECs should likewise not obtain a termination or equivalent charge from Qwest.

25. Staff recommended that because there is a concern that Qwest's proposed language for Section 7.3.4.2.1 may invoke the functionality equivalency test, Qwest should be required to file new language that incorporates the FCC's symmetry rule.

26. We concur with Staff's recommended resolution of the fourth impasse issue. Qwest's proposed language to modify SGAT Section 7.3.4.2.1 may create confusion and should not be adopted. Qwest should file revised language that the parties agree incorporates the FCC's symmetry rules.

27. The fifth impasse issue is whether compliance with Checklist Item No. 13 requires Qwest to pay reciprocal compensation on ISP bound calls. The revised Final Report discusses the issue of reciprocal compensation for ISP traffic at paragraphs 83 through 94.

28. After the parties had briefed the issue of how the D.C. Court of Appeals remand affected whether ISP-bound calls were subject to reciprocal compensation, on April 27, 2001, the

FCC issued its ISP Remand Order.[2]

29. In its ISP Remand Order, the FCC found that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in Section 251(g), including traffic destined for ISPs. The FCC found that Section 251(b)(5) does not extend to ISP-bound traffic and that the traffic delivered to an ISP is predominantly interstate access traffic subject to Section 201 of the 1996 Act.

30. Staff concluded, based on FCC Orders and its ISP Remand Order, that the issue of reciprocal compensation for ISP-bound traffic is not relevant to whether Qwest meets the requirements of Checklist Item No. 13. Staff recommended that Qwest be required to revise its SGAT to be consistent with the recent FCC Order and this Commission's determinations resulting from the wholesale pricing docket.

31. Qwest and MCIW concurred with Staff's proposed Findings of Fact and Conclusions of Law on this issue as well as Staff's recommendations.

32. AT&T agreed that under the FCC's ISP Remand Order, Qwest is not obligated to revise its SGAT to include ISP-bound traffic as part of its reciprocal compensation obligations under Section 251(b)(5). AT&T argued, however, that Qwest should be ordered to pay any unpaid reciprocal compensation for ISP traffic pursuant to its current interconnection agreements to be considered in compliance with Checklist Item No. 13.

33. Staff disagreed with AT&T because AT&T did not offer evidence in this proceeding that Qwest is not honoring its existing interconnection agreement or that the parties intended to include ISP or IP telephony traffic in the agreement's reciprocal compensation provisions.

34. We agree with Staff that the record in this docket is not sufficient to address AT&T's concerns. AT&T may bring an action before this Commission or other forum of appropriate jurisdiction seeking an interpretation and enforcement of its interconnection agreement with Qwest.

CONCLUSIONS OF LAW

1. Qwest is a public service corporation within the meaning of Article XV of the Arizona

[2] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 et al., Order on Remand and Report and Order (Rel April 27, 2001)("ISP Remand Order").

Constitution and A.R.S. Sections 40-281 and 40-282 and the Commission has jurisdiction over Qwest.

2. The Commission, having reviewed the revised Final Report dated June 27, 2001, and conditioned upon Qwest's satisfactory compliance with the recommendations contained in the revised Final Report and adopted herein, concludes that Qwest has met the requirements of Section 271 pertaining to Checklist Item No. 13, and the Commission hereby approves and adopts the revised Final Report on Qwest's compliance with Checklist Item No. 13.

ORDER

IT IS THEREFORE ORDERED that the revised Final Report dated June 27, 2001, on Qwest's compliance with Checklist Item No. 13 is hereby adopted.

IT IS FURTHER ORDERED that Qwest Corporation shall file a revised SGAT incorporating the Findings and Conclusions herein.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 30th day of August, 2001.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
JR:dap

SERVICE LIST FOR: U S WEST COMMUNICATIONS, INC. (SECTION 271)

DOCKET NO. T-00000A-97-0238

U S WEST Communications, Inc.
1801 California Street, #5100
Denver, Colorado 80202

Maureen Arnold
U S WEST Communications, Inc.
3033 N. Third Street, Room 1010
Phoenix, Arizona 85012

Michael M. Grant
GALLAGHER AND KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Timothy Berg
FENNEMORE CRAIG
3003 N. Central Ave., Suite 2600
Phoenix, Arizona 85016

Mark Dioguardi
TIFFANY AND BOSCO PA
500 Dial Tower
1850 N. Central Avenue
Phoenix, Arizona 85004

Nigel Bates
ELECTRIC LIGHTWAVE, INC.
4400 NE 77th Avenue
Vancouver, Washington 98662

Thomas L. Mumaw
Jeffrey W. Crockett
SNELL & WILMER
One Arizona Center
Phoenix, Arizona 85004-0001

Darren S. Weingard
Stephen H. Kukta
SPRINT COMMUNICATIONS CO L.P.
1850 Gateway Drive, 7th Floor
San Mateo, California 94404-2467

Thomas H. Campbell
LEWIS & ROCA
40 N. Central Avenue
Phoenix, Arizona 85007

Andrew O. Isar
TRI
4312 92nd Avenue, N.W.
Gig Harbor, Washington 98335

Bradley Carroll
Cox Arizona Telcom, L.L.C.
1550 West Deer Valley Road
Phoenix, Arizona 85027

Richard M. Rindler
Morton J. Posner
SWIDER & BERLIN
3000 K Street, N.W. Suite 300
Washington, DC 20007

Michael W. Patten
BROWN & BAIN
2901 N. Central Avenue
P.O. Box 400
Phoenix, Arizona 85001-0400

Charles Kallenbach
AMERICAN COMMUNICATIONS SERVICES INC
131 National Business Parkway
Annapolis Junction, Maryland 20701

Karen L. Clauson
Thomas F. Dixon
MCI TELECOMMUNICATIONS CORP
707 17th Street, #3900
Denver, Colorado 80202

Richard S. Wolters
AT&T & TCG
1875 Lawrence Street, Room 1575
Denver, Colorado 80202

Joyce Hundley
UNITED STATES DEPARTMENT OF JUSTICE
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Joan Burke
OSBORN MALEDON
2929 N. Central Avenue, 21st Floor
P.O. Box 36379
Phoenix, Arizona 85067-6379

Scott S. Wakefield, Chief Counsel
RUCO
2828 N. Central Avenue, Suite 1200
Phoenix, Arizona 85004

Patricia L. vanMidde
AT&T
111 West Monroe, Suite 1201
Phoenix, Arizona 85003

Daniel Waggoner
DAVIS WRIGHT TREMAINE
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Douglas Hsiao
Jim Scheltema
Blumenfeld & Cohen
1625 Massachusetts Ave. N.W., Suite 300
Washington, DC 20036

Raymond S. Heyman
Randall H. Warner
ROSHKA HEYMAN & DeWULF
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, Arizona 85004

Diane Bacon, Legislative Director
COMMUNICATIONS WORKERS OF AMERICA
5818 North 7th Street, Suite 206
Phoenix, Arizona 85014-5811

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, Arizona 85281

Robert S. Tanner
DAVIS WRIGHT TREMAINE LLP
17203 n. 42ND Street
Phoenix, Arizona 85032

Mark P. Trinchero
DAVIS WRIGHT TREMAINE LLP
1300 S.W. Fifth Avenue, Suite 2300
Portland, Oregon 97201

Jon Loehman
Managing Director-Regulatory
SBC Telecom, Inc.
5800 Northwest Parkway
Suite 135, Room 1.S.40
San Antonio, Texas 78249

Lyndall Nipps
Director, Regulatory
Allegiance Telecom, Inc.
845 Camino Sure
Palm Springs, California 92262

M. Andrew Andrade
5261 S. Quebec Street, Suite 150
Greenwood Village, CO 80111
Attorney for TESS Communications, Inc.

Todd C. Wiley
GALLAGHER & KENNEDY
2575 E. Camelback Road
Phoenix, Arizona 85016-9225

Laura Izon
COVAD COMMUNICATIONS CO
4250 Burton Street
Santa Clara, California 95054

Al Sterman
ARIZONA CONSUMERS COUNCIL
2849 E 8th Street
Tucson Arizona 85716

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Steve Olea, Acting Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

EXHIBIT A

IN THE MATTER OF QWEST CORPORATION'S SECTION 271 APPLICATION

ACC Docket No. T-00000A-97-0238

REPORT ON QWEST'S COMPLIANCE

With

CHECKLIST ITEM: NO. 13 - RECIPROCAL COMPENSATION

June 26, 2001

DECISION NO. 63977

I. FINDINGS

A. PROCEDURAL HISTORY

1. On February 17, 2000, the first Workshop on Checklist Item No. 13 (Reciprocal Compensation) took place at the Commission's offices in Phoenix. Qwest[1] filed testimony on its compliance with Checklist Item 13 on March 25, 1999. Comments were filed on February 10, 2000 by AT&T and TCG (collectively "AT&T") and Cox. MCI WorldCom ("MCIW") filed its comments February 8, 2000. Qwest filed reply comments on February 16, 2000. Parties appearing at the Workshop included Qwest, AT&T, MCIW, Sprint, Cox, e-spire and the Residential Utility Consumer Office ("RUCO").

2. On March 7, 2000, another Workshop took place to resolve any and all outstanding issues regarding Checklist Item No. 13. At the conclusion of the Workshop, parties were directed to attempt resolution on all remaining disputed issues.

3. While many issues were successfully resolved between the parties, Checklist Item 13 was deemed "disputed" due to the parties' inability to come to agreement on four issues, which eventually went to impasse. Consistent with the Procedural Order, the Staff filed its Proposed Findings of Fact and Conclusions of Law. Qwest, MCIW and AT&T filed comments on the Staff's Proposed Report. Staff hereby files its final Report which contains several revised Findings of Fact and Conclusions of Law based upon the comments of the parties.

B. DISCUSSION

1. Checklist Item No. 13

a. FCC Requirements

4. Section 271(c)(2)(B)(xiii) of the Telecommunications Act of 1996 requires that a Section 271 applicant's access and interconnection include "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)."

5. Section 251(b)(5) imposes upon all local exchange carriers the obligation to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

[1] As of the date of this Report, U S WEST has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. Therefore, all references in this Report to U S WEST have been changed to Qwest.

6. Section 252(d)(2) states that"[f]or purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

7. Section 252(d)(2)(B) further states that "[t]his paragraph shall not be construed to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls."

b. Background

8. "Reciprocal compensation arrangements" refer to agreements between interconnecting carriers with regard to charges for the transport and termination of local telecommunications traffic over their respective networks.

9. When two carriers collaborate to complete a local call, the originating carrier is compensated by its end user and the terminating carrier is entitled to reciprocal compensation under Section 251(b) of the Act.

10. Under a reciprocal compensation agreement the originating carrier pays the terminating carrier for the use of the terminating carrier's end office switch, transport facilities and tandem switch facilities when used. USW-18 at p. 26.

11. The FCC defines "termination" for purposes of Section 251(b)(5) as the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the Called party's premises. 47 C.F.R. Section 51.701 (d).

12. Call transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC. 47 C.F.R. Section 51.701(d).

c. Position of Qwest

13. On March 25, 1999, Qwest witness Michael J. Weidenbach provided Direct Testimony stating that Qwest meets the requirements of Checklist Item 13, through its proposed SGAT and its various interconnection agreements between Qwest and the CLECs in Arizona.

14. Qwest offers Local Interconnection Service ("LIS") configured with both direct trunk transport and tandem switched transport. USW-18, p. 27.

15. CLECs may also elect to purchase transport services from each other, a third party, or from a third party that has leased a Private Line Transport Service facility from Qwest. Id. At p. 27.

16. Wherever possible, Qwest offers two-way trunking. USW-18, p. 27. The Qwest SGAT, Section 7.2.2.1.3 provides:

> Two-way trunk groups will be established wherever possible; however, either Party may elect to provision its own one-way trunks for delivery of local traffic to be terminated on the other Party's network.

17. LIS ordered to a local tandem will be provided as direct trunked transport. USW-18, p. 29.

18. Direct-trunked transport has two rate elements:

1) a fixed, per month charge
2) a fixed per mile charge

19. Both fixed charges vary with the length of the dedicated facility provided (based on airline mileage), as measured from the serving wire center to the tandem or end office. USW-18, p. 32. Different charges apply for DS1 and DS3 transmission levels. USW-18, p. 33. Direct trunk charges are adjusted when the trunks are established as two-way trunks. USW-18, p. 32. In this arrangement the CLEC pays only for Qwest transport facilities used by the CLEC to deliver its originating traffic to the Qwest end office switch. USW-18, p. 32. The reverse is true if the CLEC provides the direct trunks to Qwest. Section 7.3.2.3 of Qwest's SGAT addresses this issue.

20. Tandem-switched transport has two rate elements:

1) a transport element
2) a switching element.

USW-18, at p. 33.

21. Both the transport element and the tandem switching element are fixed, per minute of use rates. Id.

22. Qwest states that it has reciprocal compensation arrangements in place in accordance with Section 252(d)(2) of the Act. USW-18, p. 33. Qwest also states that it has a concrete legal obligation to pay reciprocal compensation. Id. Section 7.3 of the proposed SGAT states that "the reciprocal compensation provisions of this SGAT shall

apply to the exchange of local traffic between CLEC's network and Qwest's network." USW-18, at p. 33.

23. Moreover, the reciprocal compensation rates in the proposed SGAT and the existing interconnection arrangements are symmetrical. USW-18, p. 33. Symmetrical compensation arrangements obligate Qwest to pay a CLEC for transport and termination of traffic originated by Qwest at the same rate that Qwest charges to transport and terminate traffic originated by the CLEC. USW-18, p. 33. The proposed SGAT states that "[t]he Parties agree that per minute of use call termination rates as described in Exhibit A of this SGAT will apply for the termination of EAS/Local traffic. Id at p. 33.

24. Qwest will record, bill, and pay in accordance with the proposed SGAT and the various interconnection agreements in Arizona. USW-18 at p. 34.

25. All call types must be routed between networks, accounted for, and settled between the CLECs and Qwest. USW-18, at p. 34. Qwest uses a CroSS7 Platform System Seven (SS7) Network to determine requirements for billing and reporting. Id. at p. 34. Qwest states that where possible and appropriate, existing accounting and settlement records will be used to exchange records and bill. Id. at p. 34.

26. Qwest will make reciprocal compensation payments for local traffic in a timely manner as required by the FCC. Id. at p. 34. However, the CLEC must submit a bill which distinguishes between local traffic and non-local traffic. Id. at p. 34. The proposed SGAT states: "Amounts payable under this SGAT are due and payable within thirty (30) calendar days after the date of invoice." See Section 5.4.2.

27. Qwest's proposed SGAT contains a provision which excludes ISP traffic from reciprocal compensation requirements. See SGAT Section 7.3.4.1.4. Qwest states that this provision complies with existing requirements and rulings at both the State and Federal levels. USW-18, p. 35.

28. Qwest has developed detailed processes that support reciprocal compensation billing and payments to CLECs. USW-18, p. 37. A CLEC or Qwest may request an audit of reciprocal compensation billing. Id. The terms and conditions of the audit process are defined in Section 18.0 of Qwest's SGAT. Id. The party requesting the audit may review the non-requesting party's records, books and documents. USW-18, p. 37.

d. Competitors' Position

29. In their July 22, 1999 preliminary Statements of Position on Qwest's compliance with all Checklist Items, AT&T stated that Qwest was not in compliance with the requirements of Checklist Item 13. AT&T stated that Qwest is failing to pay CLECs reciprocal compensation amounts that are contractually due. Cox stated that it had

inadequate information at this time to determine whether Qwest is in compliance with this Checklist Item.

30. Other CLECs filing preliminary Statements of Position on July 22, 1999, included Sprint, MCIW, NEXTLINK Arizona, L.L.C ("NEXTLINK"), ELI, e-spire, and Rhythms. ELI stated that Qwest refuses to honor the terms of its contract agreement with ELI in Arizona for reciprocal compensation. Specifically, Qwest refuses to pay for ISP traffic as required by the ELI/Qwest Interconnection Agreement. ELI has been forced to litigate the issue before the Commission in Docket No. T-01051B-99-0689. e-spire stated that it had inadequate information at this time to determine whether Qwest is in compliance with this Checklist Item. MCIW stated that Qwest is failing to pay reciprocal compensation due in Arizona. Rhythms did not offer a Statement of Position on Checklist Item No. 13. NEXTLINK stated that its experience in other states shows Qwest does not honor its reciprocal compensation obligations.

31. Sprint stated that it is possible the Commission will soon take up the issue of reciprocal compensation for ISP-bound traffic in a Sprint/Qwest arbitration proceeding. Based on the FCC's requirement that arbitrations be concluded within 9 months from the date on which a request for negotiations is served, it is possible that the Sprint/Qwest arbitration will precede the hearing on Qwest's 271 application. Should this Commission rule during that arbitration proceeding that ISP-bound traffic is subject to reciprocal compensation, Qwest's current position would be contrary to the Commission's rules, and, unless modified, would fail to meet the requirements of Checklist Item 13.

32. Two parties filed additional comments before the first Workshop on Checklist Item 13. AT&T filed additional comments on February 8, 2000; and MCIW filed additional comments on February 10, 2000.

33. AT&T's comments set forth five main areas of concern with Qwest's compliance with Checklist Item 13. First, AT&T claims that Qwest's SGAT confuses interconnection trunks with Qwest's local interconnection service offering called LIS. AT&T-10 at p. 10. Qwest language in the SGAT should be more generic in nature, for interconnection trunks, and should be more definitive that either party may provide interconnection trunks, since it is doubtful that the CLEC would have a product called LIS. AT&T-10 at p. 10.

34. Second, AT&T argues that Qwest's SGAT improperly assumes that the CLEC must have a Point of Interconnection (POI) at every Qwest wire center. AT&T-10 at p. 10. This discriminates against the CLEC, forcing the CLEC to provision and pay for a trunking network as large as the Qwest network. AT&T-10 at p. 10. AT&T states that while this provision is not in the reciprocal compensation portion of the SGAT, it impacts the reciprocal compensation section as the cost sharing provisions contained in paras. 7.3.1.1.3.1 and 7.3.2.3(a) assume the CLECs are required to trunk to the Qwest wire center rather than some other point of the CLEC's choce. AT&T-10, p. 10.

35. Third, AT&T states that Qwest's SGAT Section 7.3.1 excludes the use of third party transit providers for the exchange of traffic "absent a separately negotiated agreement ...". The SGAT should be revised to indicate the type of agreement that would be acceptable for this arrangement. AT&T-10 at p. 11.

36. Fourth, AT&T states that in paragraphs 7.3.1.1.3.1, 7.3.2.3 (a), and 7.3.4.1.3 of the SGAT, Qwest assumes that the factor for ISP traffic, or any traffic to an enhanced service provider, will be totally ignored for purposes of reciprocal compensation. AT&T-10 at p. 11. AT&T argues that the Commission has not determined that ISP traffic should be excluded for purposes of reciprocal compensation. AT&T-10 at p. 11. AT&T states that in a recent interconnection complaint matter that ISP traffic should be treated as local in nature. See In the Matter of the Petition of Electric Lightwave, Inc. to Establish an Interconnection Agreement with Qwest Communications, Inc., Decision No. 62015 (Nov. 2, 1999). AT&T-10, p. 11. AT&T states that until the FCC adopts rules relating to this traffic, the SGAT should be consistent with the Commission's Electric Lightwave Order which treats this traffic as local for purposes of reciprocal compensation. AT&T-10, p. 11.

37. AT&T's final issue is with SGAT Section 7.3.4.2.3. AT&T-10, p. 11. AT&T states that through this provision, Qwest is requiring that the host switch for a remote office be considered as a tandem switch. AT&T-10, p. 11. This provision would burden the CLEC with tandem switching charges in a discriminatory manner, where no such charge is warranted. AT&T-10 at p. 11. There is no provision in the Act or FCC orders which would support this definition of tandem switching. AT&T-10, at p. 12. The distance between the remote office and the host switch cannot be counted as tandem access. AT&T-10 at p.12.

38. MCIW's comments on Checklist Item 13 took issue with many key provisions in the SGAT governing reciprocal compensation. MCIW-1, at pp. 4-12. MCIW recommended the following modifications/clarifications to specific SGAT provisions:

a. The existing End Office definition is too restrictive. End office switches are not limited to terminating station loops and perform much broader functions and services. Id. at p. 4. .The tandem definition should be changed so that a CLEC switch could be classified as a tandem. Id.

b. The CLEC tandem should be able to charge both the EO switching, tandem switching and related tandem transmission. Where the CLEC switches cover a comparable geographic area as Qwest's tandem switches, the reciprocal compensation rate for all local traffic terminated by that CLEC should should include both the end office and the tandem switching rate as set forth by the FCC in 47 C.F.R. Section 51.711. Id. at p. 5. Section 7.3.4.1.5 should be rewritten to permit a CLEC to get tandem treatment for a CLEC switch. Id. at p. 10.

c. The definition of "Exchange Service" contained in SGAT Section 4.22 should be modified to remove the words "as defined by Qwest's then-current EAS/local serving areas". Id. The local calling area is determined by the Commission and allowing Qwest the unilateral right to modify this definition is inappropriate. Id.

d. The reference to "Qwest's tariffed Switched Access rates" should be removed and replaced with "the billing Party's tariffed Switched Access rates." Id. at p. 5. CLECs should be able to bill IXC customers and the ILEC based on a CLEC tariff, not Qwests. Each party is permitted by law to establish its own Access Tariff rates. Id. at p. 6.

e. In Section 7.3.1.1.2, since the Entrance Facility is used for local interconnection purposes, it should be priced at TELRIC rates and included in the pricing appendix and not taken from Qwest's access tariffs. Id. at p. 6.

f. Section 7.3.1.1.3.1 rewrites the way CLECs compensate for facilities used for 2-way trunking. Id.

g. ISP traffic should not be excluded. Id. ISP traffic imposes no different costs of transport and termination on local exchange carriers than does voice traffic. Forcing CLECs to terminate this category of traffic without compensation is not justified by current FCC decisions and provides Qwest with an unfair advantage by granting it a "free ride" on the networks of the CLECs. Id. at p. 6. The requirement to track such traffic in order to exclude it from facilities compensation calculations also places an onerous administrative burden on the CLECs and increases the CLEC's costs associated with LIS two-way trunks. Id. at pp. 6-7. Therefore, Section 7.3.4.1.3 should be stricken in its entirety. Id. at p. 10.

h. In existing markets where a CLEC already has traffic data, the above method should apply. In new markets, CLECs should be able to wait one quarter and then bill in arrears based on the relative traffic flow for that quarter.[2] Id. at p. 7. This should also apply to EICT when collocation is used. Id. at p. 7. The same facilities cost sharing method should also be applied to Direct Trunk Transport ("DTT"). Id. at p. 8. MCIW recommended the same change to Section 7.3.2.4.1, dealing with the DS1/DS3 MUX. Id. at p. 9. MCIW further recommended the same change to Section 7.3.3.1.1 governing trunk installation

[2] MCIW recommends the following language: "The provider of the EF will share the cost of the EF as follows: (i) for augmentation of an existing trunk group, the initial relative use factor will be the relative use of the existing trunk group for the quarter immediately prior to the establishment of the new EF, or (ii) for establishment of a trunk group in a new market where no traffic has been exchanged, the Parties shall bill each other 3 months in arrears based on the relative use of the trunk groups for the 3 months prior. The nominal charge to the other Party for the use of the EF, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to the initial relative use factor for one quarter. Thereafter, the relative use factor will be adjusted on a quarterly basis based upon actual minutes of use data for all traffic." Id. at p. 7.

NRCS, if CLECs are required to pay the nonrecurring charges for trunk installation. MCIW Ex.-1, p. 9. MCIW's primary position, however, on trunk installation NRCs is that CLECs should not have to pay the nonrecurring charges for trunk installation. Id. MCIW argues that in the existing MCIW interconnection agreement with Qwest, the parties do not charge each other NRCs for trunk installation. Id. at p. 9.

i. Section 7.3.7 should be revised to provide that transit traffic rates should apply to all parties. Id.

j. Qwest should be able to identify traffic without calling party name ("CPN") at its tandem or it should have the ability to work with the originator of the traffic to determine the jurisdiction of the traffic and be made whole. Id. at p. 11. In addition, MCIW proposed one alternative solution to calls passed without CPN. The parties could use a "charge-to-number" as a proxy for CPN. This is a standard industry solution. MCIW-1 at p. 11.

e. Qwest Response

39. Qwest filed Reply Comments on February 16, 2000. In its Comments, Qwest stated that it meets the reciprocal compensation requirements of the 1996 Act through its SGAT and its interconnection agreements in Arizona. USW-19 at p. 12. Qwest also replied that the reciprocal compensation rates provided for in its agreements are cost-based under Section 252(d)(2).

40. Section 7.3.4.1.3 of Qwest's SGAT describes what Qwest believes its obligations are with regard to the payment of reciprocal compensation to Exchange Service (EAS/Local) Traffic. USW-19 at p. 12.

> As set forth above, the Parties agree that reciprocal compensation only applies to Exchange Service (EAS/Local) Traffic and further agree that the FCC has determined that traffic originated by either Party (the "Originating Party") and delivered to the other Party, which in turn delivers the traffic to the enhanced service provider (the "Delivering Party") is interstate in nature .

41. Qwest states that it is within its rights to exclude ISP traffic from the definition of reciprocal compensation, and therefore its SGAT specifically excludes traffic to enhanced service providers. USW-19 at p. 13.

42. Qwest further states that the language excluding ISP-bound traffic from the definition of local traffic is also contained in Qwest's SGAT. Qwest points to a recent

Declaratory Ruling[3] by the FCC which found that ISP-bound traffic is non-local interstate traffic.[4]

43. Qwest would not agree to MCIW's proposed change that would define a CLEC switch as a tandem switch for purposes of reciprocal compensation if the CLEC's switch has the capability of serving a comparable geographic area as Qwest's tandem. USW-19 at p. 14.

44. With respect to AT&T's SGAT issues, Qwest stated that there was no distinction between LIS trunks and interconnection trunks. Throughout the SGAT the terms LIS trunk and interconnection trunks are used interchangeably. USW-19 at p. 19. Contrary to AT&T's assertion that the SGAT requires a POI per "wire center", the SGAT actually requires a POI per "calling area." Id. Qwest went on to state that in a large metropolitan area, a calling area may include multiple wire centers. And, in the event a CLEC, like AT&T, wants Qwest to extend facilities from each wire center or calling area in a LATA to a single point – presumably at the CLEC's switch – the SGAT provides for this as well. USW-19, p. 19.

45. Finally, Qwest stated that it made many of the revisions to its SGAT requested by the parties, including Cox, MCIW and AT&T. USW-19, p. 19.

f. Workshops

46. During the February 17, 2000 Workshop, the parties agreed that because of the FCC's conclusion in the Bell Atlantic 271 Order that ISP bound traffic is nonlocal interstate traffic and that the reciprocal compensation requirements of Section 251(B)(5) of the Act does not govern, that it is not a Checklist Item 13 or 271 compliance issue. Additionally, the parties agreed that reciprocal compensation obligations regarding this type of traffic was appropriate for review in the Wholesale Pricing Docket. Many issues were subsequently resolved throughout the workshop with many being left open to be discussed off-line in an attempt at resolution. It was determined at the conclusion of this workshop that another full-day workshop would be necessary to finalize any and all remaining issues.

47. A final workshop was conducted on March 7, 2000 at the Commission's offices in Phoenix. The parties discussed all remaining outstanding issues. At the conclusion of the March 7. 2000 workshop, Checklist Item 13 was deemed disputed on the issues set out in Section g below.

---

[3] In the Matter of the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Declaratory Ruling (Rel. February 26, 1999).

[4] On appeal to the D.C. Circuit, this issue was remanded for further examination by the FCC. *See Bell Atlantic Telephone Companies v. FCC*, 2000 WL 273383 (D.C.Cir.).

g. Disputed Issues

48. The parties were unable to agree on the four issues which went to impasse involving reciprocal compensation. Statements of Position on the impasse issues were filed by AT&T on March 23, 2000, and Qwest on March 31, 2000. MCIW filed a letter on March 24, 2000 which concurred with the AT&T position. In addition, at the time of the Workshops on this checklist item, the D.C. Court of Appeal's decision was entered which vacated and remanded the FCC's ISP Order[5] back to the FCC for further review.[6] The parties later filed briefs on the effect of the D.C. Circuit Court's order, which resulted in one additional impasse issue on the ISP reciprocal compensation issue which is contained in Disputed Issue No. 5 below.

DISPUTED ISSUE NO. 1: Whether the SGAT's Requirement that the CLECs Establish a POI in each Local Calling Area is Consistent with the Act and Existing Commission Decisions?

a. Summary of Qwest and CLEC Positions

49. AT&T argues that Qwest's SGAT Section 7.1.2 requires CLECs to establish a point of interconnection ("POI") in each local calling area. AT&T March 23, 2000 Letter at p. 2.[7] If a CLEC does not wish to establish a POI in every Qwest local calling area, it must negotiate with Qwest. Section 7.1.2.4 of the SGAT permits interconnection to a hub location on a negotiated basis; however, under the SGAT the CLEC must purchase Qwest's private line facilities at existing private line rates (which are not cost-based) from the hub location to the CLEC POI. Section 7.1.2.5 and TR 222-223. AT&T argues that these rules are inconsistent with the 1996 Act, the FCC's order and rules, which permit interconnection at any technically feasible point. AT&T March 23, 2000 Letter at p. 2. In addition, AT&T argues that in Arizona, and most other States, the CLECs arbitrated and won the right to establish one POI per LATA. Qwest's requirement of one POI per calling area is inefficient and would inappropriately shift more of the cost burden for interconnection and reciprocal compensation on the CLEC and, therefore, is discriminatory.

50. AT&T also argues that Qwest has ignored the one POI per LATA requirement set forth in the AT&T/Qwest interconnection agreement recently in Phoenix by forcing trunking to more than one POI. Letter at p. 2. AT&T claims that Qwest is ignoring AT&T's established POI and, instead, seeks to require trunks to be put in place to all Qwest end offices. AT&T Letter at p. 2. It is a highly inefficient trunking arrangement, requiring unnecessary trunks and switch terminations. It is causing delays in provisioning which is resulting in delays for AT&T's local business.

---

[5] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999).
[6] *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (D.C. Cir. March 24, 2000).
[7] Letter dated March 23, 2000 from Richard S. Wolters, Attorney for AT&T, to Charles Steese, Attorney for Qwest.

51. Qwest on the other hand argues that the SGAT offers CLECs four different standard options for interconnection with the Qwest network: 1) entrance facilities; 2) collocation; 3) meet point arrangements; and 4) interlocal calling arrangements. Section 7.1.2 of the SGAT sets forth these four standard arrangements and Section 17 states that Qwest will consider any other technically feasible interconnection request. Qwest argues that AT&T and MCIW's argument that Qwest is denying CLECs the ability to obtain one POI per LATA misses the mark in that Qwest's fourth method of interconnection - interLocal Calling Area - offers CLEC the opportunity to obtain one actual POI per LATA.

52. Qwest argues that the real issue in dispute between the parties is the price that Qwest can charge for the transport of calls that it carries outside of a local calling area to a distant part of the LATA. If calls going in each direction are in balance, then the parties split the actual cost 50/50. However, in Arizona, 90 percent of the traffic is flowing from Qwest to CLECs (primarily due to ISPs) which could require Qwest to pay 90 percent of the cost of the facilities to any location in the entire LATA.

53. Qwest further argues that AT&T and MCIW's position is premised on the point that one POI per LATA constitutes "interconnection" as set forth in the Act and therefore, in their opinion, Qwest must construct facilities for CLECs at TELRIC rates no matter how untenable the request. Section 251(c)(2)(A) states that Qwest has a "duty to provide interconnection for the "transmission and routing of telephone exchange service and exchange access." Similarly, Section 252(d)(1), the TELRIC provision, only applies to interconnection as defined in Section 251(c)(2). Therefore, Qwest need not build for CLECs or charge TELRIC rates if the one POI per LATA does not meet the definition of "telephone exchange service" or "exchange access."

54. Finally, Qwest argues that one POI per LATA does not meet the definition of "telephone exchange service". *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91 (rel Dec. 23, 1999)., the FCC defined "telephone exchange service" under the Act and held that "telephone exchange service must permit 'intercommunication' among subscribers <u>within the equivalent of a local exchange area".</u> Id. at 23 (emphasis added). The FCC also held that private line services do not meet this definition. Id at 25-26.

b. <u>Discussion and Staff Recommendation</u>

55. In the parties' interconnection agreements, the Commission approved a single point of interconnection per LATA. On appeal, the Arizona District Court held that it is within the Commission's discretion to determine not only whether a CLEC may interconnect at a given point, but how many points of interconnection a CLEC must (or may) have. *U S WEST v. Jennings*, 46 F.Supp.2d 1004, 1021 (Az. 1999). The Court went on to state that in so doing, the ACC could require a CLEC to compensate Qwest for costs resulting from an inefficient interconnection. *Id.*

56. Thus, to the extent the SGAT requires CLECs to establish a point of interconnection with Qwest in each local calling area, the Staff recommends that the SGAT be modified to eliminate this requirement. In *U S WEST v. Jennings*, the Arizona District Court specifically rejected Qwest's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. *Id* at p. 1021. The Court held that this "could impose a substantial burden upon the CLECs, particularly if they employ a different network architecture than U. S. West." *Id.*

57. In their Comments filed in response to the Staff's Proposed Findings of Fact and Conclusions of Law, both Qwest and AT&T point out that since the Arizona workshop on Checklist Item 13 concluded, Qwest eliminated its HUB/interLCA proposal and those provisions of Section 7 which incorporated it. Qwest Comments at p. 2; AT&T Comments at pps. 3-4. AT&T and Qwest also noted that Qwest has since agreed that CLECs may obtain a single point of interconnection in a LATA and pay Qwest TELRIC rates for the exchange of traffic to that single point. Qwest Comments at p. 2; AT&T Comments at p. 4. These changes are contained in the Fourth Revised SGAT which was recently filed by Qwest with the ACC.

58. Therefore, based upon the agreement and comments of the parties, this issue, previously at impasse, is now no longer in dispute and Staff considers it to be closed.

DISPUTED ISSUE NO. 2: Whether Qwest may Charge Private Line Rates for Transport Between Local Calling Areas Within a Single LATA.

a. Summary of Qwest and CLEC Positions

59. AT&T and MCIW argue that Qwest is attempting to impose non-cost based rates for interconnection/reciprocal compensation trunks on the CLECs by requiring the CLEC to pay private line rates for transmission facilities between calling areas. AT&T Letter at p. 3. AT&T argues that the Act requires that interconnection facilities be cost-based and the FCC has determined that such rates must be based upon TELRIC. AT&T also states that Qwest's SGAT is inconsistent with positions Qwest has taken elsewhere regarding their inability to intermingle Private Line and Interconnection trunks. AT&T Letter at p. 3.

60. Qwest, on the other hand, argues that the FCC's UNE Remand Order[8] does not require it to convert circuits to TELRIC rates unless they carry a significant amount of local traffic. Qwest argues that it offers CLECs a number of options from which to choose to complete an interconnection arrangement with Qwest. Qwest Statement of Position at p. 10. One interconnection option offered to CLECs is the use of an "entrance facility," which means a facility that enters a Qwest central office. Qwest Statement of

[8] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking (Rel. November 5, 1999).

Position at p. 10. Qwest offers to construct such a facility for the CLEC and charge TELRIC rates for the entrance facility. As an alternative, however, Qwest also allows CLECs to use an existing private line facility. *Id.* This option allows CLECs the option that will allow them to use spare capacity from an existing private line rather than requiring the time and expense of installing new facilities. *Id.* Qwest's SGAT Section 7.3.1.1.2 states that "if CLEC chooses to use an existing facility purchased as Private Line Transport Service from the state of Arizona or FCC Access Tariffs, the rates from those Tariffs will apply."

61. Qwest argues that AT&T and MCIW's position would require Qwest to convert a percentage of their Special Access circuits to TELRIC rates irrespective of the amount of local traffic on the circuit and that is not appropriate under FCC Orders. Qwest Statement of Position at p. 11. Qwest states that the FCC, in its UNE Remand Order, already decided this issue:

> [I]nterexchange carriers (IXCs) may not convert special access circuits to combinations of unbundled loops and transport network elements, whether or not the IXCs self provide entrance facilities (or obtain them from third parties). This constraint does not apply if an IXC uses combinations of unbundled network elements to provide a <u>significant amount of local exchange service</u>, in addition to the exchange access, to a particular customer. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order at ¶ 2 (rel Nov. 24, 1999) (Emphasis added)

62. Qwest states that its SGAT, at Section 7.1.2.4, requires Qwest to provide TELRIC rates for the transport of the call within the local calling area, but charges private line rates outside of the calling area. Qwest claims that this matches the FCC definition exactly. Transport of a call outside of the local calling area is simply not "telephone exchange access;" therefore, it is not interconnection subject to the provisions of Section 252(d)(1). Therefore, Qwest states that its SGAT allows one POI per LATA and charges TELRIC rates within the local calling area; however, it charges private line rates outside of the local calling area. Qwest Statement of Position at p. 10. This is perfectly consistent with the Act and comported with the Arizona District Court Order, which allowed one POI per LATA, but required that Qwest receive reasonable compensation for the transport of these calls. *U S WEST Communications, Inc. v. Jennings,* 46 F.Supp.2d 1004, .21021-22 (D. Ariz. 1999). Qwest Statement of Position at p. 10.

b. <u>Discussion and Staff Recommendation</u>

63. Due to confusing statements in the parties' briefs, Staff agrees that in its Proposed Findings of Fact and Conclusions of Law, its initial resolution of this issue may have resulted in the premature resolution of a disputed issue now pending before the Commission for Checklist Item 1, Interconnection and Collocation. That issue as framed by Qwest in its Comments is whether CLECs can purchase special access circuits out of

Qwest's tariffs, convert a portion of the special access circuits to interconnection trunks, and "ratchet" the rates to TELRIC. Staff believes this issue is governed by the FCC's Supplemental Order Clarification released June 2, 2000. However, because this issue is now a Checklist Item 1 impasse issue, Staff has deleted its proposed Findings related to this issue and will address the issue along with the other interconnection impasse issues.

64. The real issue in dispute apparently has been resolved by the parties, as discussed under impasse issue 1 above. That issue was framed by Qwest in its Comments as "the rate that applied when a CLEC establishes one point of interconnection in a LATA". Qwest Comments at p. 3. All parties now agree that since the Arizona workshops concluded, Qwest eliminated the interLCA provisions of the SGAT and now permits CLECs to exchange traffic throughout a LATA at TELRIC rates. Qwest Comments at p. 3; AT&T Comments at p. 4.

65. Qwest has since revised its SGAT to eliminate the imposition of private line rates for transport between local calling areas within a single LATA. See Sections 7.1.2.4 and 7.1.2.5.

66. Based upon the agreement and comments of the parties, this issue, previously at impasse, is now no longer in dispute and Staff considers it to be closed.

DISPUTED ISSUE NO. 3: Whether a provision in the SGAT which requires CLECs to pay tandem transmission rates for trunking from Qwest's host switches to Qwest's remote offices is appropriate.

a. Qwest and CLEC Positions

67. AT&T and MCIW object to SGAT Section 7.3.4.2.3 since they argue that this provision essentially treats the host switch as a tandem switch in a host/remote situation, since it requires CLECs to pay tandem transmission rates for the trunking from Qwest's host switches to Qwest's remote offices when the CLEC interconnects at the host switch and terminates calls to customers that are served via the remote office. AT&T Letter at p. 3. AT&T states that this provision is contrary to the Act, cannot be supported by any FCC rule or order and is unprecedented in other regions.

68. AT&T states that a remote office is the site of one or more Remote Switching Units ("RSUs"). AT&T argues that the RSU is nothing more than a switching module on the host switch except for the distance between the RSU and the host switch. AT&T Letter at p. 3. According to AT&T, there is no basis for the imposition of tandem transmission rates on CLECs from the host switch to the remote switch. Because of the nature of the host/remote relationship, the distance between the remote office and the host switch cannot be considered as tandem access. The host switch is not performing a tandem function and applying a tandem transmission charge between the host and the remote would be inappropriate. AT&T Letter at p. 3.

69. Qwest argues that it should be paid for transporting traffic between host switches and their remote switches on behalf of CLEC. Qwest Statement of Position at p. 11. Qwest states that it serves many rural communities throughout Arizona which in many instances cannot justify the purchase of a unique switch to serve the community, so it installs a "host switch" in a more metropolitan area, which host has one or many "remote switches" - small pieces of the host switch - in more rural communities. Id. The "remote" switch has the capacity to switch calls in that rural community without the use of the host; however, any call either to or from the rural community to an area not served by the remote switch must be switched and served by the "host switch". Qwest Statement of Position at p. 12. The latter calls require Qwest to transport the calls along dedicated trunks between the host and the remote.

b. Discussion and Staff Recommendation

70. Staff agrees with Qwest that it should be paid for the transport it provides to the CLECs. Staff does not believe that Qwest has supported its position for application of the tandem transmission rates in all host/remote scenarios, however. Staff believes that the application of tandem transmission rates in a host/remote situation would only be appropriate where the host and remote switching units are located in different wire centers. Where the host and remote switching units are located in the same wire center, Staff believes that tandem transmission rates would not be appropriate. Staff recommends that Qwest be required to modify its SGAT to incorporate this restriction.

71. No party objected to Staff's proposed recommendation on this issue in their comments filed in response to Staff's Proposed Findings of Fact and Conclusions of Law. Therefore, Staff believes that there is agreement by the parties to its resolution of this issue.

DISPUTED ISSUE NO. 4: Whether Qwest's definition of "tandem office switch" is appropriate.

a. Qwest and CLEC Positions

72. AT&T and MCIW both requested that Qwest modify the SGAT definition of tandem switching so that a CLEC's switch will be considered a tandem when the switch serves the same geographic location as Qwest's tandem switch.

73. AT&T proposed the following definition of Tandem Office Switch to replace the existing definition contained in Qwest's SGAT Section 4.11.2. AT&T claims that this new definition more completely and accurately defines a tandem office switch.

> "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Offices ~~Switches~~. CLEC switch(es) shall be considered a Tandem Office Switch to the extent such switch serves a geographic area comparable to that served by Qwest's Tandem Office Switch or where the CLEC switch provides an alternative routing function for a second

CLEC switch. ~~Access tandems provide connections for exchange access and toll traffic, while local tandems provide connections for EAS/Local traffic.~~

74. Qwest agrees to modify its definition of tandem switch so long as it is only required to pay CLEC for the switching it actually performs. Qwest Statement of Position at p. 6. Qwest's concern with AT&T and MCIW's definition is not the language, but the implementation. Section 7.3.4.2.1 of the SGAT states that "traffic delivered through a Qwest or CLEC local tandem switch (as defined in the SGAT), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above." (emphasis added). If Section 7.3.4.2.1 remained in its current form, and a CLEC's switch met the definition of a tandem switch, then the CLEC could theoretically charge Qwest both the "tandem switching rate" and "end office rate" even though CLEC only switched the traffic one time. Qwest Statement of Position at p. 6. The intention of section 7.3.4.2.1 was intended to compensate Qwest when it switched the traffic at both its end office switch and its tandem switch, meaning when it physically switched the traffic twice. Qwest Statement of Position at pp. 6-7. Qwest does not want to pay a CLEC as if it switched the traffic twice when it only switches the traffic once. Qwest Statement of Position at p. 7.

75. Qwest states that its proposal is identical to how Qwest charges CLECs for use of its tandem switch. Qwest does not charge CLECs both the end office rate and the tandem rate unless both switches are actually used. Section 7.3.7.1 of the SGAT makes this plain. When Qwest acts as a "Transit Provider" for CLEC; meaning the call does not originate or terminate with a Qwest customer - Qwest's sole role is to transit the traffic between a CLEC switch and Qwest's tandem switch. In these circumstances, it only charges the CLEC the tandem switching rate; not the tandem switching and end office rates. Neither Qwest nor CLEC should be able to charge for switching it does not actually perform for the other.

76. CLECS do have the option of bypassing Qwest's tandem switch (and therefore the tandem switching rate) altogether by connecting directly to the Qwest end office. CLEC's who pay both the tandem switching and end office switching rates do so at their choice. Qwest states that modifying the definition of "tandem switch" without the concomitant change authorizing CLECS to only recover for the actual switching it performs, denies Qwest the option of bypassing the CLEC's functional tandem.

77. Qwest agrees to modify its definition of tandem switch to almost the exact language proposed by AT&T and MCIW so long as Section 7.3.4.2.1 is also modified as well. Qwest proposed SGAT language reads:

> "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) actually serve(s) the same geographic area as Qwest's Tandem Office Switch or is used to connect and switch trunk circuits between and among other Central Office Switches.

7.3.4.2.1 For traffic delivered through a Qwest or CLEC local tandem switch (as defined in this SGAT), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above so long as the terminating Party switches the traffic at both its tandem switch and separate end office switch. However, if CLEC or Qwest only switches the traffic once and this switch meets the definition of tandem switch in Section 4.11.2, then only the tandem switching rate shall apply.

78. Qwest states that the modifications will ensure that a CLEC switch can and will be treated as a "tandem switch" where appropriate, but only allows the parties to charge for the switching and transport they actually perform for the other.

b. Discussion and Staff Recommendation

79. In its Proposed Findings of Fact and Conclusions of Law, Staff originally agreed with the changes requested by both AT&T and Qwest. The modifications requested by AT&T and MCIW were consistent with FCC orders and ensured that a CLEC switch can and will be treated as a "tandem switch" where appropriate under FCC orders. The additional language change requested by Qwest would allow the parties to charge for the switching and transport which they actually perform for the other, thus preventing a windfall to either party.

80. In their Comments filed in response to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T and MCIW argue that the additional language proposed by Qwest would actually reinstitute the functional equivalency test which has been rejected by the FCC, by basing the compensation received by the CLEC upon the number of times the traffic is switched. MCIW Comments at p. 4; AT&T Comments at p. 9 ("In addition, Qwest's new proposed language is designed to establish a functional equivalency test by requiring the CLEC switch to function to replicate Qwest's tandem functionality.")

81. Staff agrees that the FCC has rejected the functional equivalency test. See 47 C.F.R. Section 51.711(a)(3). While the language proposed by Qwest apparently is being construed by the CLECs to establish a functionality equivalency test, Staff believes that Qwest's was attempting to instead incorporate, and/or give recognition to the FCC's symmetrical compensation rule and the tandem interconnection rate symmetry rule. In other words, where Qwest does not charge a termination (local switching rate) or equivalent charge, the CLECs should likewise not obtain a termination (local switching rate, or equivalent charge from Qwest. Staff continues to believe that such symmetry is required under the FCC rules and is indeed a fair outcome for all parties.

82. However, because there is a concern over the language proposed by Qwest and Qwest's ability to use the language to establish a functionality equivalency

test, the Staff recommends that Qwest be required to file new language which incorporates the FCC's symmetry rule.

DISPUTED ISSUE NO. 5: Whether Compliance With Checklist Item 13 Requires Qwest to Pay Reciprocal Compensation On ISP Bound Calls.

a. Qwest and CLEC Positions

83. On April 14, 2000, AT&T, MCIW and Sprint jointly submitted their Statement of Position addressing reciprocal compensation for ISP traffic. The treatment of ISP traffic from consideration as a Checklist Item 13 issue was removed by the FCC in the Bell Atlantic ("BANY") Order based upon its ISP order.[9] That order was eventually vacated by the D.C. Circuit. The D.C. Circuit found that such calls most likely terminate at the ISP and are, therefore, local calls.

84. Based on the D.C. Circuit Court ruling on this issue, the CLECs argue that Qwest should be directed to modify its Arizona SGAT to treat ISP traffic as local traffic subject to reciprocal compensation. They argue that Qwest's SGAT section 7.3.4.1.3 should be changed to read as follows:

> ~~As set forth above, t~~The parties agree that reciprocal compensation ~~only~~ applies to Exchange Service (EAS/Local) Traffic and further agree ~~that the FCC has determined~~ that traffic originated by either party (the "Originating Party") and delivered to the other Party, which in turn delivers the traffic to the enhanced service provider (the "Delivering Party") is ~~interstate~~ Exchange Service (EAS/Local) Traffic in nature. ~~Consequently, the Delivering Party must identify which, if any, of this traffic is Exchange Service (EAS/Local) Traffic. The Originating Party will only pay reciprocal compensation for the traffic the Delivering Party has substantiated to be Exchange Service (EAS/Local) Traffic. In the absence of such substantiation, such traffic shall be presumed to be interstate.~~

85. On April 21, 2000, Qwest submitted its Statement of Position on the appellate rulings and its effect, if any, on Checklist Item 13. Qwest argued that neither court decision affects the treatment of ISP reciprocal compensation in this docket and remains irrelevant to Section 271 and Checklist Item 13.

86. Qwest notes that the FCC's ISP Order ruled that reciprocal compensation was not required under Section 251 of the Telecommunications Act of 1996. Subsequently, in the BANY Order, the FCC dealt with the issue of whether ISP reciprocal compensation was required under Checklist Item 13 of Section 271. In the latter instance, the FCC ruled that ISP reciprocal compensation was not a requirement

[9] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 et.al., Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (Rel. February 26, 1999).

under 271. Qwest states that this ruling was not affected by either of the appellate rulings at issue, including the D.C. Circuit's decision in Bell Atlantic, except insofar as the Fifth Circuit opinion confirmed the correctness of the FCC's reasoning.

b. Discussion and Staff Recommendation

87. Since this issue was briefed by the parties, the FCC issued its Order on Remand and Report and Order.[10]

88. In its Order on Remand and Report and Order, the FCC found that Congress excluded from the "telecommunications" traffic subject to reciprocal compensation the traffic identified in section 251(g), including traffic destined for ISPs. ISP Remand Order at para. 1. The FCC once again found that Section 251(b)(5) does not extend to ISP-bound traffic and that the traffic delivered to an ISP is predominantly interstate access traffic subject to section 201 of the Act. Id.

89. Under prior FCC 271 orders, the FCC had also found that ISP-bound traffic was not subject to the reciprocal compensation provisions of section 251(b)(5) and 252(d)(2); and was therefore, irrelevant to Checklist Item 13.[11] In that the FCC has ruled once again that ISP-bound traffic is not subject to the provisions of section 251(b)(5), it is irrelevant to this Commission's findings as to whether Qwest meets the requirements of Checklist Item 13. In addition, Qwest is, to the Commission's knowledge, following the ACC's interpretations and requirements promulgated under its interpretation of existing interconnection agreements decided before the FCC issued its recent ISP Remand Order.

90. However, in its Proposed Findings of Fact and Conclusions of Law, Staff recommended that Qwest be required to revise its SGAT to be consistent with the recent FCC order, and this Commission's determinations resulting from the wholesale pricing docket.

91. In their Comments filed in response to Staff's proposed Findings of Fact and Conclusions of Law, both MCIW and Qwest agreed with Staff's proposed Findings of Fact and Conclusions of Law on this issue. Qwest Comments at p. 6; MCIW Comments at p. 4. In response to Staff's Finding and recommendation that Qwest modify its SGAT to comply with the recent FCC order, Qwest stated that in the multi-state proceeding, Qwest recently proposed language to address the FCC order. Qwest Comments at p. 6. Qwest agreed to provide that language in Arizona with its next full SGAT filing. Id. at p. 6.

92. AT&T in its Comments agreed that under the recent FCC order, Qwest is not obligated to revise its SGAT to include Internet-bound traffic as part of its reciprocal

---

[10] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 et al., Order on Remand and Report and Order (Rel. April 27, 2001)("ISP Remand Order").

[11] *Bell Atlantic New York Order*, 15 FCC Rcd at 4142, para. 377.

compensation obligations under 47 U.S.C. Section 251(b)(5). AT&T Comments at p. 10. AT&T went on to state, however, that Qwest should be ordered to pay any unpaid reciprocal compensation for ISP traffic pursuant to its current interconnection agreements. AT&T Comments at p. 10. AT&T states that its interconnection agreement requires such payment as do other agreements. Comments at p. 10. AT&T goes on to state that the industry custom and usage at the time the interconnection agreements were being negotiated was that all local traffic was subject to reciprocal compensation. Id. at 11. AT&T argues that the parties negotiating the interconnection agreements with Qwest believed that ISP and IP telephony traffic would be considered local for purposes of reciprocal compensation. Id. at p. 11.

93. The Staff rejects the arguments raised by AT&T, for several reasons. First, AT&T introduced no evidence during the Workshop process that Qwest was not complying with its existing interconnection agreement. In addition, there is no evidence in the record that establishes that the parties indeed intended to include ISP or IP telephony traffic in the agreement's reciprocal compensation provisions. In order to determine that, AT&T should have brought a proceeding before this Commission asking for an interpretation and enforcement of this provision of their interconnection agreement. AT&T did not do this. Instead, all AT&T relies upon at this time is anecdotal statements made after the record has closed in a Qwest 271 workshop.

94. Staff resolves this issue in favor of Qwest; however Qwest shall be required to revise its SGAT with language which complies with the recent FCC order.

h. Verification of Compliance

95. Section 271(c)(2)(B)(xiii) of the Act requires a BOC enter into "[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2)". In turn, pursuant to section 252(d)(2)(A), "a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."

96. Based upon the record, and subject to Qwest revising its SGAT to incorporate the impasse resolutions contained in subpart f above, Staff believes that Qwest has demonstrated that it has entered into reciprocal compensation arrangements in accordance with the requirements of section 252(d)(2) and that it satisfies the requirements of Checklist Item 13.

97. Qwest has agreed to allow CLECs to opt into any revised SGAT language resulting from the Workshops and this proceeding.

II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.

2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.

3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).

4. The Arizona Commission is a "State commission" as that term is defined in 47 U.S.C. Section 153(41).

5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).

6. In order to obtain Section 271 authorization, Qwest must, *inter alia*, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.

7. Section 271(c)(2)(B)(xiii) of the Telecommunications Act of 1996 requires Qwest to provide access and interconnection arrangements which includes reciprocal compensation in accordance with the requirements of Section 252(d)(2).

8. Section 252(d)(2) provides that for purposes of compliance by an ILEC with Section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless—(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

9. As a result of the proceedings and record herein, Qwest provides access and interconnection arrangements which include reciprocal compensation in accordance with the requirements of Section 252(d)(2), subject to its incorporating revisions to its SGAT which reflect the Commission's findings in subpart f above.