

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application by Qwest Communications	)	
International Inc., for Authorization To	)	WC Docket No. 03-90
Provide In-Region, InterLATA Services in	)	
Minnesota	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted:** June 25, 2003

**Released:** June 26, 2003

By the Commission: Commissioners Cops and Adelstein issuing separate statements.

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## I. INTRODUCTION

1. On March 28, 2003, Qwest Communications International Inc. (Qwest) filed an application pursuant to section 271 of the Communications Act of 1934, as amended,<sup>1</sup> for authority to provide in-region, interLATA services originating in the state of Minnesota.<sup>2</sup> In this Order, we grant the application based on our conclusion that Qwest has taken the statutorily required steps to open its local exchange markets in Minnesota to competition.

2. In ruling on Qwest’s application, we wish to acknowledge the effort and dedication of the Minnesota Public Utilities Commission (Minnesota Commission), which has expended significant time and effort overseeing Qwest’s implementation of the requirements of section 271. The Minnesota Commission, working independently and with the Regional Oversight Committee (ROC), a cooperative group of state commissions in the Qwest region, conducted proceedings to determine Qwest’s section 271 compliance.<sup>3</sup> In particular, the ROC worked together on the design and execution of the regional operations support systems (OSS) testing. The Minnesota Commission also conducted state-specific pricing proceedings, and adopted the performance measurements and standards developed through the ROC, including a Performance Assurance Plan (PAP) based on Qwest’s PAP in Colorado.<sup>4</sup> As the Commission has repeatedly recognized, state proceedings demonstrating a commitment to advancing the pro-

<sup>1</sup> We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or the Act. 47 U.S.C. §§ 151 *et seq.*

<sup>2</sup> See *Application by Qwest Communications International Inc. for Authority to Provide In-Region, InterLATA Services in Minnesota*, WC Docket No. 03-90 (filed Mar. 28, 2003) (Qwest Application).

<sup>3</sup> See Minnesota Commission Comments at 7-8.

<sup>4</sup> *Id.* at 5-6; see also Qwest Application, App. A, Tab 25, Declaration of Jerrold L. Thompson, paras. 6-20 (Qwest Thompson Decl.) (detailing pricing proceedings and orders); Qwest Application, App. A, Tab 26, Declaration of Mark S. Reynolds at paras. 8, 11 (Qwest Reynolds Decl.) (detailing PAP and performance measurement proceedings).

competitive purposes of the Act serve a vitally important role in section 271 proceedings.<sup>5</sup> While the Minnesota Commission was unable to reach a collective determination on certain issues, we commend the state for its enormous time and effort in developing this application.

3. The outstanding work of the Minnesota Commission and Qwest's extensive efforts to open its local exchange network to competition have resulted in competitive entry in Minnesota. Qwest estimates that, as of December 31, 2002, competitive LECs served approximately 26.7 percent of all lines in Minnesota, including 106,827 UNE-Loops and 84,428 UNE-Platform lines.<sup>6</sup> We are confident that the hard work of the Minnesota Commission to ensure that the local exchange market in Minnesota is open to competition will benefit consumers by making increased competition in all telecommunications service markets possible in this state. We are also confident that the Minnesota Commission, as it addresses allegations of past violations of the statute by Qwest and considers any future problems that may develop, will continue to ensure that Qwest meets its statutory obligations.

## II. BACKGROUND

4. In the 1996 amendments to the Communications Act, Congress required that the Bell Operating Companies (BOCs) demonstrate compliance with certain market-opening requirements contained in section 271 of the Act before providing in-region, interLATA long distance service. Under section 271, Congress requires that the Commission review BOC applications to provide such service in consultation with the affected state and the Attorney General.<sup>7</sup>

5. The Minnesota Commission independently reviewed the record developed in the ROC; conducted open proceedings with ample opportunities for participation by interested third parties; conducted state-specific pricing procedures to establish initial rates for unbundled network elements (UNEs) and interconnection; and reviewed, modified, and adopted a PAP.<sup>8</sup> The Minnesota Commission also conducted an enforcement proceeding concerning "unfiled

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<sup>5</sup> See *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, 17421, para. 3 (2001) (*Verizon Pennsylvania Order*), appeal pending, *Z-Tel Communications v. FCC*, No. 01-1461 (D.C. Cir. filed Oct. 17, 2001); *Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Memorandum Opinion and Order, 16 FCC Rcd 14147, 14149, para. 3 (2001) (*Verizon Connecticut Order*); *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, Memorandum Opinion and Order, 16 FCC Rcd 8988, 8990, para. 2 (2001) (*Verizon Massachusetts Order*) *aff'd sub nom. WorldCom, Inc. v. FCC*, 308 F.3d 1 (D.C. Cir. 2002).

<sup>6</sup> Qwest Application, App. A, Tab 2, Declaration of David L. Teitzel (Qwest Teitzel Decl.) at para. 15.

<sup>7</sup> 47 U.S.C. § 271(d)(2)(A)-(B).

<sup>8</sup> Minnesota Commission Comments at 2-6.

agreements” between Qwest and certain competitive LECs, in which it found that the interconnection agreements should have been filed pursuant to section 252 of the Act, that Qwest’s failure to do so constituted discrimination in favor of those particular competitive LECs, and that financial penalties were warranted.<sup>9</sup>

6. Although the Minnesota Commission determined that Qwest has satisfied 12 of the 14 checklist items, it did not reach a collective determination with respect to checklist items 2 and 14, pertaining to unbundled network elements (UNEs) and resale, respectively, and public interest issues.<sup>10</sup> Specifically, two out of the four voting commissioners found that issues related to the accuracy of service usage reports and wholesale bills warrant a finding of checklist noncompliance with respect to item 2. Additionally, three out of the four voting commissioners found that issues related to unfiled agreements indicated that Qwest was not in compliance with checklist item 14 and the public interest requirement.<sup>11</sup> The issues raised by the Minnesota Commission are discussed in detail below.<sup>12</sup>

7. The U.S. Department of Justice recommends approval of Qwest’s application, although deferring to the Commission’s prior decision regarding the relevance of discriminatory interconnection agreements on the section 271 process.<sup>13</sup> The Department of Justice concludes opportunities are available to competing carriers serving business and residential customers.<sup>14</sup> Although only a small portion of residential customers are served via the UNE-Platform, the Department of Justice does not believe there are any material obstacles to such entry created by Qwest.<sup>15</sup>

#### **A. Compliance With Unbundling Rules**

8. One part of the required showing, as explained in more detail below, is that the applicant satisfies the Commission’s rules governing unbundled network elements. It is necessary to clarify, for the purpose of evaluating this application, which network elements we expect Qwest to demonstrate that it provides on an unbundled basis, pursuant to section

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<sup>9</sup> Minnesota Commission Comments, App. E, Order Assessing Penalties, Minnesota Docket No. P-42YC-02-197 (Feb. 28, 2003) at 3, 4-6.

<sup>10</sup> Minnesota Commission Comments at 2.

<sup>11</sup> *Id.*; see also Minnesota Commission Comments, Separate Statement of Commissioner Reha at 25-30, Separate Joint Statement of Commissioners Scott/Johnson at 32-37.

<sup>12</sup> See *infra* Sections III.A.1 (Operations Support Systems), IV.C (Resale), and VII.B (Unfiled Interconnection Agreements).

<sup>13</sup> Department of Justice Evaluation at 2-3. The Department of Justice also recommends that the Commission investigate the issues raised by commenters regarding billing completion notifiers (BCNs) and high reject rates, which we discuss in Section III.A.1 (Operations Support Systems) *infra. Id.* at 2 n.5, 7 n.24.

<sup>14</sup> *Id.* at 6-7.

<sup>15</sup> *Id.*

251(c)(3) and checklist item 2. In the *UNE Remand* and *Line Sharing Orders*, the Commission established a list of UNEs which incumbent LECs were obliged to provide: (1) local loops and subloops; (2) network interface devices; (3) switching capability; (4) interoffice transmission facilities; (5) signaling networks and call-related databases; (6) operations support systems; and (7) the high frequency portion of the loop.<sup>16</sup> However, the D.C. Circuit vacated these orders and instructed the Commission to reevaluate the network elements subject to the unbundling requirement.<sup>17</sup> The court's mandate was stayed first until January 3, 2003 and then until February 20, 2003. On February 20, 2003, the Commission adopted new unbundling rules as part of our Triennial Review proceeding.<sup>18</sup> These rules, however, have not yet become effective.

9. Although the former unbundling rules vacated by the D.C. Circuit were not in force at the time Qwest filed its application in this proceeding, Qwest states that it continues to provide nondiscriminatory access to these network elements.<sup>19</sup> As the Commission found in the *Bell Atlantic New York Order*, we believe that using the network elements identified in the former unbundling rules as a standard in evaluating Qwest's application, filed during the interim period between the time the rules were vacated by the D.C. Circuit and the effective date of the new rules, is a reasonable way to ensure that the application complies with the checklist requirements.<sup>20</sup> We find it significant that no commenter disputes that Qwest should be required to demonstrate that it provides these network elements in a nondiscriminatory way. Accordingly, for the purposes of this application, we will evaluate whether Qwest provides

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<sup>16</sup> See 47 C.F.R. § 51.319; *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, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*); *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

<sup>17</sup> See *United States Telecom Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002), *cert. denied*, 123 S.Ct. 1571 (2003).

<sup>18</sup> See *FCC Adopts New Rules For Network Unbundling Obligations Of Incumbent Local Phone Carriers*, News Release, (rel. Feb. 20, 2003) (announcing adoption of an Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*) (*Triennial Review News Release*).

<sup>19</sup> See Qwest Application at 25.

<sup>20</sup> See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3966-67, para. 30 (1999) (*Bell Atlantic New York Order*), *aff'd*, *AT&T Corp v. FCC*, 220 F.3d 607 (D.C. Cir. 2000). A similar procedural situation was presented in the *Bell Atlantic New York* proceeding. Bell Atlantic filed its application for section 271 authorization in New York after the unbundling rules had been vacated but before the *UNE Remand Order* had taken effect and, thus, at a time when no binding unbundling rules were in effect. Bell Atlantic suggested, and the Commission agreed, that it would be reasonable for the Commission to use the original seven network elements identified in the former unbundling rules in evaluating compliance with checklist item 2 for the application. See *id.* at 3966-67, paras. 29-31.

nondiscriminatory access to the network elements identified under the former unbundling rules.<sup>21</sup> We emphasize that, on an ongoing basis, Qwest must comply with all of the Commission's rules implementing the requirements of sections 251 and 252 upon the dates specified by those rules.<sup>22</sup>

### III. PRIMARY ISSUES IN DISPUTE

10. As in recent section 271 orders, we will not repeat here the analytical framework and particular legal showing required to establish compliance with every checklist item. Rather, we rely upon the legal and analytical precedent established in prior section 271 orders,<sup>23</sup> and we attach comprehensive appendices containing performance data and the statutory framework for approving section 271 applications.<sup>24</sup> Our conclusions in this Order are based on performance data as reported in carrier-to-carrier reports reflecting service in the period from November 2002 through March 2003.

11. We focus in this Order on the issues in controversy in the record. Accordingly, we begin by addressing issues concerning Qwest's compliance with checklist item number 2, access to UNEs. Next, we address checklist items 1, 4, and 14, which cover interconnection, access to unbundled local loops, and resale, respectively. The remaining checklist requirements are discussed briefly, as they received little or no attention from commenting parties, and our own review of the record leads us to conclude that Qwest has satisfied these requirements. Finally, we discuss issues concerning compliance with Track A, section 272 and the public interest requirement.

#### A. Checklist Item 2 – Unbundled Network Elements

12. Checklist item 2 of section 271 states that a BOC must provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections

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<sup>21</sup> The new rules adopted in the Triennial Review proceeding will not take effect until after release of this Order. Consistent with the *Bell Atlantic New York Order*, we will not require Qwest to demonstrate compliance with rules that have yet to take effect. *See id.* at 3967, para. 31.

<sup>22</sup> *See Application by SBC Communications Inc., Southwestern Bell Tel. Co. and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, 18368, para. 29 (2000) (*SWBT Texas Order*); *Bell Atlantic New York Order*, 15 FCC Rcd at 3967, para. 3.

<sup>23</sup> *See, e.g., Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6241-42, paras. 7-10 (2001) (*SWBT Kansas/Oklahoma Order*), *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001); *SWBT Texas Order*, 15 FCC Rcd at 18359-61, paras. 8-11; *Bell Atlantic New York Order*, 15 FCC Rcd at 3961-63, paras. 17-20; *see also* Appendix C (Statutory Requirements).

<sup>24</sup> *See generally* Appendix B (Minnesota Performance Data), and Appendix C.

251(c)(3) and 252(d)(1)” of the Act.<sup>25</sup> Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>26</sup> Based on the evidence in the record, we conclude that Qwest has satisfied the requirements of checklist item 2.<sup>27</sup> In reaching this conclusion, we recognize that the Minnesota Commission did not reach a collective determination with regard to this checklist item.<sup>28</sup>

13. In this section, we address aspects of this checklist item that raised significant issues concerning whether Qwest’s performance demonstrates compliance with the Act: (1) Operations Support Systems (OSS); (2) provisioning of UNE combinations; and (3) UNE pricing. Aside from OSS, UNEs that Qwest must make available under section 251(c)(3) are listed as separate items on the competitive checklist, and are addressed below under other checklist items, as are any provisioning issues that may be in dispute.<sup>29</sup>

14. As an initial matter, we note that the Minnesota Commission’s failure to reach a collective decision on checklist item 2 was in part based on the Minnesota Administrative Law Judge’s (ALJ’s) report finding that, for checklist item 2, Qwest relied on UNE-Star<sup>30</sup> as its UNE product.<sup>31</sup> The Minnesota ALJ concluded that Qwest’s application for approval should not be

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<sup>25</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>26</sup> 47 U.S.C. § 251(c)(3).

<sup>27</sup> See Qwest Application at 25-31. See generally Qwest Application, App. A, Tab 6, Declaration of Lynn M.V. Notarianni and Christie L. Doherty (Qwest Notarianni/Doherty Decl.).

<sup>28</sup> Minnesota Commission Comments at 9; see also Minnesota Commission Comments, Separate Statement of Chairman Koppendrayner at 20-21; Minnesota Commission Comments, Separate Statement of Commissioner Reha at 26; Minnesota Commission Comments, Separate Joint Statement of Commissioners Scott/Johnson at 32-33.

<sup>29</sup> 47 U.S.C. § 271(c)(2)(B). For example, unbundled loops, transport, and switching are listed separately as checklist items 4, 5, and 6.

<sup>30</sup> UNE-Star is a product, unique to Qwest, that combines elements of resale orders and UNE-Platform orders. Parties have also referred to UNE-Star as UNE-E or UNE-Eschelon or UNE-McLeod or UNE-M. See *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington, and Wyoming*, WC Docket No. 02-134, *Memorandum Opinion and Order*, 17 FCC Rcd 26303, 26355, para. 86 n.300 (2002) (*Qwest 9-State Order*). Although AT&T argues that other carriers cannot order UNE-Star products, the record shows that the Eschelon and McLeod agreements containing UNE-Star provisions were filed with the Minnesota Commission and are available for opt-in by other carriers. See Letter from Melissa Newman, Vice-President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 23, 2003) at 1 (Qwest June 23A *Ex Parte* Letter); Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 18, 2003) at 1-4 (AT&T June 18 *Ex Parte* Letter); Letter from Robert W. Quinn, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 24, 2003) at 1-3 (AT&T June 24 *Ex Parte* Letter).

<sup>31</sup> Minnesota Commission Comments at 9; see also AT&T Reply at 25.

granted until all UNE-Star lines are converted to UNE-Platform.<sup>32</sup> Significantly, in the period since the Minnesota ALJ conducted its investigation, Qwest has converted the vast majority of its UNE-Star customers to UNE-Platform.<sup>33</sup> We note that the decision to convert lines from UNE-Star to UNE-Platform does not lie solely with Qwest.<sup>34</sup> Therefore, we do not require Qwest to convert all of its UNE-Star lines to UNE-Platform lines in order to be checklist compliant.

## 1. Operations Support Systems

15. Under checklist item 2, a BOC must demonstrate that it provides nondiscriminatory access to the five OSS functions: (1) pre-ordering; (2) ordering; (3) provisioning; (4) maintenance and repair; and (5) billing.<sup>35</sup> In addition, a BOC must show that it provides nondiscriminatory access to UNEs and that it has an adequate change management process in place to accommodate changes made to its systems.<sup>36</sup> Based on the evidence in the record, we find that Qwest provides nondiscriminatory access to OSS in Minnesota.<sup>37</sup> Consistent with prior Commission orders, we do not address each OSS element in detail where our review of the record satisfies us that there is little or no dispute that Qwest meets the nondiscrimination requirements.<sup>38</sup> First, we discuss the relevance of Qwest's regionwide OSS. Second, we focus our discussion on those issues in controversy, which in this instance primarily involve certain elements of Qwest's pre-ordering, ordering, maintenance and repair, wholesale billing, and change management practices.

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<sup>32</sup> Minnesota Commission Comments at 9.

<sup>33</sup> Qwest Reply, Attach., Tab 2, Reply Declaration of Lynn M.V. Notarianni and Christie L. Doherty (Qwest Notarianni/Doherty Reply Decl.) at Ex. CLD-3 (showing that, as of the end of March 2003, 93% of POTS lines and 69.4% of POTS/Centrex lines were UNE-Platform lines rather than UNE-Star lines).

<sup>34</sup> Most competitive LECs have converted their POTS lines from UNE-Star to UNE-Platform, although several competitive LECs still are using Centrex lines from the UNE-Star product offering. *Id.* Although AT&T argues, based on a recent filing made by Eschelon in the Arizona section 271 proceeding, that carriers will be reluctant to migrate away from UNE-Star because UNE-Star provides access to certain features not available on the UNE-Platform, we find that Qwest does provide access to those features through the UNE-Platform in Minnesota. *See* Qwest June 23A *Ex Parte* Letter at 2. Additionally, we note that the Minnesota ALJ's concerns are based on billing accuracy issues related to UNE-Star, which are discussed *infra*, Section III.A.1.e (Billing).

<sup>35</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26320, para. 34; *Bell Atlantic New York Order*, 15 FCC Rcd at 3989, para. 82. The Commission has defined OSS as the various systems, databases, and personnel used by incumbent LECs to provide services to their customers. *See SWBT Texas Order*, 15 FCC Rcd at 18396-97, para. 92.

<sup>36</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26320, para. 34; *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102 and n.280.

<sup>37</sup> *See* Qwest Application at 25-31. *See generally* Qwest Notarianni/Doherty Decl.

<sup>38</sup> *See Verizon Connecticut Order*, 16 FCC Rcd at 14151, para. 9.



**a. Relevance of Qwest's Regionwide OSS**

16. Consistent with our precedent, Qwest relies in this application on evidence concerning its regionwide OSS. Specifically, Qwest asserts that its OSS in Minnesota is the same as its OSS in the entire 13-state region that participated in the ROC test.<sup>39</sup> The 13 participating states in Qwest's local service region initiated a collaborative process to design an overall plan for ensuring that Qwest's OSS and related databases and personnel are available to competitive LECs in an open and nondiscriminatory manner.<sup>40</sup> As discussed in the *Qwest 9-State Order*, to support its claim that its OSS is the same across all states, Qwest relies on the comprehensive BearingPoint test.<sup>41</sup> BearingPoint, in addition to administering the overall test, performed a regional differences assessment (RDA), which showed that Qwest's ordering, provisioning, maintenance and repair, and competitive LEC relationship management and infrastructure are materially consistent across the region.<sup>42</sup>

17. Where Qwest provides evidence that a particular system that was reviewed and approved in one of the twelve states where Qwest received section 271 approval is also used in Minnesota, our review will be informed by our findings in the *Qwest 9-State Order* and the *Qwest 3-State Order*.<sup>43</sup> We find that Qwest, through the BearingPoint test and its declarations, provides sufficient evidence that its OSS in Minnesota is the same as in those 12 states.

18. In reaching our conclusion that Qwest has demonstrated it provides nondiscriminatory access to its OSS, we rely on detailed evidence provided by Qwest in this proceeding.<sup>44</sup> We base this determination on Qwest's actual performance in the state of Minnesota. Consistent with our past practice, we note that in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have denied new entrants a meaningful opportunity to compete.<sup>45</sup> Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.<sup>46</sup>

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<sup>39</sup> Qwest Notarianni/Doherty Decl., paras. 18-55.

<sup>40</sup> *Id.* at para. 19.

<sup>41</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26321, para. 36. The third-party test was conducted by Bearing Point f/k/a KPMG Consulting, Inc.

<sup>42</sup> See *id.*

<sup>43</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6253-54, para. 35. Indeed, to the extent that certain issues have been previously briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for relitigating and reconsidering those issues. *Id.*

<sup>44</sup> See Qwest Application at 25-31; Qwest Notarianni/Doherty Decl., paras. 56-548; see also Appendix B.

<sup>45</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26321-22, para. 37.

<sup>46</sup> See *id.*

**b. Pre-ordering**

19. Based on the evidence in the record, we find that Qwest demonstrates it provides carriers with nondiscriminatory access to its OSS pre-ordering functions. We disagree with AT&T's allegation that deficiencies in Qwest's Electronic Data Interchange (EDI) interface place AT&T at a competitive disadvantage.<sup>47</sup> Specifically, AT&T states that defects in Qwest's EDI interface create an impediment to AT&T's market entry in Minnesota by forcing AT&T to use Qwest's Graphical User Interface (GUI), which is not integratable with AT&T's own systems.<sup>48</sup> As we found in both the *Qwest 9-State Order* and the *Qwest 3-State Order*, other competitive LECs have been able to successfully integrate their systems with Qwest's EDI interfaces.<sup>49</sup> Therefore, we do not find that the issues raised by AT&T regarding Qwest's EDI and GUI interfaces rise to the level of checklist noncompliance.

**c. Ordering**

20. Based on the evidence in the record, we find that Qwest demonstrates it provides nondiscriminatory access to its ordering systems.<sup>50</sup> Specifically, as discussed below, we conclude that Qwest has shown that it is able to flow through orders properly, establish adequate processes and procedures for providing billing completion notices (BCNs) to competitive LECs,<sup>51</sup> and process orders through its EDI interface.<sup>52</sup>

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<sup>47</sup> AT&T Comments at 17-18.

<sup>48</sup> AT&T Comments at 18; AT&T Comments, Declaration of John F. Finnegan, paras. 7-9 (AT&T Finnegan Decl.) (stating that the design of Qwest's customer service record (CSR) makes it difficult for AT&T to auto-populate information into a local service request (LSR)).

<sup>49</sup> See *Qwest 9-State Order*, 17 FCC Red at 26327, para. 45; *Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services, in New Mexico, Oregon, and South Dakota*, WC Docket No. 03-11, Memorandum Opinion and Order, FCC 03-81, para. 55 (*Qwest 3-State Order*); see also Qwest Reply at 9.

<sup>50</sup> Qwest Notarianni/Doherty Decl., paras. 156-305.

<sup>51</sup> The Department of Justice noted the critical importance to competitive LECs of timely and accurate BCNs and mentioned that the Commission should review AT&T's claims that Qwest is not adequately providing BCNs. Department of Justice Evaluation at 7 n.24.

<sup>52</sup> We note that other ordering issues related to documentation are discussed in Change Management, below. Additionally, we conclude that MCI's allegation that several MCI customers do not appear to be receiving MCI branding when they call directory or operator assistance does not warrant a finding of checklist noncompliance. MCI Reply at 4. The record shows that MCI alerted Qwest of the branding problem on May 1, 2003, and Qwest subsequently resolved the issue on May 9, 2003. Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1-2 (filed May 16, 2003) (Qwest May 16A *Ex Parte* Letter). In addition, we do not find that MCI's recent allegations that Qwest's business rules do not clearly document how MCI should request that "Directory Assistance Call Completion" (DACC) be blocked for MCI customers rise to the level of checklist noncompliance. See Letter from Lori Wright, Attorney - Federal Advocacy, MCI, to Ms. Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 2-3 (filed June 13, 2003) (MCI June 13 *Ex Parte* Letter). The record shows (continued...)

21. *Order Flow-through*.<sup>53</sup> As an initial matter, the Commission has looked to order flow-through as a potential indicator of a wide range of problems that underlie a determination of whether a BOC provides nondiscriminatory access to its OSS.<sup>54</sup> The Commission has not relied on flow-through rates as the sole indicator of nondiscrimination, however, and thus has not limited its analysis of a BOC's ordering process to a review of its flow-through performance data.<sup>55</sup>

22. Although Qwest failed to reach benchmarks with respect to electronic flow-through metrics in Minnesota, we do not find that this warrants a finding of checklist noncompliance.<sup>56</sup> We note that Qwest's overall performance with respect to electronic flow-through in Minnesota is superior to flow-through achieved during the pendency of both the *Qwest 9-State Order* and the *Qwest 3-State Order*.<sup>57</sup> Moreover, Qwest's flow-through rates are comparable to those of other BOCs that the Commission has previously approved.<sup>58</sup> Although we do not rely on it, we take comfort in Qwest's April 7, 2003 fix to address UNE-Platform

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that Qwest provides adequate documentation describing how to block DACC. *See* Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1-2 (filed June 18, 2003) (Qwest June 18A *Ex Parte* Letter); *see also* MCI June 13 *Ex Parte* Letter at 2. Furthermore, the record shows that Qwest and MCI have reached an agreement that will result in DACC blocking being implemented for all new and existing MCI end users. Qwest June 18A *Ex Parte* Letter at 2.

<sup>53</sup> Flow-through measures the percentage of orders that pass through an incumbent's ordering systems without the need for manual intervention.

<sup>54</sup> *See Bell Atlantic New York Order*, 15 FCC Rcd at 4035, para. 162.

<sup>55</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26369-70, para. 106.

<sup>56</sup> *See* PO-2B-1 (Electronic Flow-through for all Eligible LSRs Received via IMA, Resale) showing an average of 93.43% compared to a 95% benchmark and PO-2B-1 (Electronic Flow-through for all Eligible LSRs Received via IMA, UNE-P, POTS) showing an average of 84.37% compared to a 90% benchmark from November to December 2002 and a 95% benchmark from January 2003 to March 2003.

<sup>57</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26587-811, Appendices B-J; *Qwest 3-State Order*, Appendices B-E.

<sup>58</sup> *See, e.g., Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maine*, CC Docket No. 02-61, Memorandum Opinion and Order, 17 FCC Rcd 11659, 11703-30, Appendix B (2002) (*Verizon Maine Order*); *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, WC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, 12372-402, Appendix B (2002) (*Verizon New Jersey Order*).

flow-through problems associated with new connect LSRs and Qwest's May 1, 2003 system modifications to address minor flow-through problems with resale orders.<sup>59</sup>

23. *Billing Completion Notices.* The record shows that competitive LECs have nondiscriminatory access to billing completion notices.<sup>60</sup> Thus, we reject competitive LEC allegations that Qwest has not established adequate processes and procedures for providing BCNs to competitive LECs that request them.<sup>61</sup> Specifically, we reject competitive LEC allegations that Qwest's procedure of sending BCNs at the service order level instead of the LSR level places competitive LECs at a competitive disadvantage.<sup>62</sup> Even though Qwest is not providing BCNs in the format which competitive LECs would prefer, Qwest is providing to competitive LECs all of the information that Qwest is required to provide.<sup>63</sup> Moreover, to the extent that a sufficient number of competitive LECs would prefer a different format, they may request one through the change management process. Indeed, although we do not rely on it, we note that AT&T has submitted a change request through Qwest's change management process to modify Qwest's processes to provide only one BCN per LSR.<sup>64</sup>

24. Furthermore, we reject AT&T's argument that Qwest fails to provide competitive LECs with documentation that will allow competitive LECs to correctly set up their own systems in order to receive BCNs.<sup>65</sup> Qwest states that while it did remove some of the documentation regarding BCNs from its IMA Release 11.0, the removed information is not needed by competitive LECs to program an EDI interface to receive BCNs.<sup>66</sup> Additionally, when AT&T pointed out that Qwest had removed the information, Qwest stated that the same information could be found in the documentation present in IMA Release 10.0.<sup>67</sup> Furthermore, once Qwest realized that the competitive LEC community was seeking the documentation in IMA Release

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<sup>59</sup> Qwest Notarianni/Doherty Reply Decl., paras. 22-23. In February 2003, 53 rate zone orders did not flow through because certain rate zone information was not included on new connect LSRs. *Id.* Qwest implemented a fix for this rate zone issue on April 7, 2002, with the release of IMA Release 12.0. *Id.*

<sup>60</sup> Qwest Reply at 20-21.

<sup>61</sup> AT&T Comments at 19-21; AT&T Reply at 18-20; MCI Reply at 3-4.

<sup>62</sup> *Id.*

<sup>63</sup> Qwest Notarianni/Doherty Reply Decl., paras. 64-65. For example, posting information is available to competitive LECs in the same manner that it is available to Qwest retail. *Id.* at para. 64. Additionally, unlike competitive LECs, Qwest retail does not receive advance notices that service orders have posted to the billing system. *Id.* at para. 65.

<sup>64</sup> AT&T Comments at 20-21. This change has been prioritized as number 25 by the competitive LEC community for possible inclusion in IMA Release 14.0 in December 2003. Qwest Reply at 21.

<sup>65</sup> AT&T Comments at 20.

<sup>66</sup> Qwest Reply at 20; Qwest Notarianni/Doherty Reply Decl., paras. 59-61.

<sup>67</sup> *Id.*

11.0, Qwest republished the documentation on April 24, 2003.<sup>68</sup> We take further comfort from Qwest's assurance that it did include the BCN documentation in IMA Release 12.0.<sup>69</sup> We find that Qwest's removal of the documentation was a one-time occurrence which Qwest remedied as soon as it became aware of its mistake. Therefore, we find that the issues related to BCNs do not rise to the level of checklist noncompliance.

25. *Reject Rates.* We reject competitive LECs' allegations that Qwest's high reject rates for LSRs submitted via EDI require a finding of checklist noncompliance.<sup>70</sup> Specifically, AT&T expresses concern about the increase in the reject rates from December 2002 through March 2003.<sup>71</sup> Based on the evidence before us, we conclude, however, that Qwest's reject rates do not appear to indicate systemic OSS problems. The record shows that a recalculation of those rates by removing one competitive LEC for January through March 2003 yields reject rates similar to rates found in section 271 applications previously approved by the Commission.<sup>72</sup> Additionally, the record shows that one competitive LEC ordering migrate-as-specified orders (similar to the orders submitted by the competitive LEC that had high reject rates in February

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<sup>68</sup> See Letter from Melissa Newman, Vice President - Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed May 15, 2003) (Qwest May 15A *Ex Parte* Letter).

<sup>69</sup> Qwest Notarianni/Doherty Reply Decl., para. 61.

<sup>70</sup> AT&T Reply at 18-20; MCI Reply at 1-3 (rejecting Qwest's implication that MCI was to blame for Qwest's high reject rate in January and February and stating that rejects result from Qwest's inadequate documentation); Letter from Richard E. Young, Counsel to AT&T, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 2-5 (filed Apr. 29, 2003) (AT&T April 29 *Ex Parte* Letter); Letter from Richard E. Young, Counsel to AT&T, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 2-3 (filed Apr. 30, 2003) (AT&T April 30 *Ex Parte* Letter); MCI June 13 *Ex Parte* Letter at 2. Regionwide, competitive LECs using EDI experienced high reject rates. See PO-4B-2 (LSRs Received via EDI – Auto-Rejected) showing (27%, 26.3%, 48.5%, 38.1%, and 49.2%), PO-4B-1 (LSRs Received via EDI – Manually Rejected) showing (3.8%, 4.0%, 3.3%, 3.6%, 3.2%) for November 2002 to March 2003.

<sup>71</sup> AT&T Reply at 20; AT&T Apr. 29 *Ex Parte* Letter at 2-3.

<sup>72</sup> The recalculated reject rates are 19.5%, 26%, and 38% for January, February, and March, respectively. Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed May 22, 2003) (Qwest May 22E *Ex Parte* Letter). The high reject rate in January was caused by competitive LEC error, which that competitive LEC has since corrected. See Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed Apr. 22, 2003) (Qwest Apr. 22A *Ex Parte* Letter). The high reject rates in February and March resulted from a different competitive LEC. Qwest May 22E *Ex Parte* Letter at 1; see Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 3-4, Attach. D (citing *confidential version*) (filed May 30, 2003) (Qwest May 30C *Ex Parte* Letter); see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4044, para. 175 n.552 (reporting reject rates between 27% and 34% during the relevant months of its New York section 271 application). The wide variation in competing LECs' individual reject rates suggests that the disparate reject rate may be a function of the competing carrier's experience using the BOC's system, rather than the system itself. *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd 6237, 6304-05, para. 143.

and March 2003) experienced extremely low reject rates for the relevant five-month period.<sup>73</sup> Furthermore, although we do not rely on it, we note that Qwest implemented migrate-as-specified and migrate-by-telephone number with EDI version 12.0 on April 7, 2003, which should help lower competitive LEC reject rates arising from feature and address problems.<sup>74</sup> If reject rates deteriorate past the recalculated levels that we rely upon in this application, we will not hesitate to take appropriate enforcement action under our section 271(d)(6) authority.<sup>75</sup>

#### d. Maintenance and Repair

26. Based on the evidence in the record, we conclude that Qwest provides nondiscriminatory access to its maintenance and repair OSS functions.<sup>76</sup> We find that Qwest has “deployed the necessary interfaces, systems, and personnel to enable requesting carriers to access the same maintenance and repair functions” that Qwest provides to itself.<sup>77</sup> Below, we briefly discuss how the commercial data demonstrate that Qwest’s systems are functional and provide service to competitive LECs in a nondiscriminatory manner. We note that no commenter raises issues related to Qwest’s provision of maintenance and repair OSS functions.

27. We conclude that the commercial data demonstrate that Qwest addresses trouble complaints for competing carriers in substantially the same time and manner that it addresses complaints from its own retail customers.<sup>78</sup> We base our conclusion on the fact that, from November 2002 to March 2003, Qwest missed few parity performance measures.<sup>79</sup> Although there are minor problems with some of Qwest’s maintenance and repair quality metrics, these are

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<sup>73</sup> Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at Attach. (*citing confidential version*) (filed May 14, 2003) (Qwest May 14A *Ex Parte* Letter). While the Department of Justice remarked that Qwest did not explain the high reject rates experienced by competing LECs, Qwest subsequently submitted evidence disaggregating reject rates by competitive LEC for migrate-as-specified orders. *See* Department of Justice Evaluation at 2 n.5; Qwest May 14A *Ex Parte* Letter at Attach.

<sup>74</sup> Qwest Apr. 22A *Ex Parte* Letter at 2.

<sup>75</sup> *See* n.72 *supra*.

<sup>76</sup> *See* Qwest Application at 81; Appendix B; *see also* Minnesota Commission Comments at 9 (explaining that the Minnesota Commission did not reach a decision regarding checklist item 2, but not citing maintenance and repair performance as an outstanding issue); *Qwest 9-State Order*, 17 FCC Rcd at 26397-98, para. 155; *Qwest 3-State Order*, para. 49.

<sup>77</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 211.

<sup>78</sup> *See* Qwest Application at 28-30, 69; Qwest Application, App. A, Tab 27, Declaration of Michael G. Williams (Qwest Williams Decl.), paras. 219-28, 283-89.

<sup>79</sup> Qwest’s overall performance in promptly clearing out-of-service orders, clearing troubles in a timely fashion, responding to customer calls on a timely basis, restoring service, and meeting repair appointments indicates that Qwest performs these functions in substantially the same time and manner for both competitive LECs and Qwest’s retail customers. *See generally* Appendix B.

not significant enough to detract from our conclusion that Qwest provides nondiscriminatory OSS access.

28. First, Qwest failed to achieve parity in four of the relevant months for the repair repeat report rate metric for UNE-Platform POTS.<sup>80</sup> According to Qwest, its misses on this metric are due, in part, to trouble reports for which no troubles were found.<sup>81</sup> When this metric is recalculated to exclude these trouble reports, Qwest's performance improves, with misses in only two of the five relevant months.<sup>82</sup> Given Qwest's nondiscriminatory maintenance and repair performance for all other types of orders and that this problem appears to be isolated to the repeat trouble metric, we find that Qwest's performance on this metric does not warrant a finding of checklist noncompliance.<sup>83</sup>

29. Second, we also recognize that some of Qwest's trouble rate performance results fail to demonstrate parity.<sup>84</sup> Although troubles for competitive LECs were reported slightly more

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<sup>80</sup> See MR-7 (Repair Repeat Report Rate) for UNE-P POTS (non-dispatch) showing (19.39%, 14.44%, 7.95%, 14.66%, 13.71%) for competitive LECs versus (11.12%, 8.49%, 10.04%, 8.22%, 8.96%) for Qwest retail customers for November 2002 to March 2003; see also Qwest Application at 29; Qwest Williams Decl., para. 222.

<sup>81</sup> See Qwest Reply, App. at A-1. Qwest has developed the MR-7\* PID to track this trend. See Qwest Williams Decl., para. 21. The MR-7\* PID calculates the repair repeat report rate by excluding all trouble reports that were originally coded to "No Trouble Found" because no trouble was found, and which after the first report was closed, received no other trouble report within 30 days of the original report. See *id.* We note that Qwest has stated that, while the ROC TAG could not reach agreement on adopting the "\*" PID approach for Qwest's modified versions of three PIDs, OP-5\*, MR-7\*, and MR-8\*, these results are reported as additional information to help explain apparent disparities and to provide evidence that the apparent disparities are not due to discrimination. See *id.* at para. 23. As in previous Qwest section 271 orders, we find it appropriate to consider the adjusted results from the modified PIDs as part of Qwest's performance data. See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26489-90, para. 341; *Qwest 3-State Order*, para. 47.

<sup>82</sup> See MR-7\* (Repair Repeat Report Rate) for UNE-P POTS (non-dispatch) showing (17.91%, 16.95%, 8.20%, 17.11%, 9.64%) for competitive LECs versus (11.99%, 9.11%, 10.86%, 9.73%, 9.78%) for Qwest retail customers for November 2002 to March 2003.

<sup>83</sup> We note that Qwest also argues that this metric has been adversely affected by switch feature incompatibility problems. It is reviewing the causes of this problem and commits to resolve this incompatibility issue. See Qwest Reply, App. at A-1 (explaining that the combination of Hunting and Call Forwarding features is incompatible with Qwest's DMS-100 switches and that Qwest is using a manual provisioning process to address this incompatibility issue).

<sup>84</sup> See MR-8 (Trouble Rate) for UNE-P Centrex showing (0.49%, 0.52%, 0.44%, 0.47%, 0.42%) for competitive LECs versus (0.13%, 0.08%, 0.11%, 0.10%, 0.11%) for Qwest retail customers; MR-8 (Trouble Rate) for Centrex showing (0.64%, 0.87%, 0.58%, 0.84%, 0.22%) for competitive LECs versus (0.13%, 0.08%, 0.11%, 0.10%, 0.11%) for Qwest retail customers; MR-8 (Trouble Rate) for Centrex 21 showing (0.73%, 0.62%, 0.64%, 0.82%, 1.12%) for competitive LECs versus (0.40%, 0.43%, 0.40%, 0.48%, 0.47%) for Qwest retail customers; MR-8 (Trouble Rate) for PBX showing (0.15%, 0.13%, 0.22%, 0.20%, 0.17%) for competitive LECs versus (0.14%, 0.12%, 0.10%, 0.13%, 0.11%) for Qwest retail customers; MR-8 (Trouble Rate) for Basic Rate ISDN showing (0.64%, 0.13%, 0.74%, 0.86%, 1.31%) for competitive LECs versus (0.30%, 0.25%, 0.28%, 0.28%, 0.37%) for Qwest retail customers; MR-8 (Trouble Rate) for ISDN Primary showing (0.10%, 0.00%, 0.09%, 0.35%, 0.12%) for competitive LECs versus (0.03%, 0.04%, 0.02%, 0.03%, 0.03%) for Qwest retail customers; MR-8 (Trouble Rate) (continued....)

often than for Qwest's retail customers for these services, we find that these disparities are not competitively significant given the low competitive LEC trouble rates.<sup>85</sup>

**e. Billing**

30. Based on the evidence in the record, we find that Qwest provides nondiscriminatory access to its billing functions.<sup>86</sup> We find that Qwest complies with its obligation to provide complete, accurate, and timely service usage records and wholesale bills. Additionally, we find that Qwest's performance on the relevant measurements satisfies the parity or benchmark standards, with few exceptions.<sup>87</sup> The Commission has established in past section 271 orders that, as part of its OSS showing, a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems.<sup>88</sup> In particular, BOCs must provide two essential billing functions: (1) complete, accurate, and timely reports on the service usage of competing carriers' customers; and (2) complete, accurate, and timely wholesale bills.<sup>89</sup> Service usage reports and wholesale bills are issued by incumbent LECs to competitive LECs for two different purposes.<sup>90</sup> Service-usage reports are issued to competitive LECs that purchase UNEs, such as unbundled switching, and measure the types and amounts of incumbent LEC services used by a competitive LEC's end users.<sup>91</sup> Qwest, using the same process that it uses for its own

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for DS1s showing (1.65%, 1.84%, 2.74%, 2.61%, 2.23%) for competitive LECs versus (1.22%, 1.25%, 1.30%, 1.34%, 1.32%) for Qwest retail customers for November 2002 to March 2003.

<sup>85</sup> The five-month averages for the competitive LEC trouble rates were 0.47% (UNE-P Centrex), 0.64% (Centrex), 0.76% (Centrex 21), 0.17% (PBX), 0.72% (Basic Rate ISDN), 0.14% (ISDN Primary), and 2.22% (DS1). All relevant months and the five-month average for each metric are below 3%, which the Commission has found to be acceptable in past section 271 orders. *See, e.g., Qwest 9-State Order*, 17 FCC Rcd at 26488, para. 340 n.1237; *Verizon Maine Order*, 17 FCC Rcd at 11691, para. 49 n.209.

<sup>86</sup> Qwest Notarianni/Doherty Decl., paras. 421-548; Qwest Application at 81-84; Qwest Reply at 13-22; *see also* Department of Justice Evaluation at 8 (finding that concerns regarding Qwest's billing processes reflect private disputes between parties, one-time errors, or *de minimis* misses). *But see* Minnesota Commission Comments at 9 (stating that the Minnesota Commission did not reach a collective decision regarding checklist item 2 because of concerns regarding billing accuracy).

<sup>87</sup> In Minnesota, competitive LECs' billing accuracy under BI-3A (Adjustments for Errors, UNEs and Resale) is 98.06% versus 99.30% for Qwest retail, on average, from November 2002 through March 2003. We do not find this discrepancy to be competitively significant. *See* Minnesota Commission Comments, Attach. 3 at 32. Because of this mismatch between the month the credit occurred and the month that is being billed, we have previously relied on other billing metrics, if available. *See Qwest 9-State Order*, 17 FCC Rcd at 26382, para. 126 nn.470-71. We note that Qwest achieved parity under BI-5A and BI-5B – billing metrics which were adopted subsequent to the *Qwest 9-State Order* and which are patterned after the performance metrics adopted by Verizon subsequent to the billing problems noted in our *Verizon Pennsylvania Order*. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17432-17436, paras. 24-27 (2001).

<sup>88</sup> *See Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

<sup>89</sup> *See id.*

<sup>90</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26374, para. 115.

<sup>91</sup> *See id.*



end users, collects competitive LEC end-user usage data via the Daily Usage File (DUF).<sup>92</sup> In contrast, wholesale bills are issued by incumbent LECs to collect compensation for competitive LEC wholesale inputs, such as UNEs used by competitive LECs to provide service to their end users.<sup>93</sup> These bills are usually generated on a monthly basis, and allow competitors to monitor the costs of providing service.<sup>94</sup>

31. *Daily Usage Files.* Based on the evidence in the record, we find that Qwest complies with the checklist item 2 standards for provision of DUF.<sup>95</sup> Our conclusion is based on commercial data as well as BearingPoint's third-party audit of Qwest's billing systems, processes and performance. Notably, BearingPoint concluded that Qwest can create and distribute bills to competitive LECs in an accurate and timely fashion.<sup>96</sup>

32. Although we recognize that two of the four Minnesota Commissioners expressed concern about Qwest's ability to provide accurate DUF records, the Minnesota ALJ's findings, upon which the two Commissioners based their conclusions, are based on evidence concerning a manual process for providing usage information for UNE-Star, which Qwest no longer uses.<sup>97</sup> Qwest established, beginning in mid-2001, the same mechanized process for providing usage information for UNE-Star and UNE-Platform.<sup>98</sup> Furthermore, as the Commission found in the *Qwest 9-State Order*, these concerns regarding UNE-Star DUF issues "appear to be disputes between the parties, and more appropriate for the interconnection dispute resolution process."<sup>99</sup> As there is no recent commercial evidence of deficiencies in Qwest's DUF, we do not find that the concerns regarding Qwest's DUF rise to the level of checklist noncompliance.<sup>100</sup>

33. *Wholesale Bills.* We find that Qwest's Customer Record and Information System (CRIS) wholesale bills provide competitive LECs a meaningful opportunity to compete. Commenters raise the following arguments, which are discussed below, regarding Qwest's wholesale bills: (1) Qwest's Billing Output Specification-Billing Data Tape (BOS-BDT) bills are inaccurate; (2) Qwest's paper bills are inaccurate; (3) Qwest does not properly provide

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<sup>92</sup> See *id.*, 17 FCC Rcd at 26375, para. 116.

<sup>93</sup> See *Verizon New Jersey Order*, 17 FCC Rcd at 12333, para. 121.

<sup>94</sup> See *id.*

<sup>95</sup> Qwest Notarianni/Doherty Decl., paras. 498-511.

<sup>96</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26384, para. 131.

<sup>97</sup> Qwest Notarianni/Doherty Decl., para. 509; Qwest Reply at 13, 16.

<sup>98</sup> Qwest Notarianni/Doherty Decl., para. 509.

<sup>99</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26383-84, para. 130 n.481.

<sup>100</sup> We also reject competitive LECs' generalized claims that Qwest provides incorrect DUF records. MCI Comments at 3; AT&T Reply at 26. We note that we addressed these specific complaints from MCI concerning DUF information in the *Qwest 3-State Order*, para. 51 n.161.

information needed in order for competitive LECs to bill Qwest for terminating access charges; and (4) the billing adjustment performance metric is not reliable as a result of Qwest's UNE-Star billing adjustments.<sup>101</sup>

34. First, we reject AT&T's argument that inaccuracies in Qwest's BOS-BDT bills rise to the level of checklist noncompliance.<sup>102</sup> Qwest produces two types of electronic bills, ASCII bills and BOS-BDT bills.<sup>103</sup> As we found in the *Qwest 9-State Order*, Qwest's ASCII bill is an accurate, auditable electronic bill.<sup>104</sup> We do not need to find that other types of electronic bills provided by Qwest are accurate and auditable for Qwest to be checklist compliant. In the *Qwest 9-State Order*, we commended Qwest for making available a BOS-formatted bill, but we did not rely on Qwest's provision of the BOS-formatted bill to support our finding that Qwest provides accurate and auditable electronic bills.<sup>105</sup> Thus, we do not find that AT&T's allegations about discrepancies between Qwest's BOS-BDT bills and Qwest's paper bills rise to the level of checklist noncompliance.<sup>106</sup>

35. Second, we do not find that AT&T's allegations regarding inaccuracies in Qwest's paper bills rise to the level of checklist noncompliance.<sup>107</sup> The record shows that the improper pay-per-use charges about which AT&T complains amounted to 1 percent or less of AT&T's bill each month.<sup>108</sup> The record also shows that Qwest has removed the improper \$.49 service line charge from AT&T's paper bill and has taken measures to ensure this type of charge

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<sup>101</sup> Minnesota Commission Comments at 9 (citing Qwest Application App. K, Vol. 3, Tab 317, paras. 310-24) (*Minnesota ALJ Recommendation on Checklist Items*); AT&T Comments at 22-24; AT&T Reply at 26.

<sup>102</sup> AT&T Comments at 23; *see also* AT&T Apr. 29 *Ex Parte* Letter at 1-2; Qwest Notarianni/Doherty Reply Decl., paras. 73-97.

<sup>103</sup> Qwest Notarianni/Doherty Decl., paras. 426-47.

<sup>104</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26379-81, para. 124; *see also* Qwest Reply at 21-22.

<sup>105</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26381, para. 125.

<sup>106</sup> AT&T Comments at 23-24; *see also* AT&T April 29 *Ex Parte* Letter at 1-2; Qwest Notarianni/Doherty Reply Decl., para 77 (stating that every electronic BOS bill generated by Qwest for AT&T since November 2002 has matched the paper bill at the summary level for total amount owed). We note that Qwest is working to improve its BOS-BDT bill. Qwest Reply at 21. Qwest has made significant improvements to its BOS-BDT bill since its introduction in July 2002, including a fix to remove the disparity between the BOS-BDT bill and Qwest's paper bill if billing adjustments were made after the final bill had been generated, and correction of a usage rounding error. Qwest Notarianni/Doherty Reply Decl., paras. 74-87. Furthermore, we do not require that Qwest's BOS-BDT bill be generated from the Carrier Access Billing System (CABS) rather than from the Customer Record Information System (CRIS), which Qwest currently uses to generate BOS-BDT bills. *See* AT&T Finnegan Decl., para. 10 n.10.

<sup>107</sup> AT&T Comments at 23-24.

<sup>108</sup> Qwest Notarianni/Doherty Reply Decl., para. 100.

does not improperly appear on competitive LECs' bills.<sup>109</sup> Therefore, we do not find the issues raised by AT&T about Qwest's paper bills to be competitively significant.

36. Third, we reject AT&T's argument that Qwest fails to provide competitive LECs with information needed in order for competitive LECs to bill Qwest for terminating access charges when a Qwest customer's intraLATA toll call terminates to a competitive LEC's local exchange customer served by a competitive LEC's switch.<sup>110</sup> Where AT&T terminates calls at one of its own switches, AT&T can obtain usage information from either its own switch or from the out-of-office band signaling stream.<sup>111</sup> The record shows that for AT&T UNE-Platform customers, where AT&T would not have access to the information in the switch where the call was terminated, Qwest provides the information AT&T needs to bill Qwest for terminating access.<sup>112</sup> Since Qwest provides the necessary information to competitive LECs, we do not find that AT&T's complaints rise to the level of checklist noncompliance.

37. Finally, we conclude that the concerns raised in the Minnesota ALJ's recommendation about the billing adjustment performance metric – upon which two of the four voting members of the Minnesota Commission relied – are misplaced.<sup>113</sup> Specifically, the Minnesota ALJ argues that the billing adjustment performance metric was “manipulated” as a result of refunds given via bill adjustments to those competitive LECs using UNE-Star and is, therefore, ineffective at demonstrating whether Qwest is providing accurate bills to competitive LECs for UNE-Platform.<sup>114</sup>

38. We note that the Minnesota ALJ's finding was based on a factual situation that no longer existed at the time this application was filed. We find that the volume of UNE-Star orders has declined significantly and that performance metrics pertaining to our relevant 5-month period mainly reflect UNE-Platform orders.<sup>115</sup> Moreover, this issue does not appear to be an issue of billing accuracy. Instead, the ALJ's concerns focused on Qwest's provision of refunds

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<sup>109</sup> *Id.* at para. 81.

<sup>110</sup> AT&T Comments at 23; AT&T Reply at 25-26.

<sup>111</sup> Qwest Notarianni/Doherty Reply Decl., para. 70.

<sup>112</sup> *Id.* at para. 71.

<sup>113</sup> *Minnesota ALJ Recommendation on Checklist Items*, para. 320. We note that two out of the four voting Minnesota Commissioners adopted the Minnesota ALJ's recommendation that these billing concerns prevent a finding of compliance with checklist item 2.

<sup>114</sup> *Minnesota ALJ Recommendation on Checklist Items*, para. 320. UNE-Platform, priced at the sum of prices of the network elements, is priced lower than resale in Minnesota. *Id.* at paras. 89-100. Qwest offered the two largest competitive LECs in Minnesota, Eschelon and McLeod, an alternative to UNE-Platform called UNE-Star. *Id.* UNE-Star was ordered by those competitive LECs as resale, billed as resale, and Qwest would make subsequent end-of-month adjustments to ensure the price of UNE-Star reflected the lower UNE-Platform price. *Id.*

<sup>115</sup> Qwest Notarianni/Doherty Reply Decl., Ex. CLD-3.

given only to certain competitive LECs using UNE-Star through unfiled agreements.<sup>116</sup> As to UNE-Star, the evidence in the record indicates that the billing adjustments at issue were an agreed-upon mechanism to provide a true-up, and those adjustments do not reflect a problem with billing accuracy as we have examined it in past applications. The issue of unfiled agreements is discussed fully in the Public Interest section, below.<sup>117</sup> Thus, we find that the concerns raised by the Minnesota ALJ do not rise to the level of checklist noncompliance.

#### f. Change Management

39. Based on the evidence in the record, we conclude that Qwest provides an efficient competitor a meaningful opportunity to compete by providing sufficient access to its OSS.<sup>118</sup> We reject competitive LEC arguments that Qwest provides such poor documentation to competitors about its systems that it must fail checklist item 2.<sup>119</sup> Commenters have not raised any arguments relating to documentation that we have not fully addressed in the *Qwest 9-State Order* and the *Qwest 3-State Order*.<sup>120</sup> Thus, we find no reason to alter our conclusion in the instant application.<sup>121</sup>

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<sup>116</sup> Qwest Reply at 14-16.

<sup>117</sup> See Section VII.B. (Unfiled Interconnection Agreements) *infra*.

<sup>118</sup> See Qwest Application at 25-31. See generally Qwest Notarianni/Doherty Decl.

<sup>119</sup> MCI Comments at 3; AT&T Finnegan Decl., para. 8; AT&T Reply at 17.

<sup>120</sup> AT&T Finnegan Decl., para. 8 (stating that the test environment offered by Qwest differs significantly from its production environment); MCI Reply at 2 (stating that high reject rates are the result of Qwest's inadequate documentation); MCI June 13 *Ex Parte* Letter at 1-2; see *Qwest 3-State Order*, paras. 55-62; *Qwest 9-State Order*, 17 FCC Rcd at 26388-89, para. 139 (finding that Qwest's Stand Alone Test Environment (SATE) is designed to ensure that competitive LECs' EDI interfaces can communicate with Qwest's systems regarding key functionalities and allow real-world orders to be tested); see also Qwest Notarianni/Doherty Reply Decl., para. 7. Additionally, AT&T states that Qwest has not implemented more than 20 of AT&T's change requests (CRs), encompassing various OSS functions from pre-ordering through billing. AT&T Finnegan Decl., para. 10. The record shows that in processing AT&T's change requests, Qwest has followed the change management process designed collaboratively by competitive LECs (including AT&T) and Qwest. Qwest Reply at 10. Specifically, the record shows that Qwest has not delayed in processing AT&T's CRs or implementing those that have been approved. Qwest Reply at 10. Many of the pending AT&T CRs were submitted after January 1, 2003 – including each of the CRs specifically mentioned by AT&T. Qwest Reply at 10-11; see AT&T Finnegan Decl., para. 10 & nn.8-10; Letter from Melissa Newman, Vice President – Federal Regulatory, Qwest, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 at 1 (filed May 16, 2003) (Qwest May 16B *Ex Parte* Letter).

<sup>121</sup> See *Qwest 3-State Order*, paras. 55-58.

## 2. UNE Combinations

40. Based on the evidence in the record, we conclude that Qwest meets its obligation to provide access to UNE combinations in compliance with Commission rules.<sup>122</sup> In order to satisfy section 271(c)(2)(B)(ii), a BOC must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already combined elements, except at the specific request of the competing carrier.<sup>123</sup> Although Qwest missed the benchmark for EELs installation commitments,<sup>124</sup> we find that the performance disparities do not warrant a finding of checklist noncompliance, given the comparatively low volumes and the lack of complaints by competitors regarding EELs provisioning.<sup>125</sup> Recognizing the difficulty of drawing meaningful conclusions from relatively low volumes,<sup>126</sup> we note that in Colorado where Qwest experienced significantly higher volumes of competitive LEC orders for EELs,<sup>127</sup> it performed at or near the benchmark during the relevant months for this metric.<sup>128</sup>

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<sup>122</sup> See Qwest Application at 27-31; Appendix B; see also Minnesota Commission Comments at 9 (explaining that the Minnesota Commission did not reach a decision regarding checklist item 2, but not citing EELs as an outstanding issue). Issues raised by the Minnesota Commission regarding UNE-Platform orders are discussed in Section III.A.1.e (Billing) *supra*.

<sup>123</sup> 47 U.S.C. § 271(c)(2)(B)(ii); 47 C.F.R. § 51.315. On May 13, 2002, the U.S. Supreme Court upheld sections 51.315(c)-(f) of the Commission's rules, which, subject to certain limitations, require incumbent LECs to provide combinations of unbundled network elements "not ordinarily combined in the incumbent LEC's network" and to "combine unbundled network elements with the elements possessed by the requesting telecommunications carrier." *Verizon Communications, Inc. v. FCC*, 535 U.S. 467, 539 (2002). In a prior decision, the Supreme Court upheld the Commission's authority to adopt sections 51.315(a)-(b) of the Commission's rules, which establish the general obligation of an incumbent LEC to provide combinations of network elements and require an incumbent LEC not to separate requested elements that it currently combines, except upon request. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 385, 393-95 (1999). We note that other unbundled network elements are required pursuant to the checklist, but we discuss them in the context of other checklist items.

<sup>124</sup> See OP-3 (Installation Commitments Met) for EELs in Minnesota, indicating missed benchmarks in December, January, February, and March. In these months, the rates of installation commitments met for competitive LECs were 79.41%, 85.00%, 85.71%, and 70.21%, compared to the 90% benchmark. The competitive LEC volumes in these months were 34, 40, 56, and 47. See *id.*

<sup>125</sup> See Qwest Application at 30-31; Qwest Williams Decl., para. 230 (explaining that this metric is particularly sensitive to a small number of misses due to the low volumes ordered); Qwest Reply, App. at A-4; see also *Qwest 9-State Order*, 17 FCC Rcd at 26401, para. 162.

<sup>126</sup> See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26401, para. 162 n.608.

<sup>127</sup> Volumes for OP-3 (Installation Commitments Met) for EELs in Colorado were (236, 210, 206, 207, 198) for November 2002 to March 2003. See Letter from Melissa E. Newman, Vice President – Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed Apr. 30, 2003) at Attach. 1 (containing November 2002 - March 2003 Statewide Performance Summary for Colorado).

<sup>128</sup> Qwest missed the benchmarks for OP-3 (Installation Commitments Met) for EELs in Colorado in November and January. In these months, the rates of installation commitments met for competitive LECs were 88.14% and 89.81%, compared to the 90% benchmark. See *id.*

### 3. Pricing of Unbundled Network Elements

#### a. Introduction

41. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.<sup>129</sup> Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>130</sup> Section 252(d)(1) provides that a state commission’s determination of the just and reasonable rates for network elements, must be nondiscriminatory, based on the cost of providing the network elements, and may include a reasonable profit.<sup>131</sup> Pursuant to this statutory mandate, the Commission has determined that prices for unbundled network elements must be based on the total element long run incremental cost (TELRIC) of providing those elements.<sup>132</sup>

42. In applying the Commission’s TELRIC pricing principles in this application, we do not conduct a *de novo* review of a state’s pricing determinations.<sup>133</sup> We will, however, reject an application if “basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”<sup>134</sup> We note that different states may reach different results that are each within the range of what a reasonable application of TELRIC principles would produce. Accordingly, an input rejected elsewhere might be reasonable under the specific circumstances here.

43. In its application, Qwest relies on a benchmark comparison to its unbundled network element rates in Colorado in order to demonstrate that its unbundled network element rates in Minnesota fall within the range that a reasonable application of TELRIC principles would produce.<sup>135</sup> Based on a benchmark comparison of Qwest’s unbundled network element

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<sup>129</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>130</sup> 47 U.S.C. § 251(c)(3).

<sup>131</sup> 47 U.S.C. § 252(d)(1).

<sup>132</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 15844-47, paras. 674-79 (1996) (*Local Competition First Report and Order*) (subsequent history omitted); 47 C.F.R. §§ 51.501-51.515 (2001). Last year, the Supreme Court upheld the Commission’s forward-looking pricing methodology in determining the costs of unbundled network elements. *Verizon Communications, Inc. v. FCC*, 122 S. Ct. 1646, 1679 (2002).

<sup>133</sup> *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted). *See also Sprint v. FCC*, 274 F.3d 549, 556 (D.C. Cir. 2001) (“When the Commission adjudicates § 271 applications, it does not – and cannot – conduct *de novo* review of state rate-setting determinations. Instead, it makes a general assessment of compliance with TELRIC principles.”).

<sup>134</sup> *Verizon Pennsylvania Order*, 16 FCC Rcd at 17453, para. 55 (citations omitted).

<sup>135</sup> Qwest Application at 100-101; Qwest Thompson Decl., paras. 2, 14-20.

rates in Minnesota to its unbundled network element rates in Colorado, we find, as discussed more fully below, that Qwest's unbundled network element rates in Minnesota fall within the range that a reasonable application of TELRIC principles would produce and therefore satisfy checklist item two.

### b. Background

44. *Arbitration and Generic Cost Docket.* Prices for unbundled network elements were first established by the Minnesota Commission on December 2, 1996, in an order approving the first arbitrated interconnection agreement between AT&T and Qwest in Minnesota.<sup>136</sup> In that order, the Minnesota Commission initiated a generic cost docket to establish prices for interconnection and unbundled network elements.<sup>137</sup> On November 17, 1998, the ALJ issued a report in the generic cost docket recommending adoption of the HAI model, with modifications to engineering and expense inputs, to establish prices for unbundled network elements.<sup>138</sup> The Minnesota Commission adopted the ALJ's recommendations on May 3, 1999.<sup>139</sup> On March 15, 2000, the Minnesota Commission issued an order on reconsideration establishing additional rates not addressed in the prior order, and directing Qwest to make a compliance filing within 30 days to set the resulting rates.<sup>140</sup>

45. *Deaveraging and Line Sharing Dockets.* The Minnesota Commission examined the issues of geographic rate deaveraging and line sharing in separate dockets. The Minnesota Commission issued an order deaveraging loop rates into four geographic zones on July 10, 2000,

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<sup>136</sup> See generally Qwest Application, App. C, Vol. 2, Tab 2, Docket Nos. P-422, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729; P-421/CI-01-1375 – *In the Matter of Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc. and MFS Communications Company for Arbitration with US West Communications, Inc Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996*, Order Resolving Arbitration Issues and Initiating a US West Cost Proceeding (rel. Dec. 2, 1996) (*December 2, 1996 Arbitration Order*). The Minnesota Commission consolidated the interconnection arbitration proceedings between Qwest and each of AT&T, MCImetro and MFS into one proceeding.

<sup>137</sup> See *id.* at 60, 78.

<sup>138</sup> Qwest Application, App. C, Vol. 2, Tab 6, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 – *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, ALJ Report (rel. Nov. 17, 1998) (*ALJ Generic Cost Docket Report*). See also Qwest Application, App. C, Vol. 2, Tab 23, Docket Nos. P-421/CI-01-1375 – *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices*, ALJ Findings of Fact, Conclusions of Law, and Recommendation at 6 (rel. Aug. 5, 2002) (*ALJ Long-Term Rate Recommendation*).

<sup>139</sup> Qwest Application, App. C, Vol. 2, Tab 8, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 – *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, Order Resolving Cost Methodology, requiring Compliance Filing, and Initiating Deaveraging Proceeding (rel. May 3, 1999) (*Generic Cost Docket Order*).

<sup>140</sup> Qwest Application, App. C, Vol. 2, Tab 9, Docket No. P-442, 5231, 3167, 466, 421/CI-96-1540 – *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements*, Order Granting Reconsideration, Setting Prices and Ordering Compliance Filing (rel. Mar. 15, 2000) (*Generic Cost Docket Order on Reconsideration*).

and affirmed this order on reconsideration on October 5, 2000.<sup>141</sup> The Minnesota Commission's line sharing proceeding culminated in the issuance of an order on July 24, 2001, which established a zero rate for the high-frequency portion of the loop and positive rates for related elements.<sup>142</sup>

46. *Section 271 Cost Docket.* On September 11, 2001, the Minnesota Commission initiated proceedings relating to Qwest's application for section 271 approval with this Commission. The proceeding was divided into several specialized dockets, including a cost docket established to develop prices for new unbundled network elements in accordance with TELRIC principles.<sup>143</sup> Independent of this docket, on December 21, 2001, AT&T and WorldCom filed a complaint with the Minnesota Commission seeking adjustment of Qwest's rates for certain unbundled network elements, particularly those elements that comprise the UNE-Platform.<sup>144</sup> Subsequently, this complaint proceeding and the issues raised therein were consolidated with the section 271 cost docket.<sup>145</sup> On April 4, 2002, the Minnesota Commission issued an order declaring all rates under review in the section 271 cost docket interim subject to true-up.<sup>146</sup> On August 5, 2002, after months of pre-filed testimony, hearings and briefs, including significant participation by competitive LECs in Minnesota, the ALJ issued its recommendation concerning long-term rates.<sup>147</sup> The ALJ recommended adoption of the HAI cost model 5.2a to establish recurring rates, the loop related inputs favored by the competitive LECs, non-usage sensitive rates for local switching, as urged by AT&T, and the switching and transport assumptions proposed by competitive LECs.<sup>148</sup> For non-recurring charges, the ALJ recommended adoption of the non-recurring cost model proposed by Qwest, with certain

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<sup>141</sup> See Qwest Thompson Decl., para. 5. See also Qwest Application, App. C, Vol. 2, Tab 10, Docket No. P-999/CI-99-465 – *In the Matter of Implementing the Geographic Deaveraging Requirements of 47 C.F.R. § 51.507(f)*, Order Deaveraging Unbundled Network Element Rates (rel. July 10, 2000) (*Deaveraging Order*); See also Qwest Application, App. C, Vol. 2, Tab 12, Docket No. P-999/CI-99-465 – *In the Matter of Implementing the Geographic Deaveraging Requirements of 47 C.F.R. § 51.507(f)*, Order on Reconsideration (rel. Oct. 5, 2000) (*Deaveraging Order on Reconsideration*).

<sup>142</sup> See Qwest Thompson Decl., para. 5.

<sup>143</sup> See Qwest Application, App. C, Vol. 2, Tab 25, Docket Nos. P-421/CI-01-1375 and P-442, 421, 3012/M-01-1916 – *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element Prices and the Commission's Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Order Setting Prices and Establishing Procedural Schedule at 1 (rel. Oct. 2, 2002) (*Long-Term Rate Order*).

<sup>144</sup> See *id.*

<sup>145</sup> See *id.* at 1-2.

<sup>146</sup> Qwest Application, App. C, Vol. 2, Tab 20, Docket Nos. P-421/CI-01-1375 and P-442, 421, 3012/M-01-1916 – *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element Prices and the Commission's Review and Investigation of Certain Unbundled Network Element Prices of Qwest*, Order Establishing Interim Rates (rel. Apr. 4, 2002) (*Interim Rate Order*).

<sup>147</sup> See *Long-Term Rate Order* at 2. See also ALJ Long-Term Rate Recommendation.

<sup>148</sup> See ALJ Long-Term Rate Recommendation at 8-37. See also Qwest Thompson Decl., paras. 7-9.



adjustments.<sup>149</sup> For collocation rates, the ALJ recommended adoption of the collocation model proposed by AT&T and MCI in the prior generic cost proceeding and adopted by the Minnesota Commission in that proceeding.<sup>150</sup> For certain new collocation elements, however, the ALJ recommended adoption of Qwest's proposed collocation model, with certain adjustments, because it was the only model under consideration that estimated costs for these elements.<sup>151</sup> The Minnesota Commission adopted the ALJ's recommendations, with minor modifications, on October 2, 2002,<sup>152</sup> and denied reconsideration of this order on November 26, 2002.<sup>153</sup> Qwest submitted an SGAT in compliance with the Minnesota Commission's long-term rate order on February 18, 2002. On March 24, 2003, the Minnesota Commission issued an order accepting Qwest's compliance filing and establishing, as a final matter, the rates Qwest may charge competitive LECs for unbundled network elements at issue in the section 271 cost proceeding.<sup>154</sup> On April 23, 2003, Qwest filed an appeal of the Minnesota Commission's March 24, 2003 order in federal district court in Minnesota. That proceeding remains pending.<sup>155</sup>

### c. Benchmark Analysis

47. In its application, Qwest relies on a benchmark comparison to its unbundled network element rates in Colorado in order to demonstrate that its unbundled network element rates in Minnesota fall within the range that a reasonable application of TELRIC principles would produce.<sup>156</sup> None of the parties has challenged Qwest's benchmark analysis for Minnesota, including its decision to use Colorado rates as the basis for the comparison. Nonetheless, we perform our own benchmark analysis of Qwest's Minnesota unbundled network element rates to determine whether those rates comply with TELRIC and satisfy checklist item two. To determine whether a comparison is reasonable, the Commission will consider whether the two states have a common BOC; whether the two states have geographic similarities; whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and whether the Commission has already found the rates in the

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<sup>149</sup> See *ALJ Long-Term Rate Recommendation* at 42-49. See also Qwest Thompson Decl., para. 11.

<sup>150</sup> See *ALJ Long-Term Rate Recommendation* at 49-57. See also Qwest Thompson Decl., para. 12.

<sup>151</sup> See *id.* Qwest was the only party in the section 271 cost docket to propose a collocation cost model. See *ALJ Long-Term Rate Recommendation* at 51.

<sup>152</sup> See *Long-Term Rate Order*. Most notably, the Minnesota Commission adopted the HAI 5.2a "default backbone and branch" loop distribution methodology instead of the "right-angled Minimum Spanning Tree" approach recommended by the ALJ. See *id.* at 6-8. The Minnesota Commission also declined to adopt the price for cageless collocation recommended by the ALJ and instead adopted a price of \$0. See *id.* at 8-9.

<sup>153</sup> See Minnesota Commission Comments at 5.

<sup>154</sup> See *id.* See also Minnesota Commission Reply, Supplemental Appendix B at 11.

<sup>155</sup> See Minnesota Commission Reply at 2-3 & Supplemental Appendix B.

<sup>156</sup> See Qwest Application at 100-101; Qwest Thompson Decl., paras. 2, 14-20.

comparison state to be TELRIC-compliant or an appropriate benchmark.<sup>157</sup> Applying this standard to Qwest's rates in Minnesota, we find that Colorado is a permissible state for unbundled network element rate comparison purposes here.<sup>158</sup>

48. Having determined that the Colorado rates are appropriate rates for the benchmark comparison, we compare Qwest's Minnesota rates to the Colorado rates under our benchmark analysis, using our standard assumptions for weighting rates.<sup>159</sup> We compare the difference between the rates in Minnesota and the rates in Colorado to the difference between the costs in Minnesota and the costs in Colorado according to the Synthesis Model.<sup>160</sup> We compare rates and costs for loops and for aggregated non-loop elements.<sup>161</sup> Taking a weighted average of Qwest's loop rates in Minnesota and Colorado, we find that Qwest's Minnesota loop rates satisfy our benchmark analysis and the requirements of checklist item 2.<sup>162</sup> We also conduct a benchmark analysis of Qwest's Minnesota non-loop rates. We compare Qwest's Minnesota non-loop rates to the Colorado non-loop rates using our benchmark analysis and find that Qwest's Minnesota non-loop rates satisfy our benchmark analysis.<sup>163</sup> Thus, we find that Qwest has

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<sup>157</sup> See *Verizon New Jersey Order*, 17 FCC Rcd at 12295-96, para. 49; *Application by Verizon New England Inc., Bell Atlantic Communications Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, 3320, para. 38 (2002) (*Verizon Rhode Island Order*); *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Arkansas and Missouri*, 16 FCC Rcd 20719, 20746, para. 56 (2001) (*SWBT Arkansas/Missouri Order*); *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 63. In the *Verizon Pennsylvania Order*, the Commission found that several of the criteria should be treated as indicia of the reasonableness of the comparison. *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457, para. 64; see also *Verizon Massachusetts Order*, 16 FCC Rcd at 9002, para. 28; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6276, para. 82.

<sup>158</sup> Colorado shares geographic similarities, is served by the same BOC, has a similar rate structure, and the Commission has already found Colorado's rates to be TELRIC-compliant on their own merits. See *Qwest 9-State Order*, 17 FCC Rcd at 26467-69, paras. 302, 305.

<sup>159</sup> See *Verizon Pennsylvania Order*, 16 FCC Rcd at 17458, para. 65 (describing our standard assumptions).

<sup>160</sup> The Commission "cannot rely on the [synthesis] model to provide guidance in examining non-recurring rates, because it does not examine these costs." *Verizon Pennsylvania Order*, 16 FCC Rcd at 17457 n.248.

<sup>161</sup> We note that although the Commission only benchmarks non-loop elements in the aggregate, Qwest's Minnesota rates for switching and transport would independently satisfy a benchmark test.

<sup>162</sup> Qwest's Minnesota loop rates are 19% lower than Colorado loop rates. Comparing the weighted average costs per the Synthesis Model, we find that the Minnesota loop costs are 6% lower than the Colorado loop costs. Because the percentage by which Minnesota loop rates fall below Colorado loop rates exceeds the percentage by which Minnesota loop costs fall below Colorado loop costs per the Synthesis Model, we conclude that Qwest's Minnesota loop rates satisfy our benchmark analysis.

<sup>163</sup> Qwest's Minnesota non-loop rates are 40% lower than Colorado non-loop rates. Comparing the weighted average costs per the Synthesis Model, we find that Qwest's Minnesota non-loop costs are 10% lower than Qwest's (continued....)

demonstrated that its Minnesota unbundled network element rates satisfy the requirements of checklist item two.

**d. Appeal of the Minnesota Commission's Rate Order**

49. As noted above, on April 23, 2003, Qwest filed an appeal in federal district court in Minnesota of the Minnesota Commission's March 24, 2003 order accepting Qwest's compliance filing and establishing, as a final matter, the rates Qwest may charge competitive LECs for unbundled network elements at issue in the section 271 cost proceeding. In its reply comments, AT&T criticizes Qwest for seeking section 271 approval based on the unbundled network element rates adopted by the Minnesota Commission, while simultaneously appealing those rates and seeking much higher unbundled network element rates.<sup>164</sup> In this case, we do not believe that the existence of a pending appeal, without more, should affect our review of the currently effective rates submitted with Qwest's application. The Commission decides the merits of Qwest's section 271 application based on its present rates.<sup>165</sup> Qwest is not seeking a stay of its present rates during the period that its appeal is pending in federal district court.<sup>166</sup> Further, Qwest has committed that, to the extent it is successful on appeal, it will not seek additional, retroactive payments from competitive LECs for interconnection services provided by Qwest during the period from March 24, 2003 to the date of the federal court's decision.<sup>167</sup> This clarifies that the rates currently before the Commission in this application will not be retroactively replaced by higher rates that have not been subject to analysis and comment in this section 271 proceeding.<sup>168</sup> Under these circumstances, we conclude that Qwest's pending appeal before the federal district court in Minnesota does not preclude us from finding that Qwest satisfies checklist item 2.

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Colorado non-loop costs. Because the percentage by which Minnesota non-loop rates fall below Colorado non-loop rates exceeds the percentage by which Minnesota non-loop costs fall below Colorado non-loop costs per the Synthesis Model, we conclude that Qwest's Minnesota non-loop rates satisfy our benchmark analysis.

<sup>164</sup> See AT&T Reply at 10 n.17. See also Minnesota Commission Reply at 2-3 (noting that Qwest's appeal of the Minnesota Commission's rate order is currently pending in federal district court in Minnesota).

<sup>165</sup> See *In the Matter of Joint Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9067, paras. 97-98 (2002) (*BellSouth Georgia/Louisiana Order*).

<sup>166</sup> See Letter from Melissa E. Newman, Vice President-Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket 03-90 at 1 (filed May 21, 2003) (Qwest May 21A *Ex Parte* Letter).

<sup>167</sup> See *id.*

<sup>168</sup> Moreover, as we have pointed out in the past, to the extent prices in the future are not set in accordance with our rules and the Act, as a result of Qwest's appeal in federal district court or otherwise, we retain the ability going forward to take appropriate enforcement action, including action pursuant to section 271(d)(6). See *Verizon Massachusetts Order*, 16 FCC Rcd at 9003, para. 30; 47 U.S.C. § 271(d)(6).

#### IV. OTHER ITEMS

##### A. Checklist Item 1 – Interconnection

50. Section 271(c)(2)(B)(i) requires a BOC to provide equal-in-quality interconnection on terms and conditions that are just, reasonable, and nondiscriminatory in accordance with the requirements of sections 251 and 252.<sup>169</sup> Based on the evidence in the record, we conclude, as did the Minnesota Commission,<sup>170</sup> that Qwest complies with the requirements of this checklist item.<sup>171</sup> In reaching this conclusion, we have examined Qwest's performance in providing collocation and interconnection trunks to competing carriers, as we have done in prior section 271 proceedings.<sup>172</sup>

51. We disagree with AT&T's argument that Qwest does not satisfy this checklist item because, under Qwest's Statement of Generally Available Terms (SGAT) in Minnesota, Qwest may refuse to build new interconnection trunks for a competitive LEC.<sup>173</sup> Specifically, AT&T alleges that, under the SGAT, Qwest may build to its own lower forecast of the competitive LEC's needs, if the competitive LEC's usage on a statewide basis is less than 50 percent of the competitive LEC's trunks in service, which may cause competitive LECs to risk trunk blocking.<sup>174</sup>

52. We do not find that Qwest's trunk forecasting and utilization policies in the SGAT warrant a finding of checklist noncompliance. Qwest has a continuing obligation to provision interconnection trunks ordered by competitive LECs on terms and conditions that are just, reasonable, and nondiscriminatory.<sup>175</sup> If Qwest's forecast policy causes it to fail performance standards with regard to interconnection, it will be subject to penalties pursuant to

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<sup>169</sup> 47 U.S.C. § 271(c)(2)(B)(i); *see also* Appendix C, paras. 17-24.

<sup>170</sup> *See* Minnesota Commission Comments at 8-9.

<sup>171</sup> *See* Qwest Application App. A., Tab 3, Declaration of Thomas R. Freeberg, paras. 13-67. We also conclude that Qwest provides legally binding terms and conditions for collocation in its interconnection agreements and SGAT. *See* Minnesota SGAT § 8; *see also* Qwest Application App. A., Tab 4, Declaration of Margaret S. Bumgarner, paras. 13-91.

<sup>172</sup> *See Qwest 9-State Order*, 17 FCC Rcd at 26473-74, para. 312 (citing, *e.g.*, *BellSouth Georgia/Louisiana Order*, 17 FCC Rcd at 9133-37, paras. 201-06; *Verizon Massachusetts Order*, 16 FCC Rcd at 9092-95, 9098, paras. 183-87, 195). We find, based on the record, that Qwest's performance for interconnection satisfies its statutory obligations regarding interconnection quality and timeliness. *See also* Qwest Williams Decl., paras. 72-83. *See generally* Appendix B.

<sup>173</sup> *See* AT&T Comments at 25; AT&T Reply at 7 n.6.

<sup>174</sup> *See* AT&T Comments at 25; Minnesota SGAT § 7.2.2.8.6; *see also* Qwest Reply at 6 (explaining that § 7.2.2.8.6 of the Minnesota SGAT has been approved by the Minnesota Commission and has been part of the Minnesota SGAT since October 2001).

<sup>175</sup> *See* Qwest Reply at 6.

the PAP.<sup>176</sup> Therefore, we find that Qwest has an incentive to ensure that its network is functioning appropriately. Qwest's performance on interconnection metrics demonstrates that it provides interconnection in response to competitive LEC orders in compliance with this checklist item. Moreover, interconnection agreement provisions that include alternatives to the SGAT's forecasting provision are available for opt in by competitive LECs.<sup>177</sup> Finally, AT&T has provided no evidence that Qwest's policies here result in decreased trunk blockage performance.<sup>178</sup>

## B. Checklist Item 4 – Unbundled Local Loops

53. Section 271(c)(2)(B)(iv) of the Act requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”<sup>179</sup> Based on the evidence in the record, we conclude, as did the Minnesota Commission,<sup>180</sup> that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules.<sup>181</sup> Our conclusion is based on our review of Qwest’s performance for all loop types – which include, as in past section 271 orders, voice grade loops, xDSL-capable loops, and high capacity loops – as well as hot cut provisioning and our review of Qwest’s processes for line sharing and line splitting.<sup>182</sup> As of December 31, 2002, competitors have acquired from Qwest and placed into use approximately 106,827 stand-alone unbundled loops in Minnesota.<sup>183</sup> We note that no commenter raises issues related to Qwest’s provision of unbundled loops in Minnesota.

54. Consistent with the Commission’s prior section 271 orders, we do not address every aspect of Qwest’s loop performance where our review of the record satisfies us that

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<sup>176</sup> See Qwest Application, App. E, Minnesota Performance Assurance Plan, App. A at 1 (*Minnesota PAP*); Qwest Reply at 8.

<sup>177</sup> See, e.g., Qwest Application App. L, Vol. 1, Tab 11 (AT&T Interconnection Agreement, App. A, Attach. 3, § 4.1.3.1); Qwest Reply at 7-8; see also *SWBT Texas Order*, 15 FCC Rcd at 18390, para. 78 (explaining that section 252(i) entitles any requesting carrier to seek the same terms and conditions as those contained in an interconnection agreement).

<sup>178</sup> See NI-1 (Trunk blocking); see also *Qwest 9-State Order*, 17 FCC Rcd at 26477-78, para. 320.

<sup>179</sup> 47 U.S.C. § 271(c)(2)(B)(iv); see also Appendix C, paras. 48-52 (regarding requirements under checklist item 4).

<sup>180</sup> See Minnesota Commission Comments at 10-11.

<sup>181</sup> See Qwest Application at 34-42. See generally Appendix B.

<sup>182</sup> Our review encompasses Qwest’s performance and processes for all loop types, but as noted below, our discussion does not address every aspect of Qwest’s loop performance where our review of the record satisfies us that Qwest’s performance is in compliance with the applicable parity and benchmark measures.

<sup>183</sup> See Qwest Application at 35. In Minnesota, as of December 31, 2002, Qwest had in service 98,577 unbundled voice-grade analog loops, 6,928 xDSL-capable loops, 1,322 high capacity loops, and 2,389 unbundled shared loops. See *id.* at 35, 41.

Qwest's performance is in compliance with the parity and benchmark measures established in the state.<sup>184</sup> Instead, we focus our discussion on those areas where the record indicates discrepancies in performance between Qwest and its competitors. In making our assessment, we review performance measurements comparable to those the Commission has relied upon in prior section 271 orders, primarily those associated with measuring the timeliness and quality of loop provisioning and loop maintenance and repair.<sup>185</sup> As in past section 271 proceedings, in the course of our review, we look for patterns of systemic performance disparities that have resulted in competitive harm or that have otherwise denied new entrants a meaningful opportunity to compete. Isolated cases of performance disparity, especially when the margin of disparity is small, generally will not result in a finding of checklist noncompliance.<sup>186</sup> We generally find that disparity in one or two months out of the five-month reporting period is isolated and therefore not competitively significant.<sup>187</sup>

55. *xDSL-Capable Loops.* Based on the evidence in the record, we find that Qwest demonstrates that it provides xDSL-capable loops in a nondiscriminatory manner.<sup>188</sup> Although Qwest does not achieve parity under the trouble rate measure of maintenance and repair quality for ISDN-capable loops in Minnesota,<sup>189</sup> we find that these disparities are not competitively significant, given the relatively low competitive LEC trouble rate.<sup>190</sup> We take further comfort in Qwest's implementation of a plan to improve trouble rate performance, including weekly meetings to perform ongoing root-cause analyses to identify and implement appropriate corrective actions.<sup>191</sup> Thus, we find that Qwest's performance with respect to ISDN-capable loops does not warrant a finding of checklist noncompliance.

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<sup>184</sup> See, e.g., *Qwest 3-State Order*, para. 94; *Qwest 9-State Order*, 17 FCC Rcd at 26485-86, para. 336.

<sup>185</sup> See *Qwest 3-State Order*, para. 94; *Verizon Massachusetts Order*, 16 FCC Rcd at 9078-79, para. 162.

<sup>186</sup> See *Qwest 3-State Order*, para. 94; *Verizon Massachusetts Order*, 16 FCC Rcd at 9055-56, para. 122.

<sup>187</sup> See *Qwest 3-State Order*, para. 94; see, e.g., OP-5 (New Service Installation Quality) for DS1-capable loops; MR-3 (Out of Service Cleared within 24 Hours) for line shared loops; MR-6 (Mean Time to Restore) for line shared loops; MR-8 (Trouble Rate) for line shared loops (failing to achieve parity in two of the five relevant months).

<sup>188</sup> See Qwest Application at 36-38; Minnesota Commission Comments at 10-11.

<sup>189</sup> See MR-8 (Trouble Rate) for ISDN-capable loops showing (0.76%, 0.72%, 0.56%, 0.55%, 1.05%) for competitive LECs versus (0.30%, 0.25%, 0.28%, 0.28%, 0.37%) for Qwest retail customers for November 2002 to March 2003.

<sup>190</sup> In Minnesota, the five-month average for the competitive LEC trouble rate is 0.73%. All relevant months and the five-month average for this metric are below 3%, which the Commission has found to be acceptable in past section 271 orders. See *Qwest 9-State Order*, 17 FCC Rcd at 26488, para. 340 n.1237; *Verizon Maine Order*, 17 FCC Rcd at 11691, para. 49 n.209.

<sup>191</sup> See Qwest Application at 37; Qwest Williams Decl., para. 240.

56. In addition, we recognize that Qwest does not meet parity with respect to installation commitments met for conditioned loops in Minnesota.<sup>192</sup> Although Qwest missed the benchmark in three of the relevant months, competitive LEC performance improved each month, with Qwest achieving parity in the most recent months of performance data.<sup>193</sup> Therefore, we do not find that these performance disparities warrant a finding of checklist noncompliance.

57. *High Capacity Loops.* Based on the evidence in the record, we find that Qwest demonstrates that it provides high capacity loops in a nondiscriminatory manner.<sup>194</sup> Qwest, however, does not achieve parity under the trouble rate measure of maintenance and repair quality for DS1-capable loops.<sup>195</sup> Although troubles for competitive LECs were reported slightly more often than for Qwest's retail customers, we find that these disparities are not competitively significant given the relatively low competitive LEC trouble rate.<sup>196</sup> We take further comfort in Qwest's implementation of a plan to improve trouble rate performance for DS1-capable loops, including additional testing during provisioning and repair and additional training for field technicians.<sup>197</sup> Thus, we find that Qwest's performance with respect to high capacity loops does not warrant a finding of checklist noncompliance.

### C. Checklist Item 14 – Resale

58. Section 271(c)(2)(B)(xiv) of the Act requires that a BOC make “telecommunications services . . . available for resale in accordance with the requirements of section 251(c)(4) and section 252(d)(3).”<sup>198</sup> Based on the evidence in the record, we conclude that Qwest satisfies the requirements of this checklist item.<sup>199</sup> In reaching this conclusion, we recognize that the Minnesota Commission did not make a collective determination with regard to

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<sup>192</sup> See OP-3 (Installation Commitments Met) for conditioned loops showing (54.55%, 77.42%, 87.88%, 94.12%, 96.00%) for competitive LECs versus the 90% benchmark for Qwest for November 2002 to March 2003.

<sup>193</sup> See Qwest Application at 38; Qwest Williams Decl., para. 241.

<sup>194</sup> See Qwest Application at 38.

<sup>195</sup> See MR-8 (Trouble Rate) for DS1-capable loops showing (2.41%, 1.34%, 2.29%, 1.38%, 2.07%) for competitive LECs versus (1.22%, 1.25%, 1.30%, 1.34%, 1.32%) for Qwest retail customers for November 2002 to March 2003.

<sup>196</sup> The five-month average for the competitive LEC trouble rate is 1.89%. All relevant months and the five-month average for this metric are below 3%, which the Commission has found to be acceptable in past section 271 orders. See *Qwest 3-State Order*, para. 97; *Qwest 9-State Order*, 17 FCC Rcd at 26488, para. 340 n.1237; *Verizon Maine Order*, 17 FCC Rcd at 11691, para. 49 n.209.

<sup>197</sup> See Qwest Reply, App. at A-3.

<sup>198</sup> 47 U.S.C. § 271(c)(2)(B)(xiv); see also Appendix C.

<sup>199</sup> Qwest recognizes that it has a concrete and specific legal obligation through its SGAT and state-approved interconnection agreements to make its retail services available for resale to competing carriers at wholesale rates. Qwest Application at 66-70.

this checklist item because the Commissioners were unable to agree on how the unfiled agreement docket affects checklist item 14.<sup>200</sup> Unfiled agreements are discussed in the Public Interest Section, below.<sup>201</sup> The Minnesota Commission concluded that Qwest had resolved all other issues related to compliance with checklist item 14, and no other parties raised issues related to Qwest's compliance with checklist item 14.<sup>202</sup>

#### D. Remaining Checklist Items (3, 5-13)

59. In addition to showing compliance with the statutory requirements discussed above, an applicant for section 271 authority must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits),<sup>203</sup> item 5 (unbundled transport),<sup>204</sup> item 6 (unbundled local switching),<sup>205</sup> item 7 (911/E911 access and directory assistance/operator services),<sup>206</sup> item 8 (white pages directory listings),<sup>207</sup> item 9 (numbering administration),<sup>208</sup> item 10 (databases and associated signaling),<sup>209</sup> item 11 (number portability),<sup>210</sup> item 12 (local dialing parity),<sup>211</sup> and item 13 (reciprocal compensation).<sup>212</sup> Based on the evidence in this record, we conclude, as did the Minnesota Commission,<sup>213</sup> that Qwest complies with the requirements of all

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<sup>200</sup> *Id.*

<sup>201</sup> See Section VII.B (Unfiled Interconnection Agreements), *infra*.

<sup>202</sup> Minnesota Commission Comments at 14. See also Minnesota Commission Comments, Separate Statement of Chairman Koppendraye; Minnesota Commission Comments, Separate Statement of Commissioner Reha at 26; Minnesota Commission Comments, Separate Joint Statement of Commissioners Scott/Johnson at 33. In an *ex parte* letter filed June 18, 2003, AT&T raises issues relating to UNE-Star as a checklist item 14 violation. UNE-Star issues are addressed in our checklist item 2 discussion. See Section III.A. (Checklist Item 2) at n.30, *infra*; AT&T June 18 *Ex Parte* Letter at 1-4.

<sup>203</sup> 47 U.S.C. § 271(c)(2)(B)(iii).

<sup>204</sup> 47 U.S.C. § 271(c)(2)(B)(v).

<sup>205</sup> 47 U.S.C. § 271(c)(2)(B)(vi).

<sup>206</sup> 47 U.S.C. § 271(c)(2)(B)(vii).

<sup>207</sup> 47 U.S.C. § 271(c)(2)(B)(viii).

<sup>208</sup> 47 U.S.C. § 271(c)(2)(B)(ix).

<sup>209</sup> 47 U.S.C. § 271(c)(2)(B)(x).

<sup>210</sup> 47 U.S.C. § 271(c)(2)(B)(xi).

<sup>211</sup> 47 U.S.C. § 271(c)(2)(B)(xii).

<sup>212</sup> 47 U.S.C. § 271(c)(2)(B)(xiii).

<sup>213</sup> Minnesota Commission Comments at 7-14.



of these checklist items.<sup>214</sup> None of the commenting parties challenges Qwest's compliance with these items.

## V. COMPLIANCE WITH SECTION 271(c)(1)(A)

60. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, the BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or section 271(c)(1)(B) (Track B).<sup>215</sup> To meet the requirements of Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."<sup>216</sup> In addition, the Act states that "such telephone exchange service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier."<sup>217</sup> The Commission has concluded that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers,<sup>218</sup> and that unbundled network elements are a competing provider's "own telephone exchange service facilities" for purposes of section 271(c)(1)(A).<sup>219</sup> Furthermore, the Commission has held that a BOC must show that at least one "competing provider" constitutes "an actual commercial alternative to the BOC,"<sup>220</sup> which a BOC can do by demonstrating that the provider serves "more than a *de minimis* number" of subscribers.<sup>221</sup> Finally, the Commission has held that Track A does not require any particular level of market penetration, and the D.C.

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<sup>214</sup> See Qwest Application at 31-34 (checklist item 3), 42-46 (checklist item 5), 47-48 (checklist item 6), 48-49 (checklist item 7), 52-54 (checklist item 8), 54-56 (checklist item 9), 56-58 (checklist item 10), 58-60 (checklist item 11), 60-62 (checklist item 12), 62-65 (checklist item 13).

<sup>215</sup> 47 U.S.C. § 271(c)(1); Appendix C at paras. 15-16.

<sup>216</sup> 47 U.S.C. § 271(c)(1); Appendix C at paras. 15-16.

<sup>217</sup> 47 U.S.C. § 271(c)(1)(A).

<sup>218</sup> *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20585, para. 85 (1997) (*Ameritech Michigan Order*); see also *Application by BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20633-35, paras. 46-48 (1998) (*BellSouth Second Louisiana Order*).

<sup>219</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20598, para. 101.

<sup>220</sup> *Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Rcd 8685, 8695, para. 14 (1997) (*SWBT Oklahoma Order*).

<sup>221</sup> *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6257, para. 42; see also *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 78.

Circuit has affirmed that the Act “imposes no volume requirements for satisfaction of Track A.”<sup>222</sup>

61. We find that each of five carriers – AT&T, McLeod, HickoryTech, and NorthStar Access – serves more than a *de minimis* number of business and residential end users predominantly over its own facilities and each represents an “actual commercial alternative” to Qwest.<sup>223</sup> Specifically, AT&T provides telephone exchange service to residential subscribers over its own facilities, UNE-Loops, and the UNE-Platform and serves business subscribers through UNE-Loops and the UNE-Platform.<sup>224</sup> McLeod provides telephone exchange service to business subscribers predominantly through UNE-Loops and the UNE-Platform and serves residential customers primarily through UNE-Loops.<sup>225</sup> HickoryTech provides telephone exchange service to business and residential subscribers predominantly through its own facilities and UNE-Loops.<sup>226</sup> NorthStar Access provides telephone exchange service to business and residential subscribers predominantly through its own facilities and UNE-Loops.<sup>227</sup> We reject Sprint’s argument that, because it believes that Qwest’s estimation of competitive LEC customers for Sprint operations is inadequate, this calls into question Qwest’s estimation of competitive LEC customers as well.<sup>228</sup> Because Qwest provides several methods for estimating the number of competitive LEC residential and business customers involving numerous carriers, we find that Sprint’s concerns, even if warranted, do not rise to the level of challenging the overall conclusion that more than a *de minimis* number of business and residential customers are being served by competitive LECs over their own facilities.<sup>229</sup>

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<sup>222</sup> *Sprint v. FCC*, 274 F.3d at 553-54; *see also SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998) (“Track A does not indicate just how much competition a provider must offer in either the business or residential markets before it is deemed a ‘competing’ provider.”) (*SBC v. FCC*).

<sup>223</sup> Qwest Teitzel Decl., paras. 17-30; Qwest Teitzel Decl., Ex. MN-1 (*citing confidential information*); Qwest Teitzel Decl., Ex. MN-4 at 1-6, 9-15, 26-34, 57-59.

<sup>224</sup> AT&T Broadband provides telephone exchange service to residential subscribers predominantly over its own facilities and AT&T Local Services provides telephone exchange service to business and residential subscribers through UNE-Loops and the UNE-Platform. Qwest Teitzel Decl., Ex. MN-4 at 1-6.

<sup>225</sup> *Id.* at 26-34.

<sup>226</sup> *Id.* at 9-15.

<sup>227</sup> *Id.* at 57-59. Qwest estimates that competing LECs now serve at least 25% of access lines in Minnesota. Qwest Teitzel Decl., paras. 39-40.

<sup>228</sup> Sprint Comments at 9-11.

<sup>229</sup> Sprint Comments at 10. We note that the methods that Qwest uses to estimate the number of lines served by competitors are the same methods used in section 271 applications that the Commission has previously approved. *See Qwest 9-State Order*, 17 FCC Rcd at 26314-19, paras. 21-32; *Qwest 3-State Order*, paras. 15-17.

## VI. SECTION 272 COMPLIANCE

62. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."<sup>230</sup> The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.<sup>231</sup> Together, these safeguards discourage, and facilitate the detection of, improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.<sup>232</sup> In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.<sup>233</sup> As the Commission stated in prior section 271 orders, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.<sup>234</sup>

63. Based on the record, we conclude that Qwest Corporation (QC) and Qwest LD Corp. (QLDC), its section 272 affiliate, have demonstrated compliance with the requirements of section 272.<sup>235</sup> Further, as discussed below, we conclude that we need not address issues related to the possible provisioning of in-region, interLATA services through Qwest Communications Corporation (QCC) because Qwest has not made an affirmative showing to certify QCC's

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<sup>230</sup> 47 U.S.C. § 271(d)(3)(B); *see also* Appendix C.

<sup>231</sup> *See Implementation of the Accounting Safeguards under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, 15 FCC Rcd 1161 (2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), First Order on Reconsideration, 12 FCC Rcd 2297 (1997), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997), *aff'd sub nom. Bell Atlantic Tel. Cos. v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, 14 FCC Rcd 16299 (1999).

<sup>232</sup> *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, para. 15; *Accounting Safeguards Order*, 11 FCC Rcd at 17550, para. 24; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

<sup>233</sup> *See Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

<sup>234</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *see SWBT Texas Order*, 15 FCC Rcd at 18549, para. 395.

<sup>235</sup> QLDC is a switchless reseller which is a wholly-owned subsidiary of Qwest Services Corporation, which in turn, is a wholly owned subsidiary of QCII. QLDC was formed in the face of a number of accounting difficulties which prevented Qwest from certifying whether certain of its financial statements were in compliance with GAAP. *Qwest 9-State Order*, 17 FCC Rcd at 26514, paras. 382-383. As we noted in approving the *Qwest 9-State Order*, the Commission has allowed BOCs considerable flexibility in how they structure their section 272 affiliates. *Id.* at 26517, para. 386.

financial statements pursuant to section 272(b)(2), nor is Qwest relying on QCC to demonstrate compliance with section 272.<sup>236</sup>

64. In the *Qwest 9-State Order*, the Commission noted that its judgment about Qwest's compliance with section 272 is a predictive one, as required by section 271(d)(3)(B) of the Act.<sup>237</sup> Specifically, our task is to determine whether Qwest's section 272 affiliate, QLDC, will be complying with this requirement on the date of authorization, and thereafter.<sup>238</sup>

65. We conclude that Qwest has adequately demonstrated that QLDC will be the entity providing in-region, interLATA service originating in Minnesota.<sup>239</sup> Qwest provides support for its assertion that QLDC complies with the requirements set forth in section 272.<sup>240</sup> Qwest states, however, that it intends to eventually designate QCC as its active section 272 affiliate and to begin providing in-region interLATA services on a facilities basis through QCC.<sup>241</sup> Qwest states that it intends to do this as soon as it is able to certify QCC's financial

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<sup>236</sup> The Minnesota Commission does not identify any issues related to Qwest's compliance with section 272. Minnesota Commission Comments at 18.

<sup>237</sup> Several courts have addressed the Commission's discretion to make predictive judgments. In different contexts, the United States Supreme Court has recognized that the Commission must necessarily make difficult predictive judgments in order to implement certain provisions of the Communications Act. See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 594-96 (1981) (recognizing that the Commission's decisions must sometimes rest on judgment and prediction rather than pure factual determinations) (citing *FCC v. Nat'l Citizens Comm. for Broadcasting*, 436 U.S. 775, 813-14 (1978)); *NAACP v. FCC*, 682 F.2d 993 (D.C. Cir. 1982) ("greater discretion is given administrative bodies when their decisions are based upon judgmental or predictive conclusions"); see also *Pub. Util. Comm'n of State of Cal. v. F.E.R.C.*, 24 F.3d 275, 281 (D.C. Cir. 1994) (acknowledging that predictions regarding the actions of regulated entities are the type of judgments that courts routinely leave to administrative agencies). Indeed, we note that determining whether a BOC's section 271 application meets the requirements of the competitive checklist, the requirements of section 272, and is consistent with the public interest, convenience and necessity requires the Commission to engage in highly complex, fact-intensive analyses. See 47 U.S.C. § 271(d)(3).

<sup>238</sup> Qwest Application at 153-163; see also *Qwest 9-State Order*, 17 FCC Rcd 26303, 26517-27 paras. 393-405. In the *Qwest 9-State Order* and in the *Qwest 3-State Order*, we found that Qwest was in compliance with the section 272 affiliate safeguards. In particular, as in the instant case, we approved Qwest's use of QLDC as its section 272 affiliate. *Qwest 9-State Order*, 17 FCC Rcd at 26517-27, paras. 393-405; *Qwest 3-State Order*, paras. 112-115.

<sup>239</sup> Cf. *AT&T Corp. v. U S WEST Corp.*, 13 FCC Rcd 21438, 21465-66, para. 37 (*Qwest Teaming Order*), *aff'd sub nom. U.S. West Communications, Inc. v. FCC*, 177 F.3d 1057 (D.C. Cir. 1999), *cert. denied*, 528 U.S. 1188 (2000). In the *Qwest Teaming Order*, the Commission considered the totality of the circumstances, rather than focusing on any one particular activity, in assessing whether the BOC was providing interLATA service within the meaning of section 271. *Id.* In making its determination, the Commission considered several factors, including whether the BOC was effectively holding itself out as a provider of long distance service, and whether the BOC was performing activities and functions that were typically performed by those who are legally or contractually responsible for providing interLATA service to the public. *Id.* Similarly, we consider, for purposes of this section 271 application, the totality of the circumstances in determining whether QLDC is the entity that will be providing originating in-region, interLATA service.

<sup>240</sup> Qwest Application at 102-111.

<sup>241</sup> *Id.* at 103-04.

statements.<sup>242</sup> In the context of this record, however, we need only consider QLDC. Given that we have previously approved an application by Qwest using QLDC as its section 272 affiliate, it is clear that QLDC can serve as the section 272 affiliate here. In the event that Qwest does “merge” QLDC with another entity in the future, Qwest must, of course comply with all of the Commission’s rules.

## VII. PUBLIC INTEREST ANALYSIS

66. Apart from determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.<sup>243</sup> At the same time, section 271(d)(4) of the Act states that “[t]he Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B).”<sup>244</sup> Accordingly, although the Commission must make a separate determination that approval of a section 271 application is “consistent with the public interest, convenience, and necessity,” it may neither limit nor extend the terms of the competitive checklist of section 271(c)(2)(B). Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will serve the public interest as Congress expected.<sup>245</sup>

67. We conclude that approval of this application is consistent with the public interest.<sup>246</sup> From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in Minnesota’s local exchange markets have been removed, and that these local exchange markets are open to competition. We find further that the record confirms the Commission’s view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.<sup>247</sup>

68. We disagree with Sprint’s assertions that we must, under our public interest standard, consider a variety of other factors as evidence that the local market is not yet truly open

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<sup>242</sup> *Id.*

<sup>243</sup> 47 U.S.C. § 271(d)(3)(C); Appendix C, paras. 70-71.

<sup>244</sup> 47 U.S.C. § 271(d)(4).

<sup>245</sup> *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of “whether approval . . . will foster competition in all relevant telecommunications markets”).

<sup>246</sup> We note that Sprint refers to “price squeeze” but does not state a specific claim supported by pricing or other evidence in order to establish such a violation. Sprint Comments at 3.

<sup>247</sup> *See SWBT Texas Order*, 15 FCC Rcd at 18558-89, para. 419.

to competition, despite checklist compliance.<sup>248</sup> Specifically, Sprint argues that the level of residential competitive LEC entry in Minnesota is low, indicating that granting the current section 271 application is not in the public interest.<sup>249</sup> We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance.<sup>250</sup> Moreover, we note that according to Qwest, competitive LECs serve at least 25 percent of the local market.<sup>251</sup> Given an affirmative showing that the competitive checklist has been satisfied, low customer volumes or the failure of any number of companies to enter the market in and of themselves do not necessarily undermine that showing. As the Commission has stated in previous section 271 orders, factors beyond the control of the BOC, such as individual competitive LEC entry strategies, can explain low levels of residential competition.<sup>252</sup>

#### A. Assurance of Future Compliance

69. As set forth below, we find that the PAP that will be in place in Minnesota provides assurance that the local market will remain open after Qwest receives section 271 authorization in this state.<sup>253</sup> We find that this plan will likely provide incentives that are sufficient to foster post-entry checklist compliance. In prior orders, the Commission has explained that one factor it may consider as part of its public interest analysis is whether a BOC would have adequate incentives to continue to satisfy the requirements of section 271 after entering the long distance market.<sup>254</sup> Although it is not a requirement for section 271 authority that a BOC be subject to such performance assurance mechanisms, the Commission has stated previously that the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority.<sup>255</sup> The Minnesota PAP, in combination with the Minnesota Commission's active oversight of that PAP, and provisions for comprehensive review

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<sup>248</sup> Those factors include the level of competitive LEC market share, the financial strength of competitive LECs, and the failure of other BOCs to enter the market in the application states. Sprint Comments at 4-7.

<sup>249</sup> Sprint Comments at 7-9.

<sup>250</sup> See, e.g., *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77; *Sprint v. FCC*, 274 F.3d at 553-54.

<sup>251</sup> Qwest Teitzel Decl., paras. 39-40.

<sup>252</sup> See *Verizon Pennsylvania Order*, 16 FCC Rcd 17487, para. 126.

<sup>253</sup> Minnesota Commission Comments at 16.

<sup>254</sup> See, e.g., *Verizon Pennsylvania Order*, 16 FCC Rcd at 17487-88, para. 127.

<sup>255</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20748-50, paras. 393-98. We note that in all of the previous applications that the Commission has granted to date, the applicant was subject to an enforcement plan administered by the relevant state commission to protect against backsliding after BOC entry into the long-distance market. These mechanisms are generally administered by state commissions and derive from authority the states have under state law or under the federal Act. As such, these mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to section 271(d)(6).

to determine whether modifications are necessary, provide additional assurance that the local market in Minnesota will remain open.

70. The Minnesota PAP closely resembles the PAPs the Commission reviewed in the recently approved *Qwest 9-State Order* and *Qwest 3-State Order*.<sup>256</sup> The Minnesota PAP incorporates the key elements in the Colorado Plan.<sup>257</sup> After an open proceeding including Qwest and competitive LECs, on June 20, 2002, the Minnesota Commission decided to adopt the Colorado Plan with modifications. After further proceedings, on November 26, 2002, the Minnesota Commission ordered Qwest to file the PAP consistent with new approved language.<sup>258</sup> On March 17, 2003, Qwest submitted a revised PAP incorporating commission-ordered language and two additional provisions. The Minnesota Commission and Qwest mutually agreed on the remaining new language changes on April 8, 2003.<sup>259</sup> Qwest filed the revised agreement on April 30, 2003 with the PAP becoming effective on the date of section 271 approval for Minnesota.<sup>260</sup>

71. We conclude that the Minnesota PAP provides incentives to foster post-entry checklist compliance. As in prior section 271 orders, our conclusions are based on a review of several key elements in the performance remedy plan: total liability at risk in the plan; performance measurement and standards definitions; structure of the plan; self-executing nature of remedies in the plan; data validation and audit procedures in the plan; and accounting requirements.<sup>261</sup> The structure of these plans is similar to tiered plans that the Commission approved in the *Qwest 9-State Order*.<sup>262</sup> The PAP places at risk about 40 percent of Qwest Minnesota local operating service net income, which puts it in line with those the Commission has previously considered.<sup>263</sup> The PAP includes provisions for continuing review of the PAP by the Minnesota Commission.<sup>264</sup>

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<sup>256</sup> Qwest Application at 115-17; *Qwest 9-State Order*, 17 FCC Rcd at 26546-48, para. 442; *Qwest 3-State Order*, paras. 120-21.

<sup>257</sup> Qwest Application at 115.

<sup>258</sup> Qwest Application, App. A, Tab 26, Declaration of Mark S. Reynolds (Qwest Reynolds Decl.), paras. 2-18.

<sup>259</sup> Minnesota Commission Comments at 16.

<sup>260</sup> *Minnesota PAP*, para. 18.1; Qwest Reply at 24, n.19; Letter from Melissa Newman, Vice President - Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed May 22, 2003) at 1 & Attach. (Qwest May 22F *Ex Parte* Letter) (attaching a revised Minnesota PAP).

<sup>261</sup> See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26546-48, para. 442.

<sup>262</sup> *Id.*

<sup>263</sup> The Minnesota cap is set at 40% of ARMIS Net Return from local services. Qwest Application at 116-17 and Qwest Reynolds Decl., para. 20 & n.8.

<sup>264</sup> *Minnesota PAP*, Section 18.

72. As the Commission has stated in prior orders, the PAP is not the only means of ensuring that a BOC continues to provide nondiscriminatory service to competing carriers.<sup>265</sup> In addition to the monetary payments at stake under each plan, we believe Qwest faces other consequences if it fails to sustain an acceptable level of service to competing carriers, including enforcement provisions in interconnection agreements, federal enforcement action pursuant to section 271(d)(6), and remedies associated with other legal actions.

### **B. Unfiled Interconnection Agreements**

73. We agree with the Department of Justice that Qwest's previous failure to file certain interconnection agreements with the Minnesota Commission does not warrant a denial of this application.<sup>266</sup> We conclude, as in the *Qwest 9-State Order* and *Qwest 3-State Order*, that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the Minnesota Commission pursuant to section 252 and the Minnesota Commission acting on Qwest's submission of those agreements.<sup>267</sup> In reaching our conclusion, we note that the Minnesota Commission did not reach consensus agreement on how its public interest analysis should take account of past unfiled agreements.<sup>268</sup>

74. Although this record does not demonstrate ongoing discrimination, parties remain free to present other evidence of ongoing discrimination, for example, through state commission enforcement processes or to this Commission in the context of a section 208 complaint proceeding.<sup>269</sup> Further, to the extent past discrimination existed, we anticipate that any violations of the statute or our rules will be addressed expeditiously through federal and state complaint and investigation proceedings.<sup>270</sup>

### **1. Background**

75. *Declaratory Order.* On October 4, 2002, the Commission released a memorandum opinion and order granting in part and denying in part Qwest's petition for declaratory ruling on which types of negotiated contractual arrangements between incumbent LECs and competitive LECs are subject to mandatory filing and state commission requirements

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<sup>265</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4165, para. 430; *SWBT Texas Order*, 15 FCC Rcd at 18560, para. 421; *Verizon Pennsylvania Order* 16 FCC Rcd at 17489, para. 130.

<sup>266</sup> Department of Justice Evaluation at 9-10.

<sup>267</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26553-77, paras. 453-86; *Qwest 3-State Order*, paras. 124-42.

<sup>268</sup> Minnesota Commission Comments at 17. We note that this is not the first section 271 application that the Commission has granted without the approval of the relevant state commission. See, e.g., *Qwest 9-State Order*, 17 FCC Rcd at 26310, para. 15 & n.31 (noting that the Montana Public Service Commission did not approve Qwest's section 271 application in Montana).

<sup>269</sup> *Qwest 9-State Order*, 17 FCC Rcd at 26554, para. 453.

<sup>270</sup> *Id.*



of section 252(a)(1).<sup>271</sup> In the *Declaratory Order*, the Commission found that an agreement that creates an ongoing obligation pertaining to resale, number portability, dialing parity, access to rights-of-way, reciprocal compensation, interconnection, unbundled network elements, or collocation is an interconnection agreement that must be filed pursuant to section 252(a)(1).<sup>272</sup> The Commission also found that, unless the information is generally available to carriers, agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in sections 251(b) and (c) are appropriately deemed interconnection agreements.<sup>273</sup> Further, the Commission stated its belief that the state commissions should be responsible for applying, in the first instance, the statutory interpretation set forth in the *Declaratory Order*.<sup>274</sup>

76. *State Proceeding*. On February 14, 2002 the Minnesota Department of Commerce (MDOC) filed a complaint against Qwest with the Minnesota Commission alleging that Qwest acted in a discriminatory and anticompetitive manner, in violation of state and federal law, by entering into and failing to file 11 interconnection agreements for state approval.<sup>275</sup> An Administrative Law Judge (ALJ) held a hearing on April 29 and May 2, 2002.<sup>276</sup> On May 24, 2002, the MDOC filed a motion to reopen the record to submit evidence of an additional, oral agreement.<sup>277</sup> The ALJ held a hearing on the twelfth agreement on August 6, 2002.<sup>278</sup> The ALJ issued his recommended decision on September 20, 2002, finding that Qwest had entered into 11 written, and one oral, interconnection agreements with competitive LECs, including Eschelon

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<sup>271</sup> *Qwest 9-State Order*, 17 FCC Rcd at 26558, para. 459, citing *Qwest Communications International, Inc. 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)*, WC Docket No. 02-89, Memorandum Opinion and Order, 17 FCC Rcd 19337 (rel. Oct. 4, 2002) (*Declaratory Order*); *Qwest 9-State Order*, 17 FCC Rcd at 26555, para. 456, citing *Petition for Declaratory Ruling of Qwest Communications International Inc.*, WC Docket No. 02-89 at 3 (2002) (*Qwest Section 252 Petition*). In the *Declaratory Order*, the Commission stated the types of contractual arrangements that need not be filed: (1) settlement agreements that simply provide for backward-looking consideration that do not affect an incumbent LEC's ongoing obligations relating to section 251; (2) forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement; and (3) agreements with bankrupt competitors that are entered into at the direction of a bankruptcy court or trustee and that do not otherwise change the terms and conditions of the underlying interconnection agreement. See *Qwest 9-State Order*, 17 FCC Rcd at 26558, para. 459; *Declaratory Order*, 17 FCC Rcd at 19341-43, paras. 9-14.

<sup>272</sup> *Declaratory Order*, 17 FCC Rcd at 19340-41, para. 8.

<sup>273</sup> *Id.* at 19341, para. 9.

<sup>274</sup> *Id.* at 19340, para. 7.

<sup>275</sup> Minnesota Comments, App. D, Order Adopting ALJ's Report and Establishing Comment Period Regarding Remedies, Minnesota Docket No. P-421/C-02-197 (rel. Nov. 1, 2002) at 1.

<sup>276</sup> *Id.*

<sup>277</sup> *Id.* at 1-2.

<sup>278</sup> *Id.* at 2. The oral agreement was with McLeod for discounts of 6.5% to 10% for all services McLeod purchased from Qwest from Oct. 2000 through Dec. 2001. Minnesota Comments, App. E, Order Assessing Penalties, Minnesota Docket No. P-421/C-02-197 (rel. Feb. 28, 2003) at 43, 46.

and McLeod, in violation of state and federal regulations.<sup>279</sup> The ALJ found that the agreements should have been filed for Minnesota Commission review.<sup>280</sup>

77. The Minnesota Commission adopted the ALJ's recommendation on November 1, 2002.<sup>281</sup> Of the 12 specific interconnection agreements identified by the MDOC, eight were subsequently canceled, superseded or terminated.<sup>282</sup> Qwest subsequently filed the other four interconnection agreements with the Minnesota Commission immediately prior to filing the instant application.<sup>283</sup> The record indicates that the written and oral unfiled agreements identified in the complaint have either been terminated or were approved by the Minnesota Commission under section 252(e) and are available for opt-in by competitive LECs.<sup>284</sup> No commenter identifies additional current unfiled agreements.

78. In addition to the four unfiled interconnection agreements that were the subject of the complaint proceeding, on March 25 and 26, 2003, Qwest also filed 30 other previously unfiled interconnection agreements with the Minnesota Commission for section 252 review.<sup>285</sup> Qwest asserts that each agreement had been provided to the MDOC during its complaint investigation, but was not included in the February 14, 2002 complaint filed with the Minnesota

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<sup>279</sup> Minnesota Comments, App. D at 4-6.

<sup>280</sup> *Id.* at 4.

<sup>281</sup> *Id.* at 7.

<sup>282</sup> Letter from Melissa Newman, Vice President - Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed May 13, 2003) at 3 (Qwest May 13A *Ex Parte* Letter). We note that all eight of these agreements were terminated prior to filing of the instant application, with the exception of Qwest's unfiled agreement with Covad which was canceled on April 29, 2003. Letter from Melissa Newman, Vice President - Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed May 23, 2003) at 1, n.1 (Qwest May 23A *Ex Parte* Letter).

<sup>283</sup> Qwest May 13A *Ex Parte* Letter at 3. These four agreements were filed with the Minnesota Commission on March 25 and 26, 2003 and included one each with "Small Minnesota CLECs" and USLink, and two with McLeod. *Id.*

<sup>284</sup> Minnesota Commission Comments, App. E, Order Assessing Penalties, Minnesota Docket No. P-421/C-02-197 (rel. Feb. 28, 2003) at 6, 20; Letter from Melissa Newman, Vice President - Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 20, 2003) at 1-2 (Qwest June 20B *Ex Parte* Letter). On June 12, 2003, the Minnesota Commission approved 13 of the agreements and approved in part and rejected in part the other 21 previously unfiled agreements. *Id.*, Attach. at 1-6. The provisions that were rejected by the Minnesota Commission are not available to any competitive LEC in Minnesota. *Id.* at 1-2.

<sup>285</sup> Qwest Application at 121-22; Qwest Application, App. P, Vol.1, Tab 16. These 30 agreements were with 17 different competitive LECs.

Commission.<sup>286</sup> Qwest asserts that these interconnection agreements are either order form contracts exempt from section 252 or are settlement agreements.<sup>287</sup>

79. On February 28, 2003, the Minnesota Commission issued an Order Assessing Penalties.<sup>288</sup> Qwest, Eschelon and McLeod filed petitions for reconsideration on March 20, 2003.<sup>289</sup> The Minnesota Commission met on April 8 and 14 to consider the petitions.<sup>290</sup> On April 30, 2003, the Minnesota Commission issued, on its own motion, modifications to the February 28, 2003 penalties order, clarifying and modifying certain sections of that order.<sup>291</sup> Qwest filed with the Minnesota Commission on May 13, 2003 for reconsideration of the April 30, 2003 order.<sup>292</sup> The Minnesota Commission denied Qwest's motion for reconsideration on May 21, 2003.<sup>293</sup> Qwest filed a complaint with the United States District Court for the District of Minnesota on June 19, 2003, alleging violations of the Act, due process and Minnesota law with respect to the Minnesota Commission's findings on liability, restitutional remedy and monetary penalty.<sup>294</sup>

## 2. Discussion

80. Consistent with the *Qwest 9-State Order* and *Qwest 3-State Order*, we find that Qwest's failure to file certain interconnection agreements in Minnesota does not warrant a denial of this application.<sup>295</sup> We conclude that concerns about any potential ongoing checklist

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<sup>286</sup> Qwest Application at 121-22; Qwest Application, App. P, Vol.1, Tab 16; Qwest May 13A *Ex Parte* Letter; Letter from Melissa Newman, Vice President - Federal Regulatory, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed May 23, 2003) at 1 (Qwest May 23A *Ex Parte* Letter).

<sup>287</sup> Qwest Application at 123 n.81. Qwest filed the settlement agreements that had ongoing obligations although the MDOC, in its complaint, did not require Qwest to file these settlement agreements. *Id.*

<sup>288</sup> Minnesota Comments, App. E.

<sup>289</sup> Minnesota Reply, App. A, Order After Reconsideration on Own Motion, Minnesota Docket No. P-421/C-02-197 (rel. Apr. 30, 2003) at 1.

<sup>290</sup> *Id.*

<sup>291</sup> *Id.* at 1-14.

<sup>292</sup> Letter from Karen Finstad Hammel, Assistant Attorney General for the Minnesota Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed May 22, 2003) (attaching Minnesota Public Utilities Commission Order Denying Qwest's Second Request for Reconsideration (rel. May 21, 2003)) (Minnesota Commission May 22 *Ex Parte* Letter), Attach. at 2.

<sup>293</sup> *Id.*

<sup>294</sup> Letter from Karen Finstad Hammel, Assistant Attorney General for the Minnesota Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-90 (filed June 23, 2003) (attaching Complaint for Declaratory Judgment and Injunctive Relief to Prevent Enforcement of Public Utilities Commission Orders (filed June 19, 2003)) (Minnesota Commission June 22 *Ex Parte* Letter).

<sup>295</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26567-75, paras. 473-81; *Qwest 3-State Order*, paras. 138-42.

violations (or discrimination) are met by Qwest's submission of agreements to the Minnesota Commission pursuant to section 252 and by the state acting on Qwest's submission of those agreements.<sup>296</sup> The possibility of noncompliance with section 252 on a going-forward basis, therefore, was eliminated by the Minnesota Commission's approval of these agreements which enables competitive LECs to opt-in to them.<sup>297</sup>

81. Based on the record, we also are not persuaded that the unfiled agreement issue warrants denial of the current section 271 application. First, we reject AT&T's contention that, because Qwest has not yet agreed to pay the penalties assessed by the Minnesota Commission, no remedy for past harm has been made and continuing harm exists.<sup>298</sup> At the outset, we note that this situation is no different than that presented in the prior Qwest applications.<sup>299</sup> In the decisions addressing those applications, we concluded that approval of the application was warranted notwithstanding the pendency of state enforcement proceedings.<sup>300</sup> In our view, completion of these state enforcement proceedings, and payment of any penalties assessed, is not a pre-condition to section 271 approval.<sup>301</sup>

82. The Minnesota Commission provides extended discussion concerning the issue of Qwest's unfiled agreements in its comments on the instant application. The Minnesota Commission Chair believes that "matters regarding any prior discrimination are being fully and appropriately addressed at the state level."<sup>302</sup> One Commissioner states that until Qwest has agreed to ordered restitution, it has not yet fully satisfied her that section 271 approval is in the public interest.<sup>303</sup> Two other Commissioners state that until Qwest implements the ordered penalties and admits to wrong-doing, Qwest's conduct at issue is current and cannot be said to be in the past.<sup>304</sup> The latter three Commissioners believe that Qwest's actions regarding unfiled agreements have been sufficiently egregious to conclude that granting section 271 approval at

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<sup>296</sup> See *Qwest 9-State Order*, 17 FCC Rcd at 26567-75, paras. 473-81; *Qwest 3-State Order*, paras. 138-42. Pursuant to section 252(e)(4), these agreements were available for opt-in on June 23, 2003. *Qwest June 20B Ex Parte Letter* at 1-2. See 47 U.S.C. § 252(e)(4). On June 12, 2003, the Minnesota Commission issued orders approving, or approving in part and rejecting in part, each of the 34 previously unfiled agreements. *Qwest June 20B Ex Parte Letter*, Attach. at 1-6.

<sup>297</sup> Similarly, there is no ongoing discrimination for agreements that were canceled, superseded or terminated.

<sup>298</sup> AT&T Reply at 11-12.

<sup>299</sup> *Qwest 9-State Order*, 17 FCC Rcd 26559-60, para. 461; *Qwest 3-State Order*, para. 128.

<sup>300</sup> The Minnesota Commission rendered its penalty order on February 28, 2003 and, on reconsideration, amended that penalty decision on April 30, 2003. Minnesota Comments, App. E; Minnesota Reply, App. A, Order after Reconsideration on Own Motion, Minnesota Docket No. P-421/C-02-197 (rel. Apr. 30, 2003).

<sup>301</sup> *Qwest 9-State Order*, 17 FCC Rcd 26559-60, para. 461; *Qwest 3-State Order*, para. 128.

<sup>302</sup> Minnesota Commission Comments, Separate Statement of Chairman Koppendrayner at 24.

<sup>303</sup> Minnesota Commission Comments, Separate Statement of Commissioner Reha at 28.

<sup>304</sup> Minnesota Commission Comments, Separate Joint Statement of Commissioners Scott/Johnson at 36.

this time is not in the public interest.<sup>305</sup> We note that the statute does not require the Commission to consult with the relevant state commission regarding the public interest requirements of section 271(d)(3).<sup>306</sup>

83. We recognize that the Minnesota Commission failed to reach consensus on whether Qwest's discrimination was in the past or remained ongoing, citing Qwest's appeal of Minnesota Commission-assessed penalties and the unfiled interconnection agreement provisions not yet being available for competitive LEC opt-in. The Minnesota Commission has approved the previously unfiled agreements, however, and competitive LECs can now opt-in to previously unfiled agreements. Consistent with the *Qwest 9-State Order* and *Qwest 3-State Order*,<sup>307</sup> we find that no ongoing discrimination exists now, in light of these actions. The Minnesota Commission appears to apply a standard that differs from the standard we have previously used in reviewing section 271 applications, which is to consider whether all effective agreements with section 251(b) or (c) obligations have been made available for opt-in, thus ensuring that there is no ongoing discrimination in violation of the statute.<sup>308</sup> We do not require the penalty phase of the state proceeding to be complete before we can find no discrimination on a forward-looking basis. We take notice that some of the Minnesota Commissioners have determined that Qwest's actions have been so egregious as to warrant a denial of section 271 authorization. We reach a different conclusion, however, and, in light of its present compliance and all other circumstances discussed in this section, find that Qwest's past conduct does not warrant denial of this application on public interest grounds.

84. Second, we reject AT&T's argument that because the Minnesota Commission has not approved the recently filed "unfiled" agreements in question, that Qwest's discriminatory practices continue.<sup>309</sup> As we found in the *Qwest 9-State Order* and the *Qwest 3-State Order*, Qwest's filing with the Minnesota Commission prior to the filing of the instant section 271 application coupled with the Minnesota Commission's disposition of those filed agreements, eliminate the possibility of ongoing discrimination.<sup>310</sup> Moreover, we are not persuaded by the

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<sup>305</sup> Minnesota Commission Comments, Separate Statement of Commissioner Reha at 27-30; Minnesota Commission Comments, Separate Joint Statement of Commissioners Scott/Johnson at 34-38.

<sup>306</sup> 47 U.S.C. § 271(d)(2)(B).

<sup>307</sup> *Qwest 9-State Order*, 17 FCC Rcd 26553-54, para. 453; *Qwest 3-State Order*, para. 124.

<sup>308</sup> 47 U.S.C. §§ 251(b)-(c); 252 (a), (d), (e), (i); 271(c)(2)(B).

<sup>309</sup> AT&T Comments at 15-16; AT&T Reply at 2. We note that at the time AT&T filed its comments and reply comments, the Minnesota Commission had not acted on the 34 previously unfiled agreements Qwest filed immediately prior to filing the instant application. The Minnesota Commission has since issued orders approving, or approving in part and rejecting in part, each of the 34 previously unfiled agreements. Qwest June 20B *Ex Parte* Letter, Attach. at 1-6.

<sup>310</sup> *Qwest 9-State Order*, 17 FCC Rcd 26568-69, para. 474; *Qwest 3-State Order* at para. 132. Qwest has persuasively explained that all previously unfiled agreements were either filed, expired, terminated, superseded, did not contain ongoing section 251(b) or (c) obligations, or simply provide for backward-looking consideration that do not affect an incumbent LEC's ongoing obligations relating to section 251. *See, e.g.*, Qwest May 13A *Ex Parte* (continued...)

record in the instant application that there is any evidence of additional unfiled agreements, either written or oral.<sup>311</sup> The Minnesota Commission has thoroughly investigated this issue and has not found any other unfiled agreements.

85. We recognize that the Minnesota Commission has aggressively pursued the issue of unfiled interconnection agreements, and we believe that it will continue its diligent monitoring. Based on the demonstrated vigorous attention given the unfiled agreements issue by the Minnesota Commission and lack of evidence to the contrary, we reject AT&T's argument that non-written agreements may still be in effect.<sup>312</sup> Should allegations of additional unfiled agreements arise in the future, we are confident that these issues can be addressed through federal or state complaint or investigatory proceedings.

86. Third, we reject AT&T's contention that we should deny this application because the state record was compromised by the existence and application of provisions in the unfiled agreements.<sup>313</sup> Specifically, AT&T contends that both Eschelon and McLeod refrained from participating in the state section 271 proceeding, per written and oral unfiled agreements, and that they were the only two competitive LECs providing service through UNE-Star.<sup>314</sup> Because commercial UNE-Star OSS performance data was used by Qwest to demonstrate checklist compliance, AT&T contends the state record is compromised.<sup>315</sup> The Minnesota Commission itself did not reach a collective decision that the state record was compromised by unfiled agreements.<sup>316</sup> We note, however, that UNE-Star is being converted to UNE-Platform in Minnesota and that current commercial performance data Qwest provided in support of the instant application does not predominately rely on UNE-Star.<sup>317</sup> Moreover, we note that the facts concerning unfiled agreements in Minnesota are essentially the same as those that were examined by the 12 other state commissions upon which we relied in approving Qwest's section

(Continued from previous page) \_\_\_\_\_  
Letter (containing a matrix of the 12 previously unfiled agreements subject to the state penalty order); Qwest May 23A *Ex Parte* Letter, Attach.

<sup>311</sup> AT&T contends that because Qwest has maintained no oral agreements existed in Minnesota, contrary to state findings, Qwest must "prove (not just assert) that it has no outstanding oral secret deals." AT&T Comments at 16.

<sup>312</sup> AT&T Comments at 9-10, 16. We note that it is unclear what evidence AT&T proposes Qwest provide to prove additional unfiled agreements do not exist beyond the assertion under oath that Qwest has made to date.

<sup>313</sup> AT&T Reply at 14-15.

<sup>314</sup> *Id.* at 4.

<sup>315</sup> *Id.* at 15.

<sup>316</sup> In a separate statement, two commissioners expressed concern that not having Eschelon and McLeod in the state proceedings was detrimental. Minnesota Commission Comments, Separate Joint Statement of Commissioners Scott/ Johnson at 35.

<sup>317</sup> *See supra* n.275.

271 applications in the *Qwest 9-State Order* and the *Qwest 3-State Order*.<sup>318</sup> We are not persuaded to take a different approach here.

87. We do not address past alleged violations of section 251 that may have occurred as a result of Qwest's delay in filing certain previously unfiled agreements. Although we conclude that this record does not demonstrate ongoing discrimination, parties remain free to present other evidence of such discrimination, for example, through state or FCC enforcement processes.<sup>319</sup> Further, to the extent any past discrimination existed, we anticipate that any violations of the statute or our rules will be addressed expeditiously through federal and state complaint and investigation proceedings.<sup>320</sup>

88. *Complete-as-Filed Rule.* We waive the complete-as-filed requirement on our own motion pursuant to section 1.3 of the Commission's rules<sup>321</sup> to the limited extent necessary to consider the Minnesota Commission's disposition of Qwest's submission of previously unfiled agreements.<sup>322</sup> Additionally, we waive the complete-as-filed rule on our own motion to consider the termination of Covad's unfiled agreement on April 29, 2003.<sup>323</sup> The complete-as-filed rule requires a BOC to include in its application all factual evidence on which it would have the Commission rely in making its section 271 determination.<sup>324</sup> As of the date Qwest filed its section 271 application, it had not demonstrated compliance with the non-discriminatory requirements of section 271 because it had not yet received section 252 approval of all interconnection agreements. Further, it had an outstanding unfiled interconnection agreement

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<sup>318</sup> *Qwest 9-State Order*, 17 FCC Rcd at 26553-77, paras. 454-86; *Qwest 3-State Order*, paras. 124-37.

<sup>319</sup> *Qwest 9-State Order*, 17 FCC Rcd at 26554, para. 466. See also *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6355, para. 230 ("As we have found in past section 271 proceedings, the section 271 process simply could not function if we were required to resolve every interpretive dispute about the precise content of an incumbent LEC's obligations to its competitors, including fact-intensive interpretive disputes."); *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6246, para. 19 ("[T]here will inevitably be, in any section 271 proceeding, new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors – disputes that our rules have not yet addressed and that do not involve *per se* violations of self-executing requirements of the Act. The section 271 process simply could not function as Congress intended if we were generally required to resolve all such disputes as a precondition to granting a section 271 application.") (citing *American Tel. and Tel. Co. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000); *SWBT Texas Order*, 15 FCC Rcd at 18366-18367, paras. 25-26; *Verizon Pennsylvania Order*, 16 FCC Rcd 17487, para. 126.

<sup>320</sup> *Qwest 9-State Order*, 17 FCC Rcd at 26553, para. 453; *Qwest 3-State Order*, para. 124.

<sup>321</sup> 47 C.F.R. § 1.3.

<sup>322</sup> We refer to the contracts Qwest filed with the Minnesota Commission on March 25 and 26, 2003. Qwest Application at 121 n.78; Qwest May 13A *Ex Parte* Letter at 3. See *Qwest 9-State Order*, 17 FCC Rcd at 26571-72, para. 478 n.1746.

<sup>323</sup> Qwest May 13A *Ex Parte* Letter at 3; Qwest May 23A *Ex Parte* Letter at 1 n.1.

<sup>324</sup> *Comments Requested in Connection with Qwest's Section 271 Application for Minnesota*, Public Notice, WC Docket No. 03-90, DA 03-1019 at 3-4 (rel. Mar. 28, 2003).

with Covad. In order for this Commission to consider the Minnesota Commission's actions on the agreements pursuant to section 252, a waiver of the complete-as-filed rule is necessary.

89. The Commission maintains this procedural requirement to ensure that interested parties have a fair opportunity to comment on the BOC's application, the state commission can fulfill its statutory consultative role, and the Commission has adequate time to evaluate the record.<sup>325</sup> The Commission can waive its procedural rules, however, if "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."<sup>326</sup> We conclude, based on the circumstances presented here, that special circumstances warrant a waiver of our rule, and that such waiver will serve the public interest.

90. We conclude that the special circumstances before us here warrant a deviation from the general rules for consideration of late-filed information or developments that take place during the application review period.<sup>327</sup> In particular, as we discuss below, we find that the interests our normal procedural requirements are designed to protect are not affected by our consideration of Minnesota's disposition of Qwest's previously unfiled agreements or of the timing of the termination of the Covad agreement. In addition, we conclude that consideration of the state's disposition of Qwest's filed agreements will serve the public interest.

91. It is important to note that the Commission has not established a set of factors that must be met in order for the Commission to waive this procedural rule. Indeed, by the very term "special circumstances" it is understood that the facts surrounding new information provided in any given application would be unique. Consequently, it is within our discretion, taking into account any special circumstances, not to afford greater weight to a particular factor used by the Commission in a previous section 271 order. The grant of this waiver permits the Commission to act on this section 271 application quickly and efficiently. In this proceeding, no purpose would be served by restarting the 90-day procedural clock. On the day Qwest filed the instant application it was evident that by day 88 of our 90-day section 271 review period, the Minnesota Commission would have completed its section 252 review. Thus, there is no longer ongoing discrimination with respect to Qwest's previously unfiled agreements. Given these circumstances and the fact that interested parties have had a meaningful opportunity to comment on these previously unfiled agreements, we do not believe the public interest would be best served in this instance by strict adherence to our procedural rules. As discussed below, however, this waiver of our section 271 procedural requirements in no way should be viewed as a conclusion that such matters do not warrant further investigation.

92. Furthermore, the concrete and limited nature of the Minnesota Commission's action with respect to each interconnection agreement, while critical to the Commission's section 271 approval (because it allows competitors to opt-in to previously unfiled interconnection

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<sup>325</sup> *Qwest 9-State Order*, 17 FCC Rcd at 26575, para. 482.

<sup>326</sup> *Id.*

<sup>327</sup> *Id.* at 26576, para. 483.



agreements), places no additional analytical burden on commenters or the Commission because the analysis of the interconnection agreements was performed by the Minnesota Commission.

93. For these reasons, we find that the circumstances present in this instance warrant waiver of our procedural requirements, and allow consideration of the termination of the Covad agreement and the disposition of Qwest's previously unfiled agreements by the Minnesota Commission. We conclude that the grant of this waiver to permit consideration of the termination of the Covad agreement and approval of the Minnesota Commission of the 34 previously unfiled interconnection agreements is preferable to requiring Qwest to refile this section 271 application and restart the 90-day clock. At the same time, we are seriously troubled by Qwest's decision to delay filing 34 agreements with the Minnesota Commission until March 25-26, 2003, and refer this matter to the Enforcement Bureau for investigation and appropriate enforcement action. The Commission clarified the incumbent LECs' obligation to file interconnection agreements under section 252(a)(1) in a Declaratory Ruling on October 4, 2002, nearly six months before Qwest filed the Minnesota agreements.<sup>328</sup> We note that Qwest has provided no explanation in the record for this delay in filing the interconnection agreements. Given that it had adequate notice of its legal obligations under section 252(a), we intend to review with careful scrutiny any explanation that Qwest may provide in the context of a potential enforcement action.

#### VIII. SECTION 271(d)(6) ENFORCEMENT AUTHORITY

94. Section 271(d)(6) of the Act requires Qwest to continue to satisfy the "conditions required for . . . approval" of its section 271 application after the Commission approves its application.<sup>329</sup> Thus, the Commission has a responsibility not only to ensure that Qwest is in compliance with section 271 today, but also that it remains in compliance in the future. As the Commission has already described the post-approval enforcement framework and its section 271(d)(6) enforcement powers in detail in prior orders, it is unnecessary to do so again here.<sup>330</sup>

95. Working in concert with the Minnesota Commission, we intend to closely monitor Qwest's post-approval compliance for Minnesota to ensure that Qwest does not "cease [] to meet any of the conditions required for [section 271] approval."<sup>331</sup> We stand ready to exercise our various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in these states. We are prepared to

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<sup>328</sup> See *Declaratory Order*, 17 FCC Rcd 19340-41, para. 8 (stating that the Commission's standard for the types of agreements that must be filed "recognizes the statutory balance between the rights of competitive LECs to obtain interconnection terms pursuant to section 252(i) and removing unnecessary regulatory impediments to commercial relations between incumbent and competitive LECs.").

<sup>329</sup> 47 U.S.C. § 271(d)(6).

<sup>330</sup> *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6382-84, paras. 283-85; *SWBT Texas Order*, 15 FCC Rcd at 18567-68, paras. 434-36; *Bell Atlantic New York Order*, 15 FCC Rcd at 4174, paras. 446-53.

<sup>331</sup> 47 U.S.C. § 271(d)(6)(A).

use our authority under section 271(d)(6) if evidence shows market opening conditions have not been maintained.

96. We require Qwest to report to the Commission all Minnesota carrier-to-carrier performance metrics results and PAP monthly reports beginning with the first full month after the effective date of this Order, and for each month thereafter for one year unless extended by the Commission. These results and reports will allow us to review, on an ongoing basis, Qwest's performance to ensure continued compliance with the statutory requirements. We are confident that cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to Qwest's entry into Minnesota.<sup>332</sup>

## IX. CONCLUSION

97. For the reasons discussed above, we grant Qwest's application for authorization under section 271 of the Act to provide in-region, interLATA services in Minnesota.

## X. ORDERING CLAUSES

98. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j), and 271 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j) and 271, Qwest's application to provide in-region, interLATA service in the state of Minnesota filed on March 28, 2003, IS GRANTED.

99. IT IS FURTHER ORDERED that this Order SHALL BECOME EFFECTIVE July 7, 2003.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>332</sup> See, e.g., *Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Order, 15 FCC Rcd 5413 (2000) (adopting consent decree between the Commission and Bell Atlantic that included provisions for Bell Atlantic to make a voluntary payment of \$3,000,000 to the United States Treasury, with additional payments if Bell Atlantic failed to meet specified performance standards and weekly reporting requirements to gauge Bell Atlantic's performance in correcting the problems associated with its electronic ordering systems).

## APPENDIX A

**Commenters in WC Docket No. 03-90  
Qwest – Minnesota**Commenters

AT&T Corporation  
Communications Workers of America  
Minnesota Public Utilities Commission  
Sprint Communications Company L.P.  
WorldCom, Inc. (d/b/a MCI)

Abbreviation

AT&T  
CWA  
Minnesota Commission  
Sprint  
MCI

Reply Commenters

AT&T Corporation  
Minnesota Public Utilities Commission  
Qwest Communications International Inc.  
WorldCom, Inc. (d/b/a MCI)

Abbreviation

AT&T  
Minnesota Commission  
Qwest  
MCI

## **Appendix B**

### **Minnesota Performance Metrics**

The data in this appendix are taken from the Minnesota commercial performance data provided to the Commission. This table is provided as a reference tool for the convenience of the reader. No conclusions are to be drawn from the raw data contained in this table. Our analysis is based on the totality of the circumstances, such that we may use non-metric evidence, and may rely more heavily on some metrics than others, in making our determination. The inclusion of these particular metrics in this table does not necessarily mean that we relied on all of these metrics nor that other metrics may not also be important in our analysis. Some metrics that we have relied on in the past and may rely on for a future application were not included here because there was no data provided for them (usually either because there was no activity, or because the metrics are still under development). Metrics with no retail analog provided are usually compared with a benchmark. Note that for some metrics during the period provided, there may be changes in the metric definition, or changes in the retail analog applied, making it difficult to compare the data over time.

PERFORMANCE METRIC CATEGORIES

Metric Number	Metric Name
<b>Billing</b>	
BI-1	Time to Provide Recorded Usage Records
BI-2	Invoices Delivered within 10 Days
BI-3	Billing Accuracy - Adjustments for Errors
BI-4	Billing Completeness
BI-5	Billing Accuracy & Claims Processing
<b>Collocation</b>	
CP-1	Collocation Completion Interval
CP-2	Collocations Completed within Scheduled Intervals
CP-3	Collocation Feasibility Study Interval
CP-4	Collocation Feasibility Study Commitments Met
<b>Directory Assistance</b>	
DA-1	Speed of Answer - Directory Assistance
<b>Database Updates</b>	
DB-1	Time to Update Databases
DB-2	Accurate Database Updates
<b>Electronic Gateway Availability</b>	
GA-1	Gateway Availability - IMA-GUI
GA-2	Gateway Availability - IMA-EDI
GA-3	Gateway Availability - EB-TA
GA-4	System Availability - EXACT
GA-6	Gateway Availability - GUI - Repair
GA-7	Timely Outage Resolution Following Software Releases
<b>Maintenance and Repair</b>	
MR-2	Calls Answered within 20 Seconds - Interconnect Repair Center
MR-3	Out of Service Cleared within 24 Hours
MR-4	All Troubles Cleared within 48 Hours
MR-5	All Troubles Cleared within 4 Hours
MR-6	Mean Time to Restore
MR-7	Repair Repeat Report Rate
MR-8	Trouble Rate
MR-9	Repair Appointments Met
MR-10	Customer and Non-Qwest Related Trouble Reports
MR-11	LNP Trouble Reports Cleared within 24 Hours

Metric Number	Metric Name
<b>Network Performance</b>	
NI-1	Trunk Blocking
NP-1	NXX Code Activation
<b>Order Accuracy</b>	
OA-1	Order Accuracy, Default %
<b>Ordering and Provisioning</b>	
OP-2	Calls Answered within 20 Seconds - Interconnect Provisioning Center
OP-3	Installation Commitments Met
OP-4	Installation Interval
OP-5	New Service Installation Quality
OP-6A	Delayed Days for Non-Facility Reasons
OP-6B	Delayed Days for Facility Reasons
OP-7	Coordinated "Hot Cut" Interval - Unbundled Loop
OP-8	Number Portability Timeliness
OP-13	Coordinated Cuts - Unbundled Loop
OP-15A	Interval for Pending Orders Delayed
OP-15B	Number of Pending Orders Delayed for Facility Reasons
OP-17	Timeliness of Disconnects Associated with LNP Orders
<b>Operator Services</b>	
OS-1	Speed of Answer - Operator Services
<b>Pre-Order/Order</b>	
PO-1	Pre-Order/Order Response Times
PO-2	Electronic Flow-through
PO-3	LSR Rejection Notice Interval
PO-4	LSRs Rejected
PO-5	Firm Order Confirmations (FOCs) On Time
PO-6	Work Completion Notification Timeliness
PO-7	Billing Completion Notification Timeliness
PO-8	Jeopardy Notice Interval
PO-9	Timely Jeopardy Notices
PO-10	LSR Accountability
PO-15	Number of Due Date Changes per Order
PO-16	Timely Release Notifications
PO-19	Stand-Alone Test Environment (SATE) Accuracy
PO-20	Manual Service Order Accuracy

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MINNESOTA PERFORMANCE METRIC DATA

Metric Number	Metric Description	DR	NOV 2002		DEC 2002		JAN 2002		FEB 2002		MAR 2003		Notes
			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
<b>BILLING</b>													
<b>BI-1</b>	<b>Time to Provide Recorded Usage Records</b>												
BI-1A	UNEs and Resale Aggregate, Avg Days		1.1	4.11	1.13	4.36	1.25	3.84	4.62	3.95	1.08	3.81	
BI-1B	Jointly-provided Switched Access, %		99.99%		99.99%		99.99%		99.99%		99.99%		
<b>BI-2</b>	<b>Invoices Delivered within 10 Days</b>												
BI-2	All, %		100%		100%		100%		100%		100%		
<b>BI-3</b>	<b>Billing Accuracy - Adjustments for Errors</b>												
BI-3A	UNEs and Resale Aggregate, %		98.47%	98.95%	96.00%	99.30%	98.72%	99.51%	98.81%	99.21%	98.30%	99.52%	
BI-3B	Reciprocal Compensation, %		100%		100%		100%		100%		100%		
<b>BI-4</b>	<b>Billing Completeness</b>												
BI-4A	UNEs and Resale Aggregate, %		93.04%	88.61%	96.24%	96.11%	96.34%	96.55%	97.90%	97.62%	96.81%	97.69%	
BI-4B	Reciprocal Compensation, %		100%		100%		100%		99.97%		100%		
<b>BI-5</b>	<b>Billing Accuracy &amp; Claims Processing</b>												
BI-5A	Acknowledgment, All, %		99.60%		100%		99.36%		97.66%		99.66%		
BI-5B	Resolution, All, %		100%		100%		98.54%		100%		98.60%		
<b>COLLOCATION</b>													
<b>CP-1</b>	<b>Collocation Completion Interval when Scheduled Interval is...</b>												
CP-1A	90 Calendar Days or Less, All, Avg Days		75.75		72.75		68.83		78.5		73		a b c d e
CP-1B	91 to 120 Calendar Days, All, Avg Days				91				81.5				a b c d e
CP-1C	121 to 150 Calendar Days, All, Avg Days		130.38		82		116		109		118		b c d e
<b>CP-2</b>	<b>Collocations Completed within Scheduled Intervals</b>												
CP-2B	Non-Forecasted & Late Forecasted Collocations, All, %		100%		100%		100%		100%		100%		a b c d e
CP-2C	with Intervals Longer than 120 Days, All, %		100%		100%		100%		100%		100%		b c d e
<b>CP-3</b>	<b>Collocation Feasibility Study Interval</b>												
CP-3	All, Avg Days		7.29		5.83		8.83		8.74		8.36		a b c
<b>CP-4</b>	<b>Collocation Feasibility Study Commitments Met</b>												
CP-4	All, %		100%		100%		100%		100%		100%		a b c
<b>DIRECTORY ASSISTANCE</b>													
<b>DA-1</b>	<b>Speed of Answer - Directory Assistance</b>												
DA-1	Avg Sec			8.51		8.24		7.69		8.78		8.18	a b c d e
<b>DATABASE UPDATES</b>													
<b>DB-1</b>	<b>Time to Update Databases</b>												
DB-1A	E911, Hrs:Min		1:12		1:02		1:18		0:58		1:18		
DB-1B	LIDB, Avg Sec		1.46		1.47		1.42		1.74		1.42		
DB-1C-1	Directory Listing, Avg Sec		0.05		0.1		0.34		0.13		0.15		

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MINNESOTA PERFORMANCE METRIC DATA

Metric Number	Metric Description	DR	NOV 2002		DEC 2002		JAN 2002		FEB 2002		MAR 2003		Notes
			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
<b>DB-2</b>	<b>Accurate Database Updates</b>												
DB-2C-1	Directory Listing, %		99.02%		98.26%		97.01%		97.93%		97.97%		
<b>ELECTRONIC GATEWAY AVAILABILITY</b>													
<b>GA-1</b>	<b>Gateway Availability - IMA-GUI</b>												
GA-1A	All, %		99.44%		99.67%		96.69%		99.89%		99.98%		
GA-1B	Fetch-n-Stuff, %		100%		100%								c d e
GA-1C	Data Arbiter, %		100%		100%								c d e
GA-1D	SIA, %		100%		100%		100%		99.91%		100%		
<b>GA-2</b>	<b>Gateway Availability - IMA-EDI</b>												
GA-2	All, %		99.39%		99.69%		96.69%		99.89%		100%		
<b>GA-3</b>	<b>Gateway Availability - EB-TA</b>												
GA-3	All, %		100%		100%		99.86%		100%		100%		
<b>GA-4</b>	<b>System Availability - EXACT</b>												
GA-4	All, %		100%		100%		100%		100%		100%		
<b>GA-6</b>	<b>Gateway Availability - GUI - Repair</b>												
GA-6	All, %		100%		100%		97.82%		100%		99.88%		
<b>GA-7</b>	<b>Timely Outage Resolution following Software Releases</b>												
GA-7	All, %										100%		a b c d e
<b>MAINTENANCE AND REPAIR</b>													
<b>MR-2</b>	<b>Calls Answered within Twenty Seconds - Interconnect Repair Center</b>												
MR-2	All, %		92.43%	90.44%	89.25%	87.11%	88.46%	83.51%	89.21%	83.90%	88.70%	85.36%	
<b>MR-3</b>	<b>Out of Service Cleared within 24 Hours</b>												
MR-3	Basic Rate ISDN, %	ND	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	a b c d e
MR-3	Basic Rate ISDN, %	D	100%	98.04%		100%	100%	100%	100%	94.87%	100%	96.88%	a b c d e
MR-3	Business, %	ND	100%	99.34%	100%	100%	100%	98.56%	100%	99.34%	100%	99.30%	a b c d e
MR-3	Business, %	D	100%	96.69%	100%	98.34%	95.45%	98.03%	100%	97.22%	90.48%	96.83%	
MR-3	Centrex 21, %	ND	100%	100%	100%	92.31%	100%	100%	100%	100%	100%	100%	a b c d e
MR-3	Centrex 21, %	D	100%	96.15%	100%	97.53%	100%	97.40%	100%	98.73%	100%	97.75%	a b c d e
MR-3	Centrex, %	ND	100%	100%	100%	100%	100%	100%	100%	100%		100%	a b c d e
MR-3	Centrex, %	D	100%	90.48%	100%	90.00%	60.00%	92.16%	100%	100%	100%	94.12%	a b c d e
MR-3	Line Sharing, %	ND	90.91%	98.17%	100%	99.83%	91.30%	97.20%	100%	99.56%	90.00%	99.42%	b e
MR-3	Line Sharing, %	D	0.00%	96.55%	87.50%	97.15%	93.75%	96.41%	83.33%	96.15%	60.00%	95.12%	a b d e
MR-3	PBX, %	ND	100%	100%	100%	90.70%	100%	100%	100%	98.25%	100%	100%	b
MR-3	PBX, %	D	100%	91.43%	100%	100%	100%	92.00%	100%	96.67%	100%	89.66%	a b c d e
MR-3	Qwest DSL, %		100%	94.82%	100%	96.40%	100%	95.19%	100%	93.06%	100%	93.44%	a b c d e

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MINNESOTA PERFORMANCE METRIC DATA

Metric Number	Metric Description	DR	NOV 2002		DEC 2002		JAN 2002		FEB 2002		MAR 2003		Notes
			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
MR-3	Residence, %	ND	100%	98.03%	100%	99.81%	100%	96.98%	100%	99.59%	96.00%	99.43%	
MR-3	Residence, %	D	97.77%	96.54%	95.16%	97.03%	97.83%	96.25%	96.34%	96.04%	96.50%	94.98%	
MR-3	UBL - 2-wire, %		100%	99.15%	100%	100%	100%	100%	100%	98.11%	100%	98.59%	
MR-3	UBL - ADSL Qualified, %		100%	94.82%		96.40%		95.19%	50.00%	93.06%		93.44%	a b c d e
MR-3	UBL Analog, %		98.62%	96.82%	98.27%	97.57%	99.38%	96.53%	98.53%	96.66%	98.95%	95.58%	
MR-3	UBL ISDN Capable, %		100%	99.15%	100%	100%	100%	100%	100%	98.11%	100%	98.59%	c d
MR-3	UNE-P, POTS, %	ND	97.14%	98.17%	96.15%	99.83%	92.59%	97.20%	100%	99.56%	96.88%	99.42%	
MR-3	UNE-P, POTS, %	D	100%	96.55%	97.33%	97.15%	94.32%	96.41%	99.17%	96.15%	95.36%	95.12%	
MR-3	UNE-P, Centrex 21, %	ND	100%	100%	100%	92.31%	100%	100%	100%	100%	100%	100%	a b c d e
MR-3	UNE-P, Centrex 21, %	D	100%	96.15%	100%	97.53%	100%	97.40%	100%	98.73%	96.15%	97.75%	a
MR-3	UNE-P, Centrex, %	ND	96.15%	100%	100%	100%	100%	100%	100%	100%	100%	100%	d e
MR-3	UNE-P, Centrex, %	D	93.75%	90.48%	95.24%	90.00%	96.83%	92.16%	94.83%	100%	95.83%	94.12%	
<b>MR-4</b>	<b>All Troubles Cleared within 48 Hours</b>												
MR-4	Basic Rate ISDN, %	ND	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	a b c d e
MR-4	Basic Rate ISDN, %	D	100%	100%		100%	100%	100%	100%	100%	100%	100%	a b c d e
MR-4	Business, %	ND	100%	99.74%	100%	99.70%	100%	100%	100%	99.42%	100%	99.70%	
MR-4	Business, %	D	100%	97.90%	100%	98.93%	96.43%	98.23%	96.77%	99.30%	96.97%	98.74%	
MR-4	Centrex 21, %	ND	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	b c d e
MR-4	Centrex 21, %	D	100%	100%	100%	97.94%	100%	98.91%	100%	100%	100%	99.12%	a b c d e
MR-4	Centrex, %	ND	100%	100%	100%	97.83%	100%	100%	100%	98.21%		100%	a b c d e
MR-4	Centrex, %	D	100%	95.59%	100%	96.97%	100%	96.30%	100%	100%	100%	96.61%	a b c d e
MR-4	Line Sharing, %	ND	100%	99.74%	100%	99.73%	100%	99.85%	100%	99.92%	90.00%	99.74%	b e
MR-4	Line Sharing, %	D	100%	98.24%	100%	98.19%	93.75%	98.69%	100%	98.35%	100%	98.41%	a b d e
MR-4	PBX, %	ND	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
MR-4	PBX, %	D	100%	100%	100%	100%	100%	96.67%	100%	100%	100%	97.22%	a b c d e
MR-4	Qwest DSL, %		100%	98.41%	100%	99.28%	100%	98.40%	100%	96.74%	94.12%	96.54%	a b c d
MR-4	Residence, %	ND	100%	99.74%	100%	99.74%	100%	99.82%	100%	100%	98.53%	99.74%	
MR-4	Residence, %	D	99.15%	98.27%	98.79%	98.13%	99.22%	98.74%	100%	98.26%	97.75%	98.38%	
MR-4	UBL - 2-wire, %		100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	
MR-4	UBL - ADSL Qualified, %		100%	98.41%		99.28%		98.40%	100%	96.74%		96.54%	a b c d e
MR-4	UBL Analog, %		99.38%	98.61%	100%	98.55%	100%	98.99%	100%	98.70%	100%	98.63%	
MR-4	UBL ISDN Capable, %		100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	c d
MR-4	UNE-P, POTS, %	ND	100%	99.74%	100%	99.73%	100%	99.85%	100%	99.92%	99.19%	99.74%	
MR-4	UNE-P, POTS, %	D	98.46%	98.24%	100%	98.19%	100%	98.69%	99.36%	98.35%	97.66%	98.41%	
MR-4	UNE-P, Centrex 21, %	ND	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	



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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
MR-4	UNE-P, Centrex 21, %	D	100%	100%	100%	97.94%	100%	98.91%	100%	100%	100%	99.12%	
MR-4	UNE-P, Centrex, %	ND	100%	100%	96.00%	97.83%	100%	100%	100%	98.21%	100%	100%	
MR-4	UNE-P, Centrex, %	D	100%	95.59%	98.80%	96.97%	100%	96.30%	98.65%	100%	98.28%	96.61%	
<b>MR-5</b>	<b>All Troubles Cleared within 4 Hours</b>												
MR-5	DS0, %		87.50%	78.97%	75.00%	78.52%	78.57%	84.94%	50.00%	81.71%	85.71%	79.84%	a b d e
MR-5	DS1, %		73.33%	84.13%	76.47%	85.11%	92.31%	88.30%	76.00%	84.83%	63.64%	84.65%	
MR-5	DS3, %			97.14%		91.30%		96.00%		100%		96.00%	a b c d e
MR-5	E911, %		100%		100%	100%			100%	100%		100%	a b c d e
MR-5	Frame Relay, %			88.03%		76.42%		88.15%		89.52%		85.83%	a b c d e
MR-5	ISDN Primary, %		100%	92.00%		71.79%	100%	90.48%	87.50%	82.76%	100%	92.00%	a b c d e
MR-5	LIS Trunk, %		100%	88.24%	100%	100%	100%	100%	92.31%	100%	100%	88.89%	b c
MR-5	UBL - 4-wire, %			84.13%		85.11%		88.30%		84.83%		84.65%	a b c d e
MR-5	UBL - DS1 Capable, %		90.32%	84.13%	83.33%	85.11%	93.75%	88.30%	80.00%	84.83%	80.65%	84.65%	
MR-5	UBL - DS3 Capable, %			97.14%		91.30%		96.00%		100%		96.00%	a b c d e
MR-5	UDIT Above DS1 Level, %		100%	97.14%	88.89%	91.30%	100%	96.00%	100%	100%	100%	96.00%	a b c d e
MR-5	UDIT DS1, %		100%	84.13%	100%	85.11%	100%	88.30%	100%	84.83%	100%	84.65%	a b c d e
<b>MR-6</b>	<b>Mean Time to Restore</b>												
MR-6	Basic Rate ISDN, Hrs:Min	ND	2:44	1:58	0:53	2:16	5:23	1:51	2:05	1:24	1:10	2:13	a b c d e
MR-6	Basic Rate ISDN, Hrs:Min	D	4:24	5:23		5:27	6:01	3:54	5:18	6:47	2:35	5:36	a b c d e
MR-6	Business, Hrs:Min	ND	1:54	2:48	1:12	2:42	1:22	2:33	0:36	2:46	2:42	2:51	
MR-6	Business, Hrs:Min	D	11:23	12:02	15:46	10:18	11:55	10:47	12:28	11:33	13:20	11:15	
MR-6	Centrex 21, Hrs:Min	ND	1:13	2:37	1:16	2:18	4:41	2:11	0:59	2:36	2:09	2:29	b c d e
MR-6	Centrex 21, Hrs:Min	D	13:23	10:21	7:59	10:07	14:42	9:57	5:51	10:41	11:18	9:01	a b c d e
MR-6	Centrex, Hrs:Min	ND	1:51	4:11	2:33	4:34	15:43	3:53	1:04	6:18		5:29	a b c d e
MR-6	Centrex, Hrs:Min	D	14:53	14:07	11:18	10:26	22:59	13:33	16:24	11:55	14:17	12:18	a b c d e
MR-6	DS0, Hrs:Min		2:53	2:45	2:13	2:58	2:47	2:33	4:16	2:46	2:02	2:47	a b d e
MR-6	DS1, Hrs:Min		3:16	2:13	2:58	2:24	1:40	2:02	2:51	2:17	4:54	2:26	
MR-6	DS3, Hrs:Min			1:26		1:26		1:29		1:11		1:13	a b c d e
MR-6	E911, Hrs:Min		0:35		0:04	1:15			1:05	0:18		0:04	a b c d e
MR-6	Frame Relay, Hrs:Min			2:02		3:06		2:22		2:09		2:06	a b c d e
MR-6	ISDN Primary, Hrs:Min		1:40	1:38		5:16	1:20	1:27	1:42	3:04	0:55	1:49	a b c d e
MR-6	Line Sharing, Hrs:Min	ND	7:22	4:01	3:18	3:44	7:15	4:08	6:10	3:32	12:40	4:21	b e
MR-6	Line Sharing, Hrs:Min	D	1:29	13:27	18:34	13:13	16:31	13:02	16:55	14:12	20:47	13:55	a b d e
MR-6	LIS Trunk, Hrs:Min		0:43	2:16	0:59	0:46	1:39	0:52	1:29	1:05	1:14	1:16	b c
MR-6	PBX, Hrs:Min	ND	1:43	2:37	1:50	5:28	1:21	2:23	1:10	2:27	2:15	2:52	

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
MR-6	PBX, Hrs:Min	D	14:07	15:55	8:41	9:29	4:42	13:10	5:42	9:26	18:22	13:54	a b c d e
MR-6	Qwest DSL, Hrs:Min		0:54	5:33	2:04	4:18	0:02	6:00	0:31	8:44	9:46	7:46	a b c d
MR-6	Residence, Hrs:Min	ND	2:43	4:11	3:58	3:54	4:23	4:25	3:05	3:39	4:25	4:34	
MR-6	Residence, Hrs:Min	D	11:16	13:34	12:42	13:27	12:36	13:14	13:18	14:27	12:49	14:08	
MR-6	UBL - 2-wire, Hrs:Min		2:03	3:26	3:11	3:46	2:40	2:34	3:04	3:19	5:13	3:44	
MR-6	UBL - 4-wire, Hrs:Min			2:13		2:24		2:02		2:17		2:26	a b c d e
MR-6	UBL - ADSL Qualified, Hrs:Min		0:26	5:33		4:18		6:00	13:12	8:44		7:46	a b c d e
MR-6	UBL - DS1 Capable, Hrs:Min		3:10	2:13	2:12	2:24	2:00	2:02	2:53	2:17	2:59	2:26	
MR-6	UBL - DS3 Capable, Hrs:Min			1:26		1:26		1:29		1:11		1:13	a b c d e
MR-6	UBL Analog, Hrs:Min		5:17	11:10	5:28	11:01	4:35	10:45	5:38	11:49	5:38	12:18	
MR-6	UBL ISDN Capable, Hrs:Min		3:07	3:26	2:25	3:46	2:26	2:34	3:14	3:19	3:19	3:44	c d
MR-6	UDIT Above DS1 Level, Hrs:Min		0:46	1:26	1:30	1:26	0:29	1:29	1:28	1:11	0:51	1:13	a b c d e
MR-6	UDIT DS1, Hrs:Min		2:07	2:13	2:06	2:24	1:05	2:02	1:26	2:17	1:14	2:26	a b c d e
MR-6	UNE-P, POTS, Hrs:Min	ND	3:14	4:01	2:51	3:44	3:37	4:08	2:04	3:32	4:11	4:21	
MR-6	UNE-P, POTS, Hrs:Min	D	11:09	13:27	10:05	13:13	11:55	13:02	11:39	14:12	13:16	13:55	
MR-6	UNE-P, Centrex 21, Hrs:Min	ND	2:49	2:37	2:12	2:18	1:57	2:11	2:23	2:36	2:44	2:29	
MR-6	UNE-P, Centrex 21, Hrs:Min	D	12:48	10:21	7:57	10:07	10:04	9:57	10:04	10:41	8:26	9:01	
MR-6	UNE-P, Centrex, Hrs:Min	ND	3:20	4:11	7:06	4:34	4:09	3:53	1:56	6:18	2:38	5:29	
MR-6	UNE-P, Centrex, Hrs:Min	D	10:54	14:07	15:00	10:26	13:58	13:33	12:39	11:55	13:27	12:18	
<b>MR-7</b>	<b>Repair Repeat Report Rate</b>												
MR-7	Basic Rate ISDN, %	ND	0.00%	21.13%	0.00%	7.41%	0.00%	14.67%	0.00%	6.85%	0.00%	7.59%	a b c d e
MR-7	Basic Rate ISDN, %	D	0.00%	13.21%		12.50%	0.00%	9.76%	50.00%	5.00%	50.00%	6.25%	a b c d e
MR-7	Business, %	ND	22.22%	12.96%	23.08%	11.38%	8.70%	11.14%	13.33%	9.33%	6.67%	10.06%	
MR-7	Business, %	D	6.25%	10.26%	15.38%	9.30%	7.14%	8.94%	6.06%	12.79%	18.18%	10.18%	
MR-7	Centrex 21, %	ND	30.77%	14.86%	0.00%	6.41%	50.00%	19.12%	16.67%	14.29%	0.00%	19.40%	b c d e
MR-7	Centrex 21, %	D	40.00%	7.61%	25.00%	7.22%	0.00%	17.02%	0.00%	13.40%	12.50%	11.30%	a b c d e
MR-7	Centrex, %	ND	33.33%	8.33%	0.00%	8.70%	0.00%	11.11%	0.00%	7.14%		10.87%	a b c d e
MR-7	Centrex, %	D	25.00%	6.76%	0.00%	8.33%	20.00%	6.78%	20.00%	2.08%	0.00%	4.92%	a b c d e
MR-7	DS0, %		12.50%	16.59%	0.00%	13.84%	0.00%	14.88%	0.00%	15.68%	0.00%	17.00%	a b d e
MR-7	DS1, %		6.67%	11.24%	23.53%	14.72%	7.69%	12.17%	12.00%	11.68%	9.09%	15.97%	
MR-7	DS3, %			5.71%		4.35%		20.00%		7.14%		16.00%	a b c d e
MR-7	E911, %		12.50%		0.00%	0.00%			0.00%	0.00%		0.00%	a b c d e
MR-7	EELs, %		0.00%		11.11%		18.18%		5.26%		13.33%		a b
MR-7	Frame Relay, %			13.38%		16.98%		13.33%		10.48%		13.39%	a b c d e
MR-7	ISDN Primary, %		0.00%	8.00%		5.13%	0.00%	0.00%	0.00%	13.79%	33.33%	12.00%	a b c d e

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
MR-7	Line Sharing, %	ND	27.27%	16.18%	11.11%	14.10%	30.77%	12.69%	17.65%	18.06%	54.55%	15.37%	b
MR-7	Line Sharing, %	D	0.00%	14.58%	50.00%	18.18%	43.75%	17.31%	14.29%	23.02%	16.67%	20.80%	a b d e
MR-7	LIS Trunk, %		0.00%	17.65%	12.50%	0.00%	0.00%	0.00%	15.38%	0.00%	7.14%	0.00%	b c
MR-7	PBX, %	ND	7.14%	12.12%	15.38%	10.91%	4.00%	9.80%	15.00%	10.14%	5.56%	4.44%	
MR-7	PBX, %	D	0.00%	25.00%	0.00%	25.64%	0.00%	29.03%	0.00%	15.63%	0.00%	13.89%	a b c d e
MR-7	Qwest DSL, %		0.00%	15.87%	0.00%	14.75%	0.00%	13.46%	0.00%	19.16%	23.53%	16.38%	a b c d
MR-7	Residence, %	ND	14.29%	10.86%	12.68%	8.07%	3.57%	9.85%	8.77%	8.04%	10.29%	8.80%	
MR-7	Residence, %	D	11.60%	10.78%	10.55%	9.74%	8.27%	9.39%	12.82%	9.12%	8.29%	10.23%	
MR-7	UBL - 2-wire, %		0.00%	17.74%	5.56%	9.80%	0.00%	12.93%	7.14%	6.19%	13.33%	6.99%	
MR-7	UBL - 4-wire, %			11.24%		14.72%		12.17%		11.68%		15.97%	a b c d e
MR-7	UBL - ADSL Qualified, %		0.00%	15.87%		14.75%		13.46%	0.00%	19.16%		16.38%	a b c d e
MR-7	UBL - DS1 Capable, %		16.13%	11.24%	5.56%	14.72%	6.25%	12.17%	15.00%	11.68%	3.23%	15.97%	
MR-7	UBL - DS3 Capable, %			5.71%		4.35%		20.00%		7.14%		16.00%	a b c d e
MR-7	UBL Analog, %		7.04%	10.83%	7.48%	9.44%	9.66%	9.52%	6.07%	9.16%	7.48%	10.02%	
MR-7	UBL ISDN Capable, %		0.00%	17.74%	0.00%	9.80%	10.00%	12.93%	10.00%	6.19%	10.53%	6.99%	c d
MR-7	UDIT Above DS1 Level, %		0.00%	5.71%	0.00%	4.35%	0.00%	20.00%	0.00%	7.14%	0.00%	16.00%	a b c d e
MR-7	UDIT DS1, %		0.00%	11.24%	0.00%	14.72%	0.00%	12.17%	0.00%	11.68%	0.00%	15.97%	a b c d e
MR-7	UNE-P, POTS, %	ND	19.39%	11.12%	14.44%	8.49%	7.95%	10.04%	14.66%	8.22%	13.71%	8.96%	
MR-7	UNE-P, POTS, %	D	11.03%	10.74%	11.50%	9.71%	13.82%	9.36%	9.15%	9.41%	12.23%	10.22%	
MR-7	UNE-P, Centrex 21, %	ND	22.58%	14.86%	16.67%	6.41%	9.09%	19.12%	10.34%	14.29%	9.09%	19.40%	
MR-7	UNE-P, Centrex 21, %	D	12.50%	7.61%	7.69%	7.22%	15.38%	17.02%	23.33%	13.40%	19.51%	11.30%	
MR-7	UNE-P, Centrex, %	ND	16.95%	8.33%	22.00%	8.70%	6.45%	11.11%	4.76%	7.14%	16.00%	10.87%	
MR-7	UNE-P, Centrex, %	D	8.64%	6.76%	10.23%	8.33%	18.52%	6.78%	13.92%	2.08%	4.92%	4.92%	
MR-7*	Basic Rate ISDN, %	ND	0.00%	20.45%		3.03%	0.00%	21.15%	0.00%	8.33%	0.00%	8.93%	a b c d e
MR-7*	Basic Rate ISDN, %	D	0.00%	12.77%		8.89%	0.00%	10.53%	50.00%	5.88%	50.00%	5.00%	a b c d e
MR-7*	Business, %	ND	33.33%	12.14%	10.00%	11.62%	12.50%	12.20%	12.50%	11.94%	9.09%	12.02%	a b c d
MR-7*	Business, %	D	7.14%	10.52%	12.00%	8.09%	8.00%	9.04%	6.90%	12.14%	13.79%	10.35%	
MR-7*	Centrex 21, %	ND	33.33%	17.78%	0.00%	8.33%	57.14%	18.92%	0.00%	17.74%	0.00%	23.68%	b c d e
MR-7*	Centrex 21, %	D	50.00%	5.88%	28.57%	8.33%	0.00%	16.87%	0.00%	13.64%	12.50%	13.13%	a b c d e
MR-7*	Centrex, %	ND		10.81%		11.43%	0.00%	5.71%	0.00%	6.82%		11.11%	a b c d e
MR-7*	Centrex, %	D	25.00%	7.69%	0.00%	10.00%	20.00%	7.41%	0.00%	2.50%	0.00%	6.00%	a b c d e
MR-7*	DS0, %		14.29%	16.51%	0.00%	13.62%	0.00%	12.98%	0.00%	15.58%	0.00%	17.16%	a b d e
MR-7*	DS1, %		7.69%	12.14%	27.27%	13.94%	6.67%	12.33%	18.75%	12.22%	6.67%	15.74%	
MR-7*	DS3, %			4.35%		0.00%		22.22%		5.56%		7.14%	a b c d e
MR-7*	E911, %		16.67%		0.00%	0.00%			0.00%	0.00%		0.00%	a b c d e

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
MR-7*	EELs, %		0.00%		14.29%		0.00%		5.56%		7.69%		a b c
MR-7*	Frame Relay, %			13.00%		18.75%		13.08%		10.53%		14.58%	a b c d e
MR-7*	ISDN Primary, %		0.00%	9.52%		7.14%	0.00%	0.00%	0.00%	13.04%	100%	15.00%	a b c d e
MR-7*	Line Sharing, %	ND	25.00%	15.97%	0.00%	14.20%	33.33%	13.13%	25.00%	18.51%	25.00%	15.83%	a b d e
MR-7*	Line Sharing, %	D	0.00%	0.00%	66.67%	22.22%	35.71%	22.73%	0.00%	26.52%	0.00%	23.57%	a b d e
MR-7*	LIS Trunk, %		0.00%	16.67%	16.67%	0.00%	0.00%	0.00%	20.00%	0.00%	7.69%	0.00%	b c d
MR-7*	PBX, %	ND	7.69%	8.70%	0.00%	8.33%	0.00%	9.68%	13.33%	11.11%	6.67%	4.88%	b
MR-7*	PBX, %	D	0.00%	23.08%	0.00%	21.43%	0.00%	28.57%	0.00%	14.81%	0.00%	16.13%	a b c d e
MR-7*	Qwest DSL, %		0.00%	13.01%				14.29%	0.00%	19.90%	33.33%	17.19%	a b c d
MR-7*	Residence, %	ND	24.24%	11.97%	22.22%	8.63%	0.00%	10.52%	7.69%	9.26%	7.69%	9.41%	
MR-7*	Residence, %	D	11.90%	10.63%	10.66%	9.55%	8.40%	9.23%	12.94%	9.01%	7.14%	10.08%	
MR-7*	UBL - 2-wire, %		0.00%	16.48%	6.67%	6.41%	0.00%	16.67%	7.69%	7.32%	16.67%		a
MR-7*	UBL - 4-wire, %			12.14%		13.94%		12.33%		12.22%		15.74%	a b c d e
MR-7*	UBL - ADSL Qualified, %		0.00%	13.01%		15.00%		14.29%	0.00%	19.90%		17.19%	a b c d e
MR-7*	UBL - DS1 Capable, %		16.67%	12.14%	0.00%	13.94%	7.41%	12.33%	6.67%	12.22%	0.00%	15.74%	
MR-7*	UBL - DS3 Capable, %			4.35%		0.00%		22.22%		5.56%		7.14%	a b c d e
MR-7*	UBL Analog, %		6.22%	10.80%	7.60%	9.40%	10.15%	9.45%	5.66%	9.31%	7.43%	10.07%	
MR-7*	UBL ISDN Capable, %		0.00%	16.48%	0.00%	6.41%	10.00%	16.67%	10.00%	7.32%	11.11%		c d
MR-7*	UDIT Above DS1 Level, %		0.00%	4.35%	0.00%	0.00%		22.22%	0.00%	5.56%	0.00%	7.14%	a b c d e
MR-7*	UDIT DS1, %		0.00%	12.14%	0.00%	13.94%	0.00%	12.33%	0.00%	12.22%	0.00%	15.74%	a b c d e
MR-7*	UNE - P, POTS, %	ND	17.91%	11.99%	16.95%	9.11%	8.20%	10.86%	17.11%	9.73%	9.64%	9.78%	
MR-7*	UNE - P, POTS, %	D	11.11%	10.62%	11.65%	9.45%	12.62%	9.22%	9.27%	9.26%	12.98%	10.10%	
MR-7*	UNE P, Centrex 21, %	ND	28.57%	17.78%	10.00%	8.33%	12.50%	18.92%	10.53%	17.74%	14.29%	23.68%	b
MR-7*	UNE P, Centrex 21, %	D	7.14%	5.88%	8.00%	8.33%	5.00%	16.87%	23.08%	13.64%	13.89%	13.13%	
MR-7*	UNE P, Centrex, %	D	8.57%	7.69%	10.84%	10.00%	18.92%	7.41%	14.10%	2.50%	5.26%	6.00%	
MR-7*	UNE P, Centrex, %	ND	19.05%	10.81%	21.21%	11.43%	6.25%	5.71%	6.25%	6.82%	5.56%	11.11%	
<b>MR-8</b>	<b>Trouble Rate</b>												
MR-8	Basic Rate ISDN, %		0.64%	0.30%	0.13%	0.25%	0.74%	0.28%	0.86%	0.28%	1.31%	0.37%	
MR-8	Business, %		0.48%	0.42%	0.41%	0.37%	0.53%	0.38%	0.52%	0.40%	0.52%	0.49%	
MR-8	Centrex 21, %		0.73%	0.40%	0.62%	0.43%	0.64%	0.40%	0.82%	0.48%	1.12%	0.47%	
MR-8	Centrex, %		0.64%	0.13%	0.87%	0.08%	0.58%	0.11%	0.84%	0.10%	0.22%	0.11%	
MR-8	DS0, %		0.43%	0.44%	0.21%	0.42%	0.76%	0.56%	0.43%	0.43%	0.39%	0.51%	
MR-8	DS1, %		1.65%	1.22%	1.84%	1.25%	2.74%	1.30%	2.61%	1.34%	2.23%	1.32%	
MR-8	DS3, %		0.00%	1.01%	0.00%	0.66%	0.00%	0.72%	0.00%	0.81%	0.00%	0.72%	a b c d e
MR-8	E911, %		1.03%	0.00%	0.13%	0.07%	0.00%	0.00%	0.37%	0.34%	0.00%	0.07%	

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MR-8	EELs, %		1.86%		2.15%		2.37%		3.56%		2.63%		
MR-8	Frame Relay, %			1.54%		1.15%		1.52%		1.21%		1.51%	a b c d e
MR-8	ISDN Primary, %		0.10%	0.03%	0.00%	0.04%	0.09%	0.02%	0.35%	0.03%	0.12%	0.03%	
MR-8	Line Sharing, %		0.71%	0.84%	0.95%	0.74%	2.32%	0.68%	1.28%	0.74%	0.84%	1.05%	
MR-8	LIS Trunk, %		0.01%	0.01%	0.00%	0.01%	0.01%	0.00%	0.01%	0.01%	0.01%	0.01%	
MR-8	PBX, %		0.15%	0.14%	0.13%	0.12%	0.22%	0.10%	0.20%	0.13%	0.17%	0.11%	
MR-8	Qwest DSL, %		1.30%	0.99%	5.00%	1.12%	2.38%	1.28%	0.27%	1.84%	2.13%	1.77%	
MR-8	Residence, %		0.91%	0.93%	0.68%	0.82%	0.68%	0.74%	0.70%	0.82%	1.04%	1.17%	
MR-8	UBL - 2-wire, %		0.25%	0.30%	0.38%	0.25%	0.39%	0.28%	0.29%	0.28%	0.30%	0.37%	
MR-8	UBL - 4-wire, %		0.00%	1.22%	0.00%	1.25%	0.00%	1.30%	0.00%	1.34%	0.00%	1.32%	a b c d e
MR-8	UBL - ADSL Qualified, %		0.85%	0.99%	0.00%	1.12%	0.00%	1.28%	1.87%	1.84%	0.00%	1.77%	
MR-8	UBL - DS1 Capable, %		2.41%	1.22%	1.34%	1.25%	2.29%	1.30%	1.38%	1.34%	2.07%	1.32%	
MR-8	UBL - DS3 Capable, %			1.01%		0.66%		0.72%		0.81%		0.72%	a b c d e
MR-8	UBL Analog, %		0.50%	0.84%	0.40%	0.74%	0.38%	0.68%	0.40%	0.74%	0.59%	1.05%	
MR-8	UBL ISDN Capable, %		0.76%	0.30%	0.72%	0.25%	0.56%	0.28%	0.55%	0.28%	1.05%	0.37%	
MR-8	UDIT Above DS1 Level, %		1.23%	1.01%	5.42%	0.66%	0.60%	0.72%	3.36%	0.81%	0.92%	0.72%	
MR-8	UDIT DS1, %		0.54%	1.22%	0.55%	1.25%	1.10%	1.30%	1.12%	1.34%	1.64%	1.32%	
MR-8	UNE-P, POTS, %		0.69%	0.84%	0.56%	0.74%	0.56%	0.68%	0.72%	0.74%	0.84%	1.05%	
MR-8	UNE-P, Centrex 21, %		0.47%	0.40%	0.43%	0.43%	0.45%	0.40%	0.54%	0.48%	0.58%	0.47%	
MR-8	UNE-P, Centrex, %		0.49%	0.13%	0.52%	0.08%	0.44%	0.11%	0.47%	0.10%	0.42%	0.11%	
<b>MR-9</b>	<b>Repair Appointments Met</b>												
MR-9	Basic Rate ISDN, %	ND		100%		100%	100%	100%	100%	100%		100%	a b c d e
MR-9	Basic Rate ISDN, %	D		100%		66.67%		100%		100%		100%	a b c d e
MR-9	Business, %	ND	94.44%	98.94%	100%	98.20%	100%	97.97%	100%	99.13%	100%	99.41%	
MR-9	Business, %	D	100%	95.24%	100%	95.49%	92.86%	96.46%	96.97%	97.04%	90.91%	96.33%	
MR-9	Centrex 21, %	ND	100%	97.30%	100%	98.72%	100%	100%	100%	100%	100%	98.51%	b c d e
MR-9	Centrex 21, %	D	80.00%	93.48%	100%	95.88%	100%	92.55%	100%	93.81%	100%	95.65%	a b c d e
MR-9	Centrex, %	ND	100%	96.61%	100%	93.48%	100%	100%	100%	100%		97.50%	a b c d e
MR-9	Centrex, %	D	100%	88.73%	100%	91.43%	80.00%	91.38%	100%	88.37%	100%	98.28%	a b c d e
MR-9	PBX, %	ND	100%	96.77%	100%	100%	100%	100%	100%	95.83%	100%	100%	a b c d e
MR-9	PBX, %	D	100%	85.00%	66.67%	100%	100%	96.15%	100%	96.15%	100%	100%	a b c d e
MR-9	Residence, %	ND	98.70%	99.01%	100%	99.34%	100%	98.43%	100%	99.77%	100%	99.45%	
MR-9	Residence, %	D	97.51%	95.29%	94.14%	95.25%	97.74%	96.00%	97.07%	94.93%	97.56%	96.11%	
MR-9	UNE-P, POTS, %	ND	96.94%	99.00%	98.89%	99.19%	97.73%	98.36%	99.14%	99.68%	97.58%	99.44%	
MR-9	UNE-P, POTS, %	D	96.32%	95.28%	97.35%	95.27%	100%	96.03%	97.56%	95.10%	96.51%	96.13%	

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
<b>MR-11</b>	<b>LNP Trouble Reports Cleared</b>												
MR-11B	Volumes 0-20, LNP, Days		1	1	1	1		1	1	1	1	1	a b c d e
<b>NETWORK PERFORMANCE</b>													
<b>NI-1</b>	<b>Trunk Blocking</b>												
NI-1A	to Qwest Tandem Offices, LIS Trunk, %		0.00%	0.03%	0.00%	0.22%	0.05%	0.00%	0.01%	0.00%	0.02%	0.00%	
NI-1B	to Qwest End Offices, LIS Trunk, %		0.04%	0.00%	0.00%	0.00%	0.00%	0.00%	0.01%	0.04%	0.00%	0.00%	
NI-1C	to Qwest Tandem Offices, LIS Trunk, %		0.73%	0.03%	0.47%	0.22%	1.69%	0.00%	0.74%	0.00%	0.19%	0.00%	
NI-1D	to Qwest End Offices, LIS Trunk, %		0.06%	0.00%	0.03%	0.00%	1.55%	0.00%	0.13%	0.04%	0.00%	0.00%	
<b>NP-1</b>	<b>NXX Code Activation</b>												
NP-1A	All, %		100%		100%		100%		100%		100%		a b c d e
<b>ORDER ACCURACY</b>													
OA-1	All, %		99.75%		99.90%		99.55%		99.43%		99.43%		
<b>ORDERING AND PROVISIONING</b>													
<b>OP-2</b>	<b>Calls Answered within Twenty Seconds - Interconnect Provisioning Center</b>												
OP-2	All, %		98.19%	77.80%	98.92%	84.04%	98.17%	75.49%	99.30%	83.16%	98.57%	80.84%	
<b>OP-3</b>	<b>Installation Commitments Met</b>												
OP-3	Basic Rate ISDN, %	ND	100%	100%	100%	100%	100%	100%	66.67%	100%	100%	100%	a b c d e
OP-3	Basic Rate ISDN, %	D		100%		100%		100%	100%	100%		100%	a b c d e
OP-3	Basic Rate ISDN, %		91.67%	92.11%	83.33%	84.59%	66.67%	93.87%	100%	87.89%	100%	95.58%	b c d e
OP-3	Business, %	ND	100%	99.45%	100%	94.63%	100%	97.60%	100%	97.07%	100%	99.08%	
OP-3	Business, %	D	93.75%	90.41%	93.75%	92.34%	100%	93.54%	100%	94.87%	100%	97.02%	
OP-3	Centrex 21, %	ND	100%	95.52%	100%	100%	100%	100%	100%	94.29%	100%	97.30%	
OP-3	Centrex 21, %	D	100%	89.90%	80.00%	93.00%	100%	95.19%	100%	94.51%	100%	92.31%	a b c d e
OP-3	Centrex, %	ND		100%		70.83%		100%		100%		100%	a b c d e
OP-3	Centrex, %	D		96.79%		99.43%		97.60%		97.83%		98.25%	a b c d e
OP-3	DS0, %	ND	100%	100%	100%	100%	50.00%	100%		100%	100%	0.00%	a b c d e
OP-3	DS0, %	D				100%		80.00%	0.00%		100%	100%	a b c d e
OP-3	DS0, %		100%	55.56%	100%	61.90%	83.33%	69.23%	100%	84.21%	80.00%	76.92%	a b c d e
OP-3	DS1, %		100%	86.23%	100%	85.53%	100%	88.62%	83.33%	90.66%	75.00%	92.02%	a b c d e
OP-3	DS3, %			86.36%		89.47%		75.00%	100%	68.09%		87.95%	a b c d e
OP-3	E911, %		100%				100%		100%				a b c d e
OP-3	EELs, %		92.00%		79.41%		85.00%		85.71%		70.21%		
OP-3	Frame Relay, %			85.37%		88.51%		95.41%		90.16%		82.09%	a b c d e
OP-3	ISDN Primary, %	ND		100%		100%		100%		100%	100%		a b c d e
OP-3	ISDN Primary, %	D		50.00%				0.00%		100%			a b c d e

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
OP-3	ISDN Primary, %		75.00%	78.79%	93.33%	70.49%	71.43%	78.18%	100%	70.59%	81.82%	62.03%	a c d
OP-3	Line Sharing, %	ND	100%	99.55%	100%	99.26%	100%	99.56%	100%	99.54%	100%	99.66%	
OP-3	Line Sharing, %	D		90.80%		91.66%		93.82%		95.69%		97.70%	a b c d e
OP-3	LIS Trunk, %		87.93%	96.67%	99.29%	85.71%	100%	96.67%	95.88%	89.66%	98.31%	84.62%	
OP-3	PBX, %	ND	100%	88.89%	100%	100%	100%	87.50%	100%	100%	66.67%	100%	a b c d e
OP-3	PBX, %	D		86.49%	0.00%	88.46%	100%	91.67%	100%	91.30%		89.47%	a b c d e
OP-3	PBX, %		94.87%	74.36%	96.15%	37.50%	100%	76.00%	100%	81.82%	68.92%	64.29%	
OP-3	Qwest DSL, %	ND	98.48%	99.45%	97.80%	99.23%	100%	99.09%	98.70%	99.39%	100%	99.24%	
OP-3	Qwest DSL, %	D	80.00%	96.62%	100%	97.24%	100%	97.75%	100%	96.88%	90.91%	95.25%	a b c d
OP-3	Qwest DSL, %		100%	100%	100%	90.48%	100%	92.31%	87.50%	83.33%	100%	94.74%	a b c d
OP-3	Residence, %	ND	100%	99.55%	99.83%	99.38%	99.87%	99.60%	99.79%	99.60%	99.81%	99.67%	
OP-3	Residence, %	D	94.51%	90.91%	94.07%	91.48%	94.47%	93.90%	96.93%	95.94%	97.98%	97.90%	
OP-3	UBL - 2-wire, %		99.43%	93.75%	98.16%	86.73%	98.86%	94.25%	99.37%	88.26%	100%	95.85%	
OP-3	UBL - 4-wire, %		100%	86.23%		85.53%		88.62%		90.66%		92.02%	a b c d e
OP-3	UBL - ADSL Qualified, %		100%	96.62%	100%	97.09%	100%	97.75%	100%	96.91%	100%	95.32%	a c d e
OP-3	UBL - DS1 Capable, %		92.16%	86.23%	89.58%	85.53%	93.55%	88.62%	89.58%	90.66%	100%	92.02%	
OP-3	UBL - DS3 Capable, %			86.36%		89.47%		75.00%		68.09%		87.95%	a b c d e
OP-3	UBL Analog, %	ND											a b c d e
OP-3	UBL Analog, %	D											a b c d e
OP-3	UBL Analog, %		98.60%	90.80%	98.44%	91.66%	98.60%	93.82%	98.75%	95.69%	99.22%	97.70%	
OP-3	UBL Conditioned, %		54.55%		77.42%		87.88%		94.12%		96.00%		
OP-3	UBL ISDN Capable, %		85.00%	93.75%	97.56%	86.73%	93.55%	94.25%	94.12%	87.89%	90.48%	95.58%	
OP-3	UDIT Above DS1 Level, %		100%	86.36%		89.47%	100%	75.00%	100%	68.09%	0.00%	87.95%	a b c d e
OP-3	UDIT DS1, %		100%	86.23%	100%	85.53%		88.62%	100%	90.66%	77.78%	92.02%	a b c d e
OP-3	UNE-P, POTS, %	ND	99.73%	99.55%	99.51%	99.26%	99.64%	99.56%	99.80%	99.54%	99.89%	99.66%	
OP-3	UNE-P, POTS, %	D	96.81%	90.80%	95.79%	91.66%	98.43%	93.82%	96.41%	95.69%	97.08%	97.70%	
OP-3	UNE-P, Centrex 21, %	ND	100%	95.52%	96.15%	100%	100%	100%	95.08%	94.29%	94.12%	97.30%	
OP-3	UNE-P, Centrex 21, %	D	100%	89.90%	95.00%	93.00%	100%	95.19%	100%	94.51%	95.00%	92.31%	
OP-3	UNE-P, Centrex, %	ND	100%	100%	97.78%	70.83%	97.50%	100%	100%	100%	100%	100%	
OP-3	UNE-P, Centrex, %	D	98.25%	96.79%	89.74%	99.43%	98.25%	97.60%	94.64%	97.83%	97.78%	98.25%	
<b>OP-4</b>	<b>Installation Interval</b>												
OP-4	Basic Rate ISDN, Avg Days	ND	2	3.11	3	3	3.5	2		2.5	4	3	a b c d e
OP-4	Basic Rate ISDN, Avg Days	D		2.25		1		3	2	0		2	a b c d e
OP-4	Basic Rate ISDN, Avg Days		7.73	10.89	7	10.65	7.5	8.91	3	8.75	3.5	7.59	b c d e
OP-4	Business, Avg Days	ND	1.57	1.91	1.94	2.82	2.5	2.21	2.24	1.84	2.33	3.11	

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OP-4	Business, Avg Days	D	3.91	6.03	4.5	5.39	3.3	4.8	5.26	4.93	2.56	4.84	
OP-4	Centrex 21, Avg Days	ND	3.22	5.26	5	3.19	3	3.29	2	2.64	5.5	3.37	a b c d e
OP-4	Centrex 21, Avg Days	D	4	7.8	4.8	4.84	5.33	4.93	2.33	5.3	4	7.14	a b c d e
OP-4	Centrex, Avg Days	ND		5		5.57		3.51		4.57		4.84	a b c d e
OP-4	Centrex, Avg Days	D		7.96		7.54		6.11		5.88		7.19	a b c d e
OP-4	DS0, Avg Days	ND	5	2	7	7	5	3.5		4	5	9	a b c d e
OP-4	DS0, Avg Days	D				4		4.8	8.8		5.5	4.67	a b c d e
OP-4	DS0, Avg Days		6.57	10.77	8.7	13.56	6	6.65	7	9.8	8.6	10.38	a b c d e
OP-4	DS1, Avg Days		4.5	11.85	7	13.84	8	12.12	13.25	11.88	16.6	11.88	a b c d e
OP-4	DS3, Avg Days			18.94		18.06		17.11	12	14.58		13.6	a b c d e
OP-4	E911, Avg Days		9	27			8.6	35	61.25	92	32	15	a b c e
OP-4	EELs, Avg Days		5.29		9.33		5.62		6.67		7		a b d e
OP-4	Frame Relay, Avg Days			10		21						13	a b c d e
OP-4	ISDN Primary, Avg Days	ND		3.57		3.33		2		8	8		a b c d e
OP-4	ISDN Primary, Avg Days	D		4				10		3			a b c d e
OP-4	ISDN Primary, Avg Days		8.14	15.57	5.92	17.99	5.4	28.28	8.22	13.31	6.06	20.95	a c d
OP-4	Line Sharing, Avg Days	ND	2.95	3.03	3	2.83	2.99	2.49	2.94	2.39	3	2.48	
OP-4	Line Sharing, Avg Days	D		5.79		5.41		4.75		4.87		4.9	a b c d e
OP-4	LIS Trunk, Avg Days		16.61	20.66	10.82	14.43	11.49	15.35	11.82	12.65	17.31	16.45	
OP-4	PBX, Avg Days	ND	5.33	2.88	6	2	4.8	1.8	1.6	2.17	5.67	1.38	a b c d e
OP-4	PBX, Avg Days	D		8.41	7	9.38	3	5.83	6.5	6.78	3	4.37	a b c d e
OP-4	PBX, Avg Days		6.76	12.11	6.49	17.27	5.9	16.83	6.97	11.05	9.22	13.55	
OP-4	Qwest DSL, Avg Days	ND	4.83	4.92	4.68	4.95	4.68	4.9	4.7	4.95	5.12	4.95	
OP-4	Qwest DSL, Avg Days	D	6	5.53	5.17	5.54	6.29	5.42	6	5.35	6.55	5.58	a b c d
OP-4	Qwest DSL, Avg Days		5.75	6	5.5	7.55	6.75	4.67	7.67	6.81	5	4.39	a b c d e
OP-4	Residence, Avg Days	ND	2.12	3.05	2.43	2.83	2.3	2.5	2.25	2.4	1.87	2.47	
OP-4	Residence, Avg Days	D	3.71	5.72	3.23	5.41	3.3	4.73	3.12	4.86	3.04	4.91	
OP-4	UBL - 2-wire, Avg Days		4.04	10.04	4.15	10.28	3.82	8.76	4.33	8.66	4.05	7.36	
OP-4	UBL - 4-wire, Avg Days		5	11.85		13.84		12.12		11.88		11.88	a b c d e
OP-4	UBL - ADSL Qualified, Avg Days		4	5.52	4.78	5.53	4.38	5.43	4.25	5.37	3.5	5.55	a b c d e
OP-4	UBL - DS1 Capable, Avg Days		6.5	11.85	6.37	13.84	5.14	12.12	7.91	11.88	5.68	11.88	
OP-4	UBL - DS3 Capable, Avg Days			18.94		18.06		17.11		14.58		13.6	a b c d e
OP-4	UBL Analog, Avg Days	ND											a b c d e
OP-4	UBL Analog, Avg Days	D											a b c d e
OP-4	UBL Analog, Avg Days		5.09	5.79	5.26	5.41	5.19	4.75	5.39	4.87	5.14	4.9	



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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
OP-4	UBL Conditioned, Avg Days		9.76		7.05		7.32		5.72		5.56		
OP-4	UBL ISDN Capable, Avg Days		5.23	10.04	4.26	10.28	4.53	8.76	4.25	8.75	4.57	7.59	
OP-4	UDIT Above DS1 Level, Avg Days		4.5	18.94	7.5	18.06	9	17.11	9	14.58	18.5	13.6	a b c d e
OP-4	UDIT DS1, Avg Days		7.57	11.85	7	13.84		12.12	11	11.88	7.56	11.88	a b c d e
OP-4	UNE-P, POTS, Avg Days	ND	2.29	3.03	2.58	2.83	2.34	2.49	2.55	2.39	2.14	2.48	
OP-4	UNE-P, POTS, Avg Days	D	3.79	5.79	4.52	5.41	3.53	4.75	4.31	4.87	4.25	4.9	
OP-4	UNE-P, Centrex 21, Avg Days	ND	2.54	5.26	2.8	3.19	2.25	3.29	5.67	2.64	3.5	3.37	b c e
OP-4	UNE-P, Centrex 21, Avg Days	D	3.86	7.8	7.1	4.84	4.27	4.93	4.56	5.3	6.8	7.14	
OP-4	UNE-P, Centrex, Avg Days	ND	4.43	5	5.11	5.57	5	3.51	5.26	4.57	4.91	4.84	
OP-4	UNE-P, Centrex, Avg Days	D	5.67	7.96	5.59	7.54	5.3	6.11	6.93	5.88	7.15	7.19	
<b>OP-5</b>	<b>New Service Installation Quality</b>												
OP-5	Basic Rate ISDN, %		100%	98.76%	100%	98.19%	100%	97.83%	84.62%	97.21%	100%	95.69%	a e
OP-5	Business, %		97.83%	95.00%	94.81%	94.16%	96.00%	94.58%	90.91%	94.65%	94.12%	94.04%	
OP-5	Centrex 21, %		86.21%	94.48%	100%	93.45%	94.59%	94.16%	100%	90.37%	96.43%	91.87%	
OP-5	Centrex, %			99.42%		98.59%		100%		98.62%		100%	a b c d e
OP-5	DS0, %		100%	100%	100%	96.88%	100%	87.88%	100%	96.77%	100%	73.33%	d
OP-5	DS1, %		100%	95.99%	100%	96.74%	100%	96.32%	100%	96.58%	100%	95.83%	a b c d e
OP-5	DS3, %			98.18%		94.44%		100%	100%	91.03%	100%	93.83%	a b c d e
OP-5	E911, %		100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	a b c
OP-5	EELs, %		100%		92.11%		95.45%		94.44%		98.28%		
OP-5	Frame Relay, %			93.90%		96.55%		95.10%		95.94%		96.08%	a b c d e
OP-5	ISDN Primary, %		100%	95.65%	91.67%	94.90%	100%	100%	100%	95.29%	100%	96.43%	a d
OP-5	Line Sharing, %		95.90%	92.40%	93.72%	92.17%	90.50%	92.24%	94.42%	92.04%	96.64%	90.77%	
OP-5	LIS Trunk, %		98.44%	97.83%	98.18%	100%	98.15%	100%	100%	100%	98.64%	100%	
OP-5	PBX, %		94.44%	94.38%	97.96%	94.25%	93.33%	96.55%	98.11%	96.34%	98.31%	94.37%	
OP-5	Qwest DSL, %		99.17%	99.97%	97.78%	99.93%	99.00%	99.97%	98.91%	99.94%	98.98%	100%	
OP-5	Residence, %		96.16%	92.15%	96.57%	91.98%	96.12%	92.01%	95.15%	91.78%	94.20%	90.45%	
OP-5	UBL - 2-wire, %		97.25%	97.51%	96.05%	96.37%	95.98%	95.67%	97.08%	97.21%	98.59%	95.69%	
OP-5	UBL - 4-wire, %		100%	95.99%	100%	96.74%		96.32%		96.58%		95.83%	a b c d e
OP-5	UBL - ADSL Qualified, %		66.67%	99.82%	100%	99.61%	100%	99.83%	100%	99.64%	100%	100%	a b c d e
OP-5	UBL - DS1 Capable, %		91.36%	95.99%	95.16%	96.74%	94.12%	96.32%	94.12%	96.58%	88.57%	95.83%	
OP-5	UBL - DS3 Capable, %			98.18%		94.44%		100%		91.03%		93.83%	a b c d e
OP-5	UBL Analog, %		98.01%	76.76%	98.53%	75.93%	98.59%	75.76%	97.61%	74.74%	98.11%	71.10%	
OP-5	UBL ISDN Capable, %		98.00%	97.51%	97.67%	96.37%	97.44%	95.67%	97.06%	97.08%	95.12%	95.47%	
OP-5	UDIT Above DS1 Level, %		100%	98.18%	100%	94.44%	100%	100%	100%	91.03%	100%	93.83%	a b c d e

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
OP-5	UDIT DS1, %		100%	95.99%	100%	96.74%	100%	96.32%	100%	96.58%	100%	95.83%	a b c d e
OP-5	UNE-P, POTS, %		96.49%	92.40%	96.43%	92.17%	95.86%	92.24%	95.53%	92.04%	97.60%	90.77%	
OP-5	UNE-P, Centrex 21, %		95.69%	94.48%	98.81%	93.45%	97.09%	94.16%	96.26%	90.37%	100%	91.87%	
OP-5	UNE-P, Centrex, %		99.19%	98.85%	100%	97.18%	100%	100%	100%	98.62%	100%	100%	
<b>OP-6A</b>	<b>Delayed Days for Non-Facility Reasons</b>												
OP-6A	Basic Rate ISDN, Avg Days	ND							2				a b c d e
OP-6A	Basic Rate ISDN, Avg Days	D											a b c d e
OP-6A	Basic Rate ISDN, Avg Days			16.15	12	6.81	3	5.82		4.33		3.17	a b c d e
OP-6A	Business, Avg Days	ND		12.67		11.74		7.78		13.11		4.33	a b c d e
OP-6A	Business, Avg Days	D	2	4.65		5.13	1	4.52		5.54		4.26	a b c d e
OP-6A	Centrex 21, Avg Days	ND		21.25						3		8	a b c d e
OP-6A	Centrex 21, Avg Days	D		28.14	1	1		2.75		1.67		1	a b c d e
OP-6A	Centrex, Avg Days	ND				7		1					a b c d e
OP-6A	Centrex, Avg Days	D		30.25		17.89		5		3.75		6	a b c d e
OP-6A	DS0, Avg Days	ND					1					1	a b c d e
OP-6A	DS0, Avg Days	D						1	1				a b c d e
OP-6A	DS0, Avg Days			10		10.56	1	6		18.33	4	15.5	a b c d e
OP-6A	DS1, Avg Days			14.02		12.69		14.68	15	10.9	3	6.86	a b c d e
OP-6A	DS3, Avg Days			32.25		37		24		6		19.88	a b c d e
OP-6A	E911, Avg Days												a b c d e
OP-6A	EELs, Avg Days				6.8		13		14		2.25		a b c d e
OP-6A	Frame Relay, Avg Days			21.25		5.29		7.57		7.8		10.44	a b c d e
OP-6A	ISDN Primary, Avg Days	ND											a b c d e
OP-6A	ISDN Primary, Avg Days	D		1				4					a b c d e
OP-6A	ISDN Primary, Avg Days		5.5	15.83	2	16.69	1	34.77		17.87	1.25	17.63	a b c d e
OP-6A	Line Sharing, Avg Days	ND		3.65		4.46		4.42		5.25		5.02	a b c d e
OP-6A	Line Sharing, Avg Days	D		4.48	2	3.96		4.07		4.65		3.69	a b c d e
OP-6A	LIS Trunk, Avg Days		19.5	4	5	5	12	23	4.67	2.5	11	2	a b c d e
OP-6A	PBX, Avg Days	ND		12				4			2		a b c d e
OP-6A	PBX, Avg Days	D		25	3	2		2		1		6	a b c d e
OP-6A	PBX, Avg Days		1	10.73	1	10.57		17.28		12.88	4.26	13.53	a b c d
OP-6A	Qwest DSL, Avg Days	ND	1	9.14	1.5	6.95		6.63	1	9.43		10.22	a b c d e
OP-6A	Qwest DSL, Avg Days	D	1	3.81		2.67		3		3.36		6.22	a b c d e
OP-6A	Qwest DSL, Avg Days					2.5		21	3	2.67		3	a b c d e
OP-6A	Residence, Avg Days	ND		3.2	1	2.64	1	3.73	1	3.6	2	5.07	a b c d e

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
OP-6A	Residence, Avg Days	D	2.5	4.41	2.83	3.53	7.67	3.9	2	4.29	2	3.46	abcde
OP-6A	UBL - 2-wire, Avg Days		4	16.15		6.81	1	5.82		4.33		3.17	abcde
OP-6A	UBL - 4-wire, Avg Days			14.02		12.69		14.68		10.9		6.86	abcde
OP-6A	UBL - ADSL Qualified, Avg Days			3.81		2.75		3		3.36		6.22	abcde
OP-6A	UBL - DS1 Capable, Avg Days		7.67	14.02		12.69	1.5	14.68	13	10.9	13	6.86	abcde
OP-6A	UBL - DS3 Capable, Avg Days			32.25		37		24		6		19.88	abcde
OP-6A	UBL Analog, Avg Days	D											abcde
OP-6A	UBL Analog, Avg Days		3.45	4.48	3.39	3.96	4.43	4.07	6.2	4.65	8.36	3.69	
OP-6A	UBL ISDN Capable, Avg Days		5.5	16.15		6.81	4.5	5.82	4.5	4.33		3.17	abcde
OP-6A	UDIT Above DS1 Level, Avg Days			32.25		37		24		6		19.88	abcde
OP-6A	UDIT DS1, Avg Days			14.02		12.69		14.68		10.9		6.86	abcde
OP-6A	UNE-P, POTS, Avg Days	ND	6.5	3.65	1.67	4.46	2	4.42	7.33	5.25	1.75	5.02	abcde
OP-6A	UNE-P, POTS, Avg Days	D	3	4.48	4.67	3.96	5	4.07	2	4.65	3.89	3.69	abcde
OP-6A	UNE-P, Centrex 21, Avg Days	ND		21.25	2.5				1.33	3	1.5	8	abcde
OP-6A	UNE-P, Centrex 21, Avg Days	D		28.14	11	1		2.75		1.67	2	1	abcde
OP-6A	UNE-P, Centrex, Avg Days	ND			3	7	2	1					abcde
OP-6A	UNE-P, Centrex, Avg Days	D		30.25	1.8	17.89		5	1	3.75		6	abcde
<b>OP-6B</b>	<b>Delayed Days for Facility Reasons</b>												
OP-6B	Basic Rate ISDN, Avg Days	D											abcde
OP-6B	Basic Rate ISDN, Avg Days		17	25.25		9.25	3.5	11		28.63		11.75	abcde
OP-6B	Business, Avg Days	ND											abcde
OP-6B	Business, Avg Days	D	8	11.53	6.5	10.16		8.62		9.49		8.08	abcde
OP-6B	Centrex 21, Avg Days	D		3		8.8		5		5		1	abcde
OP-6B	Centrex, Avg Days	ND											abcde
OP-6B	Centrex, Avg Days	D		9.5				7					abcde
OP-6B	DS0, Avg Days			10.67		9		8		2	5	1	abcde
OP-6B	DS1, Avg Days			12.81		13.18		10.19		13.38		21.89	abcde
OP-6B	DS3, Avg Days			94.5		37		32.33		35.25		38.75	abcde
OP-6B	EELs, Avg Days		11		7.75		6.4		2		8.2		abcde
OP-6B	Frame Relay, Avg Days			15.13		8				7.25		17.8	abcde
OP-6B	ISDN Primary, Avg Days			17.5		40.5		10.5		10		54.6	abcde
OP-6B	Line Sharing, Avg Days	ND	5	4.45	9	3	1.5	5.82	3	2.78		2	abcde
OP-6B	Line Sharing, Avg Days	D		8.4		6.31	3	5.91		6.05		7.87	abcde
OP-6B	LIS Trunk, Avg Days		4						21	4			abcde
OP-6B	PBX, Avg Days	D		10.5		4		12		54			abcde

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
OP-6B	PBX, Avg Days					18		35					a b c d e
OP-6B	Qwest DSL, Avg Days	ND										2	a b c d e
OP-6B	Qwest DSL, Avg Days	D		13.5							3		a b c d e
OP-6B	Residence, Avg Days	ND		4.45	3	3		5.82	1	2.78		2	a b c d e
OP-6B	Residence, Avg Days	D	6.67	7.59	5.78	5.6	4.44	5.2	2.25	4.79	3.5	7.76	b c d e
OP-6B	UBL - 2-wire, Avg Days			25.25	4.67	9.25	4	11	10.5	28.63	10	11.75	a b c d e
OP-6B	UBL - 4-wire, Avg Days			12.81		13.18		10.19		13.38		21.89	a b c d e
OP-6B	UBL - ADSL Qualified, Avg Days			13.5									a b c d e
OP-6B	UBL - DS1 Capable, Avg Days		7	12.81	6.8	13.18	2.75	10.19	5.4	13.38		21.89	a b c d e
OP-6B	UBL - DS3 Capable, Avg Days			94.5		37		32.33		35.25		38.75	a b c d e
OP-6B	UBL Analog, Avg Days	ND											a b c d e
OP-6B	UBL Analog, Avg Days	D											a b c d e
OP-6B	UBL Analog, Avg Days		5.09	8.4	8.88	6.31	8.45	5.91	4.71	6.05	4.83	7.87	e
OP-6B	UBL ISDN Capable, Avg Days		3.75	25.25	4	9.25		11		28.63	5.5	11.75	a b c d e
OP-6B	UDIT Above DS1 Level, Avg Days			94.5		37		32.33		35.25	19	38.75	a b c d e
OP-6B	UDIT DS1, Avg Days			12.81		13.18		10.19		13.38	7	21.89	a b c d e
OP-6B	UNE-P, POTS, Avg Days	ND	5	4.45		3		5.82		2.78		2	a b c d e
OP-6B	UNE-P, POTS, Avg Days	D	5	8.4	5.29	6.31	5	5.91	6.5	6.05	3	7.87	a b c d e
OP-6B	UNE-P, Centrex 21, Avg Days	ND											a b c d e
OP-6B	UNE-P, Centrex 21, Avg Days	D		3		8.8		5		5		1	a b c d e
OP-6B	UNE-P, Centrex, Avg Days	ND											a b c d e
OP-6B	UNE-P, Centrex, Avg Days	D	1	9.5	4.67		1	7	3		1		a b c d e
<b>OP-7</b>	<b>Coordinated "Hot Cut" Interval - Unbundled Loop</b>												
OP-7	Analog, Hrs:Min			0:03		0:03		0:03		0:03		0:03	
OP-7	Other, Hrs:Min					0:01		0:26		0:03		0:05	a b c d
<b>OP-8</b>	<b>Number Portability Timeliness</b>												
OP-8B	with Loop Coordination, %			99.46%		99.78%		99.88%		100%		99.71%	
OP-8C	without Loop Coordination, %			94.62%		99.88%		99.87%		99.62%		99.70%	
<b>OP-13</b>	<b>Coordinated Cuts - Unbundled Loop</b>												
OP-13A	Analog, %			99.41%		99.60%		99.83%		99.44%		99.68%	
OP-13A	Other, %			98.21%		97.37%		98.72%		98.53%		99.07%	
<b>OP-13B</b>	<b>Coordinated Cuts Started Without CLEC Approval - Unbundled Loop</b>												
OP-13B	Analog, %			0.15%		0.00%		0.00%		0.00%		0.00%	
OP-13B	Other, %			0.89%		0.00%		0.00%		0.00%		0.00%	
<b>OP-15A</b>	<b>Interval for Pending Orders Delayed Past Due Date</b>												

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
OP-15A	Basic Rate ISDN, Avg Days			135.37		163.25		158.98		160.17		189.92	abcde
OP-15A	Business, Avg Days		381	103.27	203	107.1	432	121.66	233	144.9	482	163.67	abcde
OP-15A	Centrex 21, Avg Days			187.36		207.5		225.33		250.57		254.28	abcde
OP-15A	Centrex, Avg Days			270		40.38		104.67		130.4		182.75	abcde
OP-15A	DS0, Avg Days			158.62		155		186.5		209.91	6	243.2	abcde
OP-15A	DS1, Avg Days			41.71		50.79	0	64.08		62.8		75	abcde
OP-15A	DS3, Avg Days			58.24		83.53		130.88		113.1		82.54	abcde
OP-15A	EELs, Avg Days		10.67		5.5		13.25		12.63		0		abcde
OP-15A	Frame Relay, Avg Days			71.57		114.44		84.86		106		219.67	abcde
OP-15A	ISDN Primary, Avg Days		337	56.17	358	52.05	380	166	400	59.33	421	144.57	abcde
OP-15A	Line Sharing, Avg Days		1.33		1.6		2.67		3.67		9		abcde
OP-15A	LIS Trunk, Avg Days								5		2		abcde
OP-15A	PBX, Avg Days			143.33		200.87		250		298.33		306.6	abcde
OP-15A	Residence, Avg Days		217.13	65.99	216.12	80.06	283.33	71.74	206.52	74.99	221.16	92.39	
OP-15A	UBL - 2-wire, Avg Days		8.57	135.37	13.88	163.25	10.4	158.98	8.83	160.17	9.73	189.92	abcd
OP-15A	UBL - 4-wire, Avg Days			41.71		50.79		64.08		62.8		75	abcde
OP-15A	UBL - DS1 Capable, Avg Days		1.5	41.71	1	50.79	9.67	64.08	3.33	62.8	6.29	75	abcde
OP-15A	UBL - DS3 Capable, Avg Days			58.24		83.53		130.88		113.1		82.54	abcde
OP-15A	UBL Analog, Avg Days		46.2	88.88	30.24	106.43	61.5	116.57	121.57	132.51	103.11	156.35	de
OP-15A	UBL ISDN Capable, Avg Days		6	135.37	3	163.25		158.98		96.24	8	117.55	abcde
OP-15A	UDIT Above DS1 Level, Avg Days			58.24		83.53		130.88	12.5	113.1		82.54	abcde
OP-15A	UDIT DS1, Avg Days			41.71		50.79		64.08		62.8		75	abcde
OP-15A	UNE-P, POTS, Avg Days		37.5	81.7	52.11	93.72	78	97.32	32.26	111.36	40.58	131.58	bc
OP-15A	UNE-P, Centrex 21, Avg Days		3.5	187.36	0	207.5	0	225.33		250.57		254.28	abcde
OP-15A	UNE-P, Centrex, Avg Days		2	270	5	40.38	0.33	104.67		130.4		182.75	abcde
<b>OP-15B</b>	<b>Pending Orders Delayed for Facilities Reasons</b>												
OP-15B	Basic Rate ISDN			16		15		17		16		16	abcde
OP-15B	Business		0	47	0	57	0	39	0	32	0	16	abcde
OP-15B	Centrex			1		3		2		3		3	abcde
OP-15B	Centrex 21			2		0		2		1		1	abcde
OP-15B	DS0			3		2		4		3	0	2	abcde
OP-15B	DS1			42		27	0	19		27		19	abcde
OP-15B	DS3			11		10		3		6		8	abcde
OP-15B	EELs		3		2		4		8		1		abcde
OP-15B	Frame Relay			5		3		5		4		3	abcde

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OP-15B	ISDN Primary		0	23	0	3	0	1	0	10	0	0	abcde
OP-15B	Line Sharing		3		4		3		2		2		abcde
OP-15B	LIS Trunk								3		1		abcde
OP-15B	PBX			9		2		1		0		0	abcde
OP-15B	Residence		5	229	6	177	3	102	3	68	0	45	abcde
OP-15B	UBL - 2-wire		6	16	8	15	5	17	6	16	11	16	abcde
OP-15B	UBL - 4-wire			42		27		19		27		19	abcde
OP-15B	UBL - DS1 Capable		2	42	1	27	3	19	2	27	6	19	abcde
OP-15B	UBL - DS3 Capable			11		10		3		6		8	abcde
OP-15B	UBL Analog		6	158	8	140	5	78	1	54	3	34	abcde
OP-15B	UBL ISDN Capable		1	16	0	15		17		16	2	16	abcde
OP-15B	UDIT Above DS1 Level			11		10		3	2	6		8	abcde
OP-15B	UDIT DS1			42		27		19		27		19	abcde
OP-15B	UNE-P, POTS		2	276	2	234	1	141	1	100	1	61	abcde
OP-15B	UNE-P, Centrex		1	1	1	3	2	2		3		3	abcde
OP-15B	UNE-P, Centrex 21		0	2	0	0	0	2		1		1	abcde
<b>OP-17</b>	<b>Timeliness of Disconnects associated with LNP Orders</b>												
OP-17A	LNP, %		99.99%		99.97%		100%		99.99%		99.99%		
<b>OPERATOR SERVICES</b>													
<b>OS-1</b>	<b>Speed of Answer - Operator Services</b>												
OS-1	All, Avg Sec			8.2		8.25		9.03		8.98		8.3	abcde
<b>PRE-ORDER/ORDER</b>													
<b>PO-1</b>	<b>Pre-Order/Order Response Times</b>												
PO-1A-1(a)	Appt. Sched, IMA Req, Avg Sec		0.44		0.3		0.34		0.31		0.37		
PO-1A-1(b-c)	Appt. Sched, IMA Resp/Accept, Avg Sec		1.47		1.43		1.55		1.37		1.35		
PO-1A-10(a)	Meet Point Inquiry, IMA Req, Avg Sec		0.36		0.29		0.31		0.3		0.34		
PO-1A-10(b)	Meet Point Inquiry, IMA Resp, Avg Sec		4.96		4.91		4.81		4.78		4.94		
PO-1A-10Total	Meet Point Inquiry, IMA Aggregate, Avg Sec		5.32		5.2		5.12		5.08		5.28		
PO-1A-1Total	Appt. Sched, IMA Aggregate, Avg Sec		1.91		1.73		1.89		1.68		1.72		
PO-1A-2(a)	Service Avail, IMA Req, Avg Sec		0.41		0.37		0.44		0.34		0.48		
PO-1A-2(b)	Service Avail, IMA Resp, Avg Sec		7.25		7.49		7.71		8.21		8.4		
PO-1A-2Total	Service Avail, IMA Aggregate, Avg Sec		7.66		7.86		8.14		8.55		8.88		
PO-1A-3(a)	Facility Check, IMA Req, Avg Sec		0.55		0.41		0.57		0.4		0.73		
PO-1A-3(b)	Facility Check, IMA Resp, Avg Sec		7.33		6.89		7		6.71		6.68		
PO-1A-3Total	Facility Check, IMA Aggregate, Avg Sec		7.88		7.3		7.57		7.11		7.41		

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			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
PO-1A-4(a)	Address Validation, IMA Req, Avg Sec		1.09		0.81		0.83		0.78		0.91		
PO-1A-4(b)	Address Validation, IMA Resp, Avg Sec		4.37		3.82		3.89		3.71		4.1		
PO-1A-4Total	Address Validation, IMA Aggregate, Avg Sec		5.47		4.64		4.72		4.49		5.01		
PO-1A-5(a)	Get CSR, IMA Req, Avg Sec		0.61		0.67		0.89		0.54		0.89		
PO-1A-5(b)	Get CSR, IMA Resp, Avg Sec		5.71		6.22		6.55		6.31		6.8		
PO-1A-5Total	Get CSR, IMA Aggregate, Avg Sec		6.32		6.89		7.44		6.85		7.69		
PO-1A-6(a)	TN Reserv, IMA Req, Avg Sec		0.61		0.29		0.33		0.29		0.38		
PO-1A-6(b)	TN Reserv, IMA Resp, Avg Sec		4.83		5.05		4.78		4.27		4.47		
PO-1A-6(c)	TN Reserv, IMA Accept, Avg Sec		0.66		0.72		0.72		0.64		0.64		
PO-1A-6Total	TN Reserv, IMA Aggregate, Avg Sec		6.11		6.06		5.83		5.2		5.49		
PO-1A-7(a)	Loop Qual Tools, IMA Req, Avg Sec		0.94		0.74		0.78		0.63		0.74		
PO-1A-7(b)	Loop Qual Tools, IMA Resp, Avg Sec		6.74		6.88		6.94		7.88		7.97		
PO-1A-7Total	Loop Qual Tools, IMA Aggregate, Avg Sec		7.68		7.62		7.72		8.51		8.71		
PO-1A-8(a)	Resale of Qwest DSL Qual, IMA Req, Avg Sec		0.72		0.8		0.47		0.34		0.78		
PO-1A-8(b)	Resale of Qwest DSL Qual, IMA Resp, Avg Sec		8.14		6.94		7.4		6.54		6.44		
PO-1A-8Total	Resale of Qwest DSL Qual, IMA Aggregate, Avg Sec		8.86		7.74		7.87		6.88		7.22		
PO-1A-9(a)	Connecting Facility Assign, IMA Req, Avg Sec		0.36		0.27		0.27		0.28		0.27		
PO-1A-9(b)	Connecting Facility Assign, IMA Resp, Avg Sec		8.89		8.79		8.45		8.38		8.38		
PO-1A-9Total	Connecting Facility Assign, IMA Aggregate, Avg Sec		9.25		9.06		8.73		8.66		8.66		
PO-1B-1	Appt. Sched, EDI Req/Resp, Avg Sec		3.34		3.36		3.39		3.47		3.83		
PO-1B-10	Meet Point Inquiry, EDI Req/Resp, Avg Sec		5.54		5.28		5.06		5.23		6.04		
PO-1B-2	Service Avail, EDI Req/Resp, Avg Sec		7.2		6.9		7.09		8.56		8.61		
PO-1B-3	Facility Check, EDI Req/Resp, Avg Sec		6.65		6.37		6.5		6.01		6.76		
PO-1B-4	Address Validation, EDI Req/Resp, Avg Sec		2.57		2.54		2.56		2.61		3.13		
PO-1B-5	Get CSR, EDI Req/Resp, Avg Sec		3.05		3.14		3.25		3.41		3.65		
PO-1B-6	TN Reserv, EDI Req/Resp, Avg Sec		5.41		5.46		5.24		4.86		5.25		
PO-1B-7	Loop Qual Tools, EDI Req/Resp, Avg Sec		7.09		6.84		7.12		8.64		8.98		
PO-1B-8	Resale of Qwest DSL Qual, EDI Req/Resp, Avg Sec		6.51		5.79		6.96		5.56		6.67		
PO-1B-9	Connecting Facility Assign, EDI Req/Resp, Avg Sec		8.51		8.4		8.1		8.41		8.77		
PO-1C-1	Timeout, IMA Total, %		0.48%		0.26%		0.28%		0.22%		0.14%		
PO-1C-2	Timeout, EDI Total, %		0.05%		0.01%		0.07%		0.13%		0.19%		
PO-1D-1	Rejected Query, IMA Total, Avg Sec		1.33		1.32		1.31		1.31		1.32		
PO-1D-2	Rejected Query, EDI Total, Avg Sec		1.88		1.87		1.78		1.8		2.27		
<b>PO-2</b>	<b>Electronic Flow-through</b>												
PO-2A-1	IMA, LNP, %		51.28%		56.32%		59.50%		58.46%		61.80%		

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PO-2A-1	IMA, Resale Aggregate w/o UNE-P-POTS, %		62.21%		66.55%		62.33%		66.43%		65.99%		
PO-2A-1	IMA, UBL Aggregate, %		45.46%		49.64%		50.54%		45.95%		46.43%		
PO-2A-1	IMA, UNE-P, POTS, %		50.85%		46.16%		39.93%		43.62%		50.93%		
PO-2A-2	EDI, LNP, %		67.78%		74.93%		73.48%		76.80%		77.00%		
PO-2A-2	EDI, Resale Aggregate w/o UNE-P-POTS, %		74.80%		75.71%		75.87%		80.90%		77.78%		
PO-2A-2	EDI, UBL Aggregate, %		59.94%		58.94%		55.36%		62.03%		60.60%		
PO-2A-2	EDI, UNE-P, POTS, %		73.55%		88.68%		74.02%		92.05%		90.54%		
PO-2B-1	All Eligible LSRs, IMA, LNP, %		97.92%		98.18%		95.83%		95.60%		96.29%		
PO-2B-1	All Eligible LSRs, IMA, Resale Aggregate w/o UNE-P-POTS,%		91.10%		95.04%		91.42%		94.17%		95.55%		
PO-2B-1	All Eligible LSRs, IMA, UBL Aggregate, %		89.84%		91.70%		90.37%		85.96%		85.78%		
PO-2B-1	All Eligible LSRs, IMA, UNE-P, POTS, %		83.57%		83.49%		77.06%		87.43%		90.19%		
PO-2B-2	All Eligible LSRs, EDI, LNP, %		98.19%		98.09%		98.24%		98.71%		97.75%		
PO-2B-2	All Eligible LSRs, EDI, Resale Aggregate w/o UNE-P-POTS, %		93.90%		99.02%		98.26%		98.18%		98.23%		
PO-2B-2	All Eligible LSRs, EDI, UBL Aggregate, %		92.96%		97.00%		94.75%		97.31%		96.63%		
PO-2B-2	All Eligible LSRs, EDI, UNE-P, POTS, %		91.44%		99.11%		97.43%		97.91%		96.95%		
<b>PO-3</b>	<b>LSR Rejection Notice Interval</b>												
PO-3A-1	IMA - Rejected Manually, Product Aggregate, Hrs:Min		4:05		18:02		7:27		3:51		3:03		
PO-3A-2	IMA - Auto-Rejected, Product Aggregate, Min:Sec		0:03		0:03		0:07		0:03		0:03		
PO-3B-1	EDI - Rejected Manually, Product Aggregate, Hrs:Min		3:24		7:47		2:20		1:44		1:53		
PO-3B-2	EDI - Auto-Rejected, Product Aggregate, Min:Sec		0:03		0:03		0:01		0:03		0:03		
PO-3C	Manual and IIS, Product Aggregate, Hrs:Min		17:13		9:54		6:17		12:36		13:38		
<b>PO-4</b>	<b>LSRs Rejected</b>												
PO-4A-1	IMA - Rejected Manually, Product Aggregate, %		2.67%		2.82%		3.19%		2.81%		3.04%		
PO-4A-2	IMA - Auto-Rejected, Product Aggregate, %		32.61%		31.18%		31.23%		32.41%		29.47%		
PO-4B-1	EDI - Rejected Manually, Product Aggregate, %		3.81%		4.01%		3.27%		3.62%		3.15%		
PO-4B-2	EDI - Auto-Rejected, Product Aggregate, %		27.14%		26.33%		48.51%		38.07%		49.16%		
PO-4C	Facsimile, Product Aggregate, %		34.05%		13.94%		24.66%		27.39%		29.53%		
<b>PO-5</b>	<b>Firm Order Confirmations (FOCs) On Time</b>												
PO-5A-1(a)	Fully Elec LSRs Rec'd Via IMA, Resale Aggregate, %		99.88%		100%		100%		99.97%		99.88%		
PO-5A-1(b)	Fully Elec LSRs Rec'd Via IMA, UBL Aggregate, %		99.65%		100%		100%		99.63%		100%		
PO-5A-1(c)	Fully Elec LSRs Rec'd Via IMA, LNP, %		99.78%		100%		100%		100%		100%		
PO-5A-2(a)	Fully Elec LSRs Rec'd Via EDI, Resale Aggregate, %		99.94%		99.95%		100%		99.91%		99.97%		
PO-5A-2(b)	Fully Elec LSRs Rec'd Via EDI, UBL Aggregate, %		99.96%		100%		100%		99.93%		99.92%		
PO-5A-2(c)	Fully Elec LSRs Rec'd Via EDI, LNP, %		100%		99.93%		99.94%		99.43%		99.92%		
PO-5B-1(a)	Elec/Manual LSRs Rec'd Via IMA, Resale Aggregate, %		95.58%		95.67%		97.09%		95.79%		96.91%		



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PO-5B-1(b)	Elec/Manual LSRs Rec'd Via IMA, UBL Aggregate, %		98.51%		97.47%		99.65%		98.72%		98.16%		
PO-5B-1(c)	Elec/Manual LSRs Rec'd Via IMA, LNP, %		99.73%		100%		100%		100%		99.64%		
PO-5B-2(a)	Elec/Manual LSRs Rec'd Via EDI, Resale Aggregate, %		99.69%		99.66%		100%		99.86%		99.78%		
PO-5B-2(b)	Elec/Manual LSRs Rec'd Via EDI, UBL Aggregate, %		99.52%		99.44%		99.91%		99.84%		99.92%		
PO-5B-2(c)	Elec/Manual LSRs Rec'd Via EDI, LNP, %		99.91%		99.92%		100%		100%		99.80%		
PO-5C-(a)	Manual, Resale Aggregate, %		93.75%		94.12%		75.00%		100%		94.12%		d
PO-5C-(b)	Manual, UBL Aggregate, %		100%		96.67%		94.44%		100%		98.72%		
PO-5C-(c)	Manual, LNP, %		96.77%		100%		100%		100%		100%		
PO-5D	LIS Trunk, %		100%		100%		98.88%		100%		100%		
<b>PO-6</b>	<b>Work Completion Notification Timeliness</b>												
PO-6A	GUI, All, Hrs:Min		0:23		0:29		0:42		0:24		0:27		
PO-6B	EDI, All, Hrs:Min		0:22		0:24		0:19		0:25		0:25		
<b>PO-7</b>	<b>Billing Completion Notification Timeliness</b>												
PO-7A-C	GUI / Billing System Posting Completions, All, %		96.91%	96.41%	96.15%	95.68%	97.33%	98.32%	96.92%	97.12%	97.35%	98.81%	
PO-7B-C	EDI / Billing System Posting Completions, All, %			96.41%		95.68%		98.32%		97.12%	100%	98.81%	a b c d e
<b>PO-8</b>	<b>Jeopardy Notice Interval</b>												
PO-8A	Non-Designed Services, Avg Days		3	5.28	3.32	5.49	1.48	5.04	3.47	6.65	2.08	5.15	
PO-8B	UBLs and LNP, Avg Days		5.39	5.28	6.64	5.49	5.57	5.04	5.03	6.65	6.15	5.15	
PO-8C	LIS Trunk, Avg Days		18.5		21				18	15	17		a b c d e
PO-8D	UNE-P, POTS, Avg Days		3.95	5.28	3.29	5.49	3.55	5.04	3.5	6.65	6.73	5.15	d
<b>PO-9</b>	<b>Timely Jeopardy Notices</b>												
PO-9A	Non-Designed Services, %		45.45%	31.00%	40.91%	25.14%	55.56%	21.88%	30.00%	20.75%	33.33%	8.63%	d e
PO-9B	UBLs and LNP, %		73.68%	31.00%	62.50%	25.14%	41.94%	21.88%	47.73%	20.75%	43.75%	8.63%	
PO-9C	LIS Trunk, %		66.67%	0.00%	0.00%	0.00%		0.00%	0.00%	33.33%	100%	0.00%	a b c d e
PO-9D	UNE-P, POTS, %		30.77%	31.00%	25.00%	25.14%	20.00%	21.88%	0.00%	20.75%	22.22%	8.63%	c d e
<b>PO-10</b>	<b>LSR Accountability</b>												
PO-10	Product Aggregate, %		100%		100%		100%		100%		100%		
<b>PO-15</b>	<b>Number of Due Date Changes per Order</b>												
PO-15	All, Avg Days		0.05	0.03	0.06	0.03	0.06	0.03	0.04	0.03	0.04	0.03	
<b>PO-16</b>	<b>Timely Release Notifications</b>												
PO-16	All, %				100%		100%		100%		100%		a b c d e
<b>PO-19</b>	<b>Stand-Alone Test Environment (SATE) Accuracy</b>												
PO-19	All, %		97.61%		98.28%		100%		99.62%		99.36%		
PO-19A	Rel. 10.0, %		97.42%		98.46%		100%		99.49%		99.49%		
PO-19A	Rel. 11.0, %		98.17%		97.25%		100%		99.55%		100%		

MINNESOTA PERFORMANCE METRIC DATA

Metric Number	Metric Description	DR	NOV 2002		DEC 2002		JAN 2002		FEB 2002		MAR 2003		Notes
			CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	CLEC	Qwest	
PO-19A	Rel. 12.0, %										99.58%		a b c d
PO-19A	Rel. 8.0, %												a b c d e
PO-19A	Rel. 9.0, %		95.77%										b c d e
PO-19A	Rel. VICKI, %		100%		100%		100%		100%		97.54%		
PO-19B	All, %		97.06%										b c d e
<b>PO-20</b>	<b>Manual Service Order Accuracy</b>												
PO-20	Resale POTS and UNE-P, POTS, %		95.20%		94.40%		93.98%		95.63%		96.21%		
PO-20	UBLs, Analog & NL 2-wire, %		96.47%		97.38%		96.36%		98.75%		97.62%		

**Metric Number:**

\* = Metrics recalculated after NTF tickets are excluded. These metrics have not been audited by a third party.

**DR: Disaggregation Reporting**

D = Dispatch (both within MSAs and outside MSAs)

ND = No Dispatch

blank = State or Regional Level

**Notes:**

a = Sample size less than or equal to 10 in November 2002

b = Sample size less than or equal to 10 in December 2002

c = Sample size less than or equal to 10 in January 2003

d = Sample size less than or equal to 10 in February 2003

e = Sample size less than or equal to 10 in March 2003

## Appendix C Statutory Requirements

### I. STATUTORY FRAMEWORK

1. The 1996 Act conditions BOC entry into the market for provision of in-region interLATA services on compliance with certain provisions of section 271.<sup>1</sup> BOCs must apply to the Federal Communications Commission (Commission or FCC) for authorization to provide interLATA services originating in any in-region state.<sup>2</sup> The Commission must issue a written determination on each application no later than 90 days after receiving such application.<sup>3</sup> Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application. The Attorney General is entitled to evaluate the application “using any standard the Attorney General considers appropriate,” and the Commission is required to “give substantial weight to the Attorney General’s evaluation.”<sup>4</sup>

2. In addition, the Commission must consult with the relevant state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, or a Statement of Generally Available Terms and Conditions (SGAT), and that either the agreement(s) or general statement satisfy the “competitive checklist.”<sup>5</sup> Because the Act does not prescribe any standard for the consideration of a state commission’s verification under section 271(d)(2)(B), the Commission has discretion in each section 271 proceeding to

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<sup>1</sup> For purposes of section 271 proceedings, the Commission uses the definition of the term “Bell Operating Company” contained in 47 U.S.C. § 153(4).

<sup>2</sup> 47 U.S.C. § 271(d)(1). For purposes of section 271 proceedings, the Commission utilizes the definition of the term “in-region state” that is contained in 47 U.S.C. § 271(i)(1). Section 271(j) provides that a BOC’s in-region services include 800 service, private line service, or their equivalents that terminate in an in-region state of that BOC and that allow the called party to determine the interLATA carrier, even if such services originate out-of-region. *Id.* § 271(j). The 1996 Act defines “interLATA services” as “telecommunications between a point located in a local access and transport area and a point located outside such area.” *Id.* § 153(21). Under the 1996 Act, a “local access and transport area” (LATA) is “a contiguous geographic area (A) established before the date of enactment of the [1996 Act] by a [BOC] such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or (B) established or modified by a [BOC] after such date of enactment and approved by the Commission.” *Id.* § 153(25). LATAs were created as part of the Modification of Final Judgment’s (MFJ) “plan of reorganization.” *United States v. Western Elec. Co.*, 569 F. Supp. 1057 (D.D.C. 1983), *aff’d sub nom. California v. United States*, 464 U.S. 1013 (1983). Pursuant to the MFJ, “all [BOC] territory in the continental United States [was] divided into LATAs, generally centering upon a city or other identifiable community of interest.” *United States v. Western Elec. Co.*, 569 F. Supp. 990, 993-94 (D.D.C. 1983).

<sup>3</sup> 47 U.S.C. § 271(d)(3).

<sup>4</sup> *Id.* § 271(d)(2)(A).

<sup>5</sup> *Id.* § 271(d)(2)(B).

determine the amount of weight to accord the state commission's verification.<sup>6</sup> The Commission has held that, although it will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the FCC's role to determine whether the factual record supports the conclusion that particular requirements of section 271 have been met.<sup>7</sup>

3. Section 271 requires the Commission to make various findings before approving BOC entry. In order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate, with respect to each state for which it seeks authorization, that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).<sup>8</sup> In order to obtain authorization under section 271, the BOC must also show that: (1) it has "fully implemented the competitive checklist" contained in section 271(c)(2)(B);<sup>9</sup> (2) the requested authorization will be carried out in accordance with the requirements of section 272;<sup>10</sup> and (3) the BOC's entry into the in-region interLATA market is "consistent with the public interest, convenience, and necessity."<sup>11</sup> The statute specifies that, unless the Commission finds that these criteria have been satisfied, the Commission "shall not approve" the requested authorization.<sup>12</sup>

## II. PROCEDURAL AND ANALYTICAL FRAMEWORK

4. To determine whether a BOC applicant has met the prerequisites for entry into the long distance market, the Commission evaluates its compliance with the competitive checklist,

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<sup>6</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3962, para. 20; *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended*, CC Docket No. 97-137, 12 FCC Rcd 20543, 20559-60 (1997) (*Ameritech Michigan Order*). As the D.C. Circuit has held, "[a]lthough the Commission must consult with the state commissions, the statute does not require the Commission to give State Commissions' views any particular weight." *SBC Communications Inc. v. FCC*, 138 F.3d 410, 416 (D.C. Cir. 1998).

<sup>7</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20560; *SBC Communications v. FCC*, 138 F.3d at 416-17.

<sup>8</sup> 47 U.S.C. § 271(d)(3)(A). See Section III, *infra*, for a complete discussion of Track A and Track B requirements.

<sup>9</sup> *Id.* §§ 271(c)(2)(B), 271(d)(3)(A)(i).

<sup>10</sup> *Id.* § 272; see *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), *recon.*, Order on Reconsideration, 12 FCC Rcd 2297 (1997), *review pending sub nom.*, *SBC Communications v. FCC*, No. 97-1118 (D.C. Cir., filed Mar. 6, 1997) (held in abeyance pursuant to court order filed May 7, 1997), *remanded in part sub nom.*, *Bell Atlantic Telephone Companies v. FCC*, No. 97-1067 (D.C. Cir., filed Mar. 31, 1997), *on remand*, Second Order on Reconsideration, FCC 97-222 (rel. June 24, 1997), *petition for review denied sub nom. Bell Atlantic Telephone Companies v. FCC*, 113 F.3d 1044 (D.C. Cir. 1997); *Implementation of the Telecommunications Act of 1996; Accounting Safeguards Under the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 17539 (1996).

<sup>11</sup> 47 U.S.C. § 271(d)(3)(C).

<sup>12</sup> *Id.* § 271(d)(3); see *SBC Communications, Inc. v. FCC*, 138 F.3d at 416.

as developed in the FCC's local competition rules and orders in effect at the time the application was filed. Despite the comprehensiveness of these rules, there will inevitably be, in any section 271 proceeding, disputes over an incumbent LEC's precise obligations to its competitors that FCC rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As explained in prior orders, the section 271 process simply could not function as Congress intended if the Commission were required to resolve all such disputes as a precondition to granting a section 271 application.<sup>13</sup> In the context of section 271's adjudicatory framework, the Commission has established certain procedural rules governing BOC section 271 applications.<sup>14</sup> The Commission has explained in prior orders the procedural rules it has developed to facilitate the review process.<sup>15</sup> Here we describe how the Commission considers the evidence of compliance that the BOC presents in its application.

5. As part of the determination that a BOC has satisfied the requirements of section 271, the Commission considers whether the BOC has fully implemented the competitive checklist in subsection (c)(2)(B). The BOC at all times bears the burden of proof of compliance with section 271, even if no party challenges its compliance with a particular requirement.<sup>16</sup> In demonstrating its compliance, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request pursuant to state-approved interconnection agreements that set forth prices and other terms and conditions for each checklist item, and that it is currently furnishing, or is ready to furnish, the checklist items in quantities that competitors may reasonably demand and at an acceptable level of quality.<sup>17</sup> In particular, the BOC must demonstrate that it is offering interconnection and access to network elements on a nondiscriminatory basis.<sup>18</sup> Previous Commission orders addressing section 271 applications

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<sup>13</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6246, para. 19; see also *American Tel. & Tel. Co. v. FCC*, 220 F.3d 607, 631 (D.C. Cir. 2000).

<sup>14</sup> See *Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act*, Public Notice, 11 FCC Rcd 19708, 19711 (1996); *Revised Comment Schedule For Ameritech Michigan Application, as amended, for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Michigan*, Public Notice, DA 97-127 (rel. Jan. 17, 1997); *Revised Procedures for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, 13 FCC Rcd 17457 (1997); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 99-1994 (rel. Sept. 28, 1999); *Updated Filing Requirements for Bell Operating Company Applications Under Section 271 of the Communications Act*, Public Notice, DA 01-734 (CCB rel. Mar. 23, 2001) (collectively "271 Procedural Public Notices").

<sup>15</sup> See, e.g., *SWBT Kansas/Oklahoma Order* 16 FCC Rcd at 6247-50, paras. 21-27; *SWBT Texas Order*, 15 FCC Rcd at 18370-73, paras. 34-42; *Bell Atlantic New York Order*, 15 FCC Rcd at 3968-71, paras. 32-42.

<sup>16</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

<sup>17</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 3973-74, para. 52.

<sup>18</sup> See 47 U.S.C. § 271(c)(2)(B)(i), (ii).

have elaborated on this statutory standard.<sup>19</sup> First, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner” as it provides to itself.<sup>20</sup> Thus, where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy, and timeliness.<sup>21</sup> For those functions that have no retail analogue, the BOC must demonstrate that the access it provides to competing carriers would offer an efficient carrier a “meaningful opportunity to compete.”<sup>22</sup>

6. The determination of whether the statutory standard is met is ultimately a judgment the Commission must make based on its expertise in promoting competition in local markets and in telecommunications regulation generally.<sup>23</sup> The Commission has not established, nor does it believe it appropriate to establish, specific objective criteria for what constitutes “substantially the same time and manner” or a “meaningful opportunity to compete.”<sup>24</sup> Whether this legal standard is met can only be decided based on an analysis of specific facts and circumstances. Therefore, the Commission looks at each application on a case-by-case basis and considers the totality of the circumstances, including the origin and quality of the information in the record, to determine whether the nondiscrimination requirements of the Act are met.

#### A. Performance Data

7. As established in prior section 271 orders, the Commission has found that performance measurements provide valuable evidence regarding a BOC’s compliance or noncompliance with individual checklist items. The Commission expects that, in its *prima facie* case in the initial application, a BOC relying on performance data will:

- a) provide sufficient performance data to support its contention that the statutory requirements are satisfied;
- b) identify the facial disparities between the applicant’s performance for itself and its performance for competitors;

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<sup>19</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6250-51, paras. 28-29; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971-72, paras. 44-46.

<sup>20</sup> *SWBT Texas Order*, 15 FCC Rcd at 18373, para. 44; *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44.

<sup>21</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3971, para. 44; *Ameritech Michigan Order*, 12 FCC Rcd at 20618-19.

<sup>22</sup> *Id.*

<sup>23</sup> *SWBT Texas Order*, 15 FCC Rcd at 18374, para. 46; *Bell Atlantic New York Order*, 15 FCC Rcd at 3972, para. 46.

<sup>24</sup> *Id.*

- c) explain why those facial disparities are anomalous, caused by forces beyond the applicant's control (e.g., competing carrier-caused errors), or have no meaningful adverse impact on a competing carrier's ability to obtain and serve customers; and
- d) provide the underlying data, analysis, and methodologies necessary to enable the Commission and commenters meaningfully to evaluate and contest the validity of the applicant's explanations for performance disparities, including, for example, carrier specific carrier-to-carrier performance data.

8. The Commission has explained in prior orders that parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist. Rather, where these standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete.<sup>25</sup> Thus, to the extent there is no statistically significant difference between a BOC's provision of service to competing carriers and its own retail customers, the Commission generally need not look any further. Likewise, if a BOC's provision of service to competing carriers satisfies the performance benchmark, the analysis is usually done. Otherwise, the Commission will examine the evidence further to make a determination whether the statutory nondiscrimination requirements are met.<sup>26</sup> Thus, the Commission will examine the explanations that a BOC and others provide about whether these data accurately depict the quality of the BOC's performance. The Commission also may examine how many months a variation in performance has existed and what the recent trend has been. The Commission may find that statistically significant differences exist, but conclude that such differences have little or no competitive significance in the marketplace. In such cases, the Commission may conclude that the differences are not meaningful in terms of statutory compliance. Ultimately, the determination of whether a BOC's performance meets the statutory requirements necessarily is a contextual decision based on the totality of the circumstances and information before the Commission.

9. Where there are multiple performance measures associated with a particular checklist item, the Commission would consider the performance demonstrated by all the measurements as a whole. Accordingly, a disparity in performance for one measure, by itself, may not provide a basis for finding noncompliance with the checklist. The Commission may also find that the reported performance data are affected by factors beyond a BOC's control, a finding that would make it less likely to hold the BOC wholly accountable for the disparity. This is not to say, however, that performance discrepancies on a single performance metric are unimportant. Indeed, under certain circumstances, disparity with respect to one performance measurement may support a finding of statutory noncompliance, particularly if the disparity is

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<sup>25</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6252, para. 31; *SWBT Texas Order*, 15 FCC Rcd at 18377, para. 55 & n.102.

<sup>26</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 3970, para. 59.

substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

10. In sum, the Commission does not use performance measurements as a substitute for the 14-point competitive checklist. Rather, it uses performance measurements as valuable evidence with which to inform the judgment as to whether a BOC has complied with the checklist requirements. Although performance measurements add necessary objectivity and predictability to the review, they cannot wholly replace the Commission's own judgment as to whether a BOC has complied with the competitive checklist.

#### **B. Relevance of Previous Section 271 Approvals**

11. In some section 271 applications, the volumes of the BOC's commercial orders may be significantly lower than they were in prior proceedings. In certain instances, volumes may be so low as to render the performance data inconsistent and inconclusive.<sup>27</sup> Performance data based on low volumes of orders or other transactions are not as reliable an indicator of checklist compliance as performance based on larger numbers of observations. Indeed, where performance data are based on a low number of observations, small variations in performance may produce wide swings in the reported performance data. It is thus not possible to place the same evidentiary weight upon – and to draw the same types of conclusions from – performance data where volumes are low, as for data based on more robust activity.

12. In such cases, findings in prior, related section 271 proceedings may be a relevant factor in the Commission's analysis. Where a BOC provides evidence that a particular system reviewed and approved in a prior section 271 proceeding is also used in the proceeding at hand, the Commission's review of the same system in the current proceeding will be informed by the findings in the prior one. Indeed, to the extent that issues have already been briefed, reviewed and resolved in a prior section 271 proceeding, and absent new evidence or changed circumstances, an application for a related state should not be a forum for re-litigating and reconsidering those issues. Appropriately employed, such a practice can give us a fuller picture of the BOC's compliance with the section 271 requirements while avoiding, for all parties involved in the section 271 process, the delay and expense associated with redundant and unnecessary proceedings and submissions.

13. However, the statute requires the Commission to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from previous section 271 orders to be dispositive of checklist compliance in current proceedings. While the Commission's review may be informed by prior findings, the Commission will

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<sup>27</sup> The Commission has never required, however, an applicant to demonstrate that it processes and provisions a substantial commercial volume of orders, or has achieved a specific market share in its service area, as a prerequisite for satisfying the competitive checklist. See *Ameritech Michigan Order*, 12 FCC Rcd at 20585, para. 77 (explaining that Congress had considered and rejected language that would have imposed a "market share" requirement in section 271(c)(1)(A)).



consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states, the Department of Justice. However, the Commission has always held that an applicant's performance towards competing carriers in an actual commercial environment is the best evidence of nondiscriminatory access to OSS and other network elements.<sup>28</sup> Thus, the BOC's actual performance in the applicant state may be relevant to the analysis and determinations with respect to the 14 checklist items. Evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state.

14. Moreover, because the Commission's review of a section 271 application must be based on a snapshot of a BOC's recent performance at the time an application is filed, the Commission cannot simply rely on findings relating to an applicant's performance in an anchor state at the time it issued the determination for that state. The performance in that state could change due to a multitude of factors, such as increased order volumes or shifts in the mix of the types of services or UNEs requested by competing carriers. Thus, even when the applicant makes a convincing showing of the relevance of anchor state data, the Commission must examine how recent performance in that state compares to performance at the time it approved that state's section 271 application, in order to determine if the systems and processes continue to perform at acceptable levels.

### III. COMPLIANCE WITH ENTRY REQUIREMENTS – SECTIONS 271(c)(1)(A) & 271(c)(1)(B)

15. As noted above, in order for the Commission to approve a BOC's application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either section 271(c)(1)(A) (Track A) or 271(c)(1)(B) (Track B).<sup>29</sup> To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers."<sup>30</sup> The Act states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier."<sup>31</sup> The Commission concluded in the *Ameritech Michigan Order* that section 271(c)(1)(A) is satisfied if one or more competing providers collectively serve residential and business subscribers.<sup>32</sup>

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<sup>28</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18376, para. 53; *Bell Atlantic New York Order*, 15 FCC Rcd at 3974, para. 53.

<sup>29</sup> See 47 U.S.C. § 271(d)(3)(A).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20589, para. 85; see also *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20633-35, paras. 46-48.

16. As an alternative to Track A, Section 271(c)(1)(B) permits BOCs to obtain authority to provide in-region, interLATA services if, after 10 months from the date of enactment, no facilities-based provider, as described in subparagraph (A), has requested the access and interconnection arrangements described therein (referencing one or more binding agreements approved under Section 252), but the state has approved an SGAT that satisfies the competitive checklist of subsection (c)(2)(B). Under section 271(d)(3)(A)(ii), the Commission shall not approve such a request for in-region, interLATA service unless the BOC demonstrates that, “with respect to access and interconnection generally offered pursuant to [an SGAT], such statement offers all of the items included in the competitive checklist.”<sup>33</sup> Track B, however, is not available to a BOC if it has already received a request for access and interconnection from a prospective competing provider of telephone exchange service.<sup>34</sup>

#### IV. COMPLIANCE WITH THE COMPETITIVE CHECKLIST – SECTION 271(c)(2)(B)

##### A. Checklist Item 1 – Interconnection

17. Section 271(c)(2)(B)(i) of the Act requires a section 271 applicant to provide “[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”<sup>35</sup> Section 251(c)(2) imposes a duty on incumbent LECs “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . . for the transmission and routing of telephone exchange service and exchange access.”<sup>36</sup> In the *Local Competition First Report and Order*, the Commission concluded that interconnection referred “only to the physical linking of two networks for the mutual exchange of traffic.”<sup>37</sup> Section 251 contains three requirements for the provision of interconnection. First, an incumbent LEC must provide interconnection “at any technically feasible point within the carrier’s network.”<sup>38</sup> Second, an incumbent LEC must provide interconnection that is “at least equal in quality to that provided by the local exchange carrier to

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<sup>33</sup> 47 U.S.C. § 271(d)(3)(A)(ii).

<sup>34</sup> See *Ameritech Michigan Order*, 12 FCC Rcd at 20561-62, para. 34. Nevertheless, the above-mentioned foreclosure of Track B as an option is subject to limited exceptions. See 47 U.S.C. § 271(c)(1)(B); see also *Ameritech Michigan Order*, 12 FCC Rcd at 20563-64, paras. 37-38.

<sup>35</sup> 47 U.S.C. § 271(c)(2)(B)(i); see *Bell Atlantic New York Order*, 15 FCC Rcd at 3977-78, para. 63; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640, para. 61; *Ameritech Michigan Order*, 12 FCC Rcd at 20662, para. 222.

<sup>36</sup> 47 U.S.C. § 251(c)(2)(A).

<sup>37</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 15590, para. 176 (1996) (*Local Competition First Report and Order*). Transport and termination of traffic are therefore excluded from the Commission’s definition of interconnection. See *id.*

<sup>38</sup> 47 U.S.C. § 251(c)(2)(B). In the *Local Competition First Report and Order*, the Commission identified a minimum set of technically feasible points of interconnection. See *Local Competition First Report and Order*, 11 FCC Rcd at 15607-09, paras. 204-11.

itself.”<sup>39</sup> Finally, the incumbent LEC must provide interconnection “on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of the agreement and the requirements of [section 251] and section 252.”<sup>40</sup>

18. To implement the equal-in-quality requirement in section 251, the Commission’s rules require an incumbent LEC to design and operate its interconnection facilities to meet “the same technical criteria and service standards” that are used for the interoffice trunks within the incumbent LEC’s network.<sup>41</sup> In the *Local Competition First Report and Order*, the Commission identified trunk group blockage and transmission standards as indicators of an incumbent LEC’s technical criteria and service standards.<sup>42</sup> In prior section 271 applications, the Commission concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers equal-in-quality to the interconnection the BOC provided to its own retail operations.<sup>43</sup>

19. In the *Local Competition First Report and Order*, the Commission concluded that the requirement to provide interconnection on terms and conditions that are “just, reasonable, and nondiscriminatory” means that an incumbent LEC must provide interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations.<sup>44</sup> The Commission’s rules interpret this obligation to include, among other things, the incumbent LEC’s installation time for interconnection service<sup>45</sup> and its provisioning of two-way trunking arrangements.<sup>46</sup> Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC

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<sup>39</sup> 47 U.S.C. § 251(c)(2)(C).

<sup>40</sup> *Id.* § 251(c)(2)(D).

<sup>41</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15613-15, paras. 221-225; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20641-42, paras. 63-64.

<sup>42</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15614-15, paras. 224-25.

<sup>43</sup> *See Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 64; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20648-50, paras. 74-77; *Ameritech Michigan Order*, 12 FCC Rcd at 20671-74, paras. 240-45. The Commission has relied on trunk blockage data to evaluate a BOC’s interconnection performance. Trunk group blockage indicates that end users are experiencing difficulty completing or receiving calls, which may have a direct impact on the customer’s perception of a competitive LEC’s service quality.

<sup>44</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15612, para. 218; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65.

<sup>45</sup> 47 C.F.R. § 51.305(a)(5).

<sup>46</sup> The Commission’s rules require an incumbent LEC to provide two-way trunking upon request, wherever two-way trunking arrangements are technically feasible. 47 C.F.R. § 51.305(f); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3978-79, para. 65; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20642, para. 65; *Local Competition First Report and Order*, 11 FCC Rcd 15612-13, paras. 219-20.

provides interconnection service under “terms and conditions that are no less favorable than the terms and conditions” the BOC provides to its own retail operations.<sup>47</sup>

20. Competing carriers may choose any method of technically feasible interconnection at a particular point on the incumbent LEC’s network.<sup>48</sup> Incumbent LEC provision of interconnection trunking is one common means of interconnection. Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.<sup>49</sup> The provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.<sup>50</sup> In the *Advanced Services First Report and Order*, the Commission revised its collocation rules to require incumbent LECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings.<sup>51</sup> In response to a remand from the D.C. Circuit, the Commission adopted the *Collocation Remand Order*, establishing revised criteria for equipment for which incumbent LECs must permit collocation, requiring incumbent LECs to provide cross-connects between collocated carriers, and establishing principles for physical collocation space and configuration.<sup>52</sup> To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and the FCC’s implementing rules.<sup>53</sup> Data showing the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space, help the Commission evaluate a BOC’s compliance with its collocation obligations.<sup>54</sup>

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<sup>47</sup> 47 C.F.R. § 51.305(a)(5).

<sup>48</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15779, paras. 549-50; *see Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 61.

<sup>49</sup> 47 C.F.R. § 51.321(b); *Local Competition First Report and Order*, 11 FCC Rcd at 15779-82, paras. 549-50; *see also Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, para. 62.

<sup>50</sup> 47 U.S.C. § 251(c)(6) (requiring incumbent LECs to provide physical collocation); *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

<sup>51</sup> *Deployment of Wireline Services offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4784-86, paras. 41-43 (1999), *aff’d in part and vacated and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000), *on recon.*, *Collocation Reconsideration Order*, 15 FCC Rcd 17806 (2000); *on remand, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd 15435 (2001) (*Collocation Remand Order*), *petition for recon. pending*.

<sup>52</sup> *See Collocation Remand Order*, 16 FCC Rcd at 15441-42, para. 12.

<sup>53</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20643, para. 66; *BellSouth Carolina Order*, 13 FCC Rcd at 649-51, para. 62.

<sup>54</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3979, para. 66; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20640-41, paras. 61-62.

21. As stated above, checklist item 1 requires a BOC to provide “interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).”<sup>55</sup> Section 252(d)(1) requires state determinations regarding the rates, terms, and conditions of interconnection to be based on cost and to be nondiscriminatory, and allows the rates to include a reasonable profit.<sup>56</sup> The Commission’s pricing rules require, among other things, that in order to comply with its collocation obligations, an incumbent LEC provide collocation based on TELRIC.<sup>57</sup>

22. To the extent pricing disputes arise, the Commission will not duplicate the work of the state commissions. As noted in the *SWBT Texas Order*, the Act authorizes the state commissions to resolve specific carrier-to-carrier disputes arising under the local competition provisions, and it authorizes the federal district courts to ensure that the results of the state arbitration process are consistent with federal law.<sup>58</sup> Although the Commission has an independent statutory obligation to ensure compliance with the checklist, section 271 does not compel us to preempt the orderly disposition of intercarrier disputes by the state commissions, particularly now that the Supreme Court has restored the Commission’s pricing jurisdiction and has thereby directed the state commissions to follow FCC pricing rules in their disposition of those disputes.<sup>59</sup>

23. Consistent with the Commission’s precedent, the mere presence of interim rates will not generally threaten a section 271 application so long as: (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission’s pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.<sup>60</sup> In addition, the Commission has determined that rates contained within an approved section 271 application, including those that are interim, are reasonable starting points for interim rates for the same carrier in an adjoining state.<sup>61</sup>

24. Although the Commission has been willing to grant a section 271 application with a limited number of interim rates where the above-mentioned three-part test is met, it is clearly preferable to analyze a section 271 application on the basis of rates derived from a permanent rate proceeding.<sup>62</sup> At some point, states will have had sufficient time to complete these

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<sup>55</sup> 47 U.S.C. § 271(c)(2)(B)(i) (emphasis added).

<sup>56</sup> *Id.* § 252(d)(1).

<sup>57</sup> See 47 C.F.R. §§ 51.501-07, 51.509(g); *Local Competition First Report and Order*, 11 FCC Rcd at 15812-16, 15844-61, 15874-76, 15912, paras. 618-29, 674-712, 743-51, 826.

<sup>58</sup> See *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; see also 47 U.S.C. §§ 252(c), (e)(6); *American Tel. & Tel Co. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (*AT&T v. Iowa Utils. Bd.*).

<sup>59</sup> *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. at 377-86.

<sup>60</sup> *SWBT Texas Order*, 15 FCC Rcd at 18394, para. 88; see also *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 258 (explaining the Commission’s case-by-case review of interim prices).

<sup>61</sup> *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6359-60, para. 239.

<sup>62</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 4091, para. 260.

proceedings. The Commission will, therefore, become more reluctant to continue approving section 271 applications containing interim rates. It would not be sound policy for interim rates to become a substitute for completing these significant proceedings.

## B. Checklist Item 2 – Unbundled Network Elements<sup>63</sup>

### 1. Access to Operations Support Systems

25. Incumbent LECs use a variety of systems, databases, and personnel (collectively referred to as OSS) to provide service to their customers.<sup>64</sup> The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition.<sup>65</sup> For example, new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers.<sup>66</sup> The Commission has determined that without nondiscriminatory access to the BOC's OSS, a competing carrier "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.<sup>67</sup>

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<sup>63</sup> We note that the United States Court of Appeals for the District of Columbia Circuit recently opined on two relevant Commission decisions, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*) and *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Doc. No. 98-147 and Fourth Report and Order in CC Doc. No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*). *USTA v. FCC*, 290 F.3d 415 (D. C. Cir. 2002), cert. denied sub nom *WorldCom, Inc., et al. v. United States Telecom Ass'n, et al.*, 2003 WL 1448388, 71 USLW 3416 (March 24, 2003). The court's decision addressed both our UNE rules and our line sharing rules. Further, the court stated that "the *Line Sharing Order* must be vacated and remanded." *USTA v. FCC*, 290 F.3d at 429. The court also stated that it "grant[ed] the petitions for review[] and remand[ed] the *Line Sharing Order* and the *Local Competition Order* to the Commission for further consideration in accordance with the principles outlined." *Id.* at 430. On September 4, 2002, the D.C. Circuit denied petitions for rehearing filed by the Commission and others. See *Order*, Nos. 00-1012 and 00-1015 (D.C. Circuit, filed Sept. 4, 2002). On February 20, 2003, the Commission took action to revise its rules concerning incumbent LECs' obligations to make available elements of their networks on an unbundled basis to requesting carriers. *FCC Adopts New Rules For Network Unbundling Obligations Of Incumbent Local Phone Carriers*, News Release, (rel. Feb. 20, 2003) (announcing adoption of an Order on Remand and Further Notice of Proposed Rulemaking in CC Docket No. 01-338, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*) (*Triennial Review News Release*). We note, however, that, in determining whether a BOC applicant has satisfied the requirements of section 271, the Commission evaluates an applicant's compliance with the competitive checklist as developed in the Commission's local competition rules and orders in effect at the time the application was filed.

<sup>64</sup> *Id.* at 3989-90, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 585.

<sup>65</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83; *BellSouth South Carolina Order*, 13 FCC Rcd at 547-48, 585; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20653.

<sup>66</sup> See *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 83.

<sup>67</sup> *Id.*

26. Section 271 requires the Commission to determine whether a BOC offers nondiscriminatory access to OSS functions. Section 271(c)(2)(B)(ii) requires a BOC to provide “nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).”<sup>68</sup> The Commission has determined that access to OSS functions falls squarely within an incumbent LEC’s duty under section 251(c)(3) to provide unbundled network elements (UNEs) under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable.<sup>69</sup> The Commission must therefore examine a BOC’s OSS performance to evaluate compliance with section 271(c)(2)(B)(ii) and (xiv).<sup>70</sup> In addition, the Commission has also concluded that the duty to provide nondiscriminatory access to OSS functions is embodied in other terms of the competitive checklist as well.<sup>71</sup> Consistent with prior orders, the Commission examines a BOC’s OSS performance directly under checklist items 2 and 14, as well as other checklist terms.<sup>72</sup>

27. As part of its statutory obligation to provide nondiscriminatory access to OSS functions, a BOC must provide access that sufficiently supports each of the three modes of competitive entry envisioned by the 1996 Act – competitor-owned facilities, UNEs, and resale.<sup>73</sup> For OSS functions that are analogous to those that a BOC provides to itself, its customers or its affiliates, the nondiscrimination standard requires the BOC to offer requesting carriers access that is equivalent in terms of quality, accuracy, and timeliness.<sup>74</sup> The BOC must provide access that permits competing carriers to perform these functions in “substantially the same time and manner” as the BOC.<sup>75</sup> The Commission has recognized in prior orders that there may be situations in which a BOC contends that, although equivalent access has not been achieved for

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<sup>68</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>69</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3990, para. 84.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* As part of a BOC’s demonstration that it is “providing” a checklist item (*e.g.*, unbundled loops, unbundled local switching, resale services), it must demonstrate that it is providing nondiscriminatory access to the systems, information, and personnel that support that element or service. An examination of a BOC’s OSS performance is therefore integral to the determination of whether a BOC is offering all of the items contained in the competitive checklist. *Id.*

<sup>72</sup> *Id.* at 3990-91, para. 84.

<sup>73</sup> *Id.* at 3991, para. 85.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* For example, the Commission would not deem an incumbent LEC to be providing nondiscriminatory access to OSS if limitations on the processing of information between the interface and the back office systems prevented a competitor from performing a specific function in substantially the same time and manner as the incumbent performs that function for itself.

an analogous function, the access that it provides is nonetheless nondiscriminatory within the meaning of the statute.<sup>76</sup>

28. For OSS functions that have no retail analogue, the BOC must offer access “sufficient to allow an efficient competitor a meaningful opportunity to compete.”<sup>77</sup> In assessing whether the quality of access affords an efficient competitor a meaningful opportunity to compete, the Commission will examine, in the first instance, whether specific performance standards exist for those functions.<sup>78</sup> In particular, the Commission will consider whether appropriate standards for measuring OSS performance have been adopted by the relevant state commission or agreed upon by the BOC in an interconnection agreement or during the implementation of such an agreement.<sup>79</sup> If such performance standards exist, the Commission will evaluate whether the BOC’s performance is sufficient to allow an efficient competitor a meaningful opportunity to compete.<sup>80</sup>

29. The Commission analyzes whether a BOC has met the nondiscrimination standard for each OSS function using a two-step approach. First, the Commission determines “whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”<sup>81</sup> The Commission next assesses “whether the OSS functions that the BOC has deployed are operationally ready, as a practical matter.”<sup>82</sup>

30. Under the first inquiry, a BOC must demonstrate that it has developed sufficient electronic (for functions that the BOC accesses electronically) and manual interfaces to allow

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<sup>76</sup> *See id.*

<sup>77</sup> *Id.* at 3991, para. 86.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* As a general proposition, specific performance standards adopted by a state commission in an arbitration decision would be more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC outside of its interconnection agreement. *Id.* at 20619-20.

<sup>80</sup> *See id.* at 3991-92, para. 86.

<sup>81</sup> *Id.* at 3992, para. 87; *Ameritech Michigan Order*, 12 FCC Rcd at 20616; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654; *BellSouth South Carolina Order*, 13 FCC Rcd at 592-93. In making this determination, the Commission “consider[s] all of the automated and manual processes a BOC has undertaken to provide access to OSS functions,” including the interface (or gateway) that connects the competing carrier’s own operations support systems to the BOC; any electronic or manual processing link between that interface and the BOC’s OSS (including all necessary back office systems and personnel); and all of the OSS that a BOC uses in providing network elements and resale services to a competing carrier. *Ameritech Michigan Order*, 12 FCC Rcd at 20615; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20654 n.241.

<sup>82</sup> *See Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.



competing carriers equivalent access to all of the necessary OSS functions.<sup>83</sup> For example, a BOC must provide competing carriers with the specifications necessary for carriers to design or modify their systems in a manner that will enable them to communicate with the BOC's systems and any relevant interfaces.<sup>84</sup> In addition, a BOC must disclose to competing carriers any internal business rules<sup>85</sup> and other formatting information necessary to ensure that a carrier's requests and orders are processed efficiently.<sup>86</sup> Finally, a BOC must demonstrate that its OSS is designed to accommodate both current demand and projected demand for competing carriers' access to OSS functions.<sup>87</sup> Although not a prerequisite, the Commission continues to encourage the use of industry standards as an appropriate means of meeting the needs of a competitive local exchange market.<sup>88</sup>

31. Under the second inquiry, the Commission examines performance measurements and other evidence of commercial readiness to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future volumes.<sup>89</sup> The most probative evidence that OSS functions are operationally ready is actual commercial usage.<sup>90</sup> Absent sufficient and reliable data on commercial usage, the Commission will consider the results of carrier-to-carrier testing, independent third-party testing, and internal testing in assessing the commercial readiness of a BOC's OSS.<sup>91</sup> Although the Commission does not require OSS testing, a persuasive test will provide us with an objective means by which to evaluate a BOC's OSS readiness where there is little to no evidence of commercial usage, or may otherwise strengthen an application where the BOC's evidence of actual commercial usage is weak or is otherwise challenged by competitors. The persuasiveness of a third-party review, however, is dependent upon the qualifications, experience and independence of the third party

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<sup>83</sup> *Id.* at 3992, para. 87; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20616, para. 136 (The Commission determines "whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them."). For example, a BOC must provide competing carriers the specifications necessary to design their systems interfaces and business rules necessary to format orders, and demonstrate that systems are scalable to handle current and projected demand. *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders and include information concerning ordering codes such as universal service ordering codes (USOCs) and field identifiers (FIDs). *Id.*; *see also Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.335.

<sup>86</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3992, para. 88.

<sup>87</sup> *Id.*

<sup>88</sup> *See id.*

<sup>89</sup> *Id.* at 3993, para. 89.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

and the conditions and scope of the review itself.<sup>92</sup> If the review is limited in scope or depth or is not independent and blind, the Commission will give it minimal weight. As noted above, to the extent the Commission reviews performance data, it looks at the totality of the circumstances and generally does not view individual performance disparities, particularly if they are isolated and slight, as dispositive of whether a BOC has satisfied its checklist obligations.<sup>93</sup> Individual performance disparities may, nevertheless, result in a finding of checklist noncompliance, particularly if the disparity is substantial or has endured for a long time, or if it is accompanied by other evidence of discriminatory conduct or evidence that competing carriers have been denied a meaningful opportunity to compete.

**a. Relevance of a BOC's Prior Section 271 Orders**

32. The *SWBT Kansas/Oklahoma Order* specifically outlined a non-exhaustive evidentiary showing that must be made in the initial application when a BOC seeks to rely on evidence presented in another application.<sup>94</sup> First, a BOC's application must explain the extent to which the OSS are "the same" – that is, whether it employs the shared use of a single OSS, or the use of systems that are identical, but separate.<sup>95</sup> To satisfy this inquiry, the Commission looks to whether the relevant states utilize a common set of processes, business rules, interfaces, systems and, in many instances, even personnel.<sup>96</sup> The Commission will also carefully examine third party reports that demonstrate that the BOC's OSS are the same in each of the relevant states.<sup>97</sup> Finally, where a BOC has discernibly separate OSS, it must demonstrate that its OSS reasonably can be expected to behave in the same manner.<sup>98</sup> Second, unless an applicant seeks to establish only that certain discrete components of its OSS are the same, an applicant must submit evidence relating to *all* aspects of its OSS, including those OSS functions performed by BOC personnel.

**b. Pre-Ordering**

33. A BOC must demonstrate that: (i) it offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL

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<sup>92</sup> See *id.*; *Ameritech Michigan Order*, 12 FCC Rcd at 20659 (emphasizing that a third-party review should encompass the entire obligation of the incumbent LEC to provide nondiscriminatory access, and, where applicable, should consider the ability of actual competing carriers in the market to operate using the incumbent's OSS access).

<sup>93</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6301-02, para. 138.

<sup>94</sup> See *id.* at 6286-91, paras. 107-18

<sup>95</sup> See *id.* at 6288, para. 111.

<sup>96</sup> The Commission has consistently held that a BOC's OSS includes both mechanized systems and manual processes, and thus the OSS functions performed by BOC personnel have been part of the FCC's OSS functionality and commercial readiness reviews.

<sup>97</sup> See *SWBT Kansas/Oklahoma Order*, *id.* at 6287, para. 108.

<sup>98</sup> See *id.* at 6288, para. 111.

advanced technologies; (ii) competing carriers successfully have built and are using application-to-application interfaces to perform pre-ordering functions and are able to integrate pre-ordering and ordering interfaces;<sup>99</sup> and (iii) its pre-ordering systems provide reasonably prompt response times and are consistently available in a manner that affords competitors a meaningful opportunity to compete.<sup>100</sup>

34. The pre-ordering phase of OSS generally includes those activities that a carrier undertakes to gather and verify the information necessary to place an order.<sup>101</sup> Given that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that a competing carrier is able to accomplish pre-ordering activities in a manner no less efficient and responsive than the incumbent.<sup>102</sup> Most of the pre-ordering activities that must be undertaken by a competing carrier to order resale services and UNEs from the incumbent are analogous to the activities a BOC must accomplish to furnish service to its own customers. For these pre-ordering functions, a BOC must demonstrate that it provides requesting carriers access that enables them to perform pre-ordering functions in substantially the same time and manner as its retail operations.<sup>103</sup> For those pre-ordering functions that lack a retail analogue, a BOC must provide access that affords an efficient competitor a meaningful opportunity to compete.<sup>104</sup> In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC.<sup>105</sup>

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<sup>99</sup> In prior orders, the Commission has emphasized that providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC. *SWBT Texas Order*, 15 FCC Rcd at 18426, para. 148.

<sup>100</sup> The Commission has held previously that an interface that provides responses in a prompt timeframe and is stable and reliable, is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as a BOC serves its own customers. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4025 and 4029, paras. 145 and 154.

<sup>101</sup> *See Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94 (referring to “pre-ordering and ordering” collectively as “the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof”). In prior orders, the Commission has identified the following five pre-order functions: (1) customer service record (CSR) information; (2) address validation; (3) telephone number information; (4) due date information; (5) services and feature information. *See Bell Atlantic New York Order*, 15 FCC Rcd at 4015, para. 132; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20660, para. 94; *BellSouth South Carolina Order*, 13 FCC Rcd at 619, para. 147.

<sup>102</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

<sup>103</sup> *Id.*; *see also BellSouth South Carolina Order*, 13 FCC Rcd at 623-29 (concluding that failure to deploy an application-to-application interface denies competing carriers equivalent access to pre-ordering OSS functions).

<sup>104</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4014, para. 129.

<sup>105</sup> *See id.* at 4014, para. 130; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20661-67, para. 105.

**(i) Access to Loop Qualification Information**

35. In accordance with the *UNE Remand Order*,<sup>106</sup> the Commission requires incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents,<sup>107</sup> and in the same time frame, so that a competing carrier can make an independent judgment at the pre-ordering stage about whether an end user loop is capable of supporting the advanced services equipment the competing carrier intends to install.<sup>108</sup> Under the *UNE Remand Order*, the relevant inquiry is not whether a BOC's retail arm accesses such underlying information but whether such information exists anywhere in a BOC's back office and can be accessed by any of a BOC's personnel.<sup>109</sup> Moreover, a BOC may not "filter or digest" the underlying information and may not provide only information that is useful in provisioning of a particular type of xDSL that a BOC offers.<sup>110</sup> A BOC must also provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that the BOC provides such information to itself. Moreover, a BOC must also provide access for competing carriers to the loop qualifying information that the BOC can itself access manually or electronically. Finally, a BOC must provide access to loop qualification information to competitors within the same time intervals it is provided to the BOC's retail operations or its advanced services affiliate.<sup>111</sup> As the Commission determined in the *UNE Remand Order*, however, "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to

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<sup>106</sup> *UNE Remand Order*, 15 FCC Rcd at 3885, para. 426 (determining "that the pre-ordering function includes access to loop qualification information").

<sup>107</sup> *See id.* At a minimum, a BOC must provide (1) the composition of the loop material, including both fiber and copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to, digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. *Id.*

<sup>108</sup> As the Commission has explained in prior proceedings, because characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advanced services technologies, carriers often seek to "pre-qualify" a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without the removal of the impediments, can support a particular advanced service. *See id.*, 15 FCC Rcd at 4021, para. 140.

<sup>109</sup> *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-431 (noting that "to the extent such information is not normally provided to the incumbent's retail personnel, but can be obtained by contacting back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.").

<sup>110</sup> *See SWBT Kansas Oklahoma Order*, 16 FCC Rcd at 6292-93, para. 121.

<sup>111</sup> *Id.*

requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.”<sup>112</sup>

**c. Ordering**

36. Consistent with section 271(c)(2)(B)(ii), a BOC must demonstrate its ability to provide competing carriers with access to the OSS functions necessary for placing wholesale orders. For those functions of the ordering systems for which there is a retail analogue, a BOC must demonstrate, with performance data and other evidence, that it provides competing carriers with access to its OSS in substantially the same time and manner as it provides to its retail operations. For those ordering functions that lack a direct retail analogue, a BOC must demonstrate that its systems and performance allow an efficient carrier a meaningful opportunity to compete. As in prior section 271 orders, the Commission looks primarily at the applicant’s ability to return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate.<sup>113</sup>

**d. Provisioning**

37. A BOC must provision competing carriers’ orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own retail customers.<sup>114</sup> Consistent with the approach in prior section 271 orders, the Commission examines a BOC’s provisioning processes, as well as its performance with respect to provisioning timeliness (i.e., missed due dates and average installation intervals) and provisioning quality (i.e., service problems experienced at the provisioning stage).<sup>115</sup>

**e. Maintenance and Repair**

38. A competing carrier that provides service through resale or UNEs remains dependent upon the incumbent LEC for maintenance and repair. Thus, as part of its obligation to provide nondiscriminatory access to OSS functions, a BOC must provide requesting carriers with nondiscriminatory access to its maintenance and repair systems.<sup>116</sup> To the extent a BOC

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<sup>112</sup> *UNE Remand Order*, 15 FCC Rcd at 3885-3887, paras. 427-31.

<sup>113</sup> *See SWBT Texas Order*, 15 FCC Rcd at 18438, para. 170; *Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, paras. 163-66. The Commission examines (i) order flow-through rates, (ii) jeopardy notices and (iii) order completion notices using the “same time and manner” standard. The Commission examines order confirmation notices and order rejection notices using the “meaningful opportunity to compete” standard.

<sup>114</sup> *See Bell Atlantic New York*, 15 FCC Rcd at 4058, para. 196. For provisioning timeliness, the Commission looks to missed due dates and average installation intervals; for provisioning quality, the Commission looks to service problems experienced at the provisioning stage.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 4067, para. 212; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692; *Ameritech Michigan Order*, 12 FCC Rcd at 20613, 20660-61.

performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions “in substantially the same time and manner” as a BOC provides its retail customers.<sup>117</sup> Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to BOC personnel.<sup>118</sup> Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with a BOC’s network as a problem with the competing carrier’s own network.<sup>119</sup>

**f. Billing**

39. A BOC must provide nondiscriminatory access to its billing functions, which is necessary to enable competing carriers to provide accurate and timely bills to their customers.<sup>120</sup> In making this determination, the Commission assesses a BOC’s billing processes and systems, and its performance data. Consistent with prior section 271 orders, a BOC must demonstrate that it provides competing carriers with complete and accurate reports on the service usage of competing carriers’ customers in substantially the same time and manner that a BOC provides such information to itself, and with wholesale bills in a manner that gives competing carriers a meaningful opportunity to compete.<sup>121</sup>

**g. Change Management Process**

40. Competing carriers need information about, and specifications for, an incumbent’s systems and interfaces to develop and modify their systems and procedures to access the incumbent’s OSS functions.<sup>122</sup> Thus, in order to demonstrate that it is providing nondiscriminatory access to its OSS, a BOC must first demonstrate that it “has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and . . . is adequately assisting competing carriers to understand how to implement and use all of the OSS functions available to them.”<sup>123</sup> By showing that it adequately assists competing carriers to use available OSS functions, a BOC provides evidence that it offers an

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<sup>117</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196; *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692-93.

<sup>118</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4058, para. 196.

<sup>119</sup> *Id.*

<sup>120</sup> *See SWBT Texas Order*, 15 FCC Rcd at 18461, para. 210.

<sup>121</sup> *See id.*; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6316-17, at para. 163.

<sup>122</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3999-4000, para. 102; *First BellSouth Louisiana Order*, 13 FCC Rcd at 6279 n.197; *BellSouth South Carolina Order*, 13 FCC Rcd at 625 n.467; *Ameritech Michigan Order*, 12 FCC Rcd at 20617 n.334; *Local Competition Second Report and Order*, 11 FCC Rcd at 19742.

<sup>123</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 3999, para. 102.

efficient competitor a meaningful opportunity to compete.<sup>124</sup> As part of this demonstration, the Commission will give substantial consideration to the existence of an adequate change management process and evidence that the BOC has adhered to this process over time.<sup>125</sup>

41. The change management process refers to the methods and procedures that the BOC employs to communicate with competing carriers regarding the performance of, and changes in, the BOC's OSS.<sup>126</sup> Such changes may include updates to existing functions that impact competing carrier interface(s) upon a BOC's release of new interface software; technology changes that require competing carriers to meet new technical requirements upon a BOC's software release date; additional functionality changes that may be used at the competing carrier's option, on or after a BOC's release date for new interface software; and changes that may be mandated by regulatory authorities.<sup>127</sup> Without a change management process in place, a BOC can impose substantial costs on competing carriers simply by making changes to its systems and interfaces without providing adequate testing opportunities and accurate and timely notice and documentation of the changes.<sup>128</sup> Change management problems can impair a competing carrier's ability to obtain nondiscriminatory access to UNEs, and hence a BOC's compliance with section 271(2)(B)(ii).<sup>129</sup>

42. In evaluating whether a BOC's change management plan affords an efficient competitor a meaningful opportunity to compete, the Commission first assesses whether the plan is adequate. In making this determination, it assesses whether the evidence demonstrates: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers;<sup>130</sup> (2) that competing carriers had substantial input in the design and continued operation of the change management process;<sup>131</sup> (3) that the change management plan defines a procedure for the timely resolution of change management disputes;<sup>132</sup> (4) the availability of a stable testing environment that mirrors production;<sup>133</sup> and (5) the efficacy of the

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<sup>124</sup> *Id.* at 3999-4000, para. 102

<sup>125</sup> *Id.* at 4000, para. 102.

<sup>126</sup> *Id.* at 4000, para. 103.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at 4000, para. 103.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 4002, para. 107.

<sup>131</sup> *Id.* at 4000, para. 104.

<sup>132</sup> *Id.* at 4002, para. 108.

<sup>133</sup> *Id.* at 4002-03, paras. 109-10.

documentation the BOC makes available for the purpose of building an electronic gateway.<sup>134</sup> After determining whether the BOC's change management plan is adequate, the Commission evaluates whether the BOC has demonstrated a pattern of compliance with this plan.<sup>135</sup>

## 2. UNE Combinations

43. In order to comply with the requirements of checklist item 2, a BOC must show that it is offering “[n]ondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3).”<sup>136</sup> Section 251(c)(3) requires an incumbent LEC to “provide, to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory.”<sup>137</sup> Section 251(c)(3) of the Act also requires incumbent LECs to provide UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.<sup>138</sup>

44. In the *Ameritech Michigan Order*, the Commission emphasized that the ability of requesting carriers to use UNEs, as well as combinations of UNEs, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.<sup>139</sup> Using combinations of UNEs provides a competitor with the incentive and ability to package and market services in ways that differ from the BOCs' existing service offerings in order to compete in the local telecommunications market.<sup>140</sup> Moreover, combining the incumbent's UNEs with their own facilities encourages facilities-based competition and allows competing providers to provide a wide array of competitive choices.<sup>141</sup> Because the use of combinations of UNEs is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, the Commission examines section 271 applications to

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<sup>134</sup> *Id.* at 4003-04, para. 110. In the *Bell Atlantic New York Order*, the Commission used these factors in determining whether Bell Atlantic had an adequate change management process in place. *See id.* at 4004, para. 111. The Commission left open the possibility, however, that a change management plan different from the one implemented by Bell Atlantic may be sufficient to demonstrate compliance with the requirements of section 271. *Id.*

<sup>135</sup> *Id.* at 3999, para. 101, 4004-05, para. 112.

<sup>136</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>137</sup> *Id.* § 251(c)(3).

<sup>138</sup> *Id.*

<sup>139</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20718-19; *BellSouth South Carolina Order*, 13 FCC Rcd at 646.

<sup>140</sup> *BellSouth South Carolina Order*, 13 FCC Rcd at 646; *see also Local Competition First Report and Order*, 11 FCC Rcd at 15666-68.

<sup>141</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4077-78, para. 230.



determine whether competitive carriers are able to combine network elements as required by the Act and the Commission's regulations.<sup>142</sup>

### 3. Pricing of Network Elements

45. Checklist item 2 of section 271 states that a BOC must provide “nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)” of the Act.<sup>143</sup> Section 251(c)(3) requires incumbent LECs to provide “nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.”<sup>144</sup> Section 252(d)(1) requires that a state commission's determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.<sup>145</sup> Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the total element long run incremental cost (TELRIC) of providing those elements.<sup>146</sup> The Commission also promulgated rule 51.315(b), which prohibits incumbent LECs from separating already combined elements before providing them to competing carriers, except on request.<sup>147</sup> The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if “basic TELRIC principles are violated or the state commission

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<sup>142</sup> *Id.* In *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000), the Eighth Circuit had vacated the Commission's “additional combinations” rules (47 C.F.R. Sections 51-315(c)-(f)). However, on May 13, 2002, the Supreme Court reversed the Eighth Circuit with respect to those rules and remanded the case to the court of appeals “for further proceedings consistent with this opinion.” *Verizon Communications Inc. v. FCC*, 535 U.S. 467, 539. *See also id.* at 1683-87. In response, the Eighth Circuit, on August 21, 2002, vacated its prior opinion insofar as it had vacated the pertinent combinations rules and denied the petitions for review with respect to those rules. *Iowa Utilities Board v. FCC*, 8th Circuit Nos. 96-3321, *et al.*, Judgment, filed August 21, 2002.). *See also Competitive Telecommunications Association v. FCC*, 309 F. 3d 8 (2002) (affirming the Commission's interim decision to limit the ability of competitive local exchange carriers to gain access to a network element combination known as the enhanced extended link).

<sup>143</sup> 47 U.S.C. § 271(c)(2)(B)(ii).

<sup>144</sup> *Id.* § 251(c)(3).

<sup>145</sup> 47 U.S.C. § 252(d)(1).

<sup>146</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15844-46, paras. 674-79; 47 C.F.R. §§ 51.501 *et seq.*; *see also Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Report and Order, 14 FCC Rcd 20912, 20974, para. 135 (*Line Sharing Order*) (concluding that states should set the prices for line sharing as a new network element in the same manner as the state sets prices for other UNEs).

<sup>147</sup> *See* 47 C.F.R. § 51.315(b).

makes clear errors in factual findings on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce.”<sup>148</sup>

46. Although the U.S. Court of Appeals for the Eighth Circuit stayed the Commission’s pricing rules in 1996,<sup>149</sup> the Supreme Court restored the Commission’s pricing authority on January 25, 1999, and remanded to the Eighth Circuit for consideration of the merits of the challenged rules.<sup>150</sup> On remand from the Supreme Court, the Eighth Circuit concluded that while TELRIC is an acceptable method for determining costs, certain specific requirements contained within the Commission’s pricing rules were contrary to Congressional intent.<sup>151</sup> The Eighth Circuit stayed the issuance of its mandate pending review by the Supreme Court.<sup>152</sup> The Supreme Court, on May 13, 2002, upheld the Commission’s forward-looking pricing methodology in determining costs of UNEs and “reverse[d] the Eighth Circuit’s judgment insofar as it invalidated TELRIC as a method for setting rates under the Act.”<sup>153</sup> Accordingly, the Commission’s pricing rules remain in effect.

### C. Checklist Item 3 – Poles, Ducts, Conduits and Rights of Way

47. Section 271(c)(2)(B)(iii) requires BOCs to provide “[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224.”<sup>154</sup> Section 224(f)(1) states

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<sup>148</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4084, para. 244; *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6266, para. 59.

<sup>149</sup> *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800, 804, 805-06 (8<sup>th</sup> Cir. 1997).

<sup>150</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). In reaching its decision, the Court acknowledged that section 201(b) “explicitly grants the FCC jurisdiction to make rules governing matters to which the 1996 Act applies.” *Id.* at 380. Furthermore, the Court determined that section 251(d) also provides evidence of an express jurisdictional grant by requiring that “the Commission [shall] complete all actions necessary to establish regulations to implement the requirements of this section.” *Id.* at 382. The Court also held that the pricing provisions implemented under the Commission’s rulemaking authority do not inhibit the establishment of rates by the states. The Court concluded that the Commission has jurisdiction to design a pricing methodology to facilitate local competition under the 1996 Act, including pricing for interconnection and unbundled access, as “it is the States that will apply those standards and implement that methodology, determining the concrete result.” *Id.*

<sup>151</sup> *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8<sup>th</sup> Cir. 2000), *petition for cert. granted sub nom. Verizon Communications v. FCC*, 121 S. Ct. 877 (2001).

<sup>152</sup> *Iowa Utils. Bd. v. FCC*, No. 96-3321 *et al.* (8<sup>th</sup> Cir. Sept. 25, 2000).

<sup>153</sup> *Verizon v. FCC*, 535 U.S. 467, 523. On August 21, 2002, the Eighth Circuit implemented the Supreme Court’s mandate with respect to the Commission’s TELRIC pricing rule by vacating its prior opinion insofar as it had invalidated that rule and by denying the petitions for review of that rule. *Iowa Utilities Board v. FCC*, 8th Circuit Nos. 96-3321, *et al.*, Judgment, filed August 21, 2002.

<sup>154</sup> 47 U.S.C. § 271(c)(2)(B)(iii). As originally enacted, section 224 was intended to address obstacles that cable operators encountered in obtaining access to poles, ducts, conduits, or rights-of-way owned or controlled by utilities. The 1996 Act amended section 224 in several important respects to ensure that telecommunications carriers (continued....)

that “[a] utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”<sup>155</sup> Notwithstanding this requirement, section 224(f)(2) permits a utility providing electric service to deny access to its poles, ducts, conduits, and rights-of-way, on a nondiscriminatory basis, “where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”<sup>156</sup> Section 224 also contains two separate provisions governing the maximum rates that a utility may charge for “pole attachments.”<sup>157</sup> Section 224(b)(1) states that the Commission shall regulate the rates, terms, and conditions governing pole attachments to ensure that they are “just and reasonable.”<sup>158</sup> Notwithstanding this general grant of authority, section 224(c)(1) states that “[n]othing in [section 224] shall be construed to apply to, or to give the Commission jurisdiction with respect to the rates, terms, and conditions, or access to poles, ducts, conduits and rights-of-way as provided in [section 224(f)], for pole attachments in any case where such matters are regulated by a State.”<sup>159</sup> As of 1992, nineteen states, including Connecticut, had certified to the Commission that they regulated the rates, terms, and conditions for pole attachments.<sup>160</sup>

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as well as cable operators have access to poles, ducts, conduits, or rights-of-way owned or controlled by utility companies, including LECs. *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20706, n.574.

<sup>155</sup> 47 U.S.C. § 224(f)(1). Section 224(a)(1) defines “utility” to include any entity, including a LEC, that controls “poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” 47 U.S.C. § 224(a)(1).

<sup>156</sup> 47 U.S.C. § 224(f)(2). In the *Local Competition First Report and Order*, the Commission concluded that, although the statutory exception enunciated in section 224(f)(2) appears to be limited to utilities providing electrical service, LECs should also be permitted to deny access to their poles, ducts, conduits, and rights-of-way because of insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes, provided the assessment of such factors is done in a nondiscriminatory manner. *Local Competition First Report and Order*, 11 FCC Rcd at 16080-81, paras. 1175-77.

<sup>157</sup> Section 224(a)(4) defines “pole attachment” as “any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.” 47 U.S.C. § 224(a)(4).

<sup>158</sup> 47 U.S.C. § 224(b)(1).

<sup>159</sup> *Id.* § 224(c)(1). The 1996 Act extended the Commission’s authority to include not just rates, terms, and conditions, but also the authority to regulate nondiscriminatory access to poles, ducts, conduits, and rights-of-way. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(f). Absent state regulation of terms and conditions of nondiscriminatory attachment access, the Commission retains jurisdiction. *Local Competition First Report and Order*, 11 FCC Rcd at 16104, para. 1232; 47 U.S.C. § 224(c)(1); *see also Bell Atlantic New York Order*, 15 FCC Rcd at 4093, para. 264.

<sup>160</sup> *See States That Have Certified That They Regulate Pole Attachments*, Public Notice, 7 FCC Rcd 1498 (1992); 47 U.S.C. § 224(f).

#### D. Checklist Item 4 – Unbundled Local Loops

48. Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.”<sup>161</sup> The Commission has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises. This definition includes different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals.<sup>162</sup>

49. In order to establish that it is “providing” unbundled local loops in compliance with checklist item 4, a BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality. A BOC must also demonstrate that it provides nondiscriminatory access to unbundled loops.<sup>163</sup> Specifically, the BOC must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested. In order to provide the requested loop functionality, such as the ability to deliver xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities. The BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses digital loop carrier (DLC) technology or similar remote concentration devices for the particular loops sought by the competitor.

50. On December 9, 1999, the Commission released the *Line Sharing Order*, which introduced new rules requiring BOCs to offer requesting carriers unbundled access to the high-frequency portion of local loops (HFPL).<sup>164</sup> HFPL is defined as “the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions.” This definition applies whether a BOC’s voice customers are served by copper or by digital loop carrier equipment. Competing carriers should have

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<sup>161</sup> 47 U.S.C. § 271(c)(2)(B)(iv).

<sup>162</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15691, para. 380; *UNE Remand Order*, 15 FCC Rcd at 3772-73, paras. 166-67, n.301 (retaining definition of the local loop from the *Local Competition First Report and Order*, but replacing the phrase “network interconnection device” with “demarcation point,” and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

<sup>163</sup> *SWBT Texas Order*, 15 FCC Rcd at 18481-81, para. 248; *Bell Atlantic New York Order*, 15 FCC Rcd at 4095, para. 269; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20637, para. 185.

<sup>164</sup> See *Line Sharing Order*, 14 FCC Rcd at 20924-27, paras. 20-27; see also n.63 at C-12 *supra*.

access to the HFPL at either a central office or at a remote terminal. However, the HFPL network element is *only* available on a copper loop facility.<sup>165</sup>

51. To determine whether a BOC makes line sharing available consistent with Commission rules set out in the *Line Sharing Order*, the Commission examines categories of performance measurements identified in the *Bell Atlantic New York* and *SWBT Texas Orders*. Specifically, a successful BOC applicant could provide evidence of BOC-caused missed installation due dates, average installation intervals, trouble reports within 30 days of installation, mean time to repair, trouble report rates, and repeat trouble report rates. In addition, a successful BOC applicant should provide evidence that its central offices are operationally ready to handle commercial volumes of line sharing and that it provides competing carriers with nondiscriminatory access to the pre-ordering and ordering OSS functions associated with the provision of line shared loops, including access to loop qualification information and databases.

52. Section 271(c)(2)(B)(iv) also requires that a BOC demonstrate that it makes line splitting available to competing carriers so that competing carriers may provide voice and data service over a single loop.<sup>166</sup> In addition, a BOC must demonstrate that a competing carrier, either alone or in conjunction with another carrier, is able to replace an existing UNE-P configuration used to provide voice service with an arrangement that enables it to provide voice and data service to a customer. To make such a showing, a BOC must show that it has a legal obligation to provide line splitting through rates, terms, and conditions in interconnection agreements and that it offers competing carriers the ability to order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment, and combine it with unbundled switching and shared transport.<sup>167</sup>

#### **E. Checklist Item 5 – Unbundled Local Transport**

53. Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide “[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.”<sup>168</sup> The Commission has required that BOCs provide both dedicated and shared transport to requesting carriers.<sup>169</sup> Dedicated transport consists of BOC transmission

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<sup>165</sup> See *Deployment of Wireline Services offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, 16 FCC Rcd 2101, 2106-07, para. 10 (2001).

<sup>166</sup> See generally *SWBT Texas Order*, 15 FCC Rcd at 18515-17, paras. 323-329 (describing line splitting); 47 C.F.R. § 51.703(c) (requiring that incumbent LECs provide competing carriers with access to unbundled loops in a manner that allows competing carriers “to provide any telecommunications service that can be offered by means of that network element”).

<sup>167</sup> See *SWBT Kansas/Oklahoma Order*, 16 FCC Rcd at 6348, para. 220.

<sup>168</sup> 47 U.S.C. § 271(c)(2)(B)(v).

<sup>169</sup> *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20719, para. 201.

facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.<sup>170</sup> Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC's network.<sup>171</sup>

#### F. Checklist Item 6 – Unbundled Local Switching

54. Section 271(c)(2)(B)(vi) of the 1996 Act requires a BOC to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services.”<sup>172</sup> In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.<sup>173</sup> The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.<sup>174</sup> Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.<sup>175</sup>

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<sup>170</sup> *Id.* A BOC has the following obligations with respect to dedicated transport: (a) provide unbundled access to dedicated transmission facilities between BOC central offices or between such offices and serving wire centers (SWCs); between SWCs and interexchange carriers points of presence (POPs); between tandem switches and SWCs, end offices or tandems of the BOC, and the wire centers of BOCs and requesting carriers; (b) provide all technically feasible transmission capabilities such as DS1, DS3, and Optical Carrier levels that the competing carrier could use to provide telecommunications; (c) not limit the facilities to which dedicated interoffice transport facilities are connected, provided such interconnections are technically feasible, or restrict the use of unbundled transport facilities; and (d) to the extent technically feasible, provide requesting carriers with access to digital cross-connect system functionality in the same manner that the BOC offers such capabilities to interexchange carriers that purchase transport services. *Id.* at 20719.

<sup>171</sup> *Id.* at 20719, n.650. The Commission also found that a BOC has the following obligations with respect to shared transport: (a) provide shared transport in a way that enables the traffic of requesting carriers to be carried on the same transport facilities that a BOC uses for its own traffic; (b) provide shared transport transmission facilities between end office switches, between its end office and tandem switches, and between tandem switches in its network; (c) permit requesting carriers that purchase unbundled shared transport and unbundled switching to use the same routing table that is resident in the BOC's switch; and (d) permit requesting carriers to use shared (or dedicated) transport as an unbundled element to carry originating access traffic from, and terminating traffic to, customers to whom the requesting carrier is also providing local exchange service. *Id.* at 20720, n.652.

<sup>172</sup> 47 U.S.C. § 271(c)(2)(B)(vi); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with “vertical features” such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services.

<sup>173</sup> *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20722, para. 207.

<sup>174</sup> *Id.*

<sup>175</sup> *Id.* at 20722-23, para. 207.

55. Moreover, in the *Second BellSouth Louisiana Order*, the Commission required BellSouth to permit competing carriers to purchase UNEs, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.<sup>176</sup> The Commission also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.<sup>177</sup> Therefore, the ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching.<sup>178</sup> Thus, there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function.<sup>179</sup>

56. To comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to shared transport functionality.<sup>180</sup> In addition, a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier's point of presence to a dedicated trunk port on the local switch.<sup>181</sup>

#### **G. Checklist Item 7 – 911/E911 Access and Directory Assistance/Operator Services**

57. Section 271(c)(2)(B)(vii) of the Act requires a BOC to provide “[n]ondiscriminatory access to – (I) 911 and E911 services.”<sup>182</sup> In the *Ameritech Michigan Order*, the Commission found that “section 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity.”<sup>183</sup> Specifically, the Commission found that a BOC “must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.”<sup>184</sup> For facilities-based carriers, the BOC must provide “unbundled access to

<sup>176</sup> *Id.* at 20723, para. 208.

<sup>177</sup> *Id.* at 20723, para. 208 (citing *Ameritech Michigan Order*, 12 FCC Rcd at 20619, para. 140).

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.* at 20723, para. 209 (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20705, para. 306).

<sup>181</sup> *Id.* (citing the *Ameritech Michigan Order*, 12 FCC Rcd at 20714-15, paras. 324-25).

<sup>182</sup> 47 U.S.C. § 271(c)(2)(B)(vii). 911 and E911 services transmit calls from end users to emergency personnel. It is critical that a BOC provide competing carriers with accurate and nondiscriminatory access to 911/E911 services so that these carriers' customers are able to reach emergency assistance. Customers use directory assistance and operator services to obtain customer listing information and other call completion services.

<sup>183</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20679, para. 256.

<sup>184</sup> *Id.*

[its] 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what [the BOC] provides to itself."<sup>185</sup> Section 271(c)(2)(B)(vii)(II) and section 271(c)(2)(B)(vii)(III) require a BOC to provide nondiscriminatory access to "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively.<sup>186</sup> Section 251(b)(3) of the Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to . . . operator services, directory assistance, and directory listing, with no unreasonable dialing delays."<sup>187</sup> The Commission concluded in the *Second BellSouth Louisiana Order* that a BOC must be in compliance with the regulations implementing section 251(b)(3) to satisfy the requirements of sections 271(c)(2)(B)(vii)(II) and 271(c)(2)(B)(vii)(III).<sup>188</sup> In the *Local Competition Second Report and Order*, the Commission held that the phrase "nondiscriminatory access to directory assistance and directory listings" means that "the customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding: (1) the identity of a requesting customer's local telephone service provider; or (2) the identity of the telephone service provider for a customer whose directory

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<sup>185</sup> *Id.*

<sup>186</sup> 47 U.S.C. §§ 271(c)(2)(B)(vii)(II), (III).

<sup>187</sup> *Id.* § 251(b)(3). The Commission implemented section 251(b)(3) in the *Local Competition Second Report and Order*. 47 C.F.R. § 51.217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Second Report and Order and Memorandum Opinion and Order, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*) vacated in part sub nom. *People of the State of California v. FCC*, 124 F.3d 934 (8th Cir. 1997), overruled in part, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999); see also *Implementation of the Telecommunications Act of 1996: Provision of Directory Listings Information under the Telecommunications Act of 1934*, Notice of Proposed Rulemaking, 14 FCC Rcd 15550 (1999) (*Directory Listings Information NPRM*).

<sup>188</sup> While both sections 251(b)(3) and 271(c)(2)(B)(vii)(II) refer to nondiscriminatory access to "directory assistance," section 251(b)(3) refers to nondiscriminatory access to "operator services," while section 271(c)(2)(B)(vii)(III) refers to nondiscriminatory access to "operator call completion services." 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III). The term "operator call completion services" is not defined in the Act, nor has the Commission previously defined the term. However, for section 251(b)(3) purposes, the term "operator services" was defined as meaning "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call." *Local Competition Second Report and Order*, 11 FCC Rcd at 19448, para. 110. In the same order the Commission concluded that busy line verification, emergency interrupt, and operator-assisted directory assistance are forms of "operator services," because they assist customers in arranging for the billing or completion (or both) of a telephone call. *Id.* at 19449, para. 111. All of these services may be needed or used to place a call. For example, if a customer tries to direct dial a telephone number and constantly receives a busy signal, the customer may contact the operator to attempt to complete the call. Since billing is a necessary part of call completion, and busy line verification, emergency interrupt, and operator-assisted directory assistance can all be used when an operator completes a call, the Commission concluded in the *Second BellSouth Louisiana Order* that for checklist compliance purposes, "operator call completion services" is a subset of or equivalent to "operator service." *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20740, n.763. As a result, the Commission uses the nondiscriminatory standards established for operator services to determine whether nondiscriminatory access is provided.



listing is requested.”<sup>189</sup> The Commission concluded that nondiscriminatory access to the dialing patterns of 4-1-1 and 5-5-5-1-2-1-2 to access directory assistance were technically feasible, and would continue.<sup>190</sup> The Commission specifically held that the phrase “nondiscriminatory access to operator services” means that “a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing ‘0,’ or ‘0 plus’ the desired telephone number.”<sup>191</sup>

58. Competing carriers may provide operator services and directory assistance by reselling the BOC’s services, outsourcing service provision to a third-party provider, or using their own personnel and facilities. The Commission’s rules require BOCs to permit competitive LECs wishing to resell the BOC’s operator services and directory assistance to request the BOC to brand their calls.<sup>192</sup> Competing carriers wishing to provide operator services or directory assistance using their own or a third party provider’s facilities and personnel must be able to obtain directory listings either by obtaining directory information on a “read only” or “per dip” basis from the BOC’s directory assistance database, or by creating their own directory assistance database by obtaining the subscriber listing information in the BOC’s database.<sup>193</sup> Although the Commission originally concluded that BOCs must provide directory assistance and operator

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<sup>189</sup> 47 C.F.R. § 51.217(c)(3); *Local Competition Second Report and Order*, 11 FCC Rcd at 19456-58, paras. 130-35. The *Local Competition Second Report and Order*’s interpretation of section 251(b)(3) is limited “to access to each LEC’s directory assistance service.” *Id.* at 19456, para. 135. However, section 271(c)(2)(B)(vii) is not limited to the LEC’s systems but requires “nondiscriminatory access to . . . directory assistance to allow the other carrier’s customers to obtain telephone numbers.” 47 U.S.C. § 271(c)(2)(B)(vii). Combined with the Commission’s conclusion that “incumbent LECs must unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible,” *Local Competition First Report and Order*, 11 FCC Rcd at 15772-73, paras. 535-37, section 271(c)(2)(B)(vii)’s requirement should be understood to require the BOCs to provide nondiscriminatory access to the directory assistance service provider selected by the customer’s local service provider, regardless of whether the competitor; provides such services itself; selects the BOC to provide such services; or chooses a third party to provide such services. See *Directory Listings Information NPRM*.

<sup>190</sup> *Local Competition Second Report and Order*, 11 FCC Rcd at 19464, para. 151.

<sup>191</sup> *Id.* at 19464, para. 151.

<sup>192</sup> 47 C.F.R. § 51.217(d); *Local Competition Second Report and Order*, 11 FCC Rcd at 19463, para. 148. For example, when customers call the operator or calls for directory assistance, they typically hear a message, such as “thank you for using XYZ Telephone Company.” Competing carriers may use the BOC’s brand, request the BOC to brand the call with the competitive carriers name or request that the BOC not brand the call at all. 47 C.F.R. § 51.217(d).

<sup>193</sup> 47 C.F.R. § 51.217(C)(3)(ii); *Local Competition Second Report and Order*, 11 FCC Rcd at 19460-61, paras. 141-44; *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, Third Report and Order, Second Order on Reconsideration, and Notice of Proposed Rulemaking, 14 FCC Rcd 15550, 15630-31, paras. 152-54 (1999); *Provision of Directory Listing Information Under the Communications Act of 1934, as amended*, First Report and Order, 16 FCC Rcd 2736, 2743-51 (2001).

services on an unbundled basis pursuant to sections 251 and 252, the Commission removed directory assistance and operator services from the list of required UNEs in the *UNE Remand Order*.<sup>194</sup> Checklist item obligations that do not fall within a BOC's obligations under section 251(c)(3) are not subject to the requirements of sections 251 and 252 that rates be based on forward-looking economic costs.<sup>195</sup> Checklist item obligations that do not fall within a BOC's UNE obligations, however, still must be provided in accordance with sections 201(b) and 202(a), which require that rates and conditions be just and reasonable, and not unreasonably discriminatory.<sup>196</sup>

#### H. Checklist Item 8 – White Pages Directory Listings

59. Section 271(c)(2)(B)(viii) of the 1996 Act requires a BOC to provide “[w]hite pages directory listings for customers of the other carrier’s telephone exchange service.”<sup>197</sup> Section 251(b)(3) of the 1996 Act obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listing.<sup>198</sup>

60. In the *Second BellSouth Louisiana Order*, the Commission concluded that, “consistent with the Commission’s interpretation of ‘directory listing’ as used in section 251(b)(3), the term ‘white pages’ in section 271(c)(2)(B)(viii) refers to the local alphabetical directory that includes the residential and business listings of the customers of the local exchange provider.”<sup>199</sup> The Commission further concluded, “the term ‘directory listing,’ as used in this section, includes, at a minimum, the subscriber’s name, address, telephone number, or any combination thereof.”<sup>200</sup> The Commission’s *Second BellSouth Louisiana Order* also held that a

<sup>194</sup> *UNE Remand Order*, 15 FCC Rcd at 3891-92, paras. 441-42.

<sup>195</sup> *UNE Remand Order*, 15 FCC Rcd at 3905, para. 470; *see generally* 47 U.S.C. §§ 251-52; *see also* 47 U.S.C. § 252(d)(1)(A)(i) (requiring UNE rates to be “based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the ... network element”).

<sup>196</sup> *UNE Remand Order*, 15 FCC Rcd at 3905-06, paras. 470-73; *see also* 47 U.S.C. §§ 201(b), 202(a).

<sup>197</sup> 47 U.S.C. § 271(c)(2)(B)(viii).

<sup>198</sup> *Id.* § 251(b)(3).

<sup>199</sup> *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20748, para. 255.

<sup>200</sup> *Id.* In the *Second BellSouth Louisiana Order*, the Commission stated that the definition of “directory listing” was synonymous with the definition of “subscriber list information.” *Id.* at 20747 (citing the *Local Competition Second Report and Order*, 11 FCC Rcd at 19458-59). However, the Commission’s decision in a later proceeding obviates this comparison, and supports the definition of directory listing delineated above. *See Implementation of the Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115, Third Report and Order; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Order on Reconsideration; *Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended*, CC Docket No. 99-273, FCC 99-227, Notice of Proposed Rulemaking, para. 160 (rel. Sept. 9, 1999).

BOC satisfies the requirements of checklist item 8 by demonstrating that it: (1) provided nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers; and (2) provided white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.<sup>201</sup>

### I. Checklist Item 9 – Numbering Administration

61. Section 271(c)(2)(B)(ix) of the 1996 Act requires a BOC to provide “nondiscriminatory access to telephone numbers for assignment to the other carrier’s telephone exchange service customers,” until “the date by which telecommunications numbering administration, guidelines, plan, or rules are established.”<sup>202</sup> The checklist mandates compliance with “such guidelines, plan, or rules” after they have been established.<sup>203</sup> A BOC must demonstrate that it adheres to industry numbering administration guidelines and Commission rules.<sup>204</sup>

### J. Checklist Item 10 – Databases and Associated Signaling

62. Section 271(c)(2)(B)(x) of the 1996 Act requires a BOC to provide “nondiscriminatory access to databases and associated signaling necessary for call routing and completion.”<sup>205</sup> In the *Second BellSouth Louisiana Order*, the Commission required BellSouth to demonstrate that it provided requesting carriers with nondiscriminatory access to: “(1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems (SMS).”<sup>206</sup> The Commission also required BellSouth to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment (SCE).<sup>207</sup> In the *Local Competition First Report and Order*, the Commission defined call-related databases as databases, other than operations support systems, that are used in signaling networks for billing and collection or the transmission, routing, or

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<sup>201</sup> *Id.*

<sup>202</sup> 47 U.S.C. § 271(c)(2)(B)(ix).

<sup>203</sup> *Id.*

<sup>204</sup> See *Second Bell South Louisiana Order*, 13 FCC Rcd at 20752; see also *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574 (2000); *Numbering Resource Optimization*, Second Report and Order, Order on Reconsideration in CC Docket No. 99-200 and Second Further Notice of Proposed Rulemaking in CC Docket No. 99-200, CC Docket Nos. 96-98; 99-200 (rel. Dec. 29, 2000); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200 (rel. Dec. 28, 2001).

<sup>205</sup> 47 U.S.C. § 271(c)(2)(B)(x).

<sup>206</sup> *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20753, para. 267.

<sup>207</sup> *Id.* at 20755-56, para. 272.

other provision of telecommunications service.<sup>208</sup> At that time the Commission required incumbent LECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information Database (LIDB), the Toll Free Calling database, the Local Number Portability database, and Advanced Intelligent Network databases.<sup>209</sup> In the *UNE Remand Order*, the Commission clarified that the definition of call-related databases “includes, but is not limited to, the calling name (CNAM) database, as well as the 911 and E911 databases.”<sup>210</sup>

### K. Checklist Item 11 – Number Portability

63. Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.<sup>211</sup> Section 251(b)(2) requires all LECs “to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission.”<sup>212</sup> The 1996 Act defines number portability as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.”<sup>213</sup> In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that “[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.”<sup>214</sup> Pursuant to these statutory provisions, the Commission requires LECs to offer interim number portability “to the extent technically feasible.”<sup>215</sup> The Commission also requires LECs to gradually replace interim number portability with permanent number portability.<sup>216</sup> The Commission has established

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<sup>208</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15741, n.1126; *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

<sup>209</sup> *Id.* at 15741-42, para. 484.

<sup>210</sup> *UNE Remand Order*, 15 FCC Rcd at 3875, para. 403.

<sup>211</sup> 47 U.S.C. § 271(c)(2)(B)(xii).

<sup>212</sup> *Id.* at § 251(b)(2).

<sup>213</sup> *Id.* at § 153(30).

<sup>214</sup> *Id.* at § 251(e)(2); *see also Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757, para. 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) (*Third Number Portability Order*); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 16459, 16460, 16462-65, paras. 1, 6-9 (1999) (*Fourth Number Portability Order*).

<sup>215</sup> *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); *see also* 47 U.S.C. § 251(b)(2).

<sup>216</sup> *See* 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,<sup>217</sup> and created a competitively neutral cost-recovery mechanism for long-term number portability.<sup>218</sup>

#### L. Checklist Item 12 – Local Dialing Parity

64. Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”<sup>219</sup> Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”<sup>220</sup> Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation.<sup>221</sup>

65. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC’s customers dial to complete a local telephone call.<sup>222</sup> Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC’s customers.<sup>223</sup>

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<sup>217</sup> See 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

<sup>218</sup> See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

<sup>219</sup> Based on the Commission’s view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

<sup>220</sup> 47 U.S.C. § 251(b)(3).

<sup>221</sup> *Id.* § 153(15).

<sup>222</sup> 47 C.F.R §§ 51.205, 51.207.

<sup>223</sup> See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

### M. Checklist Item 13 – Reciprocal Compensation

66. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”<sup>224</sup> 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.”<sup>225</sup>

### N. Checklist Item 14 – Resale

67. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”<sup>226</sup> Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”<sup>227</sup> Section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”<sup>228</sup> Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under section 251(c)(4)(A).<sup>229</sup> Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory.<sup>230</sup> If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.<sup>231</sup> If a state creates such a limitation, it must do so consistent with

<sup>224</sup> 47 U.S.C. § 271(c)(2)(B)(xiii).

<sup>225</sup> *Id.* § 252(d)(2)(A).

<sup>226</sup> *Id.* § 271(c)(2)(B)(xiv).

<sup>227</sup> *Id.* § 251(c)(4)(A).

<sup>228</sup> *Id.* § 252(d)(3).

<sup>229</sup> *Id.* § 251(c)(4)(B).

<sup>230</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission’s authority to promulgate such rules, and specifically upheld the sections of the Commission’s rules concerning resale of promotions and discounts in *Iowa Utilities Board v. FCC*, 120 F.3d at 818-19, *aff’d in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). *See also* 47 C.F.R. §§ 51.613-51.617.

<sup>231</sup> 47 U.S.C. § 251(c)(4)(B).

requirements established by the Federal Communications Commission.<sup>232</sup> In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.<sup>233</sup> The obligations of section 251(c)(4) apply to the retail telecommunications services offered by a BOC's advanced services affiliate.<sup>234</sup>

## V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

68. Section 271(d)(3)(B) requires that the Commission shall not approve a BOC's application to provide interLATA services unless the BOC demonstrates that the "requested authorization will be carried out in accordance with the requirements of section 272."<sup>235</sup> The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.<sup>236</sup> Together, these safeguards discourage and facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.<sup>237</sup> In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.<sup>238</sup>

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is "of crucial importance" because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level

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<sup>232</sup> *Id.*

<sup>233</sup> See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

<sup>234</sup> See *Verizon Connecticut Order*, 16 FCC Rcd 14147, 14160-63, paras. 27-33 (2001); *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

<sup>235</sup> 47 U.S.C. § 271(d)(3)(B).

<sup>236</sup> See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), aff'd sub nom. *Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

<sup>237</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

<sup>238</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

playing field.<sup>239</sup> The Commission's findings regarding section 272 compliance constitute independent grounds for denying an application.<sup>240</sup> Past and present behavior of the BOC applicant provides "the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272."<sup>241</sup>

## VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.<sup>242</sup> Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission's many years of experience with the consumer benefits that flow from competition in telecommunications markets.

71. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.<sup>243</sup> Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. Among other things, the Commission may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.<sup>244</sup> Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission's analysis of checklist compliance, that markets are open to competition.

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<sup>239</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

<sup>240</sup> *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

<sup>241</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

<sup>242</sup> 47 U.S.C. § 271(d)(3)(C).

<sup>243</sup> In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *See Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; *see also* 141 Cong. Rec. S7971, S8043 (June. 8, 1995).

<sup>244</sup> *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets").



**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota (WC Docket No. 03-90)*

I vote to approve the Qwest application to provide in-region, interLATA services in the state of Minnesota. The record before us reflects that Qwest has taken significant strides toward opening its local markets to competition and has met its checklist obligations. Nevertheless, today's decision is not without challenge and difficulty.

It is my practice and custom when reviewing section 271 applications to accord significant deference to the relevant state commission. In a circumscribed 90-day process, the FCC cannot practically develop the familiarity with local market conditions that our partners in the states have developed. Here there was reluctance on the part of state commissioners to approve an application. This puts an even more serious than usual responsibility on us to delve into the factual record underpinning the application in question. This we have done and I, for one, am satisfied that the competitive checklist obligations that we are charged to find have indeed been found. Therefore, and notwithstanding the unwillingness of a majority of the Minnesota Public Utilities Commission to support this application, I feel confident in voting to approve today's Order.

This Order finds that the record does not demonstrate that there are ongoing violations that call into question the current openness of the local market in Minnesota. I believe that moving ahead now is the right thing to do, and that our approval, combined with essential, rigorous and sustained follow-through, can well serve the public interest.

I do not take lightly allegations that Qwest previously failed to file certain interconnection agreements. However, I continue to believe that charges of past violations are best resolved through separate federal and state investigations and enforcement actions. I commend the Minnesota Public Utilities Commission for working so diligently to address this problem in state proceedings. I am concerned that Qwest chose to file some of its agreements with the state commission just prior to filing its application at this Commission, but expect that by referring this issue to a possible enforcement proceeding, we can investigate this situation in a more appropriate setting and as expeditiously as possible.

**SEPARATE STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Application by Qwest Communications International, Inc., for Authorization to Provide In-Region, InterLATA Services in Minnesota (WC Docket No. 03-90)*

Today we grant Qwest authority to provide in-region, interLATA service originating in the state of Minnesota. I approve this Order and commend the Minnesota Public Utilities Commission and our Wireline Competition Bureau for all of their hard work. I also congratulate Qwest on achieving this goal.

Although I approve authorization for Qwest to provide in-region, interLATA services in Minnesota, I must express concern about the previously unfiled agreements that have been brought to our attention in this proceeding.

The Telecommunications Act anticipated transparency in the relationships between the competitive LECs and the ILECs. If we don't know what arrangements are being made among the carriers for the purposes of interconnection, we do not have the transparency that is integral to one of the purposes of the Act.

Section 271(d)(6) of the Communications Act is meant to ensure that each carrier that is granted Section 271 approval continues to satisfy the requirements on which such approval is based. We will not be reticent about using our enforcement authority to ensure that all carriers remain compliant.