STATE OF SOUTH DAKOTA)

:SS CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 22nd day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler
Notary Public and
Registered Professional Reporter

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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

- -

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996 TC01-0165

- -

Continued Transcript of Proceedings, Volume III
April 24, 2002

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BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION:
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PAM NELSON, VICE CHAIRMAN
ROBERT SAHR, COMMISSIONER

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MS AILTS WIEST: We'll go back on the record Qwest, you may call your next witness.
MR CATTANACH: Thank you For our next witness, we'd like to call Lori Simpson. Could you please be sworn.

LORI SIMPSON,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

MR CATTANACH: With the pleasure of the Commission, what I'd like to do is go through and introduce Ms Simpson's direct and rebuttal testimony And I will list the exhibit numbers. Regarding Checklist Item 6 for switching, her direct testimony would be Exhibit 47. Now as part of that, we have marked as Exhibit 47A a confidential exhibit to her testimony, which concerns proprietary patents So, you know, that will be marked separately.

Exhibit 48 is rebuttal testimony and those two were filed respectively October 24 of 2001 and April 2 of 2002, and that would be the case for the direct and rebuttal testimonies throughout here. And I won't repeat that.

MS AILTS WIEST: Excuse me. What was 46?

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MR WELK: I have Qwest loops.
MS. CREMER: That's just the one I introduced for -- I don't need to admit it I don't want the witness --
MS AILTS WIEST: Was it admitted?
MS CREMER: It was marked, but I never had it admitted
CHAIRMAN BURG: What was 45 then?
MS. CREMER: Washington language 1 9 14
MR WELK: That little paragraph
CHAIRMAN BURG: Was that introduced?
MS AILTS WIEST: Yes. That has been admitted. Excuse me. Go ahead
MR CATTANACH: That's okay So that would be the two exhibits of direct and rebuttal with the 47A being proprietary direct for Checklist Item 6 on switching. Exhibits 49 and 50 are the direct and rebuttal testimony for Checklist Item 7. Exhibit 49 in both of those concern on the direct testimony OS, operator services, and directory assistance which would be 7 Sub 2 and 7 Sub 3
Exhibit 50 is Ms. Simpson's rebuttal testimony for the DA portion of Checklist Item 7 only.

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Exhibit 51, Checklist Item 8, white pages Direct exhibit is 51. Rebuttal is 52 For Checklist Item 14, we will have Exhibit 53, which is her direct testimony on resale and Exhibit 54 would be the rebuttal testimony on resale. And lastly, we have Exhibit 55, Checklist Item 2 for UNE-P and that would be her direct testimony

DIRECT EXAMINATION

BY MR. CATTANACH:

Q With those exhibits in mind, Ms Simpson, if you were to testify to the substance of those exhibits today, would your testimony be the same as that which is contained in your prefiled testimony?
A Yes, it would
Q You adopt that testimony?
A Yes, I do.
MR CATTANACH: At this time, I would offer Exhibits 47, 47A, and 48 through 55 into evidence
MS AILTS WIEST: Are there any objections?
If not, they're admitted
Q Ms Simpson, would you be kind enough to provide us with a summary of those checklist items?
A Certainly. Thank you. Good morning I'm going start

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with a summary of my testimony concerning unbundled local switching, which is Checklist Item 6 The Telecom Act requires Bell Operating Systems to provide local switching unbundled from transport, local loop transmission or other services The local switching element includes access to line side and trunk-side facilities, plus the features, functions and capabilities of the switch The local switching element also includes access to all vertical features that the switch is capable of providing, including features that may not be activated in a switch
Unbundled local switching also includes the same basic capabilities that are available to the incumbent local exchange carriers' retail end-users Some of examples of those are telephone number, directory listings, dial tone, signaling, access to 911, operator services, and directory assistance
An incumbent local exchange carrier must also provide customized routing as part of the local switching element
Qwest does provide access to all technically-feasible switch features We provide customized routing functions and we provide access to Qwest directory assistance service, operator services, 911, and directory listings with unbundled local

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switching

The ROC third-party OSS test did not develop any measurements associated with unbundled local switching However, unbundled local switching is one of the elements that is provided with unbundled network elements platform known as UNE-P So Qwest performance in providing unbundled local switching is effectively measured because we measure our performance in providing UNE P No South Dakota CLECs have ordered stand-alone unbundled local switching However, Qwest currently provides more than 17,000 unbundled local switch elements as part of the UNE-P service that I just mentioned to CLECs in South Dakota

In summary, Qwest satisfies the 271 checklist requirements for Checklist Item 6, unbundled local switching

And that concludes my summary of my direct testimony for Checklist Item 6 And I'll move onto summarizing my testimony concerning directory assistance service, which is Checklist Item 7, Subpart 2 and operator services, which is Checklist Item 7, Subpart 3

The Telecom Act requires Qwest to provide nondiscriminatory access to directory assistance service and to operator services Qwest makes its

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directory assistance services and operator services available to all CLECs including resellers, those using UNE-P and other facilities-based CLECs.

CLEC end-users may call Qwest's directory assistance service to get the telephone number of any telephone subscriber contained in the Qwest directory assistance database, including CLECs' end-users' listings

CLECs end-users may use Qwest operator services to complete local and intraLATA long distance calls just as Qwest retail end-users do. Qwest provides directory assistance and operator services branding for CLECs Branding is the practice of identifying a local service provider's name on calls to Qwest directory assistance and/or operator services

CLECs have three choices for how they may brand their calls to Qwest directory assistance and operator services They can use Qwest brand They can choose to have a generic brand, which is something like thank you for using your local telephone company, or they can brand the calls with their own name like thank you for using XYZ telephone company

Qwest currently provides generic branding of directory assistance calls for three South Dakota CLECs and customized CLEC-specific branding for one

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South Dakota CLEC We currently generically brand the operator services calls of two South Dakota CLECs and we provide CLEC-specific or CLEC customized branding for two -- for operator services calls for two South Dakota CLECs

Qwest provides nondiscriminatory access to its directory assistance and operator services We provide directory assistance, service directory assistance listings, and operator services for CLECs using the same methods, the same practices, the same systems, the same databases, the same business rules and the same standards that are in effect for all of Qwest retail end-users' listings and access to those services

We provide the same priority of handling for CLEC end-user calls to Qwest directory assistance and operator services as we provide for our retail end-users

Qwest has measurements for access to directory assistance and operator services There are two measurements: one for DA, directory assistance, and one for operator services And they're referred to also as PIDS or performance indicator definitions. They are DA-1 and OS-1 and they both measure speed of access, one to DA, directory assistance, and one to

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operator services

These measurements were developed and approved by the ROC as part of the third-party OSS test and our performance measurements and results have been successfully audited as part of the third-party OSS test

CLECs don't have to use Qwest directory assistance or operator services They have options in addition to using RDA and OS As an alternative, they can provide their own directory assistance and/or operator services or they could use the services of a third-party provider

For CLECs that wish to provide their own directory assistance using their own operators but using Qwest's directory assistance database, that's an option And Qwest offers CLECs direct access to our directory assistance database on a per bit or read only database That access would give their operators exactly the same access to our database as our operators have

For CLECs that want to populate their own database rather than using Qwest database but using Qwest directory listings, we do provide access to all directory assistance listing in our database to CLECs for that purpose

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Qwest currently provides directory assistance and operator services to five reseller CLECs and UNE-P CLECs in South Dakota. They have approximately 32,200 resold and UNE-P lines. So those lines would access our directory assistance and our operator services.

No party raised any issues concerning access to operator services, which again is Checklist Item 7, Subpart 3, however one party, Black Hills Fibercom, raised an issue concerning access to directory assistance service.

Fibercom is a facilities-based CLEC that uses Qwest directory assistance service for its end-users directory assistance calls. And in its written comments, Fibercom noted that its request for customized branding of its directory assistance calls was delayed by Qwest.

However, at the time that we received the CLEC questionnaire from Fibercom, which I believe according to their testimony was in the July 2001 time frame, we did not have the technical capability to provide CLECs with DA customized branding. And the FCC has said customized branding has to be available where technically feasible.

We did, however, come to have that capability in September of 2001, at which time we called Fibercom

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and advised them that because we had had a remote switch from the Minneapolis directory assistance switch installed in Sioux Falls, we were able then as of September to provide customized branding to Fibercom. And what Fibercom needed to do was to haul its directory assistance traffic to the new remote directory assistance switch so that we could do the branding.

So they placed orders for the trunks to haul their DA traffic to our remote switch in Sioux Falls. We got those orders from Fibercom for the first time in October of 2001. The orders had errors and they were returned to Fibercom for correction and Qwest received corrected orders in November, about a month later.

We gave them a firm order confirmation based on their November order for the trunks and the due date was December 11 of 2001. On or just before around December 11, Qwest called Fibercom and advised that the trunks were ready and discussed with them the normal procedures for turning over the trunks to them on the due date.

At that time, our technician apparently also mentioned to John -- I'm sorry. I don't know his last name, but according to our notes it was a person named John at Fibercom, that they had also apparently ordered

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that their existing trunks be disconnected. And our technician mentioned to Fibercom, to John, that if we did that, they had not made any provision for providing busy line verify or busy line interrupt service, which was apparently being accommodated by virtue of the existing trunks which were going to be disconnected because the new trunk group was being put in place.

So according to our notes, John advised that they had not thought of that or weren't aware of that or whatever. I don't have the exact words that were used, but advised that Fibercom would then prefer to hold the installation of the new trunks and not have them turned over on December 11, as well as the disconnection of the existing trunks so they wouldn't use their BLV, busy line verify, and BLI, busy line interrupt, capability. And we expected to hear back from Fibercom.

And it wasn't until we received their written comments in this proceeding in the January time frame that we became aware that we hadn't heard back. I suppose we were aware of it but it was brought to our attention again that they considered it to be a problem that their directory assistance branding and these trunks hadn't been completed.

So after that time, we did contact Fibercom,

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and to make a long story that I'm dragging out here shorter, we reached resolution with Fibercom by doing this. We discussed a way to both take out their existing trunk group and to accommodate their BVL and BLI service on the new trunk group by, as I understand it, doing "muxing" of the new trunk. So in other words, they were able to disconnect the old trunk group, say whatever the cost was of having that trunk group in place, and accommodate both the hauling of the directory assistance traffic as well as the BVL and BLI service on the new trunk group.

And all of that, I think, was discussed in the early February time frame with Fibercom, and according to Fibercom's testimony, the directory assistance trunks as well as the CLEC customized branding was in place, I believe on March 13, according to their written testimony.

So to sum up, in my view Qwest satisfies Section 271, Checklist Item 7, Subpart 2, which is nondiscriminatory access to directory assistance service and Subpart 3, which is access to operator services.

And I will move onto white pages directory listings, which is Checklist Item 8. Qwest provides white pages directory listings to all CLECs including

reseller CLECs, those using UNE-P and other facilities based CLECs. We provide exactly the same listings options for CLECs as we provide for our retail end users. And there are three types of listings, primary, premium, and privacy. And I won't describe those unless you want me to but again, exactly the same listings options are available to Qwest retail end users as to CLECs.

CLECs' listings are nondiscriminatory in appearance and in integration in our white pages directories. CLECs' listings are in the same font and size in our directories as Qwest retail listings. You can't look in our white pages and pick out a CLEC's end users versus us a retail end-user. CLECs aren't separately listed or identified or classified in our white pages. They're fully integrated. They're not set out separately.

CLECs listings are as accurate and reliable as the listings that Qwest provides for its retail end users. Qwest's processes and procedures are the same or substantially the same for CLECs' listings as they are for Qwest retail listings so that CLECs' listings are accurate and reliable.

The same systems are used for all listings. All listings are commingled in Qwest's listings

database and commingled listed are supplied to Qwest's primary directory publisher, Qwest Dex. And by "commingled" I meant we send a single file to Qwest Dex that has integrated CLEC and Qwest retail end-users. They aren't sent separately or otherwise distinguished for Qwest Dex.

CLECs may verify the accuracy of their end users' listings. CLECs can view their listings as they appear in Qwest's listings database via a new Web based application known as DLIS, which stand for the directory listing inquiry system. They can go on-line and look at their listings real-time as they appear in our listings database.

This is something we've implemented last September. It's been very well received by CLECs and is very useful to them so that they can process accurate listing orders and also verify the existence of their listings. We also provide verification proof reports to CLECs on a monthly basis. These reports show all CLECs listings that have been added or changed since the last month's report. There's no process like that in Qwest retail.

Qwest also provides on-demand reports that show all of a CLEC's listings. A CLEC can ask us at any time for a snapshot of all of their listings so

they can see what we show they have in the way of listings and of course CLECs can call us at any time to check on individual listings.

We also provide extensive detailed in-person training on listings to CLECs at no charge. We've had many sessions in numerous cities. Representatives from more than 50 CLECs have attended those sessions. We also provide extensive written listings reference materials to CLECs. They get those at the training classes or they can just go on-line on our website and print a volume of listings, training materials, that is quite detailed and extensive and I believe is used by every CLEC that submits listings to us.

Directory close dates are provided to CLECs and the same directory close dates apply for CLECs and for Qwest retail end-users. Qwest has directories delivered to CLECs' end-users under the same terms and conditions as they are delivered to retail end-users.

We also provide directory listings to CLECs if they want to publish their own white pages directories. We have two measurements for listings, DB-1, again that's a PID, measures the timeliness of updates to our listings database, and DB-2 measures the accuracy of updates to our listings database. These measurements were developed and approved by the ROC via

the third-party OSS test and these measurements and their results have been successfully audited in the third-party OSS test.

Qwest's listings database currently contains more than 58,000 listings for 14 South Dakota CLECs.

One party, Midcontinent, raised an issue and questions concerning white pages directory listings. Midcontinent stated it had experienced listings problems. We meet with Midcontinent on a monthly basis, that is our service managers meet with representatives of Midcontinent on a monthly basis, and have been doing so for some time now.

In those meetings, it was brought to our attention, as I understand it, that there were listings issues being experienced by Midcontinent, inaccurate listings. They had examples of those. As a result of those discussions, Qwest has implemented a process whereby Qwest checks 10 percent of all of the orders submitted to Qwest.

Now that's not just listings orders. All of the Midcontinent orders. We do a check of 10 percent of the orders. We compare what Midcontinent sent us on its LSR to what Qwest processed. And as an end result of that LSR, if we find errors, we do a root-cause analysis to understand why there were errors and we

take steps to retrain the Qwest those personnel who were responsible for the errors

Midcontinent also stated in its written testimony that Qwest interconnect service center personnel are not trained on listings And that is not an accurate statement They are in fact trained on listings And the initial training for our interconnect service center personnel has been increased by eight hours Just the listings training portion of their training has been increased by eight hours

Qwest has confidence that the processes we have put in place to address Midcontinent's listings issues has reduced the number of listings errors experienced by Midcontinent And it's my understanding that Midcontinent has expressed that sentiment also in our monthly meetings with them

And in sum Qwest has satisfied Section 271, Checklist Item 8, white pages directory assistance listings

I have two more Next is resale, which is Checklist Item 14 The Telecom Act requires Bell Operating Companies to offer for resale at wholesale rates any telecommunication service that the carrier provides at retail to subscribers who aren't

telecommunications carriers

We also have the duty to not prohibit and not to impose unreasonable or discriminatory conditions or limitations on resale And, finally, with regard to resale, we have to charge wholesale rates that are based on avoided costs

Qwest does offer all of its retail telecommunications services for resale Resale discounts are applied in South Dakota to resold services and restrictions on resale are limited to those approved by the FCC or this Commission

Qwest provides its retail telecommunications services for resale on a nondiscriminatory basis, that is in virtually the same time and manner as the same services are provided to Qwest retail end-users. CLECs have access to the same preordering and ordering information as is available to Qwest retail They have access to the same installation intervals as are available to Qwest retail for the same services They have access to the same repair intervals as are available to Qwest retail, and the same technicians are used to install Qwest retail services and comparable resold services

Qwest measures its performance with regard to resale Performance measurements have been developed

and implemented to show that Qwest provides and maintains resold services at parity with Qwest retail These measurements again were developed and approved by the ROC via third-party OSS test and these measurements and results were successfully audited in the ROC third-party OSS test Our audited performance results demonstrate that Qwest is providing service to competing carriers in substantially the same time and manner as Qwest provides services to itself as required by Section 271 of the act

Qwest currently provides nearly 15,000 resold local exchange lines in South Dakota to five reseller CLECs We also provide more than 700 resold private lines and six resold Qwest DSL services to South Dakota reseller CLECs

Midcontinent raised some questions concerning resale and I'll summarize them briefly Midcontinent stated that it had experienced some resale billing problems, including Qwest applying an incorrect wholesale discount to its resale bills

It's my understanding that Qwest's current bill is correct Again, in those monthly meetings that Qwest has with Midcontinent, our service managers' meeting with Midcontinent, this issue was raised and Qwest took steps to not only correct the back billing,

the balance on Midcontinent's resale bills, to reflect the correct amount that should have been billed, but it's also my understanding that the current charges on the current bill are now correct so that going forward Midcontinent's resale bills will be correct

It's also the case that Qwest agrees now via the change management process, the CMP process that Judy Schultz testified about, I understand I think on Monday, as part of that process, Qwest was asked and agreed to provide notice to CLECs when it changes the amount that it's going to bill a CLEC

With those fixes in place, we anticipate that Midcontinent's experience should be better going forward and it should also receive notice going forward when Qwest changes the amount it's billing Midcontinent, as well as other CLECs

The second issue in general that Midcontinent raised concerned notice about a new resale offering called SmartPak And Midcontinent, in its direct testimony, indicated that it learned about this service offering from its customers In fact, Qwest did provide notice to Midcontinent that that service was available and Qwest does, indeed, give notice of new retail products and services on or before the date that they are available to reseller CLECs

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Qwest has agreed in its SGAT and its agreement with KMC to provide resold services at least equal in quality and in substantially the same time and manner that Qwest provides these services to itself, its subsidiaries, its affiliates, other resellers, and Qwest retail end users.

In summary, Qwest satisfies Section 271 requirements for Checklist Item 14, resale.

And the last checklist item I have is Checklist Item 2, unbundled network element platform, or UNE-P. This is just a part of Checklist Item 2. There are other witnesses, Karen Stewart and Barb Steel, who testified also about parts of Checklist Item 2. Karen hasn't yet but she will.

The Telecom Act requires that in order to comply with the requirements of Checklist Item 2, a Bell Operating Company must show it's offering nondiscriminatory access to network elements in accordance with the requirements of the act. The act also 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 at rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

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The act also requires that we provide unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service. And the FCC's rules contain the following obligations in part: That an ILEC, incumbent local exchange carrier, cannot separate combined UNEs, unbundled network elements, unless requested to do so by the purchaser of the UNE.

So UNE-P combinations are bundled or preassembled combinations of unbundled loops, unbundled local switch port, and unbundled shared transport. They're provided in finished form and delivered to a CLEC's end-user customer.

Qwest provides access to our directory assistance service, our operator services, our 911 and our directory listings with UNE-P. We will convert existing retail or resold or other services to UNE-P combinations, and we'll also provide new UNE-P combinations that are not currently interconnected or functional in Qwest's network. We provide switched access usage detail to UNE-P CLECs, and we provide originating local usage call detail to UNE-P CLECs.

The standard for providing UNE-P is parity with Qwest retail for comparable services. Service

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intervals for UNE-P combinations are the same as the service intervals for equivalent services provided to Qwest retail end-users.

The ROC third-party OSS test has developed performance measurements for UNE-P. Those performance measurements and the results have been audited successfully in the ROC OSS test and Qwest's audited results demonstrates that we're providing UNE-P service to competing carriers in substantially the same time and manner as Qwest provides comparable services to itself.

We currently provide more than 17,000 UNE-P combinations to three South Dakota CLECs. No parties submitted any comments with regard to UNE-P in South Dakota that I have addressed.

So in sum, I would summarize by saying that Qwest satisfies the Section 271 checklist requirements for Checklist Item 2, UNE-P.

That concludes the summary of my testimony.

MR. CATTANACH: Thank you.

Ms. Simpson, she's now available for cross.

MS. AILTS WIEST: Do you have any questions, Mr. Gerdes?

MR. GERDES: Yes, I do.

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CROSS-EXAMINATION

BY MR. GERDES:

Q. Good morning, Ms. Simpson.

A. Good morning.

Q. I'd like to go over several aspects of your testimony as it relates to some of the items that Midcontinent -- we've been calling Midcontinent "Midco" around here so if I slip, you'll understand, I assume?

A. I will.

Q. Okay. That Midcontinent has raised. You'll have to bear with me. There are a lot of moving parts to my file here.

The first thing I'd like to talk to you about is this issue with the white pages. Perhaps we can shorten this up some but it is true, is it not, that there was a point in time when Midco experienced a rather considerable number of problems with white pages. Would that be a fair statement?

A. I wouldn't agree with your characterization that they experienced a fair number of problems. Presuming that Mr. Simmons' testimony provides what appears to be all of the listings problems that Midcontinent or Midco has experienced, it is actually quite a small percentage of Midcontinent's total listings, in fact less than 1 percent, which would indicate that we're providing

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accurate listings at a rate of 99 percent, which is, in our opinion very good

Q Well it is true, is it not, that the nature of the problem was significant enough to where Midco and Kathy Miyake of your company decided that it was serious enough that it required a project to look at and try to ferret out what the problems were, isn't that true?

A I know that Mr Simmons mentioned a project and actually communicated with Kathy Miyake and her supervisor and I wasn't able to confirm that I don't doubt what Mr Simmons says I just wasn't able to get any information about that

It is certainly true that in those monthly meetings with Midcontinent, although Kathy Miyake I don't think is a part of those, that we have discussed the listings problems I don't mean to diminish problems because if your listing is not in the directory, that's a serious thing So I don't mean to diminish it, just to put it into perspective

Q Well

A I'm sorry If I could finish It is also the case that we are sampling Midcontinent's orders so that we can discover if and why we're making listings errors and take steps to correct that

Q Okay So you state in your rebuttal affidavit that

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Midcontinent did not provide the list of 80 listings that we had a problem with so you could not respond to that issue

Now as a matter of fact, Midcontinent had been corresponding with Kathy Miyake over that, had they not?

A Again, I did communicate with her and her supervisor, Rossana Robinson and I was not able to obtain -- what I said in my rebuttal was truthful as to my ability to obtain a list of listings

Mr Simmons certainly didn't provide it, so that was an accurate statement at that time. He has since provided a list of listings But I was not able to obtain internally within Qwest that list of listings I don't doubt what you're saying. I just didn't --

Q Well, okay, our people were talking to your people and they had identified a problem and they were working on it, right?

A I would agree with that

Q Thank you And it is true, is it not, that the problem can be as simple as the difference between a -- when we're talking about entering white pages listings, the problem can be as simple as the difference between entering a comma and entering a semicolon; isn't that

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true?

A Yes

Q And while most of us folks sitting in this room wouldn't think that's a huge problem, the difference would be that for my listing for example it would be the difference of whether it appears as a business listing or a residential listing; correct?

A You are correct

Q Okay So if that's done wrong, my listing appears in print inaccurately; correct?

A If a colon versus a comma is used, it would appear as a business -- semicolon indicates business listing comma indicates residence listing So you're correct that if the wrong punctuation is used, a residential listing could appear as a business listing

But if I may underscore again that the percentage of listings that Mr Simmons supplied for which you experienced that problem was a minuscule percentage of Midcontinent's overall listings

Q Well, accept for a moment my figure of 68 listings and we have a confidential exhibit that we'll later offer or I can show it to you now, if you want, of 68 listings where this was a problem To a small company like Midcontinent, wouldn't 68 listings be a significant problem?

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A That would be for you to say Any listings error is significant I again do not diminish that But our performance for listings is a standard of parity with Qwest retail We do not have error-free listings in Qwest retail

Q So if Midco's experience is as bad as yours is, then that's okay?

A Well, Mr Gerdes, that's the standard that's been set, as good as Qwest retails is 99 percent is pretty good and you can tell me it's not, but I think it is

Q Okay You'll agree with me that Midco's customers nonetheless are mad at Midco and not Qwest when that happens?

A I don't know, but I would not doubt that would be the case And again, I don't mean to diminish a bad listing A bad listing is a bad listing

Q And, of course, it's really a problem when a listing that somebody wanted to be unpublished is in fact published; isn't that true?

A That can be a serious problem whether it's a CLEC end-user or Qwest retail end-user

Q That's another thing Mr Simmons complained about, was it not?

A He did say there was a listing you had indicated should have been nonpublished and was published in a printed

shows back
Q Not only that, it was not published in Qwest's book because we caught that in time but Qwest had already shipped off the information to McLeod and it was actually published in McLeod's book, correct?
A I understand you to have said that I was not able to verify that information
Q Is that because you didn't ask?
A No
Q Okay Do you doubt that that's what occurred?
A I don't doubt you or Mr Simmons
Q I have a confidential exhibit which will be Midco 3 that outlines that in great detail Again, I'll show it to you if you want
A I've seen those
Q Okay So you now know that that occurred If you have seen the confidential exhibits, you now know that that did in fact occur, correct?
A I know that your confidential exhibit says it occurs I wasn't able to confirm it within Qwest
Q So if you couldn't confirm it within Qwest, does that mean it didn't occur?
A No I didn't say that
Q Okay Thank you You indicated in your affidavit talking about one of the -- well, I'll back up You're

aware that part of what Mr Simmons complained about in his testimony were -- I think it was three dropped business listings that didn't get put in the phone book?
A You know I don't recall that from his testimony
Q And I might be I should have looked before I talked Let me see
I'm sorry It's one instance In his testimony, he talks about one business listing that was missed in August of 2002 which has launched a series of liability negotiations Do you recall that?
A Yes I do
Q Okay Excuse me It was one listing You indicate that Qwest has no knowledge of any liability negotiations? Did you talk to Mr Toll?
A I did not talk to Mr Toll about this
Q Okay Would it surprise you to hear Mr Simmons testify that he had talked to Mr Toll about that?
A No I understand they speak It didn't occur to me to ask him, or I might have
Q Okay And, of course, that can be serious business if a person's business listing is dropped, isn't that correct?
A Yes I did get some information about that, if I could share that with you

Q Has Qwest ever gotten sued over a business listing being dropped?
A Oh, indeed, many, many
Q So that's a problem that a carrier would be most concerned about
A It's a serious thing when a business listing is omitted from a directory But I would like to tell you that it's my understanding that what happened was that Midcontinent won over, so to speak, and if I'm saying anything that's confidential here, I need to stop because this is contained in your confidential exhibit I don't have to name names I could speak generally
Q Generally speaking, that's why those are confidential So go ahead
A So go ahead? All right
Q If you can talk without --
A Without naming
Q Right
A It's my understanding that an end-user was won from an existing reseller CLEC by Midcontinent and in that activity what happened was Midcontinent issued disconnect orders for the existing resold service that belonged to the other CLEC, which is typical procedure
Disconnect orders take out stuff and including listings And so those listings, as a result

of that disconnect order issued by Midcontinent -- I believe it was August 28 of 2000 was the application date from Midcontinent concerning that disconnect It wasn't worked until sometime later in September
But that disconnect order took out the listings and it's my understanding that Midcontinent was serving or going to serve that end-user with unbundled loops
What needs to happen in that context is that Midcontinent should have issued a stand-alone listings order that would have been a match for its unbundled loop orders to establish or reestablish or maintain the listings for that end-user and Midcontinent did not do that
So the listings -- because the timing was such, the listings remained -- or went into the 2000 Sioux Falls directory because the close date had already passed at the time that the disconnect order was worked So the listing remained in the 2000 Sioux Falls directory but the disconnect order took the listings out of Qwest's listings database So the listings were not sent there to our directory publisher for our next publication of the Sioux Falls directory which would occur, I believe, in August of 2001 And Mr. Simmons says 2002 but I'm sure he must mean 2001

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Because you can also make many, many changes to an August 2002 directory.

So what happened was the disconnect order was processed and Midcontinent did not issue a stand-alone listings order to reestablish the listings associated with its unbundled loops associated with the end user. Unbeknownst to Midcontinent, those listings are not there. And then when Midcontinent discovered that, because its end users apparently called it, after the 2001 directory came out, Midcontinent did issue a stand-alone listings order a year late, effectively, in August of 2001, establishing the listings. And they're there now and all is well and they will go into the next directory, all things being equal.

The other thing that is surprising about the situation, in addition to the listings order not being submitted to Qwest is that Midcontinent -- again, this is in your confidential exhibit so stop me, if you feel I'm saying anything I shouldn't. But Midcontinent indicates in your confidential exhibit that you have a practice of checking the monthly verification proofs that you receive.

This listing would not have been in your monthly verification proofs starting in the September or October 2000 time frame. And you indicate in your

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safety. That you can't verify why you didn't check the verification proofs or what went on there because the Midcontinent employee who would have done that is no longer with you.

So for 11 months, I think you would have had verification proofs that would not have contained this listing. Well, they would have been in the first verification proof after the activity. That's how it works. So that's a lot of time to have passed for you to have checked on this listing and it didn't occur. That's what I know about the listing.

And I appreciate the fact that it was dropped, but I haven't found anything that indicates that Qwest was responsible for the omission.

Q It's true, is it not, that exhibit also indicates that Midcontinent believes that that listing proof had been checked but that the person is not working at Midcontinent now so it can't be verified?

A If you say -- I don't have it in front of me but if that's what it says, I believe you.

Q And it's true also that that exhibit says that Midcontinent understood that when it ordered [name deleted] -- or, excuse me -- strike that. Strike that from the record. When it ordered the customer's line to be hooked up, that it understood that the listing

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would also be added to the phone book; isn't that true?

A I think you mean "retained" in the phone book because it was there. It may have believed that, but that is not the practice. When you issue a disconnect order, I think that Midcontinent would, as well as others, be familiar with the fact that that takes things out of service. A disconnect is a disconnect and terminates things. So they may have believed that but without it issuing a stand-alone facilities-based CLEC listings order, which it did a year late, it should not have believed that.

Q Well, you were quoting from the exhibit. Let me quote from the exhibit as well. It says, "What Midcontinent does when bringing an account over from another CLEC is place the order to convert the account as is or as specified. The listing should come with the number and we verify the Qwest monthly verification listing record that the listing did move with the number." Did you read that?

A I read that but "as is or as specified" does not apply in the scenario that took place. "As is or as specified" would indicate that they were converting, for example, retail service to resale service and you issue an order that is convert to resale as specified or as is, in which case things are retained as is or

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changed as specified.

What Midcontinent issued was not an as specified or as converted or whatever those words are to order. They issued a disconnect an unbundled loop order and no companion stand-alone listings order until a year later. So they did not issue a specified -- that would apply to resale or UNE-P and this was unbundled loop. It was not resale or UNE-P in my understanding.

Q Are you telling me there are a different set of rules for resale than there are for unbundled and UNE-P?

A There are a different set of rules for how you submit your listings orders to Qwest. And that's all included in that training material that I mentioned in my lengthy summary.

Q You questioned Mr. Simmons' comment that directory listings training is optional. Was it ever optional?

A I don't believe that it was. I asked about that because that's a serious problem if it was optional. I don't believe it was.

Q I didn't ask you what you believed. I asked if it was ever optional.

A I don't think it was.

Q Are you maybe saying you don't know?

A I guess you could say I don't know because I --

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Q Thank you
A I asked and it's certainly not optional today
Q Okay
A And nobody confirmed for me that it ever was
Q I'm trying to remember Did you say that the amount of training has been increased?
A Yes
Q Okay For the people that enter these listings?
A Yes
Q Let's move onto this SmartPak issue, which is covered on your rebuttal affidavit starting on page 3 under Checklist Item 14 Do you know generally what I'm talking about?
A Yes
Q If you've read the prefiled exhibits, then you know that this all started in about October of 2000; correct?
A I'm thinking
Q It was announced --
A September, yes
Q It started in September and it was about October when Midco started trying to get this thing hooked up; correct?
A I don't recall Mr Simmons saying October, but if you say that's what he said, I believe you.

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Q Well, here
MR GERDES: I apologize, Commissioners I had been intending to mark these the old-fashioned way, the way we used to and then we kind of changed so we'll do it one at a time
MR GERDES: I believe the parties all have copies of the exhibits I have extra copies for the Commissioners
MS AILTS WIEST: Yeah My understanding is you gave them to the parties but you never filed it with the Commission
MR GERDES: Right So can I hand those --
MS AILTS WIEST: Yes We don't have them
MR CATTANACH: If I may ask, Counsel, are you intending to introduce this exhibit into evidence without Mr Simmons testifying?
MR GERDES: I'm going to try to do that Because, otherwise, we'll have to ask this witness to come back when Mr Simmons testifies
MR CATTANACH: I don't want to get ahead too far in the game, but before we pass exhibits out, I don't think he can introduce into evidence the testimony of the witness without that witness affirming it

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He can certainly ask did Mr Simmons say X, Y, or Z He can show her that She can say yes, he did or no, he didn't It wouldn't be offered for the truth of the matter asserted She can simply say he said it or didn't say it She can respond to whatever testimony he wants, but the exhibit shouldn't come into evidence itself
MS AILTS WIEST: Is that okay with you, Mr Gerdes? Or like you said, the other possibility is we wait for Mr Simmons' testimony and then we call this witness back Otherwise, you can go ahead if you don't think you need to actually have them admitted and ask your questions now
MR GERDES: As long as I'm entitled to ask the witness questions from the exhibit, I don't have -- as long as I'm entitled to ask questions from the exhibit, I don't have a huge problem The problem is the Commissioners aren't going to understand what's going on if they don't have the exhibit in front of them
MS AILTS WIEST: Well, we've had a number of exhibits in front of us that haven't been admitted All of our prefiled --
MR GERDES: I understand that That's why I'm slowing down here a little bit Typically, a hearing would be held whereby we have direct testimony followed by reply testimony followed by rebuttal testimony It would all go in that order And so we could then plan our evidence accordingly
Now what we're doing is lumping both the direct testimony and the rebuttal testimony at the same time for the convenience of the Qwest witnesses and then we are left to testify after they've given all of their testimony, and it seems to me that some kind of accommodation needs to be made so that we can present our testimony in an -- or our evidence, I should say, in an orderly fashion as well So, quite frankly, it seems to me it would work better if the exhibit is available to staff and to the Commissioners while I'm asking the questions
MS AILTS WIEST Right Does Qwest have any objection to having those exhibits handed out to the Commissioners?
MR CATTANACH: Just so I understand if I could make sure I'm tracking, are we talking

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Mr Gerdes, about an exhibit to his testimony or do you want to admit his testimony itself?

MR GERDES: An exhibit at this point

MR CATTANACH: If it's just an exhibit to his testimony, I have no problem showing the witness an exhibit to his testimony If what you're saying is I want to introduce Mr Simmons' testimony as though he were sitting here testifying other than him coming, that's the rub I was having

If you're saying to look hypothetically at Exhibit 4 to Mr Simmons' testimony, I don't have a problem showing the witness that and we should be able to get along fine

MS AILTS WIEST: And you have no problem with us getting those exhibits now?

MR CATTANACH: No That would be fine

MS AILTS WIEST: We do not have those exhibits

MR GERDES: It might work if we took a little break while I'm getting this straightened out because I had them all packaged up

MS AILTS WIEST: Let's do that

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15 minutes

(A short recess is taken)

MS AILTS WIEST: Mr Gerdes

MR GERDES: Thank you

(Exhibit 12 is marked for identification)

Q Ms Simpson, I'll show you what has been marked as Midco Exhibit 12. And for the benefit of everyone else in the room, all of the exhibits are premarked at the middle of the bottom, and it would say Midco 12 at the middle of the bottom of that exhibit which is one of Mr Simmons' exhibits.

This exhibit is identified as being a summary of Midcontinent's SmartPak and area-wide calling plan problem. Have you read that document before?

A I received it last Thursday afternoon and I was able to skim it I haven't been able to study it

Q Okay And I guess my point is that according to this document and confidential Exhibit 12A, which is the actual detail, this would appear to indicate that Midco made its first call on October 2 to its Qwest account manager with reference to this SmartPak plan

Would your information indicate anything to the contrary?

A No.

Q And this exhibit would also indicate that at that time

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he was left a message that Midco needed information to order the product and that thereafter on October 30, a conference call was had with the account manager and he indicated that the area wide calling plan option was not available

Would your information indicate anything to the contrary?

A I actually was not able to verify that particular point so I don't know I don't doubt Mr Simmons but I was not able to verify that within Qwest

Q Can you talk to the account manager?

A I did

Q His name is David Cross, is that correct?

A No I talked to Ann Binkley and Joan Macastaler David Cross I think I heard in another setting, is no longer an employee of Qwest

Q And then that exhibit would also indicate that the Qwest account manager on October 31 indicated that the area wide calling plan is not available for resale

Would your information indicate anything to the contrary?

A Again, I was not able to verify that fact

Q I didn't ask you if you verified it Would your information indicate anything to the contrary?

A Yes, it would because I was not able to verify it so I

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can't

Q Okay What did your information indicate that was contrary to that?

A Our account manager had no indication that this information had been given to Midcontinent, that SmartPak was not available for resale

Q Okay And then on November 3, it says that the account manager again said that the area wide calling plan is not available as a resold product

Would your information indicate anything to the contrary?

A I was not able to verify that we told that to Midcontinent

Q Okay And you checked each of these dates with someone?

A No I received these dates last Thursday and I did not have time to check the dates themselves I checked based on Mr Simmons' original testimony which I don't think included this detail

Q No, it did not That's true And to your conversation, what was a conversation that just said did we tell them this and they said no and that was the end of it? That's the kind of conversation you're talking about?

A What I asked was what was the nature of your

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conversation with Midcontinent concerning SmartPak in a very general way and very specifically based on Mr Simmons' original testimony

Q Okay And you were told what?

A I was told what SmartPak was, that it's available for resale, that it's being provided to Midcontinent for resale, that there were some billing issues associated with it that were brought up at the monthly meetings, that we were taking steps to correct those and we believe have corrected them, that there was the 10 percent check of Midcontinent's orders, which would include our checking whether SmartPak orders were issued correctly

So I got a response that was to the allegations that Mr Simmons made in his original affidavit or testimony

Q Okay But, of course, one of Mr Simmons' complaints wasn't about it being available now, it was about it being available when they first tried to get it; isn't that true? Which would be almost two years ago, a year and a half?

A I don't remember Mr Simmons' original testimony including a complaint that he couldn't order it at all I thought the issue was he claimed he didn't know about it and failed to mention that we had indeed sent him a

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notice on September 8 as he says here

He indicated he first learned it from a customer in his original testimony This changes his testimony He admits now that he did receive a notice on September 8

Q But you aren't maybe picking up on the point I was trying to make You said that when you checked out Mr Simmons' story, that you were told by whomever you talked to that SmartPak is available to Midco now

And that was in response to my question as to whether you had verified whether it was available back when they first started it And the fact that it was available now doesn't indicate that it was available a year and a half ago; correct?

A I don't remember Mr Simmons complaining in his original testimony that he couldn't order it so I didn't ask did you tell him he couldn't order it -- first of all, I wasn't speaking to the person who apparently he spoke to But I asked them to check notes and things Because he didn't claim that in his original testimony, I had no reason to ask if he had been told he could order it

What I recall is -- and I'm going from memory now so I can be corrected I recall Mr Simmons saying in his original testimony that he complained of not

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being aware of SmartPak as an offering until a customer told him about it That's what I pursued in part with our account team and found out that that wasn't true, in fact, he had been given notice Midcontinent had been given notice

Q But nothing that -- what I'm getting at is nothing that you were told during this initial conversation then dealt with the fact that Midcontinent had trouble hooking it up?

A I don't recall that being part of our discussion because Mr Simmons didn't raise it, nor did our account team indicate they had any notes to that effect or any recollection of recent conversations about that

Q Okay Is it your testimony now that products such as SmartPak are, in fact, available to CLECs at the same time they're made available to your customers?

A Yes

Q How much lead time are they given, the CLECs that is?

A Resellers CLECs, in fact I think all CLECs in South Dakota, would receive a notice on or before the date that the service is available for what is considered in South Dakota a non -- I'm sorry, a competitive service which includes SmartPak for what I understand to be categorized in South Dakota as noncompetitive services. CLECs receive at least a

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30-day notice before those products are available

Q And the notice consists of what, a copy of the tariff?

A No, it does not The tariff -- tariffs, products, and catalogs are available on our website to CLECs, but the notice, it announces the new offering I think there's a brief description of it And I believe there would be an inclusion of the dates when it's available

Q Is the tariff available on your website when the notice goes out?

A No. I don't know the answer to that question I would expect that the website tariff product or catalog is updated at the same time the Commission is updated, but I'm speculating I don't really know the answer

Q Well, one of the Complaints that we've heard is that even though the notice is given, the details aren't available until shortly before the product is implemented

Can you respond to that?

A That may be true from the perspective of what's available in the tariff catalog website location, but that wouldn't be true in the sense that if you called your service manager, account manager you couldn't get some details about a product or service

Q Provided they're available, of course?

A The person?

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Q Yeah
A Well, I think that's true for all of us
Q Yeah Might not it be better if the information was on the website?
A Well, it is on the website I think what you're asking about is when, and I really can't precisely tell you when it's on the website. We do have product catalogs for resale that describe most or all of the products and services or all of the products and services that are available for resale.

And I think that the change management process dictates when those product catalogs will be updated and how.

And I think that to the extent that CLECs participate in the change management process, it's where they have their voice to talk to us about any dissatisfaction as to updating that kind of information.
Q Well, you would agree with me, wouldn't you, that it wouldn't be sufficient for a CLEC to get the details on how to implement a program the day the program went into effect, but that, in fact, the CLEC would need that 30 days from the notice to know the details so that they could be ready to go when the product was implemented.

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A No I wouldn't agree with that. If the CLEC doesn't have any interest in a product or service, it would be irrelevant when they got notice And if they were interested, it is available to them at the time that they receive the notice so they could order it, literally.
Q But they would order something without knowing the details?
A Well, they could obtain the details from their account manager, service manager or our websites
Q Well, you just got done telling me you don't think that information is available on the website at the time the notice goes out
A Well, I was speculating And what I said is I'm not sure and I don't know when the website is updated precisely.
Q Let's go back to my original question and that is you would agree with me, would you not, that a CLEC should be entitled to some lead time to implement a new program?
A No, I wouldn't I think that the lead time that we give is adequate.
Q Okay. There is an issue that was raised by Mr. Simmons dealing with billing and they were billed at the wrong rate. You indicated that you're working

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on that; correct?
A I think you're referring to the discount applied to resold services?
Q Right
A It's my understanding in talking to the account team as well as our resale product manager that it has been corrected and your current bills should be correct at this point in time
Q Right This one was corrected
A I'm not sure I understand
Q The one that we're talking about the 18 50 to $16
A That's a different issue
Q Oh, okay I think we were talking about two different things I'm talking about the item on page 5 of your rebuttal testimony dealing with internal controls and where there was a mix-up And to shorten it up, Qwest used an old rate and charged Midco 18 50 when $16 was actually the correct rate And there was some problem getting that straightened out but I think it's now been resolved
A I think you're referring to the rate for voice messaging service?
Q Right
A And I think it's the opposite if I'm not mistaken You were underbilled not overbilled I may have

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misunderstood Mr Simmons' testimony I see someone shaking their head no to me In either case we were as I understand it, billing an incorrect rate not the rate contained in our tariff catalog or price list

It was discovered it was corrected and I really do view that as a single incident, as inadvertent and inappropriate as it may have been that it occurred I don't think it's a systemic problem It's also the case that we agree to give notices in the future of those kinds of rate changes, rather than simply implementing them and asking you to discover them on your bill for yourself
Q And then the last item that you dealt with in your rebuttal affidavit deals with posting billing detail And we're talking about a situation that stretched out from October 10, 2001 and at least from Midcontinent's standpoint, to just a couple of weeks ago where Midco was overbilled to the tune of over $200,000 And that apparently just got paid here a couple of weeks ago correct?
A That's the issue I thought you were talking about before
Q Right
A That's where we applied the wrong resale or wholesale discount to Midcontinent's resold services And yes

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it is my understanding that not only have the past balances been adjusted to correct what Midcontinent should have been billed but the current charges are also correct and reflect the right resale at this time

Q You'll agree with me that we're talking about approximately five months here, that $200,000 for a period of five months is a considerable amount of money for a small company, is it not?

A I didn't verify the amount, frankly, but I definitely agree with you that that's a serious amount of money

Q And Mr Simmons, one of the things that he complained about was it took awhile to get somebody's attention so that we could work on this problem, right?

A I didn't know that he complained about getting our attention so much as it took awhile to get it corrected is my understanding, and I don't disagree with that

Q Well, he says, "Qwest's representatives reported that response was slow due to personnel changes and lack of personnel," right?

A Well, he had our attention I think we took some time to get it corrected

Q All right What assurance do we have that this won't occur in the future?

A We do agree, as I mentioned already, to give notice to CLECs any time that we engage, again, in what we refer

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to as billing verification activities The reason that resale discount error occurred is we were looking at all reseller bills and aligning them with contract rates, discounts contained in the CLEC's contracts And we thought we were correcting Midcontinent's rate when, in fact, we were changing it to an incorrect rate

So any time we engage in that process, again, the billing verification process, we have agreed through our change management process to send a notice to the CLEC and the CLEC will have an opportunity to say to Qwest I don't agree with that change you're implementing And there's a whole procedure outlined in the change management process for how that would be handled where a CLEC would notify us it doesn't agree to a change we're about to implement to its bill.

Q I saw in the paper the other day Qwest had just laid off another 2,000 people. Are you going to have enough people around to address issues such as this quickly so that they don't take five months to resolve?

A I think you're referring to the future layoffs that were announced last week that are supposed to happen between now and September 30 There are others going on so it could be the same 2,000 people plus 2,000 more

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I do understand I'm in the wholesale markets organization That's where I work within Qwest And it's my understanding that Gordon Martin our executive vice president is committed to keeping CLECs satisfied and happy and doing what he needs to do to keep them on our network That's a good thing in his words

And I understand layoffs are difficult and will change work habits but I expect that we'll have to find ways to perform for CLECs

Q And then my question is are there procedures being put in place to make sure that these kinds of things don't happen in the future notwithstanding that there have been and will be layoffs?

A Well, the procedures that I've described where we are going to give notice to CLECs of billing changes where we are changing Midcontinent's rates for accuracy won't go away because of the layoffs

Q I'll ask you the same question that I asked a witness earlier, and that is that it appears to us that a lot of these problems got solved as this the date of this hearing approached

And I'll ask you the same question and that is will Qwest's zeal to deal with problems continue even after the eventual time that Qwest receives its

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authority to do interLATA service in the Qwest area?

A Well, to the extent it's up to me, it would

MR GERDES Okay Thank you

MS AILTS WIEST Black Hills, do you have any questions?

MR EVANS Yes We have a few

Thank you

CROSS EXAMINATION

BY MR EVANS

Q Good morning

A Good morning

Q It would not surprise you I'm going to address the branding issue, please I suppose it would not surprise you this is Black Hills' first opportunity or request to do a branding Would that surprise you?

A I had understood that we brand Black Hills Fibercom's upgrader services too, although I didn't get a lot of detail about that But I have been told that

Q But having been a new CLEC, it's something that Fibercom has not experienced before That would not surprise you?

A No And you would really only need do it once so it doesn't surprise me

Q Thank you Because it's something that Black Hills requested, it had an interest in following directions

that it received from Qwest, would you agree?
A Well, I'm not sure I understand what directions you were referring to
Q Any directions on how to do the branding, the steps that needed to be taken so the branding could occur It was in Black Hills' interest to follow Qwest's direction, was it not?
A To the extent it asked for directions and Qwest gave them, I would agree with that.
Q Are we entirely on our own?
A Well, you're on your own to the extent you're a local service provider who needs to know what it wants and ask Qwest for it
Q So, again, it was in our interest whatever information we requested to follow those directions that were given to us by Qwest Would you agree?
A I think I've already agreed with that
Q Thank you. Now you mentioned in your rebuttal affidavit that Qwest spoke to an employee named John Who was the employee within Qwest who spoke to John? Do you know?
A I don't know
Q Okay Have you reviewed a trouble ticket in regard to that conversation or are there any notes you have reviewed in regard to that conversation?

A I did receive notes I wasn't able to take the time -- I talked about the notes with the person who was sending them to me later by e-mail I really relied on my conversation with the person and I did a cursory review of the notes that I received. It wasn't a trouble ticket. It was notes in the ordering system, as I understood it.
Q Did those notes indicate that the person from Qwest who spoke to John indicated to John that the facility did not work as of December 11?
A No. It was my understanding we were advising him that it was the due date and it was ready to be turned over or close to the due date.
Q Was the trouble ticket silent as to that issue or did it actually say it was available on December the 11th?
A Well, it's not a trouble ticket until the service is in and working because you can't have trouble on a service that doesn't work yet
Q Okay
A It's related to the service order, just a semantics issue.
Q Thank you.
A I do not recall anything like you just described being in the notes.
MR EVANS: Thank you. No other

questions
MS AILTS WIEST Ms Cremer do you have any questions?
MS CREMER Thank you
CROSS-EXAMINATION
BY MS CREMER
Q That incident Midco was talking about of the overbilling -- not of the resale discount error but the other overbilling, the 16 50 and the $18 one, you said that it was discovered Who discovered that, Midco or Qwest?
A I believe Midcontinent discovered that
Q Is there any way Qwest could have or should have?
A Well, let me clarify, we were correcting the billing
Q I thought that was the resale one
A It's true in both cases
Q Okay
A We were correcting wrong billing to right billing
Q Okay And then that's where you caught it and discovered they had -- but I thought you said Midco caught it
A It was my understanding from Mr Simmons' testimony that we were underbilling for voice messaging service at a rate that was different than what is in the tariff but I take from the cues I'm getting from

Midcontinent's representatives that it was the opposite
It still was my understanding from Mr. Simmons' testimony -- okay, that they caught the error or they caught the change in their bill without Qwest having notified them
I'm sorry I'm not answering precisely Qwest is the one that initiated the change in the billing amount It was Midcontinent that discovered the change in their billing Qwest didn't advise them of it
Q Okay Was that just -- did this just happen to Midcontinent, or did it happen to other resellers?
A To the best of my knowledge, it was limited to Midcontinent
Q Okay But did anybody check that from Qwest to see in case the other resellers were not as on top of it as Midcontinent?
A Well, the change was correct it wasn't a question of the change being wrong
Q Okay I guess -- I thought it was an overbilling, not an underbilling So okay
A I didn't ask what you're asking me because I understood it to be underbilling
Q In your direct testimony on page 12, line 15, Exhibit 47?

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A Exhibit 47, Checklist Item 6?
Q Right. About the patents. Is that where you are?
A Yes.
Q Have any of those pending patents been granted?
A You know, I tried to get updated information, and frankly I was not able to because this information is a little bit old at this point. I expect that some of them would have been by this time, but I can't tell you specifically as to that which patents have and which have not.
Q Okay. In your Exhibit 47?
A Yes.
Q Which is Checklist 7.
A 47 is 6.
Q I'm sorry. 49. Exhibit 49.
A Yes.
Q Page 5 of that. And it's line 9?
A Yes.
Q It says, "Where available, the end-user will have the option of having his or her local or intraLATA call completed to the requested telephone number for an additional charge."
Does the charge differ for a local call versus an intraLATA toll call?
A Well, the surcharge would not differ. If it's an

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intraLATA toll call the toll charges would also apply.
Q And what is that service called?
A Call completion.
Q Is the end-user told how much this additional charge will be?
A If there is a charge. There's not a charge in every state. And I'm trying to recall whether there is for call completion in South Dakota. I don't believe that there is. There are only a few states left where we charge for call completion and in those states there is an announcement that says if you want this call completed for X-amount of money, follow these instructions. There is no charge in South Dakota so it's irrelevant.
Q Okay. On page 18 -- are you there?
A Yes.
Q Originating -- it would be lines 13 through 18, this originating line number screening, is that service now available?
A Yes.
Q And do you know when it became available?
A I believe it was available or fully implemented in South Dakota in November of 2001.
Q Okay. And then Exhibit 51, which is Checklist 8?
A Yes.

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Q On pages 11 and 12, you talk about -- on line 14 on page 11, it talks about submitting a single daily listing file and then on page 12 it talks about a nightly batch file.
What's the difference between those two things?
A They're the same thing.
Q They are?
A Yes. Yes.
Q And then on page 13, Footnote 17?
A Yes.
Q Has that circumstance ever happened?
A Yes.
Q And how often does that happen?
A You know, I couldn't characterize that. It's pretty unusual. The time that it comes up is generally where somebody's taking over a huge account, a CLEC, for example, would take over just a huge account and want to make -- or name changes on a very, very large account so that there's such an inordinate number of listings, the CLEC or retail end-user can't even call them in and process them through normal channels.
I don't think it's extremely unusual, but it's not our normal course of business.
Q Okay. On line 12 of that same page?

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A Yes.
Q "Qwest is also willing to hold such training sessions in additional locations if demand exists."
Who determines if the demand exists?
A It's really CLECs asking us to hold training sessions. Our listings organization has a strong interest in getting accurate listings because it reduces their workload, and they're pretty amenable to holding listings training for CLECs, whether by phone or in person, to accommodate a CLEC's needs.
Q And then could you grab Exhibit 22? And you'll need SGAT also, which is 21.
A Okay. I have them.
Q Okay. In the Exhibit 22, it would be page 43.
A Yes.
Q And it's that third paragraph where it talks about 10.4.2.4.
A I see it.
Q Okay. And then if you want to go -- the quickest way to do this would be to go -- did I already tell you to go to 239 of the SGAT?
A No, you didn't.
Q Okay.
A Page 239?
Q 239, yeah.

A Got it
Q Okay Now the language on page 43. I understand Qwest agreed to the first but altered the second Then when I go to the language on 239, page 239 -- and I'll list what I see missing and maybe you can tell me in whole why those things are either there or not there
The word "solely" on page 239 has been removed in that particular paragraph, that 10 4 2 4 The words "directory assistance services" have been added The words "and for other lawful purposes" have been added The sentence that "CLECs listings supplied to Qwest by CLEC and marked as nonpublished or nonlisted listings shall not be used for marketing purposes" has been added, and the words "as provided in section 10 4 2 5 and" has been removed
My question is where did all of those changes come from and who said you could -- I mean, who decided that could be done?
A Those changes stem from an FCC order, January 2000 I'm sorry, I don't have the name of it It relates to listings And the FCC said in that order that ILECs or RBOCs, whatever terminology they used, must allow CLECs that purchase directory assistance listings from it to be used for any lawful purpose
And Qwest, in order to comply with that FCC

order -- and there is language in the SGAT that allows it to be modified for the purposes of complying with FCC orders Qwest, for the purposes of complying with that FCC order, modified this section of the SGAT as well as, I believe, three other related sections of the SGAT Three other sections -- if I'm not mistaken, it's three -- related to the same subject matter to make it internally consistent
That is, the change, in essence, is that again CLECs can now use -- and Qwest can use CLECs listings and CLECs can use Qwest listings that are provided for the purposes of directory assistance for any lawful purpose, with the exception they may not use private listings for marketing purposes
Q So if that order came out in January of 2000, why is John Antonuk's language not inclusive of that?
A That's a good question We did not make the change until after Antonuk's order came out because even though we were aware of the FCC's order, we took exception with the fact that, I think, it literally allows even private listings to be used for any purpose, including marketing purposes
We went back to the FCC, and I think this is still pending, and asked them to reconsider whether they really meant and want us to allow private listings

to be used for things such as marketing So while we were having that internal debate and filing papers with the FCC, we really couldn't decide how to modify the SGAT
And what we finally did is an internal acknowledgment that we had an obligation to protect private listings that we hope survives any FCC future rulings we modified the SGAT and included the portion about protecting private listings from being used for marketing And that process took us awhile and it came after Antonuk's order It is our intention to put this modified language in every SGAT in all 14 states We may have already done that
Q Do you know where in the SGAT those other three places are?
A You know, I didn't think to bring that list but I have it very accessible to me and my attorney, if she's still here, Ms Sacilotto, may know If she doesn't, I can very easily get that
MS SACILOTTO If somebody hands me an SGAT
THE WITNESS Yeah We can identify it
MS SACILOTTO I can if somebody hands me an SGAT I can probably take a look at

that And if you would like, I can see if I can scrounge up the FCC order that had to do with it That might be slightly more difficult, but I have my computer here if that would be of benefit
THE WITNESS: I know where the cite is exactly We can find it
MS SACILOTTO: Okay We can find that for you
Q On page 36 of 22, Exhibit 22?
A Exhibit 22 is the Liberty --
Q Okay
A Okay I've got it
Q Yeah It's the Liberty Paragraph 1, and it states "Qwest agreed to revise Section 10 6 1 1
A Yes
Q Can you tell me what was revised in that paragraph?
A I can tell you -- I'll look at it and I may be able to tell you from memory I can tell you this It's quite a lengthy change and if I'm not mistaken, we sent you an e-mail with that change in it last Thursday or Friday An attorney from Dorsey Whitney sent you this actual -- I'm sorry I'm mixing this up with the resale. 6 1 1 The 10 got me confused Let me look at 10 6 1 1 and see if I can do that
(Witness examines document)

A I can't from memory recall the actual change to the section I know there was one, but it was probably fairly extensive
Q And then in paragraphs 2 and 3 it says 10 6 2 10 was amended Do you know what was amended in that one?
A Let me take a look
(Witness examines document)
A As I recall, and this was true for a number of provisions in the listings in the directory assistance section, we amended it to make it reciprocal There were a number of provisions that went one way towards the CLECs' duties and the CLECs objected -- to the extent we exchange listings with each other, they objected and said some of those requirements should be reciprocal
And I believe this is an example of a section where we didn't modify the substance but we modified it to make it reciprocal so the obligations went both ways If I'm not mistaken I would have to verify that to be 100 percent sure
Q Okay On page 40 of the Liberty reports or Exhibit 22, that would be paragraph 2
A Yes
Q And it talks about 10 7 2 14
A Yes

Q And I can give you another one because it's the same question but it's a different section Do you want to do them separately or together?
A Separately
Q Okay Then when you go to the SGAT, I don't find it in there Do you know where I could find that language?
A I can tell you why you can't find it
Q Okay
A Subsequent to this order -- there was an ongoing issue in other states about forecasting, generally We had forecasting requirements in the SGAT for -- in this context for listings, if I'm not mistaken, or use of operator services, excuse me, and we also had them in the resale section
In that big discussion about forecasting, we agreed to modify our position which was being fiercely challenged by AT&T and WorldCom And I can't speak to the other forecasting changes that were made but we agreed to delete all forecasting requirements for operator services and for resale.
It's my recollection that we neglected to delete it from the multistate SGATs but were reminded that we had agreed to do that by AT&T subsequent to Antonuk's order coming out, or perhaps it was reflected in his order that AT&T had briefed this So in the

multistate process we did eventually go ahead and delete the operator services forecasting language
Q And so is the issue then closed to everyone's satisfaction?
A They were very pleased that we deleted those forecasting requirements
Q Okay So 10 5 2 12, which is on page 41 of Antonuk's report, again it's one of those I can't find
A I'm sorry What page of Antonuk's report?
Q It would be on page 41 of his report paragraph 2 and it's 5 2 -- I'm sorry 10 5 2 12
A It's the same answer as before
Q Okay Which state was it that you reached this agreement with? Do you remember?
A I know that I announced if you will, the fact that we were going to delete the resale forecasting provisions in Washington And subsequent then subsequently to that, it was in the multistate process where I and we did that And we did it everywhere And then I recall that it was in the multistate paperwork shop process that AT&T said but oh, my what about directory assistance and operator services forecasting I think you need to take those out too for you to be consistent with your agreement to delete certain forecasting provisions

So I believe, in fact I'm quite sure, it was in the multistate process where we actually first deleted these provisions from the SGAT and then went back and did it in all the other states Made the commitment in Washington, as I recall, but somehow perhaps neglected to delete these two requirements from directory assistance and operator services, were reminded of that in the multistates and from then forward, deleted these provisions from other SGATs
Q But Antonuk didn't know about it?
A Yes, he did He said AT&T says in its brief you agreed to delete DA and OS forecasting so what's up with that, and we did it I'm going from memory so if Ms Sacilotto is here, she can correct me if I'm mistaken She's very familiar with the multistate paperwork shop process
Okay She says I'm close enough
MS SACILOTTO: I'm happy to clarify, if you want
Q On Exhibit 23?
A That's not either of these I have it
Q Page 107, paragraph 1 And it says, "Qwest agreed to change sections 6 1 1"?
A Yes
Q Now the language reads the same, that Qwest is willing

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to change various sections and that can be found in about a dozen more paragraphs

The question I have is the South Dakota - the original SGAT that was filed here in November of 2000 and then Antonuk issued his report on this in May of 2001 With your filing in October, we got a revised SGAT and then we have the KMC SGAT

Now all of that language when you read that is all the same So what is it that you agreed to change?

A I can't from memory tell you what we changed, but I can tell you this We did make changes to those sections that Antonuk cited in his order There's no question about that And those changes are definitely reflected in the South Dakota SGAT The reason your 2000 SGAT and your 2001 South Dakota SGATs, for example, in 6 1 1 are the same is because where we actually agreed to change that provision was either in Arizona or Colorado, which predated the multi states workshop And I'm thinking it was early 2000

So what happened was AT&T and WorldCom in particular filed testimony in Arizona and said we don't like 6 1 1 I modified it They filed the same testimony in Colorado and said we don't like it in Colorado either, the original language I carried the

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Arizona change to Colorado for 6 1 1 Then we went to the multistates They filed the same testimony Again, I carried the Arizona, Colorado, and I may have those states wrong but I'm pretty sure about this

I carried the Arizona and Colorado change to the multistate's SGATs and so those changes were made in Arizona and Colorado before your 2000 South Dakota SGAT was filed So we used, at that moment that your first South Dakota SGAT was filed, we used the most current language that we had already agreed to in some states to - as the basis for that first South Dakota SGAT

Q Okay Is the Arizona or Colorado - is any of that filed in South Dakota?

A Well those changes were carried to the multistate and so well, if I may finish, so to the extent that Antonuk ordered those changes, those very same changes, you do have documentation that reflects everything we agreed to change

Q Okay You're anticipating the question that I'm actually not asking you Was the Arizona and Colorado - anything from those states filed in South Dakota?

A I didn't file anything, but I would defer to our attorneys

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Q So the same problem I've had with practically all of your witnesses, how am I supposed to track any of this when I don't know - I read Antonuk's reports It says Qwest will change this I don't see a change I mean, how - it just comes back to my basic question

How do I know that the appropriate language has been inserted or deleted without me going through and doing Qwest's work for them, which is going through the SGAT word by word?

A Well, I'm telling you under oath that I have reviewed my sections of the South Dakota SGAT and to the best of my ability - I can't claim there couldn't be a typographical or other clerical error

I have reviewed my sections of the South Dakota SGAT, those for resale, UNE-P, unbundled switching listings, directory assistance, and operator services, as I do with all SGATs before we file them to make sure they are consistent with the representation they are making in that state as to what the SGAT contains

And I can tell you that those sections of the SGAT that I just mentioned do indeed incorporate everything that we agreed to in the multistate process Again, to the best of my ability I can't claim that it's 100 percent error free of typographical or

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clerical errors or -

Q What is a clerical error?

A There's a provision that we - instead of - for example, including a specific provision, we refer to an SGAT from a nonmultistate state And so I consider a clerical error that they took the Section 6 2 3 from the wrong state and put it in the South Dakota SGAT That's really clerical because it was not our intention to do anything other than in South Dakota in that instance than what Antonuk ordered in the multistate process

Q So you're telling me these are clerical errors and typos that we're finding in this, the problems that we're having?

A I haven't heard a list of the problems that you're having The ones that you've mentioned that you can't see the changes to 6 1 1 I'm telling you absolutely reflect - that section absolutely reflects what we have in the multistate SGATs And it is our offer to show that we satisfy the checklist in South Dakota, regardless of whether the SGAT is highlighted or red lined or footnoted or not, on its own merits In my opinion, makes the case that we satisfy the 271 checklist in South Dakota as well as our testimony and this hearing

Q On page 109 of Antonuk's report, paragraph 8?
A I have it
Q Okay I'll give you a minute to read that
A Collocation?
Q Are you on --
A I'm sorry I'm in the wrong -- oh, I'm in the SGAT Is this 20 --
Q Page 109 of --
A Which exhibit?
Q Oh, man 23 It should have just been the page after what we were talking about
A Oh, I closed it up
Q Okay
A Okay I have it
Q Okay 109, paragraph 8
A No I don't have it Okay Yes
Q Okay Have you had a chance to read that? It deals with N-11?
A Yes
Q How was N-11 agreed to? What was the --
A What I recall WorldCom asking was if Qwest implemented any additional services using X-11 or N-11, would they be available for resale, and I said yes If it's a retail telecommunication service, we would not be able to not make it available for resale And my

recollection is that satisfied -- I said that on the record, satisfied WorldCom
Q Thank you On page 111 of that same --
A Yep
Q Paragraph 16 That proposed language?
A Yes
Q Now I don't find it in my revised SGAT
A In the multi -- well, let me look at the SGAT first, and then I'll tell you what we did
6.2 6; right?
Q Right
A This section, and I do believe the multistate was the first place this was raised, a question about this section And it was actually raised by McLeod, as I recall
It says here AT&T and McLeod commented But AT&T wanted it deleted and we just said no And I think that settled it because then McLeod said well it should be reciprocal You shouldn't be able to reserve numbers for yourself either And for some reason, I foolishly could not agree to do that at the multistate workshop.
But I believe Antonuk didn't order it, as I recall, but before Antonuk's order came out, we did agree to modify it to the parties and make it

reciprocal I saw the error of my ways and we modified it at a later workshop and then carried it to all the other states
Q Okay On page 113 of Antonuk paragraph 19?
A Yes
Q Where Qwest agreed to add the word "properly" to modify this section I don't see that that was added
A That's a clerical error And it truly is I agreed to add it I recall -- I think it was Ms Seleen of AT&T asking -- or somebody asking that that word be added and it just got away from us
And we have since gone back where we discovered that or it was pointed out to us and added that word but obviously not in time to be reflected in the October version of the South Dakota SGAT
Q Okay And then on page 116?
A Yes
Q Paragraph 32
A Yes
Q When I go in and read 6.4.7 I don't read that at all the same
A I need to read this again
Q Okay
(Witness examines document)
A I'll tell you what my recollection is, which is I think

inconsistent with what this order says I believe that we did not agree to modify 6.4.7 of the SGAT at all and Ms Friesen of AT&T, she's their attorney, agreed to defer discussion of this section until Section 5.3.2 of the SGAT, which is a general terms and conditions provision of the SGAT She agreed to defer her part of requests that we change 6.4.7 of the SGAT until such time as it was discussed -- as that general provision was discussed in the general terms and provisions workshop So I don't recall that we agreed to change this provision at all, contrary to what this says
Q Okay And do you know since the one was filed with South Dakota in October, has any of that been resolved in 5 --
A 3.2
Q 5.3.2 or has any of that changed?
A Mr Brotherson who follows me as a witness is a general-terms witness and he can talk to you about 5.3.2 And if they agreed there to also modify 6.4.7 he can tell you that I do not recall 6.4.7 being subsequently modified pursuant to the general terms workshops but Mr Brotherson can verify that
MS CREMER Okay Thank you That's all I have
MS ALTS WEST Commissioners, do

any questions?

(Discussion off the record)

MS AILTS WIEST: We'll go back on the record. Commissioner Burg.

CHAIRMAN BURG: Ms Simpson, I just had one question, sort of an informational one. There was a discussion with Mr Gerdes on missed listings or things that were missed in the phone book, is what it was. Do you have an electronic phone book listing available?

THE WITNESS: You know, my Checklist item Mr Gerdes doesn't cover electronic directories so I believe that we do but I just want you to know that it's qualified by not being an expert on our electronic directories.

CHAIRMAN BURG: The reason is if that is available, I was wondered if there's a missed one, if that's corrected immediately in the electronic.

THE WITNESS: I think your hypothesis would be correct because if it's electronic it is probably updated on a daily basis as is the directory assistance database. So primarily for the missed listings that Mr Gerdes referred to, once it's discovered and put back in

our database the directory assistance database is also updated immediately, unlike white pages that you can't change but usually once a year.

So I think your hypothesis would be correct that if there is an electronic directory assistance offering, and I believe Qwest Dex has one, I would anticipate that it would be updated more immediately and so the end user experience wouldn't be quite as drastic.

CHAIRMAN BURG: Would you see if you can find that answer?

THE WITNESS: Yes.

CHAIRMAN BURG: That would be something I'd like to know. That's all.

MS AILTS WIEST: Any other questions from Commissioners?

I just had a question on the auditing of the Matrix. You said you were auditing 10 percent of their orders or their directory assistance. What exactly were you auditing?

THE WITNESS: 10 percent of any types of orders that they send to us.

MS AILTS WIEST: How long are you going to be doing that?

THE WITNESS: I don't think we've

given an end commitment and I would anticipate we will be doing it until Midcontinent and Qwest are satisfied the problems have diminished or gone away.

MS AILTS WIEST: Who pays for that auditing?

THE WITNESS: We just have our personnel in the centers doing it. Qwest pays for it.

MS AILTS WIEST: Is there a provision in the SGAT where other CLECs can request that type of auditing?

THE WITNESS: No.

MS AILTS WIEST: There are no auditing provisions?

THE WITNESS: Well, you're using the word "auditing" perhaps more formally. There may be auditing provisions in the general terms and provisions section of the SGAT.

What we're doing is not quite that formal. Maybe it amounts to the same thing. We've agreed to pull 10 percent of WorldCom's orders and compare them to their LSRs.

I'm not an auditor, but I'm not so sure that that's strictly-speaking auditing. We're trying to

make sure we don't make mistakes on their orders as they've experienced in the past, if that's auditing.

MS AILTS WIEST: So if Black Hills requested that service, would they also get that same service from Qwest?

THE WITNESS: I think if we experienced a problem or Black Hills experienced a problem with Qwest, we would definitely take whatever steps are reasonable as discussed between us and the CLEC to correct whatever was going wrong.

MS AILTS WIEST: But it would be totally discretionary whether Qwest would do those types of things or not?

THE WITNESS: Well you say "totally discretionary." I think it would be between the CLEC and Qwest, I can't say that Qwest would across-the-board be able to agree to any kind of "audit requirement" that a CLEC would care to write. I think I would be going [illegible] if I said that.

MS AILTS WIEST: Do you have any redirect?

MR CATTANACH: No

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MS. AUTS MIES: Thank you.
CHAIRMAN BURG: Blayne, that probably brought a question to me. I was trying to figure your auditing and you're auditing, what did you say, 10 percent?
THE WITNESS: Yes.
CHAIRMAN BURG: What if you find -- really, before you find one in that 10 percent? I'm trying to figure out -- that's an indication that's a problem. Do you go to 100 percent then? I'm trying to say if you're finding some in the 10 percent, that means you probably missed some in the 90 percent.
THE WITNESS: Well, I think it would depend on the nature of the error. If you found a systemic error, I think you may be correct then, or a repeat error that is affecting service, you may be correct. It may be the case that we would need to look at all of those types of things where the error was found to ensure -- like if it was a billing problem, for example.
But I don't think that that's really the point of the review that's being undertaken. I think the point of it is to identify whether Midcontinent's orders are being processed correctly and to the

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extent they're not, analyze why they're not and take remedial steps so that the next one is done correctly.
CHAIRMAN BURG: I was thinking that when we were talking about the auditing and still talking about white page listings or yellow page listings.
THE WITNESS: It would include listings orders, but it includes all of Midcontinent's orders like new resold service, new UNE-P, new unbundled loop.
CHAIRMAN BURG: Are you confident in Midco's case they've brought to your attention every single white or yellow page error?
THE WITNESS: I would ask Midcontinent that. Mr. Simmons' testimony seems to indicate to me it's a complete list and seems to be a running list in the sense it's not just current. They've been keeping it for a while. So the number of listings actually appears greater than if you just took their current experience. It's my impression it was a complete list.
CHAIRMAN BURG: The percentage order -- you said 99 percent accurate if you had more than one year that would be throwing that off,

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yeah. Okay. I think that's probably true, I would guess, on the white and yellow pages, that those would be caught by either the consumer or the company probably --
THE WITNESS: They generally don't go undiscovered. I think that's a fair statement.
COMMISSIONER NELSON: I thought of one question. I want to go back to questions that Mr. Gerdes had on Midco's problem and it had something to do with the disconnect and language that says "as is" or "otherwise specified" or something like that.
When somebody asks to be disconnected, do you treat all the CLECs the same way you are treating Midco? I mean, were you expecting the same thing?
THE WITNESS: Yes. The process for listings doesn't vary from CLEC to CLEC.
COMMISSIONER NELSON: Now on the disconnect notice, do you tell the CLECs or give them in writing or something the procedure they're supposed to follow to do this or are we assuming this is common sense?
THE WITNESS: No. That might be more of an OSS question because it's associated with the IMA-GUI. How you submit the disconnect

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order and what the process is for submitting a disconnect order versus another type of order are associated with the OSS for the most part.
But we do indeed have training for CLECs on resale we offer. We have training on other types of services, including order processing requirements. And there is IMA-GUI training that would include some of that information. We also have product catalogs that to some extent, not a great extent, describe order requirements.
COMMISSIONER NELSON: So you're saying -- I don't think that was the issue that I'm talking about, though. I don't think it had anything to do with the product. It was a disconnect when somebody obviously got a new customer or something and it ended up not getting in the directory or something. So you're saying I should ask the OSS people this?
THE WITNESS: Well, I mean, you're asking me if they're trained on how to issue orders and what orders to issue, and I think that is probably an OSS-related question since it's related to the IMA-GUI which is where they input their orders.
COMMISSIONER NELSON: But the answe

to my question is they are trained and they're told how they have to go about doing these orders; right?

THE WITNESS: Training is available to CLECs. They're not expected to just know by osmosis or some other means.

COMMISSIONER NELSON: Do most people take the training that's offered?

THE WITNESS: Well, again, it's a little out of my area of expertise, but I think so. I think CLECs have as big an interest as we do in having their orders issued correctly, to the extent they're in control of the portion that's in their control.

COMMISSIONER NELSON: Okay. That's fine. Thank you.

MS. AILTS WIEST: Any other questions of this witness? If not, thank you. Qwest, you may call your next witness.

MS. HUGHES: Qwest calls Larry Brotherson.

(Exhibits 56 through 58 are marked for identification)

MS. HUGHES: Good afternoon, Commissioners. My name is Mary Rose Hughes and I will be handling the next issue for Qwest which concerns the general terms and conditions portion of the SGAT. Mr. Larry Brotherson is Qwest's witness on this issue.

Mr. Brotherson, have you been sworn?

THE WITNESS: No.

LARRY BROTHERSON,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MS. HUGHES:

Q. Mr. Brotherson, you should have in front of you what we have premarked as Exhibit 56 and Exhibit 57. Would you please identify those exhibits?

A. Exhibit 56 is my rebuttal affidavit filed April 2 of 2002 in these proceedings and Exhibit 57 is the supplemental affidavit that was filed April 16.

Q. Mr. Brotherson, do you have any changes to either Exhibit 56 or Exhibit 57?

A. No.

Q. Are these exhibits true and correct?

A. Yes.

MS. HUGHES: Qwest moves the admission of Exhibits 56 and 57.

MS. AILTS WIEST: Are there any objections? If not, they're admitted.

Q. Mr. Brotherson, you should also have in front of you what we have premarked as Exhibit 58. Will you please identify that exhibit for us.

A. Exhibit 58 is a photocopy of the outside of an envelope addressed to Midco Comm., and the second page is a letter starting out "Dear telecommunications manager." These two were documents provided by Mr. Simmons to Qwest concerning one of their issues.

MS. HUGHES: Qwest moves the admission of Exhibit 58.

MS. AILTS WIEST: Any objections? If not, it's admitted.

MR. GERDES: No objection.

Q. Mr. Brotherson, will you please summarize your testimony us.

A. Yes. My particular area deals with the general terms and conditions of the SGAT. Though not technically a Checklist Item, they are part of the overall contract and Qwest would agree to include those in the workshops.

We started out -- these workshops began almost a year ago on general terms and conditions and we started out literally with hundreds of issues. They were reduced through negotiations and a lot of wordsmithing to a very few remaining issues. Those were submitted to Mr. Antonuk, the facilitator for the seven-state workshop. And then the rulings came out.

Many of the issues were in our favor, Qwest's favor. Some of the issues were not necessarily what Qwest had asked for. It was compromised language that Mr. Antonuk for example had proposed or recommended. Qwest anticipated the Antonuk recommendations across-the-board in the general terms and conditions section. We did not challenge any of those in Section 5.

All of the recommendations are incorporated into the Section 5 language of the SGAT filed as an exhibit here in South Dakota. The South Dakota staff has also supported the recommendations of Mr. Antonuk. So our filing is also consistent with the staff's position. It tracks with the language that he had proposed.

In the testimony in these proceedings, AT&T has raised several objections. Essentially, they're objecting to the recommendations of the facilitator, Mr. Antonuk. They raised these objections in the other states as well. And the other seven-state participants that have ruled on this to date have all rejected the AT&T positions and gone with the recommendations of the facilitator. And I would note staff has also gone with

the facilitator's recommendations and not with AT&T's recommendations in these proceedings

Midco in Mr Simmons' filed testimony raised three additional issues dealing with Section 5 general terms and conditions The first was they wanted a new Section 1 7 2 which provided that new products should have the same terms and prices as similar existing prices This was also raised by AT&T in the other states

It's been rejected by the states that have looked at it to date from the seven-state workshop, and they have all gone with the Antonuk recommendation Basically Mr Antonuk's position was that there are already present rules on how Qwest should price its products In fact we have rather lengthy cost dockets and debates about pricing models, and there are also provisions already in the SGAT that if the parties have a dispute that they can resolve their disputes And, therefore, the additional language of coming up with terms and prices not based on costs but, rather, on similar products was not necessarily appropriate Qwest certainly agrees with that

The second Midco issue dealt with the request for language in the SGAT or I should say the Interconnection Agreements that will address how fines

would be levied or passed through in service performance hearings if there were provisioning problems and if there was a determination of fault

This also has been rejected in the other states I remember the discussions came up, for example, in Washington But in the seven states as well, this has been rejected Primarily, the thrust has been, well, that it's the place to decide how to allocate fault or how fines should be paid or who's going to pay which fines Those determinations should take place in the hearing addressing the problem once the evidence is in and the facts are in and the witnesses have been cross-examined, and it should not be predetermined without facts or hearings and written into the Interconnection Agreement how stuff is going to be addressed in an upcoming hearing

So the third issue with Midco that was raised by Mr Simmons that dealt with general terms and conditions issues involved the mailing that they had received that they had raised concerns in Mr Simmons' testimony that Qwest was perhaps using improper wholesale information

With the initial filing of Mr Simmons' testimony, we didn't have sufficient information to investigate Mr Simmons -- or Midco was kind enough to fax us the actual mailing, the brochure and the envelope The envelope and the cover letter was the Exhibit 58 that I talked about earlier The brochure that was our mailing is attached as part of my supplemental testimony, which is Exhibit 57

After receiving the documents from Midco as to what the particular product was and the time frame, I was able to investigate the issue This was a promotional mailing that Qwest sent out to promote a very high-speed Internet access called Direct Internet Access It's a product that will run anywhere from 1,000 to $1,500 a month depending upon how it's connected to the network But it's a very high-speed type interconnection service

I filed supplemental testimony on this, which was Exhibit 57, that explains that no wholesale or improper use of Midco customer information was used, that Qwest did a mailing based on our retail customers as well as commercially-purchased marketing lists of businesses that might be interested in this type of service

That concludes my summary

MS HUGHES: Thank you

Mr Brotherson is available for cross-examination

MS AILTS WIEST: Mr Gerdes

CROSS-EXAMINATION

BY MR GERDES:

Q Good morning, Mr Brotherson

A Good morning

Q Did you get a chance to talk to Mr Simmons on the phone?

A No, I did not I had attempted to reach him and let him know the results of my investigation, and he was out of the office I left him a short voice mail

Q He's a busy guy We knew you had called and we were trying to get ahold of him to see if you had talked and we couldn't find him So thank you for giving us the answer

Regarding the first item that you mentioned in your rebuttal affidavit, that of relabeling or slightly changing services and relabeling them?

A Uh-huh

Q That's been dealt with and you've explained it and that isn't going to happen Would that be a fair summary?

A I'm not sure what you mean by that's not going to happen There will be new products introduced, I would expect, over the future of the Telecommunications Act And the issue is how would you price that or set --

Q Right Exactly And that's been dealt with and it's not going to be done in a manner that's unfair to CLECs

and customers?

A No. It's not going to be done in a manner that's unfair.

Q One thing on that topic, though, I just wanted to clarify. You mentioned the KMC agreement and a number of other witnesses have already done so.

That agreement has not been approved by the Commission; would that be correct, by this Commission?

A I don't have direct knowledge on that.

Q If it hasn't been approved by the Commission, would that lessen the impact of your testimony?

A It shouldn't change it.

Q Okay. What I want to talk to you about is this proposal that Mr. Simmons had made, and I'll quote it as you did in your reply affidavit. "A provision should be included in the SGAT which would transfer [State] Commission levied sanctions against the retail provider to the wholesale provider if violation of service standards are due to poor provisioning of service by the wholesale provider."

Now you'd agree with me that that sentence requires a finding by somebody that the violation was, in fact, due to poor provisioning of the service wholesale provider before the liability could be transferred, wouldn't you?

A It doesn't make clear that if, for example, issues of joint liability -- if both parties are at fault in a particular problem, how that's going to be resolved.

Q Doesn't it say it has to be due to poor provisioning by the wholesale provider?

A You could in theory have poor provisioning by a wholesale provider and also have errors or omissions on behalf of the retail provider. A statement as you have proposed may be interpreted to say irrespective of whatever the retailer does wrong, that if you establish that the wholesale provider did something wrong, they pick up the fine.

Q That's not one of the conditions in this sentence, though. This just says if the violation of the service standards are due to poor provisioning of the service by the wholesale provider. It doesn't say anything about the other items that you talked about, does it?

A No. That's one of the problems of the sentence.

Q So could it not be that a provision like this could be utilized by a commission as a basis to transfer liability where, in fact, it is found that the violation was due to actions of the wholesale provider?

A We're back --

Q Right.

A -- to talking about the issue again. But, yes, it

could be relied upon to say irrespective of anything the retailer did, the SGAT says if there is any liability on the part of the wholesaler, the wholesale --

Q That's not what this says. It doesn't say any liability. It says "was due to what they said."

And that's my point. My point is we have a bunch of red books over in the corner that are the statutes of the State of South Dakota. Do you see them?

A Yes.

Q And they say thou shalt or thou shalt not in various places; right?

A Right.

Q And if this Commission finds thou shalt, they will enforce it, and if this Commission finds thou shalt not, they also will enforce that; correct?

A Correct.

Q And so why couldn't this just be another provision like that where the Commission within its discretion enforces the law?

A Well, I don't think there's a problem with the concept of expecting this Commission to properly enforce the law. I would expect in a hearing on any performance standards, that's exactly what's going to come out

The issue is do you want to build into the Interconnection Agreement the language around what's going to happen in the hearing that we haven't had yet on the evidence or the facts surrounding the performance issues under the other section of the statute.

Q Okay. So can you tell me that at the first hearing on a question under whether or not it was the fault of the retailer or of the wholesale provider, that Qwest will not contend that that standard is not in the SGAT and so therefore you cannot find against us? Can you say you won't make that contention?

A Without knowing what the nature of your complaint is going to be, I can't waive whatever my rights are in that other hearing that we haven't had, no.

Q Yeah. Well, Mr. Simmons is really saying that as a general principle of the relationship between the retailer and the wholesaler that if it's the wholesaler's fault, they're the ones that ought to bear the burden.

Now what's wrong with that? There's nothing wrong with that concept, is there?

A I would expect that in the appropriate hearing under the appropriate Commission rules if those are the facts, that is exactly what will happen.

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Q Okay. Why can't you put it in the SGAT along with language that says -- and if it isn't that way, then we won't have that finding?

A For a couple of reasons, the one I raised earlier. And we get into a debate about does merely saying if we're at fault exonerate any fault on behalf of Midco. And you're saying, well, it doesn't say that. Can I be assured if Midco also commits some fault, that they won't say we're exempt? We can get into that kind of a debate, but it really doesn't belong in the SGAT or in these proceedings.

It belongs to the hearing when you're looking at whose at fault and what fines should be provided for it, which is not part of the SGAT, but part of the Commission proceeding independent of that.

It's no different than saying if there's an automobile accident, you know, and one of the parties is at fault, they should be liable. I'm not saying that's an improper sentence. I'm saying it doesn't belong in the SGAT, it belongs in the hearing to determine the liability for the motor vehicle accident.

Q I think we've beat that dead horse to death enough now so I think we both made our point and we can go on.

This mailing, Exhibit 58, would you look at the first page of that, please.

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A Uh-huh.

Q The second line of the address line says, Midco Comm, and then it says (Reseller MO-7); correct?

A Correct.

Q What does Reseller MO-7 mean?

A It's an internal identification of Qwest that Midco is a reseller.

Q A reseller of Qwest?

A Yes.

Q In other words, it's a business record that was generated because of the business relationship between the two?

A It would be a -- it would be part of the identification of Midco in Qwest's records as a customer of Qwest.

Q And would -- do you see anything wrong with using that record, that business record to contact Midco in this way?

A Well, I think Midco is also aware of their status as a reseller, but, no, I don't see anything wrong with that.

Q Well, you would agree with me that Qwest should not use business information generated through the business relationship between Midco and Qwest to try to win back Midco's customers to be customers of Qwest?

A Definitely, and we've established procedures to prevent

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that.

Q Okay. So you agree that would be improper and shouldn't be done?

A I would agree with that.

Q Okay. We'll just leave it at that. Thank you.

MR. GERDES: That's all I have.

MS. AILTS WIEST: Black Hills?

MR. EVANS: Yes. Thank you.

CROSS-EXAMINATION

BY MR. EVANS:

Q Good morning, Mr. Brotherson.

A Good morning.

Q I visited briefly with your counsel prior to testimony so I'm sure you understand we'd like to visit with you about dispute resolution?

A I do understand there was a question on that.

Q Okay. Section 5.18, do you have that in front of you?

A I do.

Q The particular language that you have in front of you, there's a footnote that indicates that KMC has signed an Interconnection Agreement with this particular language. Is that your understanding as well?

A This language here?

Q Yeah.

A I am not familiar with the KMC language.

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Q Okay. I thought I had a shortcut. We won't do it that way.

I'd like to visit with you just briefly about if any CLEC and Qwest are involved in a dispute under the Interconnection Agreement, of course, and Qwest should decide that it wanted to arbitrate the issue, is there any way that the CLEC could prevent that arbitration?

A In this language here?

Q Yes, sir.

A Okay. Because we've got a lot of reiterations over the years on file. But in this --

Q Can I interrupt you to make sure we're clear then? Can I assume that 5.8, which is part of your exhibit -- excuse me, Exhibit 21, is that what you're looking at?

A Yes.

Q That's going to be part of the SGAT that will be filed in South Dakota; is that correct?

A That's correct.

Q Okay. Just wanted to clarify that. Back to my question. I'll repeat it. If a CLEC and Qwest were involved in a dispute and Qwest determined that it wanted to arbitrate the issue, is there any way that the CLEC could prevent that arbitration under this language?

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A ... not sure what you mean by 'prevent' but the ... language provides at 5.18.1 'each party reserves its ... to resort to the Commission or to a court ... or regulatory authority of competent ...'

So if a party did not want to arbitrate they ... not waived their right to use or select one of ... other ...

Q Let's compare that language please to 5.18.3. And I'm looking at, sort of in the page I'm looking at about ... down, it says 'either party may request ... the dispute be settled by arbitration.'

That indicates to me that either party can ... and then that would be the only avenue that ... parties would have then to resolve the dispute. ... you disagree with that statement?

A I don't know. I'm not sure I understood the statement.

Q Well, my concern is most issues between CLECs and BOCs ... resolved before this Commission. It appears ... that the language of 5.18 is intended to take ... It says that the Commission still has ... the language actually could be construed ... to say that if Qwest wants to go to ... we have to choose. Would you disagree ...

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A I would disagree with that. I would say that if we go ... to 5.18 ...

Q Could you read the sentence that you would ...

A Let me start at about the middle where it says, 'Dispute resolution under procedures provided in ... 5.18 shall be preferred but not the exclusive ... for all disputes between Qwest and the CLEC ... out of this agreement or its breach. Each ... reserves its right to resort to the Commission or ... court, agency or regulatory authority of ... jurisdiction.'

And I would read that to say each party has a ... to go to whatever the court of competent ... would be. If it's a matter before the ... Commission, if it's a matter before court, if it's a ... before the FCC, depending upon the issue, that ... be their right which is spelled out here, even ... there is a preference for dispute resolution, ... party retains that right.

Q Let's look at 5.18.3 a little closer then, please. And ... a long sentence and let's break it up, please. I ... read it. It says, 'If the vice president level ... representatives or the designated representatives with ... to make commitments have not reached a ... of the dispute within 15 calendar days after

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there's a resolution request,' I'll skip down past the comma. It says then so we have a situation we don't have a resolution at the vice-presidential level. Then either party may request that the dispute be settled by arbitration.

So that means either the CLEC or Qwest could require arbitration. Would you not agree?

A That's the way it reads. Either party can request a arbitration.

Q So if Qwest requests arbitration, then the CLEC would have no choice on this language. Would you agree?

A Well, I believe that the intent of the parties in the negotiations was that -- and because this was an issue raised by CLECs in the negotiations, the language that was in 5.18.1 was included to make it clear that neither party waived their right to go to the Commission.

Q So would it be your testimony that Qwest would agree that if a CLEC did not want to go to arbitration and would rather come to this Commission, that Qwest would agree to that?

A I would say that if this were the agreement between the CLEC and Qwest, we would abide by the provisions of this agreement, which would say that the parties have not waived their rights to go to these other -- each

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party has reserved its right to go to the other jurisdictions.

Q I'll repeat my question. If Qwest wanted to go to arbitration, the CLEC did not, would Qwest resist that arbitration and not come before this Commission as a CLEC might otherwise request?

A I know there were issues around whether or not in the case of Black Hills Fibercom the parties had elected to arbitrate first and there was no reservation of the right to go to the Commission.

And I don't have that language in front of me.

Q Well, let's don't worry about that language.

A Well, but it becomes critical in answering your question. I would say we will honor this -- what we have agreed to honor here in this dispute resolution clause, we will honor. What we have agreed to honor in other dispute resolution clauses we will honor.

When we get down to what they mean, and particularly I can explain what this one means, but when we get down to the question of what others might mean that I don't have in front of me, I think I would defer to my attorney to tell me what the contract interpretations will be.

Q Would Qwest resist language that allowed arbitration to

only occur by mutual consent of the parties?
A. It's difficult to negotiate on the stand, but, of course, the CLEC has the opportunity when an SGAT is tendered to say this is a good starting point but there are some provisions in this SGAT I would like to negotiate different language for. And the parties go back and forth on that language. And in exchanging that language and how it fits in to the rest of the paragraphs in that section and perhaps interrelates to other parts of the SGAT, the decision would be made by the negotiating parties on both sides to accept or reject the language.

I think what you're saying would not be inconsistent with some of the stuff that's laid out in the SGAT and therefore, probably that language could be agreed to as different language than the SGAT, if Black Hills Fibercom or another CLEC didn't like the way it was written in this section and had a preferred way of saying it that did not change the scope or the thrust.

And it doesn't sound like that's what you're talking about. Then we would probably agree to that as a modification in the language. Particularly when you get to the section involving general terms and conditions which the lawyers are generally comfortable with, it's rewritten, a lot by them, by the lawyers.

Q. I understand. Now you've been offered as the expert on this particular section of the SGAT. Can you point us to any language in this particular section that allows arbitration to only occur by mutual consent to the parties? Are you aware of any sentence at all?
A. In the SGAT language?
Q. Yes, sir.
A. Only occur by mutual consent? Either party may request. If the other party agrees, that would be mutual consent. If the other party doesn't agree, then you fall back to 18.1, which is the reservation of rights to go to the Commission.
Q. So would it be your testimony that Section 5.18.1 is more controlling, if you will, than 5.18.3? And, in other words, if Black Hills Fibercom, for example, resorted to 5.18.1, at that point Fibercom can say, no, we do not want to arbitrate, we're going before the Commission?

Would you agree with that statement?
A. I'm trying to think about your statement that 18.1 is more controlling than 18.3, and I feel like I'm going down this road of trying to give legal opinions on how these will turn.

But I would say that sentence, "each party reserves its rights," is not overridden by the

provisions, the procedural provisions, of how you escalate a dispute. You take it to the vice-president, either party may request dispute resolution. I think those types of provisions do not negate the rights for that sentence in 18.1.
Q. Then would it be best -- I propose would it be best to modify 5.18.3. Rather than say "either party," it might say "the parties by mutual consent may request dispute resolution."

Would that be better language to fulfill your intent?
A. My hesitancy on responding to what's better language stems from a good two weeks with AT&T and WorldCom's attorneys arguing about the language in this section.
Q. Okay.
A. And my reluctance to rewrite it again -- we had XO and AT&T debating among themselves the way to write the sentence. So we kind of got a consensus language and there are several different ways to write what was intended to accomplish here. And I think we wrote several of those different ways in the course of the reiterations.

But as far as which one's better, I think any CLEC can request in their Interconnection Agreement different wording when they sit down and negotiate

their Interconnection Agreement.
Q. But that's only by negotiation with Qwest; correct?
A. Correct.
Q. Okay. I think we've covered that topic. Thank you for your time.

Moving on, arbitrations are normally held, if you will, in secret or behind closed doors, are they not?
A. No. I believe there are Commission hearings and, to my knowledge, there's not a restriction on who attends. I would defer to the Commission rules in each state.
Q. Of course, the language requires the arbitration would occur in Denver, does it not?
A. I'm sorry. I thought we were talking about the arbitrations involving negotiations.
Q. No. I'm sorry. I'm talking about any arbitration that would be subject to this 5.18.
A. Oh, if the parties are arbitrating a dispute, they would probably be subject to the AAA arbitration rules, if that's the provision in the Interconnection Agreement. We had some CLECs ask for J.A.M.S., and I'm not sure what J.A.M.S. stands for, but it's another judicial authority that has arbitration rules. So whatever arbitration procedures were in the specific Interconnection Agreement would apply, and I don't

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recall any arbitration procedures that are on their face confidential But that may be something the parties could address

Q I'm sorry to interrupt you In the interest of time, let me move on Now the language of 5 18 3 requires that the arbitration proceedings shall occur in Denver, does it not?

MS HUGHES If you could read the entire sentence please for the witness

Q "The arbitration shall occur in the Denver metropolitan area or another mutually agreeable location "

A That's in what paragraph?

Q That would be 5 18 3

A Okay

Q That would be about the third to the last --

A Yes I found it "Shall occur in the Denver metropolitan area or in another mutually-agreeable location " Yes I found it

Q So unless Qwest agreed to another location, it's most likely going to occur in Denver; correct?

A I don't recall any instance where we have not worked with the CLEC on choosing an agreeable location for an arbitration

Q Do you commonly have arbitrations where the CLEC is located?

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A Usually our C LECs are in all states So it winds up either being in Denver if it's sort of a generic issue that involves all states or if it might be a state specific issue, it would more than likely be in a particular state

Q Okay And to close -- maybe I should back up In 5 18 3 2 the first sentence reads, "There shall be no discovery except for the exchange of documents deemed necessary by the arbitrator to an understanding and determination of the dispute "

That essentially cuts off any opportunity, does it not, for the CLEC to request documents that it believes might be relevant does it not?

A In this language, if the parties elect to use arbitration -- and I think earlier it spells out those would be under the AAA or J A M S rules -- if the parties elect to do arbitration, the discovery that they're going to have available to them will be the discovery available under the arbitration procedures, which are usually expedited because that's usually the reason businesses have arbitration clauses in commercial agreements is because it's expedited

If a party chose instead to go to the Commission, they would be subject to whatever the discovery rules are of the Commission And if they

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choose to go to federal court or whatever court jurisdiction, they would be subject to whatever the discovery rules of that court would be

So it would depend on which avenue the dispute is being resolved in that would drive the discovery procedures, yes.

Q Okay Thank you. Lastly, very quickly, 5 18 5 in my opinion expresses a two-year statute of limitations. As you may be aware, South Dakota has a six-year statute of limitations for contracts.

Would Qwest be willing to amend that from two years to six years?

A Qwest would be certainly willing to comply with South Dakota Law I think rather than me predict what the ruling was on this, I think we would be certainly willing to add language that says, "or as otherwise provided under South Dakota Law," and I would let the Supreme Court tell me what the statute is on this contract.

MR EVANS: Thank you very much

MS. AILTS WIEST: Did the Commission want to break for lunch?

COMMISSIONER NELSON: Absolutely

MS AILTS WIEST: Do you want to return at 1:10?

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CHAIRMAN BURG: Yeah That should work.

MS. AILTS WIEST: Or not? Earlier?

COMMISSIONER NELSON: 1:30 is great

MR. WELK: Karen, do you have cross?

MS. CREMER: I'm trying to decide There wouldn't be much.

MR. WELK: I'm not trying to -- if there's a 2 o'clock plane.

(Discussion off the record)

MS. AILTS WIEST: It's up to the Commission if they would like to finish this witness.

COMMISSIONER SAHR: Sounds fine with me.

CHAIRMAN BURG: That settled it for you, huh?

MS. AILTS WIEST: Don't mean to rush you. Feel free to take as long as possible

CROSS-EXAMINATION

BY MS. CREMER:

Q Were you in the room when Ms. Simpson was testifying and there was a question about 5 3 2 and 6 4 7?

A I was. In fact, hearing my name my ears perked up and I immediately turned to 5 3.2 and 6 2 7. I'm familiar

with those sections. I didn't catch the question

Q Basically my question was if you read the language on page 116 of Exhibit 23, paragraph 32, it's considerably different than the language that you'll find in the South Dakota SGAT?

A I'm sorry. Could I have that cite again?

Q Yeah. It would be Exhibit 23 and it's page 116, paragraph 32

MR. WELK: What was that again, Karen, please where you're at?

MS. CREMER: Which part? The one on the Liberty reports? 116, paragraph 32

(Witness examines document)

A All right. I found the --

Q Okay. Did you read 6.4.7 in the SGAT?

A Right.

Q And I don't have a page marked on that

A I do.

Q It's page 55

A The history of the evolution of this paragraph was that the original language spelled out the FCC rules, which included a $100 penalty, get a written verification, have a voice recording verification, the kinds of things that we're familiar with, for example, in long distance PIC changes where a customer says I never

authorized them to switch me to this company and the FCC promulgated rules around how you have a proof of authorization of some kind if you call up and say I'm authorized to switch this customer.

There involved some discussions and debates around well, what if the rules change, will the SGAT, its detailed procedures be controlling or will the new FCC rules as they evolve be controlling. And in the end, the parties backed out by simply saying -- and I'm looking for my earlier cite, 5 -- do you remember that cite?

Q 5.3.2.

A 5.3. Okay. In any event, the parties backed that down to saying the parties shall make proof of authorizations available to each other upon request in the event of an allegation of an unauthorized change in accordance with all applicable laws and rules and shall be subject to any penalties contained therein. And by changing the language to simply say we will comply with any applicable rules and be subject to any penalties contained therein, it alleviated the need to quote the $100 fine or debate what happens if the Commission changes that fine, do you amend the SGAT and that sort of thing.

So it was resolved by simply saying whatever

the fine is in the rules will apply, rather than the numerical number.

Q Okay. Just to follow up on something Mr. Evans had asked you, I believe you said you weren't familiar with the KMC Interconnection Agreement. I'm sorry, the SGAT, the KMC SGAT.

A I think the question was did I know if it had been approved, and I said I was not sure -- or I was not aware of whether or not it had been approved. I forget the nature of the question. It had to do with the approval of the KMC agreement.

Q Okay. But you're familiar with it?

A I looked at that agreement at the time, yes.

Q Okay. Well, it was attached to your testimony.

A Yes.

Q And I guess I thought you had said you weren't familiar with the document and so --

A No. I was not familiar with the fact as to whether or not their Interconnection Agreement had been approved.

MS. CREMER: Okay. That's all I have.

MS. AILTS WIEST: Do the Commissioners have any questions?

COMMISSIONER SAHR: I have a couple. Mr. Brotherson, if you'll look at Provision 5.18,

if you go to page 44 and Black Hills Fibercom had asked this question. I think it's about the ninth line down. It says, "The arbitration proceedings shall occur in the Denver metropolitan area or in another mutually-agreeable location."

If Qwest didn't want to have the arbitration proceeding in another location, then they could unilaterally stop it from being held in that location and the arbitration would have to be held in Denver; correct?

THE WITNESS: I think under this language, that could be an event that could occur.

COMMISSIONER SAHR: Okay. Well, I think that's what it does say.

Then looking at 5.18.3 back on page 43 -- and this again was part of Fibercom's questions. And it's in that long first sentence, the part that says, "either party may request that the dispute be settled by arbitration."

The way I read that is that means one party can unilaterally make the decision to go to arbitration. Is that the way you would read that?

THE WITNESS: Could you repeat your question?

COMMISSIONER SAHR: The question is

the last clause on the end of the first sentence, "then either party may request that the dispute be settled by arbitration." Because it uses the word "either," that could indicate to me one party unilaterally without mutual consent -- I know in your hypothetical question you posed it in terms, well, they could mutually consent to arbitration. But if one of the parties did not want arbitration, it would appear to me using the word "either" that they could unilaterally impose arbitration on the other party. Is that correct?

THE WITNESS: No. I don't read it that way. I think the intent of the sentence and the debate was it's not simply the CLEC's right to ask for arbitration or it was not simply Qwest's right to ask for arbitration to the exclusion of the other, that either party had the right -- I think it was originally perhaps proposed the CLEC could request arbitration. We made it clear either party had the right to request arbitration. And that's all it was intended to accomplish.

As I explained earlier in response to questions from Fibercom, I don't think it was intended in any way to negate the provisions in 5.18.1 that said that the parties reserved their

right to go to other jurisdictions.

COMMISSIONER SAHR: Is it your position that, say, put the shoe on the other foot and Black Hills Fibercom wants arbitration and Qwest doesn't, then do we have arbitration under 5.18.3 or do we not have arbitration?

THE WITNESS: And Qwest does not want it?

COMMISSIONER SAHR: Right.

THE WITNESS: Then I would say you don't if Qwest seeks one of the other jurisdictions.

COMMISSIONER SAHR: Under 5.18.1.

THE WITNESS: Yes.

COMMISSIONER SAHR: And that was coming up to my next question, which clause do you think controls? And you're saying you think 5.18.1 controls in that instance?

THE WITNESS: Yes. I think if 5.18.3 were intended to limit the rights granted in 5.18.1, it would specifically say so. The sentence that has been referred to simply was intended to make clear that not just one side or the other but either party has the right to ask for arbitration.

COMMISSIONER SAHR: Do you think we

could rewrite 5.18 to make this a little clearer? It seems to me we're having a lot of people differ on what this means and a lot of questions about 5.18.1 and 5.18.3, which I think with a little bit of wordsmithing could be made crystal clear if that's not the intent.

THE WITNESS: I think I will defer that answer somewhat to my attorney. I think the original proposed dispute resolution language that was placed on the table when we started the negotiations was about 17 pages long, as I recall. We got it down to about two and a half through mutual agreement and a lot of give and take.

And we have represented this as agreed-to language. And to the extent that I voluntarily negotiate to waive something without the other parties that said we agree to something different, I'm kind of in a bind.

I certainly recognize that at least some parties here feel this language could be clearer. I've tried to make it very clear that it is Qwest's position that 5.18.1, that either party has the right to go to the Commission is the intent of the document and is the intent of the parties when they negotiated this language. And any decision by the

South Dakota Commission that reaffirms that intent would certainly not be adverse to me or I think to the other parties, but I'm not sure I'm free to negotiate out what these other parties agreed to and change what we got to.

COMMISSIONER SAHR: And I can understand the negotiation part of it but I do think though if the intent is as you described, I think we could pretty easily insert language that would make that very clear. And I think it's somewhat vague how 18.3 and 18.1 interact.

THE WITNESS: I guess my testimony is if that language were ordered by this Commission and it carried out that intent, we would certainly honor it.

COMMISSIONER SAHR: Then the next question I have is on 5.18.6. And I haven't completely read this section so if this is an off-the-wall question, please feel free to clarify me on that. It says, "Nothing in this section is intended to divest or limit the jurisdiction or authority of the Commission or the FCC as provided by state and federal law."

So that talks about our jurisdiction. In the case of -- and I know you're saying the arbitration

provision you feel is something that has to be mutually agreed upon But would we potentially be taking the right of an action by the private party? It doesn't take away the PUC's jurisdiction to investigate or open a Docket or those sort of things

Are we limiting that language -- could that possibly be limiting Midcontinent's or Black Hills Fibercom's ability to take something before the Commission because they've gone through the arbitration process? Or maybe that's the intent of that I don't know But it talks about our jurisdiction but what I'm wondering about is is it going to limit the parties' right to have access to the Commission to resolve a dispute

THE WITNESS: No In fact, it was put in there again like the 15 1 to make it very clear that the parties do have the right to go to the Commission

And so in addition to the language in 5 18 1, you've got 5 18 6 "Nothing in this section is intended to divest or limit the jurisdiction and authority of the Commission or the FCC as provided by state and federal law."

I mean, we're just trying to use as plain

English as we could to say none of this limits the authority of the South Dakota Commission.

COMMISSIONER SAHR: Right. I understand our authority but it doesn't say or limits the parties' right to bring a private action before that particular Commission either. It talks about our ability, but I'm not sure if I'm clear on that And maybe I'm just missing it.

But perhaps more importantly is this question Your position is that under 5 18 that there's no limitation to an entity to come before the Commission and pursue some sort of private right that they might have under state law or before the FCC under federal law? Is that correct?

THE WITNESS: If I understand your question, that's correct The reason I qualify that is there may be something that is brought before the Commission under the law that ought to be in federal court, personal damage or claim or something I don't know unique things about South Dakota

I'm not saying we're granting people the right to bring anything But certainly anything they have a right to bring before the South Dakota Commission, nothing in this document waives any of

that

COMMISSIONER SAHR: All right Thank you

COMMISSIONER NELSON: I guess I hav a question Are you saying that -- are you viewing in your opinion that if you go to arbitration and you still aren't happy, could they still go to court, can they still go to the Commission?

THE WITNESS: No

COMMISSIONER NELSON: That's what I thought

THE WITNESS: No If the parties choose the expedited arbitration and the pros and cons that come with it, it's whatever they get, their answer, and they agree to live with it It's pretty common We have it with our vendors and a lot of other people It's simply an expedited process We try to make it very clear it's available It's not mandatory

COMMISSIONER NELSON: Well, Mr Brotherson, I agree with you it is kind of a popular thing right now to force people into arbitration whether they like it or not and your local credit card company has been only too happy to send out a notice that says if you don't agree

to arbitrate this, go find a new credit card company Well, lots of luck There aren't any credit card companies that aren't forcing people to do this. I don't want to force people to live with arbitration if they prefer to go to the Commission or if they prefer to go to court I'm done

MS AILTS WIEST: Any redirect?

MS HUGHES: No redirect Thank you

MS AILTS WIEST: Okay How long did the Commission want to take for lunch now? I believe it's about 12:30 Hour or hour and a half? Quarter to 2:00

MS HOBSON: For everyone's information, we will start after lunch with Marie Schwartz, the 272 witnesses

MS AILTS WIEST: Are those the only other witnesses you plan on doing today, Ms Hobson?

MS HOBSON: I think that's going to be adequate It will depend on how the planes land and so on and so forth whether we have other witnesses available today

MS AILTS WIEST: Okay

(A lunch recess is taken from 12.30 p m to 1 45 p m)

(Exhibits 59 59A 59B 60 marked for identification)

MS AILTS WIEST Qwest you may call your next witness

MS HOBSON Before we do that I have a few housekeeping matters

MS AILTS WIEST Go ahead

MS HOBSON First with regard to Exhibit 46 which was the document that the staff had retrieved from the Qwest web page and was the subject of some testimony by Mr Pappas yesterday Qwest would move the admission of that exhibit

MS AILTS WIEST Is there any objection? If not it's admitted

MS HOBSON Next Qwest promised to get back to the Commission with the exact designation of the parts of the testimony that Mr Pappas was adopting

That information is contained in Qwest Exhibit 44 with the following changes to Section 3 of that document So on the very last page of that exhibit before the signature page in Section 3, it should read Section III "Access to unbundled loops" beginning on page 3 line 1 and ending on page 17 line 20 and page 40 line 4 through page 53 line 10 Those are the only changes to the

prefiled direct of Mr Pappas

MR GERDES What was the last number page 40 line 40 to what? I'm sorry I don't write fast enough

MS HOBSON I'm sorry Page 40, line 4 through page 53, line 10

MR GERDES Thank you

MS HOBSON And then finally, this morning Ms Simonson indicated that she would get back to the Commission with the four SGAT sections that were changed that she discussed in her testimony And so here comes the list 10 6 2 1 10 6 2 3 10 4 2 4 and 10 5 2 11 In addition the citation to the FCC order that she promised to provide reads as follows: "It's the provision of directory listings information under the Telecom Act F and RO FCC 01-27 " It was released January 23 2001 I believe that previously there was a suggestion and the answer reading to the 2000 date It's 2001 Thank you

MS AILTS WIEST Thank you

MS HOBSON Qwest calls Marie Schwartz

MARIE SCHWARTZ,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MS. HOBSON:

Q Would you please state your name for the Commission, tell them where you work and what it is that you do

A Yes My name is Marie Schwartz I'm a director in FCC regulatory accounting at Qwest Corporation or the BOC where I have responsibility for our compliance with Section 272 of the Telecommunications Act

Q Thank you You have in front of you Exhibit 59 Could you identify that quickly for the record?

A Yes This is my direct affidavit

Q And do you have an Exhibit 59A?

A Yes

Q Could you please identify that exhibit?

A These are two confidential exhibits

Q Is that 59A and B are two confidential exhibits?

A That's correct

Q Okay And could you just identify the exhibit numbers that were previously attached to those exhibits when they were a part of your prefiled direct?

A Yes 59B is labeled as MES 272-18C, and 59A is labeled as MES 272-3C

Q Thank you And can you also identify Exhibit 60, please

A Exhibit 60 is my rebuttal affidavit

Q Okay Do you have any changes or corrections to make to any of those exhibits?

A No, I do not

Q Now that you've been sworn, can you again confirm the truth and accuracy of the contents of Exhibits 59, 59A, 59B, and 60?

A Yes, I can

MS. HOBSON: With that, Qwest would move admission of Exhibits 59, 59A, 59B, and 60

MS. AILTS WIEST: Any objection? If not, they're admitted

Q Do you have a summary of your testimony?

A Yes, I do And before I start my summary, I actually have some handout materials that I can share with the Commission and observers today to help you to sort of follow along as we discuss our compliance with Section 272 and the relevant requirements

Okay I think everyone has a copy Starting on page 2, Section 272 governs how the BOC and the long distance affiliate must conduct business with each other after we have 271 authority As Ms Brunsting and I will show, Qwest has established that we meet the

requirements of Section 272. As you're aware, Section 272 compliance has received extensive review in other state proceedings including the multistate proceeding or workshop which the South Dakota Commission has followed quite closely.

On the next page on page 3, I'd like to recap our Section 272 compliance history. Again, 272 was extensively evaluated in the multistate proceeding in June of 2001. In September, the multistate facilitator issued a report on 272 and recommended a third-party exam of our compliance with some of the accounting requirements in 272. We then engaged KPMG to conduct this third-party exam and they issued a report finding us in compliance in all material respects except in 12 instances.

We then corrected those 12 discrepancies and we further enhanced our controls as detailed in my affidavit and the affidavit of Ms. Brunsting that were attached to the KPMG report, which is an exhibit in my rebuttal affidavit. We then proactively engaged KPMG to come back again and verify that those enhanced controls were, in fact, in place and that work is detailed in the KPMG Jacobson declaration which is also an exhibit in my rebuttal.

As you're probably aware, we did experience

some difficulty in satisfying some 272 accounting requirements due to the transition to a new 272 affiliate. And we've subsequently provided evidence through the KPMG exam that controls are in place to prevent such difficulties in the future.

Moving onto page 4, before we discuss the requirements of Section 272, I think it would be helpful to talk about the Qwest affiliates or companies that are relevant in Section 272. Qwest Communications International, Inc. is the publicly-traded parent of all Qwest affiliates. Qwest Corporation, or QC, the company that I work for, is the BOC. It used to be US West Communications, and it's the applicant in this proceeding.

Qwest Communications Corporation, or QCC, was the premerger long distance arm of Qwest and the new 272 section affiliate through which QC will be providing in-region interLATA services upon receipt of Section 271 relief. And that's the company Ms. Brunsting is representing today. Qwest long distance, or QLD, was our old 272 affiliate. It was dissolved in November 2001, however it was always a compliant 272 affiliate. And finally, Qwest Services Corporation, or QSC, is the parent of QC and QCC. It's sometimes called the services company.

On page 5, you can see kind of a simple illustration of that corporate structure. The top BOC is the publicly-traded parent. Directly underneath you can see QSC is the parent of the separate affiliate Qwest Corporation, the BOC, which can be found on the bottom and bolded around the edges. And then QCC, the separate 272 affiliate.

So, again, as you can see, these two affiliates are separate.

272 has seven key requirements which we're prepared to comply with: A, that we have a separate affiliate, and we do, as you can see, QCC. 272(b), the structural and transactional rules. C contains the nondiscrimination safeguards. D, a biennial audit which means we need to have an audit every two years after we receive authority. 272(e) contains what's called the fulfillment of certain requests, nondiscrimination around the provision of exchange and exchange access. F, the Sunset rules, talks about basically 272 might go away in the future. And then finally G, the joint marketing provisions show that we will be able to jointly market local and long distance service once we have approval.

So briefly, 272(a), we've satisfied this requirement and we have a separate affiliate, QCC. QC

does not own stock in QCC nor does QCC own stock in QC. So here we have satisfied the FCC's test from previous 271 approval orders for establishing a separate affiliate.

B, the structural and transactional rules. We're compliant in these five key areas. We one, operate independently; two, we have separate books, records, and accounts; three, we have separate officers, directors, and employees; four, creditors of the 272 may not have recourse and do not to the assets of the BOC; and then finally all of our transactions are at arms-length, reduced to writing, and posted on the Internet.

(B)(1), operate independently. Basically, the two companies do not jointly own any network facilities or the land or buildings on which those facilities are placed. There can be no separation installation or maintenance on QC's facilities by QCC nor can there be any OI&M on the 272's facilities by QC or any other Qwest affiliate.

Further, QC will not provide any discriminatory acts as to network service. So here we've satisfied the operate independently requirement by having separate asset systems. We monitor asset transfers through extensive employee training. QC does

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not perform any O&M for QC or vice versa and this is detailed in my affidavit

(b)(2), separate books, records, and accounts. The 272 does maintain separate books, records, and accounts that are separate from the books, records, and accounts of the BOC. The two companies use separate financial system controls, edits, and have a separate general ledger software that's maintained at separate locations. Each company has a separate chart of accounts and those charts were attached in my affidavit and the affidavit of Ms. Brunsting.

So here we've shown again that we have sufficient processes in place to maintain separate books, records, and accounts and we satisfy the FCC's test, again, from previous 271 approval orders. And then these processes were enhanced after the KPMG exam that was recommended in the multistate proceeding and the affidavits detailing those enhancements are attached to my rebuttal.

(b)(3), we've satisfied that we have separate officers, directors, and employees. Any QC employee who performs functions for the 272 are required to report their activities so the 272 can be billed appropriately under FCC pricing rules. And of course those agreements are reduced to writing and posted to

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the Internet. We verified that there's no overlapping employees on payroll registers and other FCC tests in March of 2001, and we continued to maintain internal controls to ensure ongoing compliance such as Social Security No., edit checks, and so forth.

Then finally, the nonaccounting safeguards order in paragraph 178. And this, as indicated in my rebuttal, does permit the parent and the 272 to share officers. So we've satisfied the FCC's test here in New York and Texas for compliance with separate officers, directors, and employees for the reasons that I just covered.

(b)(4), creditors of the 272 may not have recourse to the assets of QC. QCC does not obtain credit under any arrangement that would permit a creditor to have recourse to the assets of QC. QCC's obligations are not cosigned by the BOC, nor are they cosigned by the parent in a manner that would allow recourse to the assets of QC.

We've satisfied the no-recourse requirement of 272 by reviewing our debt agreements and through training efforts and there has never been a dispute on our compliance with (b)(4).

272(b)(5), our transactions between the two companies must be at arms-length, reduced to writing,

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and posted to the Internet. They're documented by stand-alone agreements, by service agreements, or by tariffs. And they are posted to the Internet within 10 days. Rates, terms, and conditions of the transactions are publicly available to make them available to third parties as well as to ensure that accounting safeguards are maintained.

All transactions are reviewed by the Section 272 compliance oversight team which we fashioned after SBC's compliance committee and which I am member in chair.

QCC and QC's, the 272 billing each month is reconciled to make sure that whatever we bill each other matches exactly to what's posted on the Web. So once again, when we look at previous FCC 271 approval orders, we've met 271 (b)(5) by documenting our transactions, pricing them subject to the FCC's rules, and posting to the Internet.

We reconcile our transactions to the FCC's cost allocation manual, or CAM, we reconcile them to the CAM spreadsheets and with the ARMIS report filed with the FCC. And, once again, the KPMG exam did test for compliance with (b)(5).

On 14, there are some sufficiency requirements in terms of FCC guidance on what we

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actually have to post. I'll cover those briefly. Of course rates, terms, and conditions, number and type of personnel, level of expertise, and a few other things that the FCC has deemed necessary in terms of sufficiency requirements. And we do meet those requirements.

272(c) ensures that we do not discriminate in favor of our 272 sub. We make available goods, services, facilities, and information that we provide to QCC to other long distance carriers at the same rates, terms, and conditions. We have processes and controls in place that ensure that QCC must obtain information and telecom services through the same QC processes as other interexchange carriers. And the 272 may obtain any nontelecommunication services through the same manner, through the BOC sales team representative. And finally we post our transactions between the two companies on the Internet, as I mentioned, and we review all of those transactions. So we have met the requirements in 272(c), the nondiscrimination provisions.

As I mentioned earlier, our 272 controls will be audited every two years, starting within the first year that we have 271 approval. So this is not the only time that 272 will be evaluated.

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272(e) contains some nondiscrimination provisions around the provision of exchange and facilities. One, 271(e)(1), there must be a nondiscriminatory provision of telephone exchange service and exchange access for unaffiliated entities.

(2), we must provide exchange access to the 272, obviously under the same terms and conditions as to other interLATA providers.

(e)(3), we must charge the 272 or to ourself, to the extent after 272 Sunset we provide long distance out of the BOC, the same rates for telephone exchange service and exchange access that would be charged to unaffiliated entities.

And then finally, four, in-region interLATA or intraLATA facilities or service to the 272 must be made available to all carriers at the same rate and under the same terms and conditions. We will report our performance under 272(e)(1) monthly and it will be required to be reported in the biennial audit.

Training has been key at Qwest in order for us to achieve 272 compliance. Number one, we trained BOC 272 and services company management employees, emphasizing the transactional requirements and the nondiscrimination requirements. Refresher training was deployed in January of this year as a result of the

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KPMG exam.

We also issued targeted training to employees who conduct business with the 272, those QC sales team representatives, which I discussed earlier under 272(c). Training specific to the OI&M requirements was provided to both QC and QCC network-lead customers. And, finally, targeted training was delivered to all 272 employees.

So just recapping briefly, we've had a compliant 272 affiliate since the release of the act. QLD was our first 272. We then transitioned to a new 272 affiliate in the first quarter of last year, QCC. We've demonstrated that we have sufficient controls in place to satisfy 272. These controls were tested in the KPMG, recommended by the multistate facilitator, and then enhancement implemented after that exam were verified in the Jacobson declaration.

We will demonstrate Section 272 compliance through the first biennial audit and thereafter as long as 272 applies.

So we've shown, and this is key, that our 271 authority will be carried out in compliance with 272 and thus satisfy the FCC's test.

Finally before closing, I'd like to recap what were known as the deferred issues in the

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multistate proceeding related to our 272 compliance. Basically, issues that were to be satisfied through the third-party examination that I mentioned earlier. There were eight such issues and they have all been resolved.

The first was the use of generally-accepted accounting principles, or GAAP. The facilitator wanted GAAP tested in the examination. The KPMG report did address GAAP so this issue can be resolved.

Two, the use of materiality. The KPMG exam did use the materiality threshold that was recommended by the multistate facilitator. So this issue has been resolved.

The third issue has been described as the audit trail issue but what it's really about is did we post on the Internet the services that we were actually providing. The KPMG exam did test our Internet postings with the services we provided.

The fourth item had to do with internal controls. The KPMG exam did test for internal controls. As I mentioned, we enhanced those after the examination and they're detailed in three affidavits that are attached to the rebuttal affidavit.

The fifth item was basically a finding by the multistate facilitator that an assertion that you had

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to actually post billing detail to the Web was not a requirement.

The next issue, timely posting, did we post our Internet transactions in a timely manner. KPMG tested for that and that issue can be resolved.

The next issue was around the required officer certification that is to be completed in compliance with the (b)(5) requirements. KPMG did examine our officer certification to make sure that it was signed by a BOC officer.

And then finally, the last issue is described as compliance with FCC accounting principles. The multistate facilitator actually concluded that this issue is the same as the first issue that revolved around GAAP.

As I mention, the KPMG exam did address all issues that were deferred in the multistate report, and Dr. Griffing did even recommend to the South Dakota Commission that he agreed with the multistate facilitators' issues with regard to the third-party exam.

So in conclusion, I would just like to say again that QC has established that we meet the requirements of 272. This compliance has received extensive review in state proceedings. Eight states

have already given preliminary or final approval to our 272 compliance. So the South Dakota Commission should now be able to recommend approval on 272 in our 271 application. And what that means is that you can find that our past and our present behavior can give the FCC the predictive judgment that it needs to find us in compliance.

Thank you for your attention today and we look forward to your decision.

Q. Thank you for that summary.

MS. HOBSON: Ms. Schwartz is tendered for cross examination.

MS. AILTS WIEST: Do you have any questions, Mr. Gerdes?

MR. GERDES: I have no questions. Thank you.

MS. AILTS WIEST: Black Hills?

MR. EVANS: No questions. Thank you.

MS. AILTS WIEST: Commission staff?

MS. CREMER: Thank you.

CROSS-EXAMINATION

BY MS. CREMER

Q. Good afternoon.

A. Good afternoon.

Q. QCC will provide interLATA long distance for QC. Will intraLATA also be provided?

A. I don't know the answer to that. Ms. Brunsting would be better able to describe the service provided from QCC.

Q. On page 12, line 11 of Exhibit 59, which you really don't need to go to, you'll probably recognize it. But you said there was training with approximately 50 network department leaders? I don't know if you want to go to it or not.

My question is how do those individuals pass this information along to the individuals that work under their supervisors? How does the information they attend at training, how does that get passed along to what are known as worker bees?

A. Typically it's my understanding that depending on the nature of the organization, that training could be passed on through staff meetings, through, you know, e-mail or other communication, but typically in a staff meeting session.

Q. And then on page 16 of Exhibit 59, you refer to your Exhibit MES 272-6 which is the officer list for the BOC and Brunsting's affidavit for the officer list for the 272 affiliate. Do you know, is that still current as of today's date?

A. I believe one change that would be made in terms of the officer list of QC is that the vice president controller, Mark Schumacher, has been replaced by Brian Treadway.

Q. Okay. Where did Mr. Schumacher go?

A. Mr. Schumacher left Qwest.

Q. Okay. On page 16 of Exhibit 59, line 16, that's your direct--

A. I'm sorry. Could you repeat the reference again, please?

Q. Page 16, line 16 of Exhibit 59. And you state, "I have overseen a comparison of the BOC and the 272 affiliate payroll registers." Do you see that?

A. Yes.

Q. How was it that you oversaw the comparison?

A. I worked directly with an individual in the payroll department who pulled a download from the payroll system and actually ran a comparable access database that allowed us to ensure that there were no employees appearing on both payrolls.

Q. And then on page 23, line 4 you state, "It's important to note that the BOC has taken a conservative approach concerning transactions with the 272 affiliate."

What do you mean by that? What sort of a conservative approach?

A. As you proceed further in the paragraph, the conservative approach that we took was around the posting of our 272 transactions. QCC became our 272 subsidiary on March 26 of 2001. However, in order to be conservative without being required, we actually posted our transactions back to the date of the merger, so back to June 30 of 2000.

Q. Okay. Thank you. And I don't know if this is you or Ms. Brunsting that has to do with switched access rates. I think that was my -- how billing will be handled between QC and QCC, is that something you would deal with or --

A. I believe that Ms. Brunsting can talk in more detail about the product offering itself. Access services will be subject to the requirements in 272(e) as I just covered. Any access services provided, or frankly any services provided to the 272, for that matter, will be provided under the same rates, terms, and conditions as we would provide to other carriers.

Q. So a toll call that originates and terminates in South Dakota, which switched access rate would you apply? Is that something you would know?

A. I would not have detail around specific--

Q. Okay. That would be Ms. Brunsting?

A. Yes.

Q Or if not, it is now, huh?
A Fair enough.
MS. CREMER: That's all I have. Thank you.
MS. AILTS WIEST: Do the Commissioners have any questions?
I just had a couple. Going back to the KPMG report, you stated there were 12 instances where you needed to have corrections made. And then after that, you engaged KPMG to verify the enhanced controls were in place.
But that report didn't actually go back and retest those areas, did it? Did it just test to see that you had actually implemented controls?
THE WITNESS: That's correct. It tested that those controls were in fact implemented.
MS. AILTS WIEST: So there was no retesting about the 12 areas where you were in noncompliance?
THE WITNESS: Ms. Brunsting and I did testify in our affidavits that those 12 discrepancies were corrected.
MS. AILTS WIEST: And was that verified by KPMG afterwards?

THE WITNESS: Yes. It was verified that those were corrected.
MS. AILTS WIEST: Is it true that Qwest no longer pulls your individual affiliate transactions?
THE WITNESS: I'm sorry. I'm not understanding the question.
MS. AILTS WIEST: In AT&T's testimony, they stated Qwest used to post individual affiliate transactions.
THE WITNESS: We used to post billing details so we would post on a monthly basis what was actually billed. The FCC found in the SBC Texas order that that information was not required. At that time, we ceased to post that information but do adequately describe our transactions in accordance with the FCC's sufficiency requirements which I covered in my summary.
MS. AILTS WIEST: AT&T also brought up, is it true, the BOC leases dark fiber and transport services from QCC?
THE WITNESS: There is a contract posted on the Web on our 272 website that does describe a dark fiber leased from -- by the BOC or QC from the 272, yes.

MS. AILTS WIEST: Then if a CLEC would like to do that, they would have to enter into their own contract with QCC, is that correct?
THE WITNESS: That would be my understanding. And Ms. Brunsting would be able to talk more specifically about the operations of QCC.
MS. AILTS WIEST: Okay. Thank you. Is there any redirect?
MS. HOBSON: No.
MS. AILTS WIEST: Thank you.
THE WITNESS: Thank you.
MS. AILTS WIEST: You can call your next witness.
(Exhibits 61, 61A and 61B are marked for identification)
MS. HOBSON: Qwest calls Judy Brunsting.
JUDITH BRUNSTING,
called as a witness, being first duly sworn in the above cause, testified under oath as follows:
DIRECT EXAMINATION
BY MS. HOBSON:
Q Good afternoon. Would you please state your name and on the record and tell the Commission where you work and what you do?

A Yes. My name is Judith L. Brunsting. I'm a senior director for Qwest Communications Corporation, the 272 affiliate, and I reside in Denver, Colorado.
Q Thank you. You've been handed what has been previously marked as Exhibit 61. Can you just briefly identify what that is?
A Exhibit 61 is my affidavit for Qwest Communications Corporation for Section 272.
Q And can you identify Exhibit 61A?
A 61A is a confidential exhibit that was attached to my affidavit. It references JLB 272-5C.
Q And 61B, please?
A 61B references another confidential exhibit that was attached to my affidavit and that references JLB 272-6C.
Q Do you have any changes or corrections to make to any of those exhibits at this time?
A No, I do not.
Q And can you again confirm for the Commission the truth and accuracy of the content of all of those exhibits?
A Yes, I can.
Q Okay.
MS. HOBSON: With that, Qwest would move the admission of Exhibits 61, 61A and 61B.
MS. AILTS WIEST: Are there any

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objections?
If not, they're admitted
Q Do you have a summary of your testimony?
A Yes, I do
Q Go ahead, please
A The purpose of my testimony is to show that the 272 affiliate is prepared to satisfy and comply with Section 272 of the Telecommunications Act The 272 affiliate will show that the processes are in place to follow the separateness requirements of operating independently, maintaining separate company books, having separate employees, and documenting the transactions with the BOC upon BOC approval of Section 271
We will identify processes and controls put in place to operationalize the business all while meeting the separateness requirements of Section 272
We have had the opportunity to take the experience of readying a 272 affiliate, implementing the business processes and controls, starting the proceedings to demonstrate Section 272 satisfaction and compliance and introducing a new 272 affiliate I have been a part of these activities for five years Experience has shown us a number of things One, we never have it perfect Two, we always need to stay

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flexible, be able to monitor controls that we have in place and also be able to react quickly to process changes that are needed
The information provided today will assist the Public Utilities Commission of the State of South Dakota in reaching a recommendation that once the BOC receives Section 271 approval from the FCC, the 272 affiliate will enter the interLATA business complying with Section 272
During the period between July 1, 2000 and April 2001, the completion of the merger between US West and Qwest occurred The previous 272 affiliate, US West's, long distance name changed to Qwest Long Distance In January of 2001, I led the efforts to designate Qwest Communications Corporation as the 272 company of the future
In March of 2001, significant business requirements were overlaid onto the 272 affiliate We moved employees from one Qwest entity to another to best align those functions and be in compliance with Section 272 Separate operational book, record, and account requirements, employee separateness, credit conditions, and transaction documentation were completed between the 272 and the BOC. This was a huge accomplishment in a very short amount of time

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There are several provisions of Section 272 that directly affect the 272 affiliate Ms Schwartz went through and covered each of the sections of 272 I am just going to discuss briefly those associated predominantly with the 272 affiliate They are 272(a), the separate affiliate requirement, (b) the structural and transactional requirements, and Section 272(g), the joint marketing
I would like to acknowledge that 272(c) states the nondiscrimination requirements of the BOC and so note that the Section 272 affiliate understands and has communicated to its employees the operation and understanding of these requirements Training and communication of these requirements for Section 272 has been conducted and reinforced with employees
The 272 affiliate is an organization of over 2,000 people And I believe it's right at a little over 2,700 today The employees are located primarily in Ohio, Virginia, Minnesota, Colorado, and numerous other out-of-region locations The organization has divisions responsible for network operations, which includes provisioning and engineering sales and customer service, and marketing The 272 affiliate currently has operating authority to conduct business in all 50 states and it also provides interLATA

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origination and is certified to do so in the 36 states outside the 14-state region
I'd like to focus now on the areas where we have directed efforts at the 272 affiliate First, Section 272(a) requires that the BOC provide interLATA long distance through one or more separate long distance affiliates. Qwest Communications Corporation will be the Section 272 affiliate The 272 affiliate is an existing corporation organized under the laws of the State of Delaware The 272 affiliate and the BOC are both subsidiaries of QSC, or Qwest Services Company, as displayed by the organizational chart that Ms Schwartz just covered and is a wholly-owned subsidiary of Qwest Communications International
Section 272(b) requires the 272 affiliate to operate independently, maintain separate books, records and accounts, have separate employees, officers, and directors, obtain credit separately, and reduce service requests between the 272 and the BOC to writing, priced according to the rules posted to the Internet, billed, critical element, recorded and monitored
The 272 operates independently There is no joint ownership with the BOC of facilities or the land and buildings The 272 affiliate follows GAAP, which includes accrual accounting The 272 affiliate has its

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own separate chart of accounts, has its own separate financial statements, expense controls, a separate general ledger, and account system. And by the way, the account system and general ledger system are on different operating systems which actually are in different locations.

The 272 affiliate has no officers, directors, or employees who are also officers, directors, or employees of the BOC. Employment policies and guidelines restrict the sharing of information by employees who move between entities. Corporate commitment to 272 awareness and training reinforces the requirements of separateness and operating guidelines with the BOC.

Transactions between the 272 affiliate and the BOC are accounted for in accordance with Section 272 and the affiliate transaction rules. Service descriptions, terms, and conditions are defined. The rates comply to rule requirements, posting to the Internet of the service provided or received is completed, billing and financial receipt of funds due to the 227 affiliate are also recorded.

We ensure that all employees receive the necessary information to be compliant with the Section 272 requirements. New employee training on the

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requirements of Section 272 occurs within 10 days of an individual's employment with Qwest. Current employees receive training and annual review via the code of conduct. Employees that have compliance issues receive information on who they can contact for questions and also report potential violations.

Section 272(g) provides the guidelines the 272 affiliate and the BOC must follow relative to joint marketing. Joint marketing allows the BOC to market and sell the interLATA services of the 272 affiliate once the BOC has received 271 approval. It is important to point out that in the FCC's nonaccounting safeguards order, the FCC stated that the regulations -- there are no regulations necessary to implement Section 272(g)1.

This section states that if the BOC permits its 272 affiliate to market or sell the BOC's telephone exchange services, the BOC must allow other carriers to similarly market and sell the BOC's telephone exchange service. The 272 affiliate will not market or sell BOC services, except through an agreement on an arms-length basis reduced to writing and made publicly available.

Section 272(g)(2) permits the BOC to engage in joint marketing with the 272 affiliate. Once authority is received by the BOC pursuant to

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Section 271 of the Act, the 272 affiliate will not market or sell intraLATA service until the BOC does receive approval to provide interLATA service from South Dakota by the FCC.

Lastly, Section 272(g)3 provides that the BOC's joint marketing and sale of services on behalf of the Section 272 affiliate do not violate the nondiscrimination requirements. The 272 affiliate understands that the permitted joint marketing services must be provided pursuant to an arms-length transaction consistent with the requirements of Section 272(b)(5), which is reduced to writing, posted, appropriate pricing applied, and made publicly available.

As the FCC has recognized, it permits joint marketing to increase customer choice.

In the past several months, several decisions were released approving the BOC compliance with Section 272. In the multistate proceeding, the report issued stated that the record demonstrates that Qwest has met each of the separate requirements established by Section 272. The multistate report also recommended an independent examination of compliance with Section 272(b)(2) and (b)(5). The examination is complete and as the KPMG report concluded, except in 12 instances, the BOC and 272 complied in all material

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respects with the applicable accounting rules. Of the 12 instances, seven findings identified services provided by the 272 affiliate to the BOC.

The 272 affiliate has designed new controls, additional control enhancements to correctly post, bill, and book transactions. We now conduct much more extensive review by management of the proposed pricing that is used. We have adopted additional policies and enforced those. We have created checklists. And additional training again with the QCC employees was completed and future training packages have been proposed. KPMG has conducted an additional review confirming that we did complete all of those activities.

In conclusion, the 272 affiliate is a separate affiliate from the BOC that is prepared to show it not only satisfies but complies with Section 272. Processes are in place, a structure has been created that we have employed, communications training and awareness have been conducted to create the employee knowledge to stay compliant with Section 272. We recommend that you find the 272 affiliate of Qwest is in compliance with Section 272. And thank you very much for your time.

MS. HOBSON: Thank you for that.

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summary. In the event I did not do so, I intended to move the admission of 61A and B and I will then tender Ms. Brunsting for cross-examination.

MS. AILTS WIEST: I had those marked all. Mr. Gerdes?

MR. GERDES: No questions.

MS. AILTS WIEST: Fibercom?

MR. EVANS: Yes. We have a few.

Thank you.

CROSS-EXAMINATION

BY MR. EVANS

Q. Good afternoon.

A. Good afternoon.

Q. You have mentioned a few times at least that the companies, the BOC and the 272 affiliate, have separate employees. Now isn't that primarily for the purposes of payroll and things of that nature that they are separate?

And if I can follow-up, the reason I say that is didn't we hear testimony that commonly if one employee works for another, if an affiliate employee works for the BOC, they simply bill their time to the BOC, is that correct?

A. Using the previous affiliate transaction rules, if another legal entity of Qwest provided services or

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worked for the BOC, they would bill their time. With the 272 requirements, however, and especially those of 272(b)(5) and the separate employee requirement 272(b)(3), those employees are not loaned or shared to provide services and billed unless it is reduced to writing, posted on the Internet, and that service would be available to the BOC. But it would be publicly made available.

Q. Okay. So if the BOC and the affiliate had an arms-length agreement that was posted to the Internet, they could have employees working for one another provided their time was accounted for?

A. That's correct. Except for the OI&M restrictions of 272(a), which are operation, installation and maintenance, and the 272 affiliate's employees cannot provide OI&M for the BOC nor can the BOC or any affiliate of the BOC provide OI&M for the 272 affiliate.

Q. Thank you.

A. Uh-huh.

Q. You mentioned, as I recall, a term called "joint marketing." Will the BOC and the 272 affiliate join under the Qwest name and Qwest logo?

A. The plans that are currently in place will place a package and a product line under the Qwest brand that

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would be marketed through joint marketing through the BOC sales channel.

Q. Are there any mechanisms by which the public might recognize they're dealing with a 272 affiliate or the BOC or as far as the public is concerned will be they be the same?

A. The requirements as far as the selection of an interexchange carrier by a customer when they call in to the business office, they will still have the right and be offered to be read from a list or to select the 272 affiliate as their long distance carrier.

Q. And to make sure I understand, all they will see will be the Qwest logo and the Qwest name. Would that be correct?

A. That would be correct except on the billing pages. The billing pages would separate the Qwest Communications Corporation as a separate billing entity.

Q. Which will be mailed in the same envelope, I assume?

A. Today currently, there is a billing and collections agreement that is posted out on the Internet between the 272 affiliate and the BOC very similar to the agreements that other IXEs have with QC but it is planned that the QC, the BOC, would provide the billing service for us.

Q. Thank you. Are the financial results of the BOC and

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the 272 affiliate, I assume they're reported to the same shareholders; is that correct?

A. There is a requirement because of financing that the BOC issues a separate set of financial statements. The QCC financial statements would be rolled up at the QCI, or the Qwest Communications International level, because we do not publicly seek financing on our own. However, for reporting purposes for 272, we have created our own nonaudited balance sheet and financial statements.

Q. Okay. So essentially you have the BOC, the 272 reporting to QSII. QSII are the only shareholders of the entire arrangement; correct?

A. That's true.

Q. Okay. Now as a practical matter, when two companies reporting to a holding company who have the same directors and officers, other than some of the things you've outlined this afternoon that are required by the FCC or the Telecommunications Act, is there anything else that Qwest will be doing to maintain the integrity and the separateness of those two entities?

A. As the diagram that was used in Ms. Schwartz's presentation pointed out, there is a services company entity that resides between Qwest Communications International, the holding company, and the BOC, the

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272 affiliate, and also a number of other affiliates in the Qwest family

The services company employees receive all of the same communications, receive specific guidelines on the sharing of information, and how they provide those common types of shared and administrative services to the legal entities

There is no officer or director of QCC that is also an officer or director of the BOC Now there might be -- there is probably an officer or director of QCC that might be a officer or director of the services company

Q Okay

A However, it does not -- it keeps clean the relationship with the BOC between the 272 and the BOC

Q Okay And I think you've described what I would call a lateral separateness Let's look vertical Are there directors that are directors with QCI that might be a director with any other company, a subsidiary?

A I believe there are officers

Q Or directors?

A Directors of QCI that are also officers or directors of QCS or one of the other affiliates.

Q So there could be some vertical commingling in terms of expertise, directors, and officers?

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A Yes. And I might add that that parent relationship and the reporting through a services company was envisioned in the FCC nonaccounting safeguard order.

Q Okay

A In that they expected us to be able to have efficiencies by using that services company level and by maintaining that separateness at the other level

Q Okay You mentioned there might be joint marketing Will there be any joint sales assistance or joint services that might be provided together to customers by the BOC and 272 affiliate?

A The joint marketing that I refer to in 272(g) refers to the sales by QC of QCC's products, the customer ordering, the order inquiry So there will be a number of functions that QC does provide for QCC in the sales and service area up front to the customer

Q Thank you. Now how would a company like Black Hills Fibercom, for example, take advantage of those sales and services and joint marketing arrangements?

A The sales and services joint marketing arrangements that are referred to in Section 272(g) do not need to be provided by the BOC They are not offered on a nondiscriminatory basis or required to have been done so

Q Okay

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A There is an agreement, though, that will be posted out on the Internet that does describe those services that the BOC will provide the 272 affiliate as far as the sales, customer order inquiry, and the 272 affiliate will pay for those services

Q Can you describe those services, what might be available now?

A Upon 271 approval if I'm a retail customer, I call into the sales channel The sales rep takes my order for my local service and then I go to the selection of my long distance carrier I indicate that I would like to select Qwest Communications Corporation or the Qwest brand for my long distance They would then assist me in determining what plan or what service pricing area I'm looking for They would explain to me the full arrangements of services and they would take my order

That order would then be passed on within that business office and entered into the system and then handed off to -- back to QCC again so that they could perform their PIC change of the customer and actually operationalize that customer to now be selected to QCC

Q Okay That was one service you just described, is that correct?

A Uh-huh One plus I'm going to select a specific IXC

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Q Okay I wanted to touch briefly on Section 272(f), a Sunset provision of the Telecommunicabons Act And as I understand it with the exception of 272(e) and those requirements that are in 272(e), all the other requirements essentially could disappear at the end of three years; is that correct?

A That is my reading of that particular section also

Q And that would also include any auditing that might be done by KPMG?

A Yes. That would also include the biennial audit requirement

Q So it would no longer be required?

A After a period of time, or until at some point the FCC has determined they can Sunset those requirements

Q Now given recent issues that have arisen with Enron and their financial sheet accounting, Qwest has certainly been in the headlines recently in that regard as well has it not?

A I read the same public, you know, articles that you do and have noticed those types of articles

Q Okay And recently the Qwest stock prices dropped apparently because of that; is that correct?

A I would not jump to that conclusion as to that's the reason the stock prices dropped

Q All right Now is there anything that we can provide

to this Commission that perhaps after the three-year Sunset period is over that the entities continue to operate as they are required to under the Act?

A I would just make the one assurance that when the biennial audit requirement that is contained 12 months after entry into the long distance market is accomplished, there will be an extensive audit.

Verizon and SBC are currently in the throes yet of that annual audit and there's yet to be a report out on that. There's been very extensive information found and processes improved and work done between those companies. Two years thereafter where you would have optimistically almost all of your states in business, there's another full biennial audit.

The biennial audit requirements are very extensive in each of the areas and the states will have an opportunity to participate in that to understand that information that's there and to review it.

Q But after the second biennial audit, there's no guarantee of a third or fourth or any thereafter; correct?

A Not as I have read in Section 272.

Q I understand from your testimony that Qwest employees, if they're working for the BOC, are working for the 272 affiliate, they actually have different-color badges

that they wear; is that correct?

A Yes.

Q They must be housed in the same building; is that correct? At least in one city?

A Yes.

Q How many -- that's not a fair question. I assume Qwest has more offices other than just in Denver; is that correct?

A Yes.

Q Do BOCs and 272 affiliates share same offices in other cities besides Denver?

A I believe there are a number of locations and I'm talking about a building location.

Q Certainly.

A That would have both BOC employees and 272 affiliate employees. In those locations, however, we have put structural safeguards in place in that we physically separate those employees to the extent possible. And if not immediately, put a plan in place to put up permanent separate entrances. They have ID systems that operate differently as far as how they would enter their work spaces.

Q Do all of the 60,000 employees of Qwest, plus or minus, do they all have a certain color of badge that they wear?

A The employees that do have a color identification are the employees of the BOC, the employees of the 272 affiliate, and all of the employees of the services company. Because we felt it was so critical for the services company whose employees work with each, the 272 and the BOC, to understand the information-sharing requirements and to have an visible notation of what legal entity that person reports to that they're working with.

Q Final question. And although the companies are separate and the employees apparently are separate to a degree possible, I assume BOC employees own Qwest stock and 272 affiliate employees own 272 stock. Could that be true?

A That could be true. Yes.

MR. EVANS: No other questions.

MS. AILTS WIEST: Commission staff, do you have any questions?

CROSS-EXAMINATION

BY MS. CREMER:

Q Good afternoon.

A Good afternoon.

Q Could you just summarize for us the complaint that Touch America has filed against Qwest with the FCC, if you know?

A The Touch America complaint has to do with the merger agreement where Qwest with the interLATA services that they provided in the 14 states moved all of those services over to Touch America. Touch America then began providing all of those services, and I believe that complaint is a dispute as to how those services have been transferred and the operation of those going forward. And that's all the information I really have on that. But it has to do with the divestiture piece at merger time.

Q Do you know what the status of that is in front of the FCC?

A I do not.

Q Okay. So QCI is the parent?

A Uh-huh.

Q QCC is the 272 and QC is the BOC, right?

A QCI is the parent. QSC is the services company, QCC is the 272, and QC is the BOC. Is that what you said?

Q Yeah.

A Thank you.

Q Do you know who Mr. Tempest is?

A Yes, I do.

Q What's his position?

A General Counsel.

Q For which of those entities?

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A Qwest Services Corporation He is an employee of He is also a director of Qwest Communications Corporation
Q What did you tell me his position was?
A He's an employee, General Counsel, of Qwest Services Company but he is a director of Qwest Communications Corporation
Q And what about S-E-L-I-G-A?
A Robin Seliga
Q Okay
A Chief financial officer for Qwest Services Corporation, director for Qwest Communications Corporation
Q What is the largest entity in the QCI organization?
A The BOC And I don't know that to be factual as far as exact employee counts but just based on experience, the BOC is the largest entity
Q Okay So that's QC, right?
A Yes, it is
Q Who is General Counsel for QC?
A QC receives its General Counsel and legal services from the services company, and the legal counsel and services of the legal group are at QSC. So there is no legal group specifically within QC
Q And what about who's the executive vice-president/CFO for the BOC?
A I'm going to refer to my officer list that was attached

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to my testimony. Exhibit 272-8 James Smith is so noted as the president/officer title for the BOC.
Q Okay What about vice-president?
A Senior vice-president network is Robert Tregemba
Q What about the CFO?
A The BOC does not have a specific CFO designate. It does have a vice-president and controller title instead of a CFO and that is, as Ms. Schwartz mentioned, Brian Treadway today Mark Schumacher has left the business
Q When did Mr Treadway take that position, approximately?
A February time frame
Q Of this year?
A Yes January, February
Q Okay
A Uh-huh
Q In your example that you were discussing with Mr. Evans where the customer calls in and says I want Qwest for my carrier and say this afternoon you've been given 271 approval, am I going to end up with Qwest for my local, my intraLATA and my interLATA, or are they going to talk to me about that I have three choices? How is that going to work?
A Today, plans continue to be developed as to those full marketing promotions and plans that will be used with

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those customers The 272 affiliate, however will offer interLATA capabilities so that they will be a PIC that I could pick them as my interLATA carrier and if they so choose, they could pick QCC as their intraLATA carrier
Q Right But are you going to tell me that have those two different choices?
A Yes.
Q Okay Do you have or do they have like a marketing script that we could look at?
A The marketing scripts are still under development And I would also note the FCC has not required the providing of scripts as far as an approval process for the joint marketing requirements So the actual scripts that will be used hasn't been a requirement Those are in the planning status

And in the nonaccounting safeguards order, one of the things it did mention is we need to follow the equal access requirements and the parity issues have to be maintained
Q Okay. Now I'm trying to understand why Qwest and, you know, I know the line about one-stop shopping and we all want that Okay So move beyond that

What is it that the long distance, the out region, what is it that they're going to gain? They're

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going to be offering -- I can now do all of my long distance calling through Qwest How are the billing arrangements set up here? Does the money stay separate? You know, who get the switched access money? How is billing done?
A And I'm going to only answer a couple of the points you just raised just so I simply walk through them and feel free to ask me additional ones, okay
Q Uh-huh
A In relationship to the switched access as QCC purchases access through the wholesale division of the BOC, just like any other carrier does, it will receive its own bill It will pay switched access rates at the same rates, terms, and conditions as any other carrier does, and currently today QCC receives those same access bills from Bell South, Southwestern Bell, and Verizon It will be no different as they become operational within the 14 state region That is the access piece
Q Okay
A So the BOC will bill QCC for that QCC needs to remit that That will be a revenue on the BOC's books, it will be an expense on QCC's books The revenue now for billing and collections, how will the billing and collections be handled? If the BOC is billing on

behalf of QCC

Q Right

A The long distance calls, it will appear on the Qwest bill. The billing and collections agreement has been negotiated. It is posted out on the Internet. It lists all of those terms and conditions and services that QCC will purchase from the BOC when they're ready to combine and put that all together on one bill. And it gets to the detail as to the service that's provided to other carriers, billing inquiry, accounts receivable. Each of the particular activities that the BOC is going to provide for the 272 is listed in that contract. And I might note it's almost 100 pages.

Okay. So the contract is out there.

The 272 affiliate firmly intends to use the BOC to bill those services for us.

Q Will QC have any interLATA revenues?

A No. Via Section 271, 272 of the Act, the interLATA revenues will need to be until the Sunset rule, you know, here, it will have to be provided through the 272 affiliate.

Q And when is that Sunset rule --

A Three years after the last state's entry has been my interpretation.

Q Okay. When did your position transfer from I think

it's Qwest long distance to QCC?

A In January or February of last year.

Q Of 2001?

A Yes. 2001.

Q Okay. Everyone kept saying you'll handle these so I've got little notes all over.

A I'm glad you kept track of them.

Q Well, I'm sure I didn't. For a toll call that originates and terminates in South Dakota, say from Sioux Falls to North Sioux City?

A Uh-huh.

Q Now everyone thinks of South Dakota as one LATA but North Sioux City?

A Is another LATA.

Q Okay. Which switched access rate would apply for the interLATA intrastate?

A Where did the call originate from?

Q Say Sioux Falls.

A The call originated in Sioux Falls, it terminates in North Sioux City?

Q Yeah.

A This is an intrastate, interLATA call.

Q Okay. And so then -- I have to find it on my chart here. FCC rates; right?

A FCC rates, yes, I believe those are FCC-filed rates.

Q Okay. And then if it is an intraLATA intrastate call?

A Uh-huh.

Q Those would be PUC rates?

A Yes. Access rates -- which rates specifically are you asking me, access or toll?

Q Switched access.

A IntraLATA intrastate would be those access rates governed by the South Dakota Public Utilities Commission.

Q Okay. For interLATA intrastate.

A That would be the first example of a call that originated in Sioux Falls and terminated in North Sioux City and that would be an FCC-governed access rate.

Q Okay. And what about an intraLATA interstate?

A IntraLATA interstate is FCC covered, I believe. Starting to feel like I might win money if I get these right.

Q Well, I had blanks on some of mine. Okay. Well, you were the only one that could answer it so whether you were right or not, I guess we won't know but you answered them.

Is QCC currently operating in South Dakota?

A QCC currently has no customers in South Dakota. It does have operating authority to do business and it has, I believe, a certificate to provide long distance,

again upon approval of Section 271 approval at the FCC.

I do not know of any direct specific customers with the divestiture that did need to occur with the merger, there are no customers in South Dakota.

Q Okay. Do you know when the company, QCC --

A Uh-huh.

Q -- will file for interLATA intrastate authority with us?

A IntraLATA?

Q InterLATA intrastate authority.

A InterLATA intrastate.

Q Right.

A They should -- I mean, we will file for that or make sure our certificate covers that type of a call.

Q Okay.

A When we file our tariffs or our price lists or whatever authority we need to follow in the rules and requirements of South Dakota.

Q Because you told me, right, that QCC has an intraLATA?

A Uh-huh.

Q Intrastate CLEC?

A Yes.

Q Okay. And then will QCC offer its long distance offerings in non Qwest Corporation local exchange

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areas?
A Current planning is underway to review the non Qwest-franchised areas and to offer services in these, and plans are underway to review and look at that. It is fully intended that Qwest will be a full national provider and would offer long distance service in all areas.
Right upon initial 271 approval, it might not be as ambitious, but our plans are to be able to offer long distance service everywhere. As we do today, by the way, in the 36 states outside the region.
Q You don't need to look at this but on page 7 of your testimony, you said that Qwest Long Distance is scheduled to be dissolved at the end of October 2001. Did that happen?
A We dissolved Qwest Long Distance November 5, 2001.
Q This is a question that was passed off to you also.
A Okay.
Q QCC will provide interLATA long distance for QC. Will intraLATA also be provided?
MS. HOBSON: I'm sorry, Ms. Cremer. I'm having trouble understanding whether you're saying "intra" or "inter."
Q QCC will provide interLATA long distance for QC; right?
A Correct.

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Q Okay. Will it also provide -- or let's see. Will intraLATA also be provided?
A Is that for QC as an end-user or consumer themselves or is it for QC's retail customer?
Q I'm assuming retail. Or -- okay. Both.
A Both?
Q Yeah.
A QCC, at this point, I don't know of any plans for QCC at a corporate level to offer telecommunications services intraLATA to QC. However, QCC will offer intraLATA service to retail customers of QC, should they so desire that selection of that carrier.
Q And if I've asked you this, just tell me. Will intraLATA intrastate long distance service be offered by QCC for QC?
A And that would be intraLATA interstate for QC's retail customer?
Q IntraLATA intrastate, both intra.
A Yes. QCC will provide intraLATA intrastate for customers that so select them as their intraLATA carrier.
Q Okay.
MS. CREMER: That's all I have. Thank you.
THE WITNESS: Thank you.

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MS. AILTS WIEST: Do the Commissioners have any questions?
CHAIRMAN BURG: Thank you. Back when you were visiting with Mr. Evans from Black Hills on the employees that are available to CLECs, do you remember that discussion?
THE WITNESS: Yes, I do, sir.
CHAIRMAN BURG: It says would those employees, and I wrote 272 employees, I believe, they would be available -- would they also be available as a CLEC's for the same services you're offering them, available to you at the other companies? I'm not even sure that's a proper question. I'm not sure that's feasible. If they wanted those services from those employees, is that possible?
THE WITNESS: Under the requirements of Section 272, the BOC has a requirement that if it offers the 272 affiliate particular goods, services, it needs to offer those services to like other customers on equal terms and conditions. The nondiscrimination requirement does not go the reverse way.
However, the 272 affiliate, if it allows its employees to provide a service for the BOC, needs

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to make sure that it is posted, reduced to writing, priced accordingly, billed, and would be available for someone to view and understand those services that QCC is providing the BOC.
And I would always say approach QCC and see if they wanted to provide those services, but they aren't under any requirement to do so.
CHAIRMAN BURG: They're not under a requirement?
THE WITNESS: No, they're not.
CHAIRMAN BURG: That was part of what I wanted to know. Then we were talking about the Sunseting provision.
Is that automatic or is there something that triggers it?
THE WITNESS: I wish it was automatic but it isn't. It is three years or until such time as the FCC rules.
CHAIRMAN BURG: So it's the FCC that would determine that.
THE WITNESS: There is a caveat phrase there. I don't know the specific language but at this point there isn't an automatic date on that.
CHAIRMAN BURG: When did you say the

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[illegible]

THE WITNESS: The three years would be after the last state

CHAIRMAN BURG: What is the date of the states now where you have -- is there any?

THE WITNESS: We have [illegible] knowledge either a [illegible] We have pending -- some states. And we're waiting for the FCC for results and depending on the [illegible] in that way

CHAIRMAN BURG: Okay. But you're not able to offer any one FCC test result

THE WITNESS: That's right. We're not able to offer long distance until the FCC approves the application which is once we file 90 days thereafter

CHAIRMAN BURG: That's what I was getting at is does the three years start upon approval of the last state or upon approval of the FCC in the last state?

THE WITNESS: I would say it's the approval of the FCC but I would defer to the attorneys. That's my own personal thought. That is definitely not supported by legal

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interpretation

CHAIRMAN BURG: That's all I have

MS. AILTS WIEST: Any other questions? Any redirect?

MS. HOBSON: Thank you. Just briefly.

REDIRECT EXAMINATION

BY MS. HOBSON

Q. Ms. Browning, you indicated that you work for QCC?

A. Yes.

Q. That's the 272 company?

A. Yes.

Q. QCC will be paying the access charges, isn't that right?

A. Yes.

Q. And so it will be the entity that you don't work for that will be applying those charges?

A. Yes.

Q. Okay. So whatever rates will be paid, it is your understanding that they are going to be equivalent to the rates any other interexchange carrier pays?

A. Yes.

Q. Whether those are intrastate or interstate?

A. It would be based on the origination of the call, the termination of the call, and our assumption is under

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equal terms and conditions as any other carrier pays for that use.

Q. So not to disabuse you of the idea you might win money here, you're not the one that gets to decide what those rates are going to be, is that correct?

A. Not really.

Q. You've been asked a question by Commissioner Burg and also by Mr. Evans earlier concerning the BOC's provision of services to the 272 affiliate.

A. Yes.

Q. And I'm just wondering if you can clarify whether if the BOC provides services to the 272 affiliate if that results in a conversion of the BOC's employees into becoming 272 affiliate employees?

A. No, it does not result in the conversion. When the service is offered, there is -- according to the rates and terms and conditions that would be attached with that work order, there's no 100 percent of any employee that would provide a service to the 272 affiliate. And time would be recorded and it would be accordingly billed based on those rates that are contained in that work order.

Q. But they remain the employees of the BOC, is that correct?

A. They remain the employee of the entity -- of the BOC

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if they're an employee of the BOC providing the service for the 272, they stay an employee of the BOC. Likewise, if they're a 272 affiliate employee providing a particular service for the BOC, they remain an employee of the 272 affiliate.

MS. HOBSON: Thank you. That's all I had.

CHAIRMAN BURG: Can I just ask a question that brings up? That would be similar to the fact that those same services would be offered either way, whichever you're talking about would also be offered to CLECs?

THE WITNESS: It would be in the context of the BOC offering the 272 affiliate the service. They would need to offer those like services to any CLEC or any other IXE or any other, you know, carrier that requested that.

CHAIRMAN BURG: Or vice versa, if 272 employees offered services to the BOC, they would be offering those services also to other --

THE WITNESS: The direction of the nondiscrimination requirement does not go that direction. It only applies to the BOC in providing services to the 272. The 272 providing services to the BOC, they are not required to offer those to

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A I think this is just talking through the steps of what we will do when we're in the condition there is no compatible facilities

If it would have been I think SGAT language we were going to add to that section we probably would have put the appropriate numbers next to it

Q It shows footnoted at 9 1 2 13, which is what I -- if you look at it, it says footnote 39, and that's what I looked at then when I read it to see if it matched

A Okay. As I said, it doesn't It's just a paraphrasing of that section

Q So we could strike the footnote or what?

MS SACILOTTO: Well, if you want to know the source of the paraphrase, I wouldn't strike the footnote

MS CREMER: Actually, I would have -- well, whatever

Q On page 27 -- and it would be line 7?

A Okay.

Q "In South Dakota approximately 3 4 percent of the existing lines are served by IDLC technology and only 1 5 percent are located in areas where the concentration of IDLC is in excess of 75 percent."

What does that reading mean? I just don't understand what you're saying there

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A Well, over the state line count, the total lines in South Dakota 3 4 percent of those are integrated digital loop carrier or fed by integrated digital loop carrier

The 1 5 percent is those lines where in a wire center we've got a 75 percent concentration of IDLC. So I think what that's saying is in the smaller -- how would I explain this? In the larger wire centers where you've got a higher concentration of integrated digital loop carrier, that only one and a half percent are attributed to that area

(Exhibit 46 is marked for identification)

Q Now in your testimony you just talked about the 3 4 percent

A That's correct.

Q Okay. I have handed you what's been marked for identification as Exhibit 46 Do you recognize what that is?

A Sure. It's a report out of the ICONN database, and it takes a look on a central office CILI code by central office CILI code the total number of loops in that wire center, loops that are available for assignment, loops that are in service I do not believe from looking just at the top one -- well, then it talks about loops with integrated digital loop carrier systems and loops

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with [illegible]

Q And that's Qwest, right? That's all the Qwest entities right?

A Yes

Q Okay. Now when I did the math and my math was 3 4 with what we've -- what we have up with 3 4 percent

So my question is you -- where did you come up with that percent? What's your numerator and what's your denominator here?

A Frankly, I haven't looked this report and taken my time to take a look to make that 3 4 percent come out of this

Q Well do you know -- you accepted this testimony, right?

A Yes, I did

Q Do you know where that 3 4 percent -- I don't come all of here and maybe I don't -- I don't know but I don't know where you get the 3 4 percent

A I believe that's where the numerator came from and the same reason -- and I say I believe it was also backed by any carrier with the numbers that are there

Q Well, you know, if you were just to do it theoretically, what do you would we add up for our numerator and what would be our denominator?

A You would take a look at the total lines for the

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State of South Dakota, which would be the sum of the first column. You would then add up the next to last column, which is integrated DLC, and you would divide that by the total of the first column

Q Okay. That's what I did and it's 3 4, which you know -- I think that's great if you were doing something different than we were

And is that -- where that number comes from?

A Yes

Q Okay. We just wanted to be sure. Okay. On page 30 of the last sentence there "Since the establishment of QCCC Qwest's performance for providing nonrecurring installation has been improved significantly."

That's correct

Q What performance report do you have to support that?

A The information that's out of the Qwest website that relates to the PID measurements

Q Such as?

A Hold on for a second. OP 13 measurement

Q OP 13?

A OP 13. Does this not have -- does it not show 100 percent on that measurement?

Q And then on Exhibit 8 -- page 8 would be your attachment to 12

A Okay. What's the -- I see the

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Q That's the direct of Liston
A I'm talking about 8
Q I'm sorry 8 is the --
A Is that the unbundled loop provisions?
Q Yeah
A Excuse me
Q It's the unbundled loop, NIDs, and line splitting, checklist item 4
A I see that
Q You don't see that?
A I'm having trouble finding where you're at I'm sorry
Q Do you see anything that looks like that (Indicating)?
A Which exhibit number is it?
Q Okay It's Liston's Exhibit 12
A Yes
Q Okay And then go to the back of that, and she's got it numerically, her exhibits It's No. 8.
A I will get there I'm sorry I passed it up. Thank you
Q Now that's probably the greatest legend for ICDL flow there is However, what do any of those things stand for?
A First you need to understand the unbundling of a digital loop carrier system I talked about both integrated and universal Integrated --

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Q Okay If you could explain the difference between universal and integrated, and I think you just were
A Sure Integrated is where the carrier system is integrated into the switch. So really in a central office we have no access to that to unbundle. And so a process has to occur which allows you to unbundle the integrated pairgain system.

Universal comes in, makes an appearance on a D-4 channel bank and from there goes over to the switch where they pick up the dial tone services. So if you take -- like I guess the easiest way is the old SLC 96 world, there's four DS-1 that feed the system. Each one of those is comprised of 24 DSO on DS-1 and in the central office on the universal system you have access to individual channels.

You don't have that luxury with integrated pairgain. Because of that and because of the complexity and expense of having to unbundled integrated pairgain, we take a look at doing as it says here, circuit cards. LST is line and station transfer.

So we would take a look at perhaps a customer that isn't working on pairgain and maybe working on a copper loop that's still one of our customers and do some kind of a line and station transfer in order to free that facility up for the CLEC making that request.

We then get into where we start talking -- where, you know, we do the investigation There's an INA di group, which gives us the ability out of the integrated system to pick a single DSO channel to provide that service.

In that central office where there's not a INA di group then we start getting into longer intervals, 90 to 120 days If you have to order a COT in essence, what you're having to do there is deintegrate the integrate pairgain systems. So you're having to break out the four DS-1s off the switch fabric, run those through a D-4 channel bank, in essence where they come out of, and then you provide the unbundled loop service on that individual channel
Q What was the INA di group?
A Di group Integrated network access, I believe
Q What does it exactly do?
A Well, like I said, it's integrated into the switch fabric. The INA di group breaks those DS-1s out of the switch fabric and allows you to gain access to them
Q On page 37 of this same testimony -- are you there?
A Close I am
Q Okay. On line 9 it says, "For South Dakota all loops are located in zone 2." Do you see that?
A Yes. I do

Q Okay And then if you go back to -- it would be Jean Liston's loop-14 exhibit
A I'm sorry I have 13 and 15

MS SACILOTTO: Do you need a 14, Dennis?

THE WITNESS: If I could

Q Is that your own or the official one?
A This is my own

MS CREMER: Is the one that you matched up there from the Commission's Docket?

MS SACILOTTO: We marked it yesterday I don't know where the court reporter's keeping the copies

(Discussion off the record)

Q Okay Did I tell you where on that yet?
A I don't think you did
Q Okay If you go to Qwest performance results, it says -- that first page right behind it. There's a cover page for 14
A Uh-huh
Q And then the next page is Qwest performance results. Are you there?
A It's got a list of graphs on it?
Q Yeah
A Yes

Q Okay. In that first box it says checklist 4, unbundled loop analog installation interval zone 1, and it shows South Dakota as having one in zone 1.

But I thought our testimony said we're only zone 2. So my question is why?

A And I don't know the answer to that question.

Q Okay. Do you have the SGAT up there? Or the Liberty reports, which would be number 25. And I think that's in that smaller pile right in front of you, or your own.

(Discussion off the record)

Q Right here?

A Thank you.

Q Okay. On page 44.

A I'm there.

Q Okay. Paragraph 15, which has started on page 43, but I'm talking about the paragraph that's right above paragraph 16.

A Okay.

Q It starts out, Qwest responded to three of these four requests, and it goes through them the last sentence being, "This issue can be considered closed."

I can't find these changes in the South Dakota SGAT. Do you know where those would be?

A No, not without looking.

And if we failed to perform cooperative testing due to our fault or missed the appointment due to our fault, we would waive the charge of the nonrecurring installation. That is in the South Dakota SGAT.

In addition what happened at the multistate is although AT&T's prefiled testimony talked about these issues, what we really ended up adding to th SGAT was the sixth or seventh installation option that's called project coordinated installation.

So part of what you find with -- and I can share -- I can understand how staff is having -- having not lived through it, people file prefiled testimony, and then when you get to the workshop process it didn't always get resolved in a manner that's entirely consistent with what people wanted in their prefiled testimony because they make compromises.

And I believe what Mr. Antonuk was talking about here is what AT&T requested in the prefiled testimony and then what subsequently got amend 9.2.2.9 by the concessions that we made on the waiving of the charges and the holding of the appointment time and then the addition of the project coordinated installation option.

MS. SACILOTTO: I can shed light on this, if you'd like my explanation, because I was recently posed with almost the identical question. If you don't want -- I'm happy to offer it to clarify this for you.

MS. CREMER: Well, just as long as you understand it's not testimony.

MS. SACILOTTO: I offer it for what it's worth, if the Commission would like. I'm happy to help. If you don't want me to help, I'm happy to stay silent.

MS. AILTS WIEST: You can tell us where that language is?

MS. SACILOTTO: I can explain this provision and how we address this in the multistate process. Yes, I can.

MS. AILTS WIEST: Okay.

MS. SACILOTTO: Section 9.2.2.9 was the subject of quite a bit of negotiation after the multistate workshop. And the big ticket items that we negotiated with the CLECs on those provisions were the 30-minute holding the appointment and if Qwest missed the 30-minute hold of the appointment, it would waive the entire nonrecurring charge for the installation.

MS. AILTS WIEST: Okay.

Q On the same page, 44, paragraph 17 the sentence, "X testified that the SGAT Section 9.2.2.9.10 is referenced."

We don't appear to have that section. Do you know why?

MS. SACILOTTO: I think Mr. Antonuk has a typo in his report.

MS. CREMER: Which is what?

MS. SACILOTTO: If you look right below it, he says 9.2.10, and then in his -- in his block code he has 9.2.2.10, and then in the provision above he has 9.2.2.9.10.

Q Okay. On page 47?

A Yes.

Q And paragraph 25?

A Yes.

Q 10.2.10.3 is referenced, but the South Dakota SGAT not have this section. Do you know what should be referenced or where we could find that?

MS. SACILOTTO: I can ask Ms. Bumgarner this question. I have a feeling th might be an additional -- I'm speculating but in looking at this this could be another typographi error situation in the Antonuk report but I could

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ask Ms Bumgarner this and we can bring you an answer back

MS CREMER: She's still here to testify?

MS SACILOTTO: I think she's still here, yeah I can ask her Yeah I can ask her that question, and we can clear that up I think that will be pretty straight forward

10 2 is a provision that relates to local number portability so she should be able to answer your question

MS CREMER: That's all I have

THE WITNESS: Okay Thank you

MS AILTS WIEST: Do the Commissioners have any questions?

COMMISSIONER NELSON: I have one Mr Pappas, can I assume or are you willing to tell me when you adopted other people's portions of other people's testimony did you read the testimony and if there was a graph or a chart or some fact in there, do you know that -- verify that it was right?

THE WITNESS: I, right, read the testimony several times over the past week, yes

COMMISSIONER NELSON: Did you verify

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the information in there to be sure it's accurate?

THE WITNESS: As much information -- yeah I tried to verify every point in there.

COMMISSIONER NELSON: Why didn't you verify the numbers on this thing? That was part of somebody else's testimony; right?

THE WITNESS: It sounds like a rounding issue more than anything, if we're talking about one-tenth of 1 percent

COMMISSIONER NELSON: I want to be sure I didn't misinterpret what you're saying here, that you actually did adopt it.

THE WITNESS: We're talking 3 4 or 3 5 It's probably a rounding issue

MS CREMER: My issue was, was it a timing issue? Was there different numbers we should be looking at? We don't know when it doesn't match up

Did you use different numbers to get 3 4 than we had was the whole point. It's odd you would round

MS SACILOTTO: Well, I noticed that you pulled this off of the website on -- at least if the date on the bottom of the exhibit is correct, it is April 17, and then the testimony

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that you were citing from was the October testimony

And I have no idea, but that was when you were asking the question that was something that at least jumped into my mind

MS CREMER: Right But, again he had no idea what the numbers were He adopted the testimony and again we run into the problem they have no idea what the testimony is based on He couldn't even give us the numerator and denominator

MS SACILOTTO: I think that misstates his testimony He did both

MS AILTS WIEST: Did the Commissioners have anymore questions?

COMMISSIONER NELSON: That's it for me

CHAIRMAN BURG: I don't

MS AILTS WIEST: In AT&T's testimony they mentioned I want to know if you'd agree with this that Qwest has altered their held order policy - this is on conditioning of loops and determined that orders that are currently in held status will be rejected if there are no facilities and no current construction jobs

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planned

So if a new service order is placed by CLEC and no facilities are available, no construction jobs are planned, then the LSR will be rejected rather than be placed on held over? Is that correct?

THE WITNESS: It's not really correct What happens is - and we do the same thing on the retail side We will take a look, as I said earlier, and we'll take a look for alternative -- doing bad pair recovery We'll take a look at line and station transfers, pending engineering jobs

When we exhaust all of those avenues we send that order up to a center in Cheyenne, Wyoming that retains that order for 30 business days with the hopes because of churn in the network there is going to be a facility free up

If within that 30 business days the facility frees up, it's allocated, assigned to that service order, and that service order is released So their characterization of how we handle the LSRs isn't really accurate

MS AILTS WIEST: And then they also -- it was their position that Qwest should

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refund conditioning charges if it's Qwest's performance or requires the end user to abandon the CLEC

Do you know if any state has accepted AT&T's position on that?

THE WITNESS: Certain degrees They've talked about certain degrees of giving money back for conditioning In the multistate order Mr Antonuk, the facilitator, kind of broke it up that if -- you know, if it's Qwest's fault, basically or if the customer cannot receive service for I believe it was three months, then there should be a conditioning refund as long as that money was actually paid to Qwest

At the same time the AT&T claims -- there was really no way to put -- really no way to put any teeth -- or identify the actual claim I mean, the language they came up with in there were terms like unreasonable delay, poor quality And I think I've got a note here, assigning fault is not easily or readily done when you're taking a look at unreasonable delay or poor quality because you don't know who that unreasonable delay or poor quality is attributed to

So basically what AT&T wants is the ability to

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say you condition this loop for me, two months later I have an end user customer who gets a better deal from ABC company and they leave, it's no fault of anybody's really, other than a marketing from another company and they want refunds on that amount

MS AILTS WIEST: With respect to Mr Antonuk's report language, have other states changed that language, though, with respect to this issue?

THE WITNESS: I'm not aware that other states have changed that language

MS AILTS WIEST: And then if you just look on page 38 -- or 39 on the rebuttal, of Ms Liston's rebuttal, on line 19 you mention the Black Hills new contract amendment.

Did you mean 2002?

THE WITNESS: I probably did. Did I say 2001?

MS AILTS WIEST: Yes. It says 2001 there The new amendment was mailed March --

THE WITNESS: March 22, 2002 My apologies

MS AILTS WIEST: That's all I had Did you have any redirect?

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MS SACILOTTO I just had a couple of questions, if I may

REDIRECT EXAMIANTION

BY MS SACILOTTO:

Q Mr Pappas, I want to circle back to the issue of trouble isolation charges you talked about with Mr somebody like a last name like mine, I should be able to get other people --

MR GERDES: Gerdes What did you want?

MS SACILOTTO I wanted to not butcher your name I'm sorry I ended up flipping my own page Give me a second here

Q If a CLEC performs for itself the trouble isolation tests that you described, finding the fault and the detailed tests and the fault is on Qwest's network does Qwest charge for the testing?

A No, they do not

Q Does Qwest charge for the repair?

A No, they do not

Q Are CLECs required to go to -- have Qwest perform trouble isolation testing for them?

A No, they're not It's basically their call If they choose not to test for their own end user, they can certainly request we do it for them

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Q Is that what you were saying would be the charge?

A That's exactly what I was saying, yes

MS SACILOTTO That's all I have

MS AILTS WIEST Any other questions of this witness?

Thank you Since it's almost 5 o'clock, I believe we'll adjourn for the day And is 8:30 still all right to begin, or did somebody want to change that time --

MS SACILOTTO If we have a couple of minutes, maybe we can clear up the one questio you had about 10 2 from Mr Antonuk's report Would you like to clear that up?

MS AILTS WIEST That's fine with me

(Discussion off the record)

MS SACILOTTO I really hope it won't be long

(Discussion off the record)

MS AILTS WIEST Go ahead

DIRECT EXAMINATION

BY MS SACILOTTO:

Q Ms Bumgarner has returned to the stand and hopefu she'll be able to elucidate or provide some insight onto the provision of Mr Antonuk's report that we ha

CONTINUATION

[2]

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questions about earlier

A. Right. That was a question around the installation hours and the comment about the SGAT sections refers to the loop section, the 9 2 3 7 1, and the Section 10 2 10 3.

I will tell you there's never been a 10 2 10 3 section of the SGAT so this is clearly a typographical error in Mr. Antonuk's report.

I wasn't at the workshop that talked about that particular issue. This came up under the unbundled loops, but there is a section of the SGAT in the number portability section that talks about our normal business hours, and that's 10 2 5 4 3. And that talks about the hours of our -- Monday through Friday, 7 to 7, talks about the hours in terms of the LNP managed cut with a CLEC provided loop.

So I'm assuming that's where their discussion came from.

MS. AILTS WIEST: Okay. Thank you. Does anybody have any questions?

If not, thank you. We will begin tomorrow at 8:30.

(The hearing concluded at 4:55 p.m.)

STATE OF SOUTH DAKOTA)
: SS CERTIFICATE
COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 23rd day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

* *

IN THE MATTER OF THE INVESTIGATION
INTO QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271(c) OF THE TC01-0165
TELECOMMUNICATIONS ACT OF 1996

* *

Continued Transcript of Proceedings, Volume II
April 23, 2002

* *

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,
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PAM NELSON, VICE CHAIRMAN
ROBERT SAHR, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS had in the above-entitled matter, at the South Dakota State Capitol, Room 413, 500 East Capitol Avenue, Pierre, South Dakota, on the 23rd day of April, 2002, commencing at 8:30 o'clock a.m.

* *

I N D E X

Witness	Direct	Cross	Redirect	Recross
Tom Freebery	5	19	55	61
Margaret Bumgarner	65	69	81	88
Dennis Pappas	174	176	186	

Exhibit Nos.	Identified	Received	Withdrawn
14 - Freebery Affidavit	4	4	4
15 - Freebery Exhibit	4	4	4
16 - Freebery Affidavit	4	4	4
17 - Freebery Exhibit	4	4	4
18 - Freebery Affidavit	4	4	4
19 - Freebery Exhibit	4	4	4
20 - Freebery Interconnection	4	106	106
21 - SGAT	64	64	64
22 - Liberty Report	64	64	64
23 - Liberty Report	64	64	64
24 - Liberty Report	64	64	64
25 - Liberty Report	64	64	64
26 - Liberty Report	64	64	64
27 - Liberty Report	64	64	64
28 - Liberty Report	64	64	64
29 - Petition	64	64	64
30 - Bumgarner Direct	64	64	64
31 - Bumgarner Exhibit	64	64	64
32 - Bumgarner SGAT	64	64	64
33 - Bumgarner Exhibit	64	64	64
34 - Bumgarner Item 9	64	64	64
35 - Bumgarner Exhibit	64	64	64
36 - Bumgarner Item 10	64	64	64
37 - Bumgarner Exhibit	64	64	64
38 - Bumgarner Item 11	64	64	64
39 - Bumgarner Exhibit	64	64	64
40 - Bumgarner Direct	64	64	64
41 - Bumgarner Exhibit	64	64	64
42 - Request Denial Confidential	64	64	64
43 - SGAT Language and Interconnection Agreement Language	64	64	64
44 - Pappas Affidavit	64	64	64
45 - SGAT Section 9.1.8	64	64	64
46 - Report out of ICCBH Meeting	64		

(Exhibits 14 through 20 are filed electronically.)

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MS AILTS WIEST We'll go back on the record Qwest, you may call your next witness

MR DEVANEY: Good morning First of all, I'm John Devaney appearing on behalf of Qwest I did not make an appearance yesterday Testifying for Qwest today as our first witness is Mr Tom Freeberg

TOM FREEBERG,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MR DEVANEY

Q Mr Freeberg, you have filed testimony on three different checklist items; is that correct?

A Yes

Q And they would be Checklist Items 1, 3, and 13?

A Yes

Q And so you have both direct and rebuttal affidavits on all three; is that right?

A That's right

Q Let's first focus on your affidavits relating to Checklist Item 1, interconnection We have premarked Mr Freeberg's October 24, 2001 interconnection affidavit as Exhibit 14 And, Mr Freeberg, do you have any corrections that you would like to make to

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that testimony?

A No I don't think so

Q Are the answers that you provided in that testimony true and correct to the best of your knowledge?

A Yes, they are

Q And similarly, you have filed a rebuttal affidavit dated April 2, 2002 on Checklist Item 1, interconnection trunking Do you have any corrections you'd like to make to that affidavit?

A No

Q And are the answers you provided in that affidavit true and correct to the best of your knowledge?

A Yes, they are

MR DEVANEY: We would ask that Mr Freeberg's two affidavits relating to interconnection, Exhibits 14 and 15, be admitted into the record

MS AILTS WIEST: Are there any objections? If not, they're admitted

MR DEVANEY: Thank you

Q Proceeding then to Checklist Item 3, which is the subject of poles, ducts, conduits and rights-of-way Again, Mr Freeberg, you filed an affidavit on October 24, 2001; is that right?

A Yes

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Q And that's been premarked as Exhibit 16 And again a rebuttal affidavit on April 2, 2002 that's been marked as Exhibit 17 is that correct?

A Yes

Q With respect to both pieces of testimony, do you have any corrections?

A No

Q And is the information you've provided in both of those affidavits true and correct to the best of your knowledge?

A Yes, it is

MR DEVANEY We would then ask that Exhibits 16 and 17 be admitted into the record

MS AILTS WIEST Any objection to Exhibits 16 or 17?

MS CREMER What was 16? Was that Checklist 3?

MR DEVANEY Correct

MS AILTS WIEST If not they're admitted

MR DEVANEY Thank you

Q Finally Checklist Item 13 a direct affidavit on October 24 2001 and a rebuttal affidavit on April 2 2002; is that correct Mr Freeberg?

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A Yes

Q Do you have corrections to either of those affidavits?

A No

Q And again, is the information you've provided in those affidavits true and correct to the best of your knowledge?

A Yes, it is

MR DEVANEY We would ask that Exhibits 18 and 19 also be admitted into the record

MS AILTS WIEST Any objections to 18 and 19? If not, they're admitted

MR DEVANEY Thank you

Q Finally Mr Freeberg, you have prepared a demonstrative exhibit for your summary that's based on your interconnection testimony is that correct?

A Yes

Q We're going to pass that out now it has been premarked as Exhibit 20 And just to emphasize it is based on data that's set forth in his testimony And once we hand that out Mr Freeberg we'll ask you to proceed with your summary

A Okay

MS AILTS WIEST Are you doing all three or just interconnection?

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MR DEVANEY He's going to do all three in his summary

MS AILTS WIEST Do any of the parties have any trouble with doing all three right away? Okay Go ahead

MR GERDES No

MS AILTS WIEST Go ahead

MR DEVANEY Okay I'll just wait until this exhibit is handed out

MS AILTS WIEST This is the summary?

MR DEVANEY The exhibit that's being handed out now? No It's a bar chart that will be used in his summary He'll just refer to it

MS AILTS WIEST Be used Okay

MR DEVANEY If I haven't said, it's Exhibit 20

Q Mr Freeberg, I think we're ready to go Could you begin your summary by just giving the Commission a brief description of your background and who you are and what your experience is?

A Sure

Q Thanks

A Good morning I'm Tom Freeberg I'm an engineer by

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education registered in the State of Minnesota I've worked for Qwest and its predecessor since 1979 in various engineering, construction, administration, planning, and operations positions I've supervised crews responsible for placement and splicing of interoffice and loop facilities I've supervised service order administrators and facilities specialists who maintained records of idle and working cable and electronics inventories as the orders were processed I've drafted blueprints for cable and electronics augments, run computer models comparing the economics of various network augment options -- switching, loop, and interoffice transport -- and I've developed the cost portion of business cases for potential new office services

Finally, as part of Qwest's wholesale division, I directed the development and documentation of provisioning and maintenance processes associated with new resale, interconnection, and unbundled local services to ensure that basic provisioning and maintenance were in place to support the initial rollout of local wholesale services Most recently, I've actively participated in many state proceedings where Qwest has been seeking approval to provide interLATA services within its 14-state region.

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I've filed direct and rebuttal affidavits on behalf of Qwest on Checklist Items 1, 3, and 13, as we just discussed Checklist Item 1 concerns both trunk-side interconnection and collocation

I'm addressing the interconnection portion of this checklist item and my fellow witness, Margaret Bumgarner, will address the collocation portion. Trunk-side interconnection allows for the exchange of local calls on trunk groups between CLEC and ILEC central office switches Put simply, this form of interconnection allows the retail customer of a facilities-based CLEC to easily place a call to a retail customer of Qwest's or vice versa

A trunk group is a set of transmission paths that are connected to the trunk-side switch ports of a CLEC at one end and the trunk-side switch ports of an ILEC at the other end With the proper software in each switch, the calls will flow between networks

Checklist Item 3 concerns CLEC access to Qwest's poles, ducts, conduits, and right-of-way space This checklist item is straightforward It involves Qwest's having methods and procedures in place to meet its obligation under the act to provide CLECs with access to these facilities and space

Checklist Item 13 concerns the payment

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between carriers who exchange local calls on trunk group between CLEC and ILEC central office switches This checklist item has a close tie to the interconnection trunking aspect of Checklist Item 1 Generally, a carrier bills its own retail customer for the costs of originating a local call When that call is carried over an interconnection trunk group to another carrier for termination, the carrier that terminates the call bills the carrier that originated it Since the transport and switching rate elements are applied symmetrically by both carriers, the payment is called "reciprocal compensation"

Regarding Checklist Item 1, Qwest currently exchanges calls with South Dakota CLECs on over 10,000 trunks Each trunk can handle one simultaneous call Six South Dakota CLECs have taken advantage of this offer and have active trunks When I filed my direct testimony in October of 2001, approximately 7,000 trunks were in place As captured in Exhibit 20, just handed out, this gain represents a steady growth over the past two years at an annual rate of about 50 percent In January 2002, these trunks allowed for the exchange of 70 million minutes of calling between Qwest and the six CLECs That's minutes per month These data show that interconnection is clearly allowing

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CLECs in South Dakota to compete and be successful in providing local exchange service

Qwest has a continuing legal obligation to provide timely, good-faith responses to future requests for more interconnection trunking. As part of our effort to meet this obligation, Qwest and the South Dakota carriers that are interconnected with us use a well documented access service request process for submitting these requests. This process was developed by national standards bodies and it is a process very similar to that which interexchange carriers have long used to place orders for exchange access.

Qwest's ultimate obligation is to provide interconnection trunking in a manner that's nondiscriminatory, that is provisioning and repairing of trunks on substantial power par with Qwest's provisioning and repair of local interoffice trunks for itself.

How do you measure whether that's happening? Well, the collaborative Qwest/CLEC ROC process resulted in 13 well defined measures or indicators of performance. These measures use objective criteria for provisioning trunks, repairing trunks, and managing call blockage to develop an overall picture of whether

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Qwest is providing interconnection trunking in a nondiscriminatory manner.

What do these measures in South Dakota tell us about Qwest's performance? Qwest has consistently met provisioning due dates for interconnection trunks and since October provisioning intervals have averaged approximately 20 days. Delays in provisioning trunks are very rare and installation quality is high, as demonstrated by the absence of repairs during the 30 days following installation. Repairs of trunks have rarely been needed and on the infrequent occasions when repairs have been necessary, Qwest has consistently completed them in less than two hours. Call blocking is almost nonexistent.

Regarding Checklist Item 3, Qwest offers access to poles, ducts, conduits, and rights-of-way as required by the Telecommunications Act of 1996 in section 224. Qwest's commitment includes providing access to conduit and rights-of-way into multiple-tenant environments such as apartment buildings and condominiums. Qwest currently provides space to other South Dakota carriers on over 7,000 poles. By my count, at least two South Dakota CLECs have taken advantage of this offering. This carrier count does not include nine carriers who are occupying

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Qwest pole space with cable television provider status who may also be providing local telephone service. I'm not aware of any requests for right of way space or duct space except perhaps in conjunction with collocation.

Qwest is committed to provide timely good-faith responses to request for access to poles, ducts, conduits, and rights-of-way in its South Dakota Interconnection Agreement, such as the KMC agreement. Qwest has a well-documented, relatively simple two-step process for filling these requests.

An inquiry of Qwest's outside plant records is the first step to filling a CLEC request, and it's generally completed in 10 calendar days or fewer. If the CLEC wishes to proceed with the request, field verification is the second step. Field verification involves a physical inspection of the pole or conduit route that the CLEC wishes to use. Qwest strives to complete all field verification in 35 calendar days or fewer. If a request must be denied, it is specific and communicated not later than the 45th calendar day of the process.

If it's necessary to prepare the pole or conduit for CLEC access, this make ready work is completed on a first-come, first-served basis via

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priority-one assignment in Qwest's construction project scheduling system. A CLEC may view Qwest's records and perform its own verification and make-ready work. This process is very similar to that described in the testimony of Verizon's witnesses in the states where 271 checklist approval has been granted to Verizon. Qwest's obligations are recorded in Section 10.8 of the SGAT, in the Qwest/KMC agreement, and in other Interconnection Agreements.

Regarding Checklist Item 13, Section 251(b)(5) of the act requires all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications. Qwest satisfies the Section 271 Checklist Item 13 requirement of offering reciprocal compensation arrangements in accordance with Section 252(d)(2).

Specifically as part of its commitment to interconnection, Qwest provides reciprocal compensation arrangements under the terms and conditions that 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 local calls that originate on the network facilities of the other carrier and that are a reasonable

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approximation of the additional cost of terminating such calls

Three carriers have entered into conventional reciprocal compensation agreements with Qwest One carrier has an Interconnection Agreement with Qwest that's strictly bill-and-keep with respect to exchange of local traffic When the parties agree that each will likely owe the other the same amount of reciprocal compensation, they may enter into an agreement that does not involve a transfer of nearly matching payments This is called bill-and-keep

Two South Dakota carriers have what might be called traffic balance agreements These agreements allow for bill-and-keep while local traffic is approximately in balance when originating minutes are compared to terminating minutes These agreements allow for conventional reciprocal compensation when traffic is not balanced

When I filed my direct testimony on October 2001, I reported that the volume of interconnection traffic exchange was about 50 million minutes per month, 50 In January 2002, as I mentioned before, these trunks allowed for the exchange of 70 million minutes of calling between Qwest and the six CLECs This is a significant and steady growth over

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the past six months This gain represents approximately 40 percent gain in six months Payments between the carriers are also growing

Qwest has a continuing legal obligation to provide timely payment and accurate billing of reciprocal compensation Nondiscrimination is ensured since this particular checklist item is associated with two ROC-defined performance measurements The audited performance measurements provide objective criteria associated with reciprocal compensation In each month from October 2001 to February 2002, Qwest surpassed the 95 percent benchmarks for each of these performance measures

Qwest has continued to improve its processes and it has revised them to be even more responsive to CLEC needs Qwest's most recent Interconnection Agreements reflect the advice of regulators from workshops in other parts of Qwest's ILEC geography The Commissions of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Oregon, Utah, and Wyoming have found that pending review of the third-party OSS test, Qwest satisfies Checklist Items 1, 3, and 13

I appreciate the chance to offer this endorsement of Qwest's satisfaction of these checklist items, and I'll attempt to respond to any questions you

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may now have

MR DEVANEY Before offering Mr Freeberg for any cross examination questions we would ask that demonstrative Exhibit 20 be entered into the record

MS AILTS WIEST Is there any objection to Exhibit 20? If not, it's admitted

MR DEVANEY Thank you Mr Freeberg is available for questioning

MS AILTS WIEST Mr Gerdes, do you have any questions?

CROSS-EXAMINATION

BY MR GERDES

Q Good morning, Mr Freeberg

A Good morning

Q I'd like to refer to that portion of your rebuttal testimony dealing with your response to Mr Sammons' concern under Checklist Item 13 dealing with reciprocal compensation for terminating traffic

Do you have that generally in mind? It's on page 13 It starts on page 13 of your rebuttal affidavit

A I'm there

Q Okay Thank you And if I'm understanding what you're saying correctly as long as Midcontinent gets the

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information and bills Qwest we don't have a problem

A No

Q Just so we're agreeing, we don't have a problem, is that correct?

A That's correct

MR GERDES Okay That's all I have Thank you

MS AILTS WIEST Black Hills

MR EVANS We do have some questions Thank you

MS AILTS WIEST Go ahead

CROSS EXAMINATION

BY MR EVANS

Q Good morning My name is Linn Evans and I'm general in-house counsel for Black Hills Corporation and Black Hills Fibercom, a subsidiary of Black Hills Corporation And I am a power lawyer, not a telecommunications lawyer, so bear with me please

First I'd like to know, please, what arrangements do you have with AT&T for the exchange of ISP traffic?

A I don't know that I'm familiar with the individual terms of AT&T's agreement with Qwest It's hard for me to be familiar with the individual terms of each carrier

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Q I understand your testimony to say they were included in the SGAT, is that true, or will be?
A That's true I'm more familiar with the SGAT
Q How does the SGAT address that issue then?
A The SGAT aligns with SCC's pronouncement that came out in April of last year that gave us all advice about how that traffic should be subject to compensation
Q And what is that general arrangement? Can you describe that for the Commission?
A Sure It's not a simple explanation, but yes, I'll try it The FCC was faced with the question of whether that traffic is local in nature or interstate in nature And it said that that traffic was, in fact, information access and specifically not either local or interstate However, it did suggest that traffic is interstate in nature

In making that declaration, it also said that if carriers were exchanging traffic under agreements that didn't specifically address this traffic, they were subject to a set of rules If, in fact, there were explicit language in their agreements, they needed to follow through on those agreements

The FCC established recommended rates that should be used for compensation of that type of traffic, if the carriers were exchanging traffic and

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exchanging compensation in the first quarter of 2001. Those rates that the FCC prescribed tended towards zero over a three-year period, tended towards bill-and-keep over a three-year period of time. And for carriers who are not exchanging traffic and exchanging moneys as of the first quarter of 2001, it took them to bill-and-keep as of the effective date of the FCC order
Q Okay Would it be possible for a CLEC such as Black Hills Fibercom to opt into that portion of the SGAT by itself?
A Yes. And I believe it has.
Q Okay I'm a parrot here right now. Did Qwest make any payments to any other CLECs for ISP traffic?

MR. DEVANEY: I'm sorry. May I ask that a time frame be placed on that question? Because the law has changed so I think the time frame may be important

MS AILTS WIEST: Do you have a time frame?

Q Within the last six months
A Can you ask me the complete question once again
Q Maybe Has Qwest received payments from any other CLEC within the last six months for ISP traffic?

MR. DEVANEY: I may also ask are we

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talking about South Dakota?
Q Any state if you know
A You know, I don't know
Q In South Dakota, would you happen to know?
A I don't know
Q Okay What services has Qwest provided under the KMC Interconnection Agreement?
A I don't believe it's in effect yet
Q So no services at all have been provided to date?
A I don't believe so
Q Do you know when that might occur? Do you have any time line?
A Soon, but I don't know
Q You really don't know, though, correct?
A That's true
Q You mentioned that you have two traffic balancing agreements Can you tell me who those are with? I assume those are in South Dakota
A Right I believe that those are with AT&T and with Midcontinent
Q Now you also mentioned that we have approximately 70 million minutes of is it local calling per month in South Dakota with Qwest involving Qwest I should say?
A That's the number of minutes that's being exchanged

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over the 10,000 interconnection trunks, yes
Q Excuse me So they're interconnection minutes correct?
A True
Q Do those minutes include traffic delivered to ISPs?
A Yes, they do
Q Do you know approximately how many of these minutes? Any kind of a range?
A I don't
Q You also mentioned that Qwest has achieved a 95 percent benchmark How is the standard established that you've actually reached that percentage?
A The Regulatory Oversight Committee hosted collaborative sessions that discussed the definition of two measures one of which is titled Billing Indicator 3 and another which is called Billing Indicator 4 And they very carefully took a look at billing accuracy and completeness and timeliness and they have audited the collection of data against those measures and those results of the collection of that data is published to the Commission and to interconnected CLECs
Q Okay Exhibit 14, which is your direct on Interconnection Agreements, page 3 you mention that the performance data during the past six months show that Qwest is meeting CLEC's demand for interconnection at

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the required level of quality Is that what you've just testified to?
A What line are we on?
Q Lines 3 through 5, essentially
A I see it What was the question?
Q Is that testimony related to the 95 percent benchmark we just discussed?
A No Actually the 95 percent benchmark we just discussed is associated with Checklist Item 13 and this is Checklist Item 1
Q So what are the required levels of quality for checklist involving interconnection?
A Good question Here in South Dakota, I believe there are no specified benchmarks or established benchmarks Instead, those performance measures generally drive towards nondiscrimination through a demonstration of parity with feature group service

So, in fact, what's happening is those trunk groups that are arranged for local interconnection are compared to trunk groups that are arranged for interexchange carrier exchange access And it's, you know, a parity comparison there
Q Okay I'll direct your attention to Exhibit 19, page 6, please This is your redirect -- rebuttal, excuse me, affidavit on reciprocal compensation

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In that rebuttal, you make a comment to Mr Wilson's essentially affidavit or his testimony in lines 17 through 19 essentially. Can you tell me what you mean by that sentence in lines 17 through 20?
A Sure

MR DEVANEY: I'm sorry What page number?

MR EVANS: This is page 6

MR DEVANEY: Thank you
A The circumstances there involve a carrier who perhaps had formerly established a trunk group with Qwest to exchange one-plus calls, for example, that is an interexchange carrier It might be an incumbent local carrier who's located in territory adjacent to Qwest and has a trunk group in place

But in any event, any carrier who has perhaps arranged a trunk group, arranged that trunk group through, for example, an exchange access tariff and has arranged a large digital pipe as is fairly typical, a DS-3 transmission facility can physically handle the through-put of 28 DS-1s and in many cases the price for the DS-3 in the tariff is something less than 28 times the DS-1 So parties tend to establish that DS-3 and have some portion of the DS-3 as idle or vacant space.

When the same carrier becomes a CLEC and

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begins to enter the local exchange carrier business Section 7 3 1 1 2 allows the CLEC to use that vacant capacity for the establishment of a new local trunk group new local interconnection trunk group And when the carrier does that, Qwest levies no charge for the use of that capacity
Q Now you mentioned a large pipe Would you agree that the most efficient way to transfer the calls between a Qwest -- a CLEC, for example of Black Hills Fibercom would be a single large pipe?
A Yes
Q Do you have any idea why Fibercom has refused to use single large pipe and rather had to use four trunking trunks? Trunk groups I apologize
A Well, let's be sure we don't confuse a trunk group with what you just referred to as a pipe A transport system we just mentioned, a DS-3 transport system has the equivalent of 672 trunks Each of those 672 trunks could be one member of a trunk group A trunk group can be any size

So a DS 3 transmission facility could handle as many as 672 one member trunk groups or any number of trunk groups as long as the total number of members totalled 672 or fewer I don't know if that answers your question I'm not familiar with a refusal

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Q You weren't I'm sorry to interrupt you
A I was not involved, no
Q Okay Do you have any idea well, you don't I'm sorry

In terms of turning up trunks, can you describe how trunks are essentially turned up? Is there a specific order that must be done or what?
A Sure When a CLEC wishes to provision a new trunk group, it submits an access service request It is a form that a CLEC fills out and submits to Qwest It can submit this form electronically, by facsimile, by postal service A CLEC chooses a due date and the specifics of the type of traffic that's going to be carried, the size of the trunk group and so forth

Qwest receives this, turns around an acknowledgment of having received such a request in the form of a firm order confirmation This typically is turned around in five days or fewer At that point, the two carriers have agreed on a due date and at that point the carrier should have agreed that the order is complete and correct and so forth

And then as the due date nears, Qwest begins a process of ensuring that the transport facility has been established before any traffic is pointed to it so the two carriers ensure there's continuity between the

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two companies and that at a very specific time when both carriers have technicians on hand, each instructs their switches to begin to send calls to this new transport facility which becomes the new trunk group With some confirming tests, the Order is completed and that group begins to handle traffic

Q In regard to Black Hills turning up the trunk groups, do you have any idea why Qwest turned up the Rapid City trunk group list of the four that were installed for Black Hills Fibercom?

A I'm not familiar with that particular request

Q Will anyone testify in these proceedings that might be familiar with that?

A I wouldn't expect that Was this in testimony that you had filed?

Q No, it was not

A No I don't think so

MR EVANS: No other questions Thank you

MS AILTS WIEST: Staff

MS CREMER: Thank you

CROSS-EXAMINATION

BY MS CREMER

Q Good morning

A Good morning

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MS CREMER: Are you planning on admitting the SGAT at any point?

MR DEVANEY: I believe we are, yes

MS CREMER: Can we do it now because I need to refer to it?

MS HOBSON: We don't have a copy to mark right now

MS CREMER: You gave everybody a copy We've all got a copy with us

MS HOBSON: We don't have anything to mark for the court reporter at the moment

MS CREMER: Do you want to just make 21 the SGAT? Make 21 the SGAT What about the Liberty reports? Are you planning on putting those in?

MS HOBSON: Yes Same issue: we don't have them right now to be marked

MS CREMER: When do you plan on doing that? These are the witnesses we're going to have questions of that, the Liberty reports and the SGAT

MS HOBSON: Well, we were planning to do it when we have copies that we can have marked We just don't have them here right now But if you have copies, I believe everyone has been

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served with a copy with our petition We just don't have anything clean to give the court reporter right at this moment

MS CREMER: Why wouldn't we have the Commission -- the original file?

MS AILTS WIEST: It's downstairs We just didn't bring the whole thing up

MS CREMER: Right But we would have that, right, and isn't that what should be marked as the exhibit?

MS AILTS WIEST Right We can certainly mark those If you want to take a short break --

MS CREMER: We're going to need the Liberty reports and the SGAT, which the SGAT is 26 and the Liberty reports are 27 through 33 or something like that

MS AILTS WIEST: That sounds right So 26 through 33

MS HOBSON: Attachments to the petition

MS AILTS WIEST: Right Let's go get those and we'll get everything straightened out

MS HOBSON: No problem

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MS AILTS WIEST: We'll just take a short break 10 minutes

(A short recess is taken)

(Exhibits 21 - 28 were marked for identification)

MS AILTS WIEST: Let's go back on the record We did go down and we got the SGAT that Qwest filed with its original petition plus the Liberty reports, and I'll just tell you what the numbers are You can write them down, and we can have somebody move them in We have 21 is the SGAT 22 is the Liberty report on Checklist Items 3, 7, 8, 9, 10, and 12

23 is the Liberty report on Checklist Items 1, 11, 13, and 14 24 is the Liberty report on emerging services 25 is the Liberty report on 5, 6, 2, and 4 Exhibit 26 is the Liberty report on general terms and conditions, 272, and Track A And 27 is the Liberty report on public interest And 28 is the Liberty report on the QPAP, Qwest performance assurance plan

And then it's my understanding that Qwest also would like the original petition put in, which is 98 pages Did you want just your petition pages 1 through 98?

MS HOBSON: Yes That's correct

MS AILTS WIEST: Okay We'll mark that as Exhibit 29, the petition

(Exhibit 29 is marked for identification)

MS AILTS WIEST: Okay Does anybody want to move any of those exhibits in? Is there any objection to having any of those exhibits offered and received into evidence?

MR DEVANEY: I think we can stipulate to their admissibility

MS AILTS WIEST: So we'll have admitted Exhibits 21, 22, 23, 24, 25, 26, 27, 28, and 29 Okay At this point, Ms Cremer, I believe you were doing cross

Q Qwest has amended the SGAT -- I'm sorry John Antonuk, which would be Exhibit 27 -- do you have that in front of you?

A Yes

Q Okay I'm going to start with a different question and lead into that one John Antonuk recommended deletion of 7 2 2 15 and I don't know if you want to look that up It effectively extended Qwest's obligation to the state borders, that 50 miles Do you remember that part of it?

A Yes, I do

Q Okay However, he said that cost dockets offered Qwest

the chance to address economic issues like risk by pursuing higher rates for lengthy transport projects if the economic facts supported them.

What was it that Qwest found inadequate about this approach to the direct trunk transport issue?

A Qwest believed that the FCC, in paragraph 553 in the first report and order that came out in August of 1996, made it clear that an ILEC's obligation was to a limited build-out of its facilities Now the FCC wasn't clear about what it meant when it said "limited," but it made clear that ILECs needed to open their networks, needed to allow interconnection at any point onto their networks But when it came to establishing interconnection, it said that ILEC's obligation was limited or was a limited build-out that was called for

This is the singular example, I think, of Qwest pushing back against a recommendation of John Antonuk's Here in South Dakota where distances can be very great, we felt like a challenge here was a reasonable thing Several states agreed with Qwest on this point and so that -- you do spot the one single pushback that Qwest has made against John Antonuk's advice

Q Okay Thank you In Section 10 8 2 27 4, which

restricts the access of CLEC employees to landowner agreements, do you know what I'm talking about?

A I do

Q Why does Qwest feel justified in making this addition to the SGAT although the recommended resolution of John Antonuk did not explicitly call for its inclusion?

A The modifications that I suggested in my rebuttal testimony are the result of give-and-take between Qwest and AT&T This is language that AT&T requested And so its inclusion is really intended to be a compromise with AT&T

Other carriers have expressed agreement with AT&T in its suggested language Qwest certainly would have no problem with encouragement from the South Dakota Commission to take that particular section back to a language that doesn't include those changes But those were the CLEC compromises

Q Okay Thank you In your Exhibit 14?

A Yes

Q Okay On page 12, line 2 Found it?

A Got it

Q It talks about the six facilities-based CLECs Who are the six facilities-based CLECs that you're referring to?

A Midcontinent, Black Hills, Northern Valley, Sprint,

AT&T Give me a moment I'll think of the sixth McLeod

Q McLeod Okay Where does Sprint have facilities?

A I don't know off the top of my head but they have a significant number of trunks

Q Did you ever consider Comchoice or Ionex?

A I considered them and the data that I'm looking at would suggest that if they have an opportunity to arrange interconnection trunking, they simply haven't exercised that option yet

Q What information did you look at?

A I looked at aggregated data on interconnection trunking, a volume report that I receive on a monthly basis

Q On page 2, lines 12 and 13 of the same exhibit, 14 I believe, you're talking about the six feasible points of interconnection

A Yes.

Q Are there other feasible points of interconnection, in your opinion, than those six that you've listed?

A Yes

Q What would those be?

A I think there's -- you know, it's intended to be no limit In other words, this is an example of six, and I think the suggestion is the point of interconnection

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could be anywhere on Qwest's network
Q. On page 10 Footnote 6 is that a reference to the South Dakota revised SGAT that we marked as Exhibit 21?
A. No
MR. DEVANEY: That would be Footnote 16
MS. CREMER: I'm sorry
Q. Page 10 Footnote 16 I'm sorry
A. Those are references to the SGAT Let me just check, though Yes
Q. Could you find that in the SGAT, please
A. Sure
(Witness examines document)
A. I'm there
Q. Okay Here's my problem You picked up on it, didn't you?
A. I think I noticed
Q. Yeah They're not numbered
A. You're right Can I help you?
Q. Well, this was our problem with the SGAT as we went throughout it, and I've got pages of examples we'll go through We'll hit on highlights of it Whose responsibility is it to have gone through this SGAT, made the corrections and the changes? Who is it that we can talk to about, you know, things like this?

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A. I want to accept responsibility I mean, I --
Q. Okay
A. I repeatedly reviewed the SGAT and I attempt to get this right and whether it's wrong, it can certainly be my fault
Q. So I expect we will get yet another revised?
A. Absolutely yes
Q. Okay
A. Can I help you with one point about that particular footnote?
Q. Sure
A. Section 4 of the SGAT formerly had numbers and no longer does What used to be Section 4 1 1 2 in Footnote 16 is now there in Section 4 of the SGAT under central office switch
So if you go to Section 4 of the SGAT under central office switch, there you'll find the cite that I was attempting to direct the reader to at Footnote 16 I apologize
Q. On page 18 of your testimony, lines 5 through 11, I'll let you take a quick look at that
A. This is Exhibit 14?
Q. Yeah You're talking about the design of its network and did you see that?
A. Yes

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Q. Okay My question is you talk about longstanding principles Have those changed any in the last 10 years?
A. The word "any" is a very strong word I would say they've changed very, very little
Q. Well, what about dial-up Internet access? What has that done to hold times? Has that changed any of the longstanding principles or how does that factor into hold times?
A. Certainly, those types of calls are typically longer in duration and despite the fact that that is true, carriers extensively still use Earl Ling (phonetic) and Neil Wilkinson (phonetic) tables to determine appropriate trunk group sizing
So while there may have been, you know, some minor different kinds of effects of Internet-oriented calling, to a great extent most of the carriers that I've seen both inside Qwest and outside Qwest have continued to use that same trunking theory to determine the proper sizing trunk groups
Another effect I guess that we've seen is in some offices a movement of the busy hour to another part of the day, for example But, again, as parties have managed blocking on networks, that problem, I think is one that all carriers have been able to

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manage
Q. I would now refer you to Exhibit 16, which is your direct on Number 3 Did I give you a page number yet?
A. Not yet
Q. Okay Page 6, lines 6 and 7 And it says, "Qwest's SGAT has been updated as a result of consensus reached in a collaborative process in various states"
A. I see that
Q. Okay So my question is which states?
A. The states that were focused on primarily were those that were involved in Qwest's multistate 271 case Those states, I believe, were Idaho, Iowa, Montana, North Dakota, Utah, New Mexico, Wyoming But there are the remnants of workshops that also happened in Washington, Oregon, Arizona, and Colorado So the SGAT that's been filed here in South Dakota is truly the amalgamated result of those workshops in each of those jurisdictions
Q. Can you tell us which language was included -- I guess the -- how did you determine what to include or exclude when there was a difference between the state decisions? I mean, was that something Qwest decided?
A. That's a good question And the bias was towards the multistate case So the bias was towards aligning with John Antonuk's advice if there was, you know, a

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difference

Q Okay. But that was Qwest's decision?

A Yes, it was.

Q That wasn't what the other -- okay

A That's true.

Q On page 4 of that testimony, line 2

A Yes.

Q I said "Qwest has also incorporated all recommended SGAT language to date from those state commissions participating in the multistate workshops that have considered the multistate facilitator's recommendations."

So again does this mean changes recommended in Colorado, Washington, and Oregon were not included?

A I don't think that would be accurate, no. I think the only case we've just described is when there might be some conflict. But in many cases, there was not.

Q So that's your preference for the multistate language?

A True.

Q Okay. And then on page 2 of your testimony, lines 18 through 19, it talks about cases of insufficient capacity due to safety, reliability, or generally applicable engineering constraints.

What would those be?

A Well, insufficient capacity circumstance could be one

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where a CLEC identifies a route, wants, for example, to place cable into a conduit system and along again between two points on a map, and when Qwest checks its capacity along that route it finds that each and every duct and conduit along that route is occupied by an existing working cable. That is probably an example of an insufficient capacity circumstance.

It's typically not a dead end, however. Even when that circumstance has been reached, parties typically get together and especially if that circumstance is only true for a portion of the route between the two points, the parties talk about options.

But I think legitimately, that is a circumstance where the parties might technically, you know, reach an insufficient capacity situation.

A safety or reliability circumstance might be one where, let's say, a party seeks to replace an aerial cable with a sag in the cable that reaches too low a distance over a roadway that's spanned, and Qwest might say, you know, we can't allow a cable to be placed like that, it doesn't make the clearance that it needs to make.

The FCC, when they were asked a similar question in the first report and Order, talked about the huge number of examples of these kinds of things

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when various codes are considered and so forth. So those are maybe a few examples. I don't know if they're the best ones, but there certainly are many.

Q Okay. On page 10, line 1, "Qwest generally provides access to the relevant records within 10 business days." What would be your exception to not providing those in 10 business days?

A If a CLEC said like to place an aerial cable from Rapid City to Sioux Falls and I want to see all the records on all the poles between the two cities, Qwest might say we don't have all of those records in one place, we're going to have to get all of those records together before you can see them. And the process of gathering them all up could take more than 10 days. That's just an example, of course.

Q On page 16, Footnote 31 where it seeks a waiver from the Commission, would that be the FCC or this Commission?

A In this case, I believe that the SGAT, the language in the SGAT would have been directing that waiver back towards this Commission.

Q Back towards our Commission?

A Yes.

Q In your Exhibit TRF-2, which is page 38 of your exhibit -- never mind. We figured that one out. Okay.

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Okay. I don't remember which was your reciprocal comp. Is that 18?

A 18 and 19.

Q Okay. On page 12 of Exhibit 18 --

MS. AILTS WIEST: What was the page again?

MS. CREMER: Page 12.

MS. AILTS WIEST: Okay.

MS. CREMER: I think I have the wrong -- just a minute.

Q Go instead to page 5. It starts on the bottom of page 5, "The Nebraska and South Dakota SGATs are very similar." Why is that? Is that because the states are very similar or --

A They were refiled, I believe, at similar points in time. I don't know precisely when the Nebraska SGAT was most recently filed, but when I made that statement I believe that those two SGATs had been filed at approximately the same point in time. And when they were refiled, the basis of the refiling was primarily to incorporate recommendations of John Antonuk again in both states.

Q Okay. It just happened to be the timing of it and that's why ours were the same as opposed to --

A That's true. Timing more than anything

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Q Okay. So on that same page 5, line 17, it says 'Qwest is now refiling its South Dakota SGAT to reflect consideration between Qwest and the CLECs as a result of the workshops in 11 other Qwest states.'
Does that include Nebraska then?
A I'm sorry. Which page is this on?
Q I'm sorry. Page 5, line 17.
A Pardon me. Okay. Now I've got it. Thank you. Remind me of the question.
Q Okay. So Qwest is refiling its South Dakota SGAT to reflect consideration and then -- between 11 states. Okay. So -- come up with Arizona, Colorado, Oregon, Washington, and then the multistates, Idaho, Iowa, Montana, New Mexico, North Dakota, Utah, Wyoming. So is Nebraska in there?
A Of the three states I would leave out of that, Nebraska would be among the three that are not in there. And the reason I left that out when I wrote this is I thought to myself Nebraska was not truly a workshop, a collaborative workshop. It was more similar to the proceedings here, which are a more formal hearing. In those other states, we had less formal workshops.
Q So there's nothing from Nebraska that's in our SGAT, but all our SGAT's are similar?
A Yes.

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Q Okay. And then on page 17, line 13 --
A I'm there.
Q -- that paragraph that starts with line 13 and it talks about a 77 percent percentage --
A Oh, yeah.
Q -- could you explain to us what happened with this?
A Why it wasn't higher?
Q Yeah.
A Right. Billing completeness, that performance measure, if I remember right, has to do with getting a bill correct the first time. And that performance measure drops below its benchmark when Qwest needs to retroactively make a billing adjustment.
And I'm aware of a couple of things that have kept that performance measure down. One has been -- I'm looking at the word. Tentative rate setting circumstances that have at a point in time reached permanency so that when a rate has truly been made permanent, Qwest may then go back and have to make a billing adjustment on a retroactive basis in order to reflect an order that made array permanent. And that has pulled this measure down in certain places. I don't know for sure if that's what pulled this down here in South Dakota.
MR. DEVANEY: Mr. Freeberg, were

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you looking for the term interim rates?
THE WITNESS: Thanks. Interim was the term I'm trying to remember. Mr. Williams is going to be on, I think, soon and he may have more familiarity here with the particular circumstance here in South Dakota.
One other circumstance that comes to mind for me is a situation we've had with the call records on very long-duration calls, calls coming up and effectively don't come down for days and weeks. And those very, very long-duration calls we've struggled with and in some cases had to make billing adjustments to try and properly reflect those when the billing system struggled with calls that literally were so long they went over month-to-month billing periods, for example.
Q Well, who is the misrouted traffic from one party? Who is that that you're talking about?
A I believe that was a Midcontinent circumstance, fairly sure.
Q It was in your testimony?
A It was.
Q So I assume you know about it as opposed to --
A I did research it. I did research it and you're right, I was aware of a circumstance where the routing of

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traffic, I believe it was to us, was coming either direct via an end office or via a tandem and there was -- I wish I could remember the details. There was encouragement, I think, on Qwest's part to make a change in the routing of the traffic so that Midcontinent could get the billing that it expected. And, in fact, those corrections and changes were made and the billing was adjusted. But, again, you know, that pulls this measurement down on Qwest's part.
Q Okay. Let's go back to the SGAT. Can you grab Exhibit 23, which are the Liberty reports, 1, 11, 13, and 14? And then turn to page 22. Okay. In paragraph 5, and that's just a couple of sentences from the bottom of paragraph 5, it says, "These sections were all deleted in the SGAT filed by Qwest for the December 18, 2000 workshop and are marked as consensus."
If you read the first sentence in that paragraph where it says, "The number of parties raised questions about 7.1.3.4.3 through 7.1.2.4.6, okay. Now if you go to the SGAT, and then you'll see at the bottom of page 58 it says 7.1.2.4 was intentionally left blank.
A Yes.
Q Okay. That's good. My question is what happened to 7.1.2.4.1 and 4.2? It talks about deleting 3 through 6

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but I don't know if 1 and 2 got left out or what happened.

A. This particular section of the SGAT going back now, again a very long time ago, I believe this section of these states' SGATs was modified in late 2000, that is in the fall and early winter of 2000.

At that point in time, Qwest made an important change in its willingness to arrange interconnection. Prior to that period of time, Qwest understood that the FCC's advice was that a new entrant local exchange carrier, a facilities-based local exchange carrier needed to interconnect with Qwest in each local calling area that it wished to serve.

Within any LATA, as you probably well know, there are multiple local calling areas. So any carrier who chose to serve the entire LATA needed to establish quite a few points of interconnection, one in each local calling area.

These sections of the SGAT when they existed in earlier SGATs, again now quite some time ago, allowed that Qwest would arrange transport at intraLATA toll transport rates from a single point of interconnection out to each local calling area. That approach was not well received by CLECs. They didn't like it. And they encouraged Qwest to allow them to

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interconnect, for example, at an access tandem.

An access tandem is a switch prior to interconnection that handled only one-plus type calls. So it didn't handle local calls. However, the attractiveness of interconnection at that point had to do with that switch having a trunk group to many, many of the offices in a LATA. So there was a trunk group in place that could carry a local call and in September of 2000, Qwest deleted all of these sections and it deleted all of 7.1.2.4. To my knowledge, all the subsections, the primary section, it used to be called enter local calling area facilities was the title on this.

And now in Section 7, I don't think you'll surely find the words "local calling area." They appear maybe in one or two places throughout the section. They used to be spread all over the place throughout the section. But this primarily was the place which called for a point of interconnection in each local calling area. That's no longer the requirement.

Q. So that was a change that occurred in the SGAT that was filed with the Commission?

A. I believe there was an SGAT filed here in November of 2000. And I can't say with certainty whether this

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section was deleted then. I would guess that it was. Since it's after September of 2000, my guess is the originally-filed SGAT here way back in November of 2000 also showed this section as deleted or intentionally left blank. And, again, that's because at the point of the first filing of the SGAT here in South Dakota, we had abandoned this thought that there needed to be a point of interconnection for each local calling area.

Q. So the multistate then was completed when?

A. Well, the recommendations from John Antonuk came out in May 2001 on Checklist Items 1 and 13. The recommendations from John Antonuk on Checklist Item 3 came out a few months before that, I believe.

Qwest, on the heels of receiving John Antonuk's advice, then began the process of reacting to John Antonuk's advice of each of the commissions involved in the case. Those state commissions made recommendations to Qwest about the wisdom of John Antonuk's advice and based on those recommendations. Qwest has been refiling SGATs ever since. I'd say we're largely done now, but it certainly, I think, has covered the year of 2001 probably.

Q. So the change was made in South Dakota in November of 2000, but the multistate wasn't completed until May of -- that portion until 2001?

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A. Right. Qwest's announcement about allowing a single point of interface for LATA came out in September of 2000 in a Colorado workshop. Maybe even August of 2000 in a Colorado workshop. And Qwest made that willingness available in all states. At that time, the Washington workshop was active, the Oregon workshop was active. The Arizona workshop was active, as well as Colorado. And so it deleted these sections in all of those SGATs.

Q. How come the website 7.2.2.8.9, why was that deleted?

A. Good catch. I can't explain that. The next time Qwest files, it should put that website there.

Q. Okay.

A. Thank you.

Q. Well, we have pages of those things, but I think we've made our point. I guess I would come back to my question of who's going to go through this SGAT, clean it up? There's numerous typos, which, you know, I don't know if someone proofs this.

Who is going to go through and clean this up and assure the Commissioners and the Commission that the changes that were made that were recommended by Antonuk were made, that the consensus changes have been made? Is that you?

A. Yes. It is me. And I won't do it all by myself. I

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there one of the answers to getting this right is to have several of us look this over But I'll certainly take that responsibility myself I'll have I'm sure John Dawney's help as I do that And, you know, we have a scribe you know for this who is literally handling the files themselves who I work with closely So I do apologize for typographical errors, matters like the one you just identified At the next filing, absolutely we would try to make this just as pristine as we know how

MS CREMER Okay That's all I have

MS AILTS WIEST Do the Commissioners have any questions?

CHAIRMAN BURG I have one that occurred to me during your opening statement You indicated that several cable companies use your poles for attachments of their cable and that they may be using the cable for telephony Do you know if they are or not?

THE WITNESS I'm told that Midcontinent is doing that and I think openly I don't think there's a secret there to that But my expectation - the only point I was trying to make there is we and Midcontinent probably made an

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agreement on their attaching their cable to our poles probably in advance of the Telcom Act I don't know the time precisely

CHAIRMAN BURG I would guess that's true probably for others too Would you know when they do start doing telephony over their cables?

THE WITNESS There's no notice called for

CHAIRMAN BURG There's no requirement that you know of?

THE WITNESS None that I know of

CHAIRMAN BURG And so I suppose would you also agree that we could probably look forward in the future to maybe seeing more of it done?

THE WITNESS Oh, I would expect that, yes

CHAIRMAN BURG But basically you did not allow those attachments for telecom purposes, that was a business decision to sell space on poles when it was made would that be accurate?

THE WITNESS Yes I think we felt an obligation to make this available, yes

COMMISSIONER NELSON I have one

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Is there like a master SGAT somewhere or does every state have their own little version of this SGAT so --

THE WITNESS Each state has its own version regrettably, but yes

COMMISSIONER NELSON So the only SGAT I should worry about is the one that you file here

THE WITNESS Yes

COMMISSIONER NELSON So you're not using that as like all SGATs are going to be the same?

THE WITNESS No In fact, I think we feel that you may make recommendations to us that we've not received before anywhere else And when you do that, we'll consider them very seriously

And, you know, we're interested in getting your endorsement on our file So even if it differs from what we've received in other places, we may very likely go with your suggestion That might make your SGAT different than others

COMMISSIONER NELSON When we're done and this hearing process is all finished, are we going to have an SGAT that reflects everything

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that --

THE WITNESS Including your recommendations, yes

COMMISSIONER NELSON Is this prior to a decision? I mean, before I make any final decision, am I going to have a final SGAT that I look at?

THE WITNESS Do you want to try that, John or Mary?

MS HOBSON Commissioner Nelson, I believe that the SGAT will be one of those documents that continues to evolve over time even after 271 approval, but I have already agreed to get back to you this week with an estimate as to when we're going to file a new SGAT

And if the Commission would prefer to see that before they get the opportunity to finish up these proceedings, that would be information we'd be interested in knowing If, on the other hand, you would prefer that we wait until you have the opportunity to make any other suggestions that you find appropriate based upon what you're hearing this week and next week, we can do that as well

COMMISSIONER NELSON I guess I'm just interested in seeing some document that

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reflects what the deal really is I mean usually if I enter into a contract with somebody I know exactly what I'm going to do and exactly what they're going to do So I guess when I'm making a decision here I want to know what the deal we agreed to is I guess I was wondering if the SGAT is the document I should look at that would confirm what we have and not have agreed to

MS HOBSON The SGAT is the document that embodies Qwest's position and the agreed positions and the Antonuk position on a lot of these items if not all of these items The problem is that's a moving target not only for this Commission but for everybody else So it will only be as good as the point in time in which it's issued But we can issue another one

And it sounds like Ms Cremer has some changes that she'd like to see cleaned up and we have some other things that have just come out of the various other proceedings in other states that we can put in at this time and that might be useful to you So we can do that for you

COMMISSIONER NELSON: Thank you

CHAIRMAN BURG: But I would presume that once we make decisions, that those will affect

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what you know the SGAT will change based on these decisions, especially the orders probably

MS HOBSON It could do that

THE WITNESS We'd have to issue it before and after

CHAIRMAN BURG: I wondered -- I don't know how big of a job that is, but we won't have everything that's going to occur -- and if it's someplace in the record beforehand, even if it isn't in the SGAT form itself

One other point that brings to me, do I understand then for example if a good idea comes out of the discussion here to go in the SGAT it may be one that you take and apply other places as well?

THE WITNESS: That's certainly happened before

COMMISSIONER NELSON: See what I thought was going to happen is I thought that when these hearings and issues are all resolved, that we would have all reached an agreement on what it is we think that you're going to be doing in terms of service here in dealing with CLECs

Then I thought for at least that point in time until you move on and do something different, there

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would be a document that tells me what it is that we've all agreed to do So I was thinking sometime at the end of the hearing when you have the time and I don't know if you're going to do rebuttals after this stuff or not, but usually there's a process where you people write briefs or something explaining what it is you thought you already didn't tell me and I look at that

But I thought that might be the period we'd have an SGAT that tells me what it is we've looked at Is that not the way we're going to do this? I'm open-minded about it I'm just curious

MS HOBSON: Commissioner Nelson, I think that probably the best way to get at what your concerns are and to make sure that South Dakota has what it needs, we will file an SGAT prior to the time that you have issued your decision in these proceeding and then to the extent that there are changes that are engendered by that decision, we will supplement and file again

COMMISSIONER NELSON: Okay Thank you

MS AILTS WIEST I just had a couple of questions You mentioned that you didn't follow the facilitator's recommendation and stated

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many states agreed with that decision

Were there states that disagreed and actually did following Antonuk's? That was in the transport in excess of 50 miles

THE WITNESS: There were

MS AILTS WIEST Which states were those?

THE WITNESS: Montana comes to mind

MS AILTS WIEST So that language was not deleted: is that correct?

THE WITNESS: Right If you look at the Montana SGAT, that section would have been deleted In other words, in the Montana SGAT I do believe there is no 7 2 2 1 5

MS AILTS WIEST Is that a final decision by Montana? That was a final decision?

THE WITNESS: Yes

MS AILTS WIEST And did Qwest contest that?

THE WITNESS: Contested it, but have at this point in time conceded

MS AILTS WIEST Agreed to it Okay And then I'm going on to the Item 3 I know AT&T brought up the issue about the 45 days to grant or deny requests And their claim is that --

well, apparently in your SGAT, you still have a waiver of the 45-day interval for large requests?

THE WITNESS: Yeah. We understood that to be John Antonuk's advice.

MS. AILTS WIEST: AT&T's point was there was no exception to the FCC 45-day rule.

THE WITNESS: Right. So they disagree with John Antonuk.

MS. AILTS WIEST: Do you believe that there is an exception to the FCC 45-day rule?

THE WITNESS: I believe you could make an exception, yes.

MS. AILTS WIEST: That it's up to the state commissions as to whether they wanted to make an exception or not?

THE WITNESS: Yes.

MS. AILTS WIEST: Okay. Did you have any redirect, Mr. Devaney?

MR. DEVANEY: Just very briefly, thank you.

REDIRECT EXAMINATION

BY MR. DEVANEY:

Q. Mr. Freeberg, a couple of follow-ups. On the transport issue of building transport up to 50 miles, just to be clear, Qwest is agreeing to build at least up to

50 miles, is that correct?

A. Oh, and beyond. I think the key point here is that when a span longer than that is in place and when neither carrier has facilities, we feel we're on equal footing, we and the other carrier, and the best way to put those facilities in place is to get together and each build half. It's just simply that easy.

Q. And am I correct that in the SGAT that's being proposed, there's not a refusal to build beyond 50 miles, but rather if there's a need to build beyond 50 miles, the issue would be submitted to the Commission for a determination as to who would build?

A. Good point. That's true. We still understand the obligation until we're permitted otherwise.

Q. Okay. And then finally with respect to the 45-day waiver issue with respect to the poles issue, could you just explain why there might be circumstances where more than 45 days could be needed?

A. Sure. Earlier in the discussion, I offered an example of a realistic possibility that a carrier could request a route that spanned the state that they would like to attach a cable to Qwest poles that went from one end of the state to other, a state being a single LATA. That would certainly be a very large request.

It would involve not only an extensive amount

of records to be reviewed, but would also involve literally a person out driving and making notes about they observed each and every pole along the way. Trying to make a determination, first of all, is it truly a Qwest pole or not. That is a question which is not always easily determined.

And once that's been seen, whether the pole is sturdy enough, for example, to accommodate an additional attachment, you know, those kinds of questions need to be made, notes need to be kept on each and every pole. Just doing that physically would be the work of either one person taking a very long time or a number of people each taking some portion of the route.

And a similar kind of request could happen on an underground situation where a party says I want to use some Qwest duct space, for example, and in order for Qwest to process and understand whether or not that space is available it involves, again, first looking at all the records and then driving out and finding these manholes.

Not always easy to even find the manhole that you're looking for, making sure it's the right one. And then potentially redirecting traffic around that manhole opening up that manhole cover. Often manholes

are filled with water. It would involve pumping all the water out of the manhole. Ventilating the manhole, climb down into it, making notes about what's seen down below. There are even cases where manholes get paved over and, you know, again, manholes are hard to find.

So there can be some circumstances where when there are just, you know, dozens or hundreds of manholes that need to be observed that getting that done in these kinds of intervals just represents a physical near impossibility.

Q. Is it fair to say based on your experience that in the majority of cases, Qwest can comply with the 45-day rule but this waiver that the company is seeking is for exceptional circumstances?

A. I think it's a very unusual circumstance, yes.

MR. DEVANEY: Thank you. That's all I have.

MS. AILTS WIEST: Any further questions? If not, thank you. We'll take a 15 minute break.

(A short recess is taken)

(Exhibits 30 through 41 are marked for identification)

MS. AILTS WIEST: Qwest, you may call your next witness.

MR. CATTANACH: Good morning,

members of the Commission My name is Bob Cattanach I will be the attorney conducting the summary for Ms Bumgarner who will be the next Qwest witness

Ms Bumgarner has the distinction of being the winner of the witness with the most checklist items We will try to be as efficient as we can I can preview for you several of them are not disputed What I'd like to do, first of all, is have the witness sworn and I'll go through the exhibits that she will be using

MARGARET BUMGARNER,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MR CATTANACH:

Q Good morning, Ms Bumgarner

A Good morning

MR CATTANACH: What I'd like to do if it's appropriate for the Commission is just walk through your exhibits and briefly indicate which checklist items they refer to We have premarked as Exhibit 30 Ms Bumgarner's direct testimony of October 24 2001 on collocation Exhibit 31 is her rebuttal testimony on collocation dated April 2,

2002

Exhibit 32 relates to Checklist Item 7 and the E911 part of that, her direct testimony dated October 24, 2001 And then Exhibit 33 is her rebuttal testimony dated April 2, 2002 Exhibit 34 concerns Checklist Item 9, numbering administration Direct testimony was dated October 24, 2001, rebuttal April 2, 2002 That would be Exhibit 37 I'm sorry Exhibit 35 Excuse me Yes 35 That took me all of 30 seconds to get that wrong

Exhibit 36, Checklist Item 10, signaling databases Direct testimony would be dated October 24, again, 2001 Exhibit 37 will be the rebuttal testimony, April 2, 2002 Exhibit 38 concerns Checklist Item 11, number portability, direct testimony October 24, 2001, and Exhibit 39 would be her rebuttal testimony, April 2, 2002 And then the last checklist item is Checklist Item 12, dialing parity Exhibit 40 is her direct testimony, again dated October 24, 2001, and her rebuttal, Exhibit 41, April 2, 2002

Q Ms Bumgarner, does the testimony contained in those exhibits constitute your testimony as to those checklist items?

A Yes, it does

Q And if you were to go through all the substance of those exhibits in live fashion today would your testimony be the same?

A Yes, it would

Q And it's true and correct to the best of your knowledge?

A Yes, it is

MR CATTANACH Members of the Commission at this time I would offer into evidence checklist items I'm sorry, Exhibits 30 through 41

MS AILTS WIEST Is there any objections to Exhibits 30 through 41 being admitted? If not, they're admitted

(Exhibits 42 and 43 are marked for identification)

MR CATTANACH We would also like to have identified for the record Exhibits 42 and 43

Q And as these are being passed out Ms Bumgarner can you identify what these exhibits are?

A Yes Exhibit 42 this is the CLEC product catalog documentation It's for the private switch automatic location identification service It's associated with 911 I discussed this in my rebuttal testimony

And Exhibit 43 this is SGAT language and Interconnection Agreement language It's from Arizona It's addressing the new 911 record unlock process that I discuss in my testimony

Q And these hardcopy exhibits were not available at the time you filed your rebuttal testimony is that correct?

A No They were not

MR CATTANACH We would offer at this time Exhibits 42 and 43

MS AILTS WIEST Any objection to 42 and 43? If not they're admitted

Q Ms Bumgarner, could you testify in summary form as to the checklist items that you're appearing here today on?

A Yes The first checklist item this is Checklist Item Number 1 for collocation Collocation is the provision of space to other carriers at Qwest's premises and is for the purpose of interconnection and access to the unbundled network elements

Qwest offers eight forms of collocation Caged physical, caged physical, shared caged physical, the interconnection distribution frame, which is the ICDF, common area splitter collocation virtual collocation, adjacent collocation, and remote

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collocation

In accordance with the FCC's requirements in CC Docket 98 147, Qwest has a three-step ordering process It involves forecasting, application, and acceptance The first step, forecasting, involves an annual forecast that's updated on a quarterly basis The second is the application Qwest provides a feasibility study and then a quote for the installation And then the third step is acceptance The CLEC must provide signed acceptance and payment of 50 percent of the quoted charges within seven days

The performance measures, currently the process has eight performance measures that were developed in the regional oversight committee Based on the 10 days for the feasibility study, there are CP3 and CP4 They measure the average intervals in days and then the percent of commitments met.

And then based on an overall provisioning interval the 90-day, 120-day, and 150-day intervals for installation, we have CP1, ABC, that measures the installation interval by the average number of days And then CP2, which is disaggregated A, B, and C for the different intervals measures the percent of commitments met

The results for South Dakota show that Qwest

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has met all of the intervals and commitment met measures In addition, the region-wide results for Qwest have been silent for collocation There were comments filed in South Dakota by three parties; the PUC staff, Midcontinent, and AT&T.

The first issue, Midcontinent raised an issue that was related to a specific collocation job that was completed in 1999 in Sioux Falls And it was involving the DC power that was installed At the conclusion of a collocation job, the CLEC representative and the Qwest interconnection manager do a walk-through to review the job and then the CLEC signs a job acceptance form

So during that walk-through, neither Midcontinent nor the Qwest interconnection manager noticed that the acceptance form was incorrect regarding the amount of DC power that was installed

Midcontinent brought this issue to its Qwest account manager March 7, 2002, and Qwest has already provided a question to Midcontinent for the incorrect billing

Related to this, Midcontinent expressed a general concern about whether there would be problems for availability of facilities in small rural offices First, we would hope that Midcontinent will submit a

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forecast of its collocation plans so that Qwest can ensure we meet Midcontinent's needs and the offices that they're interested in

Second, Qwest provides a website listing of all of its offices that provides information about space availability in the specific offices and then any power or facility problems The website posting of space availability was required by the FCC rules and Qwest has gone beyond what the FCC required and that was based on the consensus agreements in the 271 workshops

The information that we have in addition to the space that's included on the website, we provide information about the number of CLECs that are in queue waiting for space if there are any, and in addition we provide information about whether or not an office is equipped with DS-3 capability And then if there are any power equipment additions that are going on, we have the information about the estimated completion date for power jobs

This commitment is included in our SGAT and it's also included in the KMC Interconnection Agreement

Currently, there are no offices in South Dakota with exhausted space or facility issues

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And I just checked the website again Thursday There still are no South Dakota offices listed

The second issue, the PUC commented on and agreed with the recommendations of the multistate facilitator on the 15 disputed issues that were not resolved during the workshops Qwest has agreed to accept the recommendations of the multistate facilitator and also Dr Griffing on behalf of the PUC staff for all of the 15 open issues from the workshops

Qwest had previously included revisions in its SGAT language and KMC Interconnection Agreement for 14 of the 15 issues In my rebuttal affidavit, I stated that Qwest also accepts the recommendation of the PUC staff and AT&T for a 90-day collocation provisioning interval for virtual and physical collocation without a requirement for a forecast when condition space is readily available And we also agreed to AT&T's request for a 45-day interval for the ICDF collocation if an ICDF frame or space for a new ICDF is available

Qwest has only requested a slight modification to the facilitator's proposed resolution when a forecast is not provided If Qwest must condition space or do a major infrastructure modification rather than always requiring Qwest to file

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for a waiver, what we've proposed is that Qwest will provide an explanation of the required conditioning or the major infrastructure modification with our quote And if the CLEC disputes the need for or doesn't agree with the length of the interval that's been proposed, then Qwest will petition the Commission for a waiver

That concludes my statement for Checklist Item 1, collocate

The next checklist item is Checklist Item 7, and this is for access to 911 and enhanced 911 services or E911 Qwest provides CLECs with nondiscriminatory access to 911 and the enhanced 911 services CLECs are able to provide their customers with the same access to 911 services as Qwest provides to its customers.

For a CLEC that uses its own switch, it must establish the 911 trunks from its end office switch or from its customer's PBX switch to the selective router and that selective router then acts as a tandem in the enhanced 911 network It connects the calls to the appropriate public safety answering point or the PSAP And the CLEC can either self-provision the E911 facility, or it can request that Qwest provide that facility The CLEC's 911 calls use the exact same trunks as Qwest customers from the selective router to the PSAP A CLEC that is using Qwest's switch, it's as

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a reseller or as an unbundled network element, uses the exact same trunks as Qwest customers to access 911 services

Where Qwest provides the enhanced 911 services, the automatic location identification data management system, also known as the ALI database or the 911 database, is administered and managed by an independent third party and that's Intrado

Qwest's contract with Intrado as its database administrator requires that Intrado provide E911 database management services to all CLECs and the independent companies in a manner that's at parity with those provided to Qwest

For reseller CLECs and CLECs that are using Qwest's unbundled switch, Qwest provides the updates to the enhanced 911 database on behalf of the CLEC We use the same procedures that Qwest uses to update its own end-user's records A batch upload is made at night with all of the completed service orders for that day The Qwest records and the CLEC records are sent together They're commingled in the same batch on the data linked to Intrado

Facilities-based CLECs that use their own switch provide their own E911 database updates directly to Intrado And 12 states have determined that Qwest

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satisfies this checklist item In South Dakota, there was one party who commented on this checklist item It was AT&T

The first issue AT&T commented about the private switch automatic location identification or the PSALI service What PSALI does, it provides the individual station information for business customers with a PBX or a centrex service For example, my individual office telephone number would show up in the 911 database, and it would indicate that I'm located on the 28th floor, 2803

And rather than just listing the main telephone number for the business it actually identifies where the individual telephone numbers are located for a large business building or campus-type application

Qwest has documented its wholesale product offering for the PSALI service, which has been provided to the CLECs It's posted on our website in the CLEC product catalog It's provided to them through the change management process And that's actually the Exhibit 42 that was distributed at the beginning of the meeting

The contract amendment that's associated with the PSALI service is also available on Qwest's website

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And while Qwest completed its work with Intrado to change the billing programs and the documentation for this product offering, Qwest made arrangements for CLECs to be able to serve their end user customers with PSALI

There have been no requests by CLECs for PSALI service in South Dakota However, Qwest has provisioned several of these arrangements for CLECs, including AT&T in the other states without requiring a contract amendment

I attached a copy of the PSALI contract amendment It was attached to my rebuttal affidavit as Exhibit MSB-911-6 And Qwest will add that language to its South Dakota SGAT or any CLEC's Interconnection Agreement if requested by the CLEC

The second issue that was raised, AT&T commented on the delays for unlocking the E911 database records That means not being able to change the information in the record For customers migrating to CLECs that are porting their telephone number, the result is that the CLEC's database updates are rejected until the record is unlocked The first important thing to keep in mind is that delays in updating the record in the 911 database does not affect the end-user's ability to be able to call for emergency

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services It doesn't affect their ability to dial 911
The customer's information is still in the E911 database When a customer migrates to a different service provider, all of the customer's information remains in the database It's never removed The record is unlocked And that's unlocked by the old service provider so that the new service provider can update the record and then relock it, and they relock it as the responsible company for that record And that typically only involves changing the company identification to say who's the responsible service provider for that particular customer
The delays in updating the 911 database, waiting for the record to be unlocked is an industry-wide issue, and it's in no way unique to Qwest That's why the industry addressed this issue in the National Emergency Numbering Association, the NENA And it's also been discussed in the local number portability administration working group, the LNPA, working group
In NENA's most recent meeting, which was December 6 through the 11th of 2001, it reached agreement on a draft standard recommendation for how to handle the unlocking of records by database administrators so that when these migrate orders come

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through from the new service provider, they can be processed in a more timely manner
The NENA standard was approved March 25, 2002, and it will also be incorporated into the industry's local number portability guidelines
I included a copy of the approved NENA standard, the resolution for failed migrates. It's in my rebuttal affidavit as Exhibit MSB-911-7.
All service providers porting numbers, whether that's Qwest or resellers or CLECs using Qwest's unbundled switching, other incumbent LECs and facilities-based CLECs, have had problems with the delays in unlocking the 911 database records.
Qwest did not wait for the final approval on the NENA standard Qwest took action on this immediately following that December 2001 NENA meeting. We signed an agreement with Intrado that implemented the draft standard And Intrado implemented that new process February 25 The new process was documented and provided to the CLECs through the change management process It's also included in the CLEC's product catalog documentation that's on the website.
In addition, Intrado sent letters to all the service provider's 911 contacts Qwest authorized Intrado to unlock its records upon validation in the

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NeuStar local number portability database that the CLEC had actually activated the port which indicates that its completed its provisioning work And Qwest also made arrangements with Intrado that they will perform this same function for a CLEC that authorized Intrado to authorize the records upon validation that the port activation has been done
So beginning February 25 Intrado validated all failed migrate records daily and processed the valid migrates accordingly Thus, the new process is in and working Intrado processes 100 percent of the valid migrate records each day And Intrado also provides a report of the invalid migrate records back to the responsible service provider back to their 911 database administrator And that's on a daily basis
After the close of the workshop on Checklist Item 7 in Arizona, AT&T sought to reopen the record on the basis of its claims that Qwest had failed to unlock 911 records on a timely basis And as I discussed in my rebuttal testimony, Qwest demonstrated that AT&T's concerns were not valid
Upon presentation of the data showing that the number of locked records was less than 10 and the information demonstrating that Qwest's implementation of the new NENA standard for addressing the record

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unlocks between carriers, the Arizona staff recommended against reopening the record in that proceeding
The Arizona staff further agrees with Qwest that the proper place for CLECs to raise issues with the performance measures or to request additional performance measures are in the ROC or the Arizona technical advisory group, the TAG group The Arizona Commission staff requested that Qwest include a provision in its SGAT which details the new process that we've implemented with Intrado to unlock the Qwest records when it's been determined by Intrado that the CLEC has actually activated the port
Qwest has proposed SGAT language for the Arizona SGAT It's willing to include that language in the South Dakota SGAT and also in any CLEC's Interconnection Agreement if they request it That language was the exhibit that was marked as Exhibit 43
That concludes my opening statement for Checklist Item 7 for the access to 911 and E911 services
The next checklist item is Item 9 This is for numbering administration This checklist item is about the administration of central office codes They are also referred to as the NXX codes or prefixes The act required that until the FCC established its plan or

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rules, that Qwest was to provide nondiscriminatory access to numbers for assignment by CLECs to their customers

The FCC's plan for transferring the numbering administration function to a neutral third party for both the NPAs or area codes and the central office codes has already been implemented The numbering administration functions for our region transferred to NeuStar on September 1, 1998 So Qwest no longer is the central office code administrator in our region And some requests no longer assign the central office codes to itself or CLECs. Qwest has legally-binding commitments in its SGAT and in its Interconnection Agreements for numbering administration and continued compliance with the central office code assignment guidelines and the FCC's numbering rules, including the provision of data to the North American numbering plan administrator when requested

The ROC developed one performance measure for this checklist item that's the PID, NP-1, and that measures the timely activation of NXX codes And Qwest's results in South Dakota so far have been 100 percent for each month of reportable results 12 states have found that Qwest satisfies the requirements of this checklist item And for

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South Dakota, no parties filed comments disputing that Qwest satisfies this checklist item That concludes my statement for Checklist Item 9, numbering administration

The next is Checklist Item 10. This is for access to signaling and to the associated databases. Qwest provides nondiscriminatory access to its signaling network It includes the signaling links and the signal transfer points, or STPs, to certain call-related databases for call routing and completion And to the service management systems, the SMS, these are used to create, modify, and update information in the call-related databases. And that's in accordance with the 1996 act and the FCC rules.

The CLECs may interconnect their switches directly to Qwest STPs or they can interconnect their own STP with Qwest STPs or many of the CLECs use a third-party signaling network provider The CLECs call routing and database inquiries are handled in the same manner as Qwest call routing and database inquiries When a CLEC purchases unbundled switching from Qwest, it includes the use of Qwest signaling network, and the CLEC signaling traffic is routed over Qwest signaling network in the exact same manner as Qwest signaling traffic

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Qwest provides access to its call-related databases for the purpose of switch query and database response through the signaling network The call-related databases are the advanced intelligence network database, or AIN the line information and calling database, the totally-free calling database local number portability database and the 911 database And I address 911 database under Checklist Item 7 Qwest provides access on an unbundled basis to the service management systems for creating modifying and updating information in Qwest's line information database and the calling name database

For the 800 database and the local number portability database, those are national SMSs that are used to provide those updates

The regional oversight committee developed one performance measure for this checklist item and that's the DB-1A and that's for the line information database and the calling name database and it measures the timeliness of updates

12 state commissions have found that Qwest satisfies the requirements for this checklist item There were no comments filed in South Dakota disputing Qwest's compliance with this checklist item

That concludes my statement regarding

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Checklist Item 10 for access to signaling and the call-related databases

The next checklist item is Checklist Item 11 This is for number portability Number portability is the ability of an end-user customer to retain at the same location their existing telephone numbers when switching from one service provider to another

Qwest has met all of the requirements for providing long term number portability or LNP according to the FCC's rules In South Dakota, the LNP deployment covers 100 percent of Qwest's access lines As of the end of February 2002, Qwest had ported 28,440 telephone numbers in South Dakota and over 2 5 million telephone numbers region wide

Qwest deployed the local number portability using the location routing number technology or LRN The location routing number is an addressing and routing method that allows the rehoming of an individual telephone number to other switches through the use of a database and the signaling network And each customer's telephone number is matched in that regional database with the location routing number of the switch that currently serves that telephone number

The number portability administration center database the NPAC is administered by a neutral third

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party, NeuStar And unlike intra methods of method portability, the long-term number portability does not operate by routing the call through the Qwest network Calls can terminate directly to the CLEC's network, interexchange carrier calls, or other CLEC's calls They don't have to be routed through the Qwest network

An advanced intelligent network, or an AIN trigger, causes the query to be launched to the local number portability database, and it determines the new routing address and sends the call to the switch that currently serves that number for call completion And when the trigger is set on the telephone number prior to the due date, the frame due time or the start time for an unbundled loop cutover, the CLEC controls the activation of number portability

In essence, Qwest preprovisions it's part of number portability We set that trigger the day before the due date So from that point, on the actual activation of number portability is controlled by the CLEC

The regional oversight committee has developed five performance indicators for local number portability There is OP-8B and OP-8C They measure the percentage of LSA or the unconditional pending triggers and as the AIN triggers that are set prior to

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the start time or the bundled foot loop cutovers and the frame due time for the LNP orders where coordination is not required

The regional oversight committee also developed the OP-17 measure It measures the timeliness of disconnects associated with the LNP orders And the MR-11 and MR-12 measure the timeliness of clearing LNP trouble reports 12 states have found Qwest satisfies the requirements of this checklist item

There were four parties that filed comments on number portability in South Dakota The first, Midcontinent, indicated that it doesn't have a major problem with porting numbers, but it did raise an issue involving porting associated with unbundled loop cutovers And so, again, when that LSM trigger is set on a telephone number prior to the start of the unbundled cutover, which Qwest sets those triggers the day before, the CLEC controls the activation of the number port itself

Qwest performance shows that the LSA trigger has been set prior to the loop cutover 100 percent of the time for the past 12 months Thus, this issue is not about number portability It relates to the coordination for unbundled loop cutovers and that will

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be addressed by Mr Pappas

The second issue which is from Black Hills Fibercom, they describe some instances where the ported number was reassigned to a Qwest retail customer The reassignment or the duplicate assignment of numbers are rare occurrences They happen even with some of the Qwest retail customers In other words, Qwest takes this issue very seriously

We've undertaken several actions to complete number reassignments Qwest has had a group performing database reconciliation between the customer number, which is called the C-num database, and the number portability database and they've been investigating the causes of these reassignments since early 2001 and taking action on the things they find

In January of 2002, Qwest implemented a mechanized system enhancement for checking the status of the numbers against existing accounts and also against the local number portability database prior to assignment on a wholesale service order And in addition, Qwest does a mechanized comparison between it's number assignment date base the C num database and the local number portability database query And it makes sure the ported numbers are marked as unavailable for every assignment

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Qwest is not aware of any number reassignments that have occurred since we implemented the mechanized solution in January We have been meeting with Black Hills on a weekly basis and they haven't identified any new occurrences

The next issue the last issue for number portability the PUC staff and AT&T commented on the coordination of local number portability with a CLEC provided loop And Dr Griffing recommended adopting the multistate facilitator's solution of this issue

It was not resolved during the workshops and Qwest supports the recommendation of Dr Griffing and the multistate facilitator Qwest has already made the recommended changes to its South Dakota SGAT It's included in the KMC Interconnection Agreement And that's a commitment that if notified by the CLEC by 8 p m on the due date that the CLEC is unable to complete its provisioning work or it needs to cancel the Order that Qwest will ensure the end-user's customer their line is not disconnected that day

In addition, Qwest has made further mechanized changes since the multistate report was released that provided improvements to the porting process beyond what the multistate facilitator deemed

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necessary for Qwest to do to satisfy the requirements of Checklist Item 11

The mechanized process provides additional time for Qwest to hold the related disconnect of the switched translations and the -- that's associated with a numbered portability order. And that's in case a CLEC is delayed in completing its provisioning work so that the end-user's service will not be disrupted Qwest holds the disconnect of the switch translations until 11:59 p.m of the day after the due date

So Qwest has gone beyond what the multistate facilitator and the South Dakota PUC staff had deemed appropriate for Qwest to do to satisfy this checklist item. Qwest's performance for the OP-17 measure that was developed by the regional oversight committee that's related to this new mechanized process has been excellent. Qwest has been meeting 100 percent of the delayed disconnect commitments each month for South Dakota.

That concludes my opening statement on Checklist Item 11 for local number portability

The last checklist item, which is Checklist Item 12, for local dialing parity. Qwest complies with the act and the FCC rules for providing dialing parity, such that customers are able to dial the same number of

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digits to make any given telephone call without regard to the identity of the customers or the called parties' local service provider.

Qwest does not implement any requirement or a technical constraint that requires CLEC customers to dial any access codes or any greater number of digits than a Qwest customer to complete the same type of call. Qwest has legally-binding commitments to make dialing parity available in its various interconnection agreements and in the SGAT. 12 states have found Qwest satisfies the requirement of this checklist item For South Dakota, there were no comments filed disputing Qwest's compliance with this checklist item

That concludes my opening statement for Checklist Item 12, dialing parity

MR CATTANACH: Thank you.

Ms. Bumgarner We would now make her available for cross-examination.

MS AILTS WIEST: Mr Gerdes, do you have any questions?

CROSS-EXAMINATION

BY MR. GERDES:

Q Good morning, Ms. Bumgarner.

A Good morning.

Q I think you also deserve the award for the heaviest

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paper on the table since we've started I think I just have one question As I understand it Mr Pappas is going to handle the unbundled loop cutover issue is that correct?

A Yes, he will

MR GERDES Then I have no questions Thank you

MS AILTS WIEST Black Hills

MR EVANS Thank you

CROSS-EXAMINATION

BY MR EVANS

Q Good morning

A Good morning

Q Other than the KMC agreement, has any other CLEC adopted into the particular language regarding collocations in South Dakota?

A I don't know the answer to that I don't know if any others have adopted the SGAT

Q Okay Your testimony I believe indicates that there's a 90-day collocation period when space is readily available, is that correct?

A Yes That's true

Q And it's 45 days if there's an interconnection distribution frame available or if that equipment is used, is that correct?

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A Right The ICDF is a different type of collocation so yes it's a 45 day interval

Q What's different between the cage collocation and ICDF? Could you explain that for me, please

A When you establish the physical collocation, whether it's a caged or the cageless, that space and frame is dedicated to that particular CLEC with an interconnect distribution frame That's a frame that is shared by multiple CLECs So there may already be an ICDF established that has space available

Q Why would it take 45 days for an ICDF to be connected for a CLEC?

A Well, the space preparation, bringing the tie cables you know, because the Order may cover both the tie cables that are going from that frame to other frames in the office, placing the terminating blocks for that particular CLEC You also have to establish in the mechanized system the numbering for those particular connections so that you can keep track of where those cross connects are going to be made So there's, you know, considerable work in establishing that space on that ICDF

Q In terms of a physical collocation, does Qwest from time to time collocate its own equipment within its own building, in other words additions that are made to

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Qwest equipment?
A We don't actually collocate
Q Well, I'm using that term in terms -- what I'm driving at, I suppose, and I can ask the question more directly, it takes 90 days for a CLEC to have the collocation accomplished, or at least you have that long.
Does it take Qwest that long for itself to install equipment that might be similar that they would use? In other words, can you do it quicker if you wanted to?
A It really depends on the job that you're putting in. It's kind of one size fits all.
Q I understand.
A But you're bringing power to, you know, somebody that you're having to run new power cables to, involves placing the frames. We do these also through outside contractors so making arrangements for their personnel to come in and place that equipment. And the 90 days is a pretty average time frame.
We have commitments in our SGAT that if we complete a job -- you know, if it's a smaller job and it doesn't take us as long, we have commitments in our SGAT that we won't hold the job for 90 days. We will turn that job over as soon as the provisioning is

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completed.
And I think if you look at performance measures, you'll see that in a lot of the cases the intervals that are stated under those performance measures are less than the 90 days.
Q Now the 90-day period, that does not begin, as I understand it, until it's an FOC; is that correct?
A I think you're mixing terminology.
MR. WHITE: When would the 90 days start?
THE WITNESS: The 90 days starts at the receipt of the application. So as soon as we receive your application, that's the start of the 90 days.
Q Thank you. I apologize for my error. Before the time period will run or before we can actually enter the application, I assume a BAN is required; is that correct? Billing access number, account number?
A I believe in the general terms and conditions part of the SGAT, there are some things in establishing for service -- I forget now exactly what it's called. A questionnaire that's filled out. And it goes through things like establishing account information, that sort of thing.
But in terms of the ordering of collocation

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we do have a process in place that's called parallel processing so once you've begun negotiating your negotiating your interconnection agreement, we don't want to accept orders or collocation for that negotiated agreement to be fully approved by the Commission. We will actually do parallel processing and begin the installation of the collocation
Q Okay. So we've established, and we're grateful, the number of times that apparently have occurred with Qwest particularly as it relates to Black Hills Fibercom and we've established, in our opinion, improper attention to these issues. What's the timing of this application and decision on it? Seems to us and suggests that the increased attention we continue to [illegible] at Black Hills Fibercom.
A Are we talking about the [illegible]?
Q That's one issue, but more [illegible]. The number of issues of our [illegible].
A [illegible]
Q [illegible]
A I'm not the witness for the [illegible] and the third party testing, the [illegible], but we will tell you a little bit about what's been done

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that.
There have been many, many changes over the past year. From Mr. Brotherson's perspective, the change management process, the documentation, how that documentation is distributed and made available for review, the monthly meetings that are scheduled. There has also been a lot of changes made in our account management side, the account managers and service managers that have been assigned. So they have been focusing a lot of attention on trying to work more closely with the CLECs. They established meetings. I believe that the service manager for Black Hills has been meeting with you on a weekly basis. You can establish whatever frequency you would like. Some are meeting on a weekly basis. Some are on a biweekly basis. Some are meeting once a month. It's really depending on what the CLEC would like.
Q Those meetings are telephone calls, correct?
A I think they are telephone calls, but I think they also will go and meet with you.
Q Has Qwest sent someone to meet with Black Hills Fibercom to your knowledge?
A Well, actually I can think of one instance where we sent a couple of people to meet with Black Hills about specific issues on number portability. But I'm not

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real familiar with all of the things that they've worked on with you

Q Sure. Those meetings occurred within the last six months or so, is that correct?

A I think the number portability meeting occurred prior to the six months. I think it may have been a year ago. I'm not positive of the date.

Q Okay.

MR. EVANS: Thank you.

COMMISSIONER NELSON: How much do you have?

MS. CREMER: It really depends on how she answers. If she doesn't know it will go much faster than if she knows.

COMMISSIONER NELSON: I want to be done at 5 to 12:00.

MS. CREMER: We might as well just wait then just to be sure.

MS. AILTS WIEST: We'll reconvene at 1:30.

(A lunch break is taken from 11:40 a.m. to 1:30 p.m.)

(Exhibits 44 and 45 are marked for identification)

MS. AILTS WIEST: Ms. Cremer.

cross-examination

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MS. CREMER: Thank you.

CROSS-EXAMINATION

BY MS. CREMER:

Q If you would, look at Exhibit 32.

A What page?

Q Page 6, line 15.

A Okay.

Q You state that there are three exchanges that are still being served by basic 911 services. What three exchanges are those?

A Can I have one minute?

Q Sure.

(Discussion off the record)

A Lake Union and Brule.

Q What do you have for Corson County?

A I don't have anything listed on this. They were just listing the ones that had basic 911 on the list they have.

Q Okay. My information shows that Morristown, Mobridge, and Northern Timber Lake also have basic 911 services.

A They don't have those listed on this. I can check on those.

Q What are you looking at exactly?

A This was just a list from the database manager for South Dakota about the ones that - Qwest exchanges

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that are basic. And they had like a long explanation and kept Union and Brule as the only two

Q Do you know are there any Qwest basic [illegible] that have no 911?

A I'm not aware of any.

Q Are - looking at that chart that you have my information sheet that Perkins County has no 911. Ziebach County is passing 911. Jones County, the exchange - the Ft. Pierre exchange and Jones County is passing 911 and the Wagner exchange in Charles County is passing 911 but don't currently have it. You don't reflect any of that?

A No. Not on the list they have. And the 271 requirements are to provide access to the 911 service that we have. If it's a county that doesn't have 911 service there's not a requirement for us to supply 911 for 271. It's just provide the same service that we provide to ourselves.

Q Right. I was just checking the basis of your testimony. On page 19 of that same exhibit

A Yes.

Q - you state that the account manager will arrange a meeting with the PSAP representatives, Qwest 911 manager, and state regulatory representatives as needed.

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Who are the state regulatory representatives?

A It depends on the state how your 911 is set up in some of the cases. The counties are responsible for the 911 service so you meet with county officials that are the authorities for the 911 in that particular county. Some states actually have one of their state departments that's responsible for 911. So it really depends on what your state has established. In some cases the individual PSAP, themselves, the public safety answering points, are responsible for their area of coverage.

Q And do you know who that would be in South Dakota?

A No, I don't.

Q But somebody at Qwest would?

A Yes. It would be probably the database manager for that area.

Q Who is that?

A Sean - oh boy. Sean Bixby, I'm

Q Is that someone in South Dakota?

A Yes. He's actually located in - well, based on his telephone number he's looking in Minnesota.

Q Exhibit 38, which is your direct for Checkout 11.

A Okay.

Q On page 7 - just a second. I've got the wrong exhibit. I want you to look at your exhibit checklist

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to that, which is LPN 3.
A Okay.
Q And on page 7, lines 18 and 19, you said, "Given Qwest's deployment of LPN in South Dakota, there has been no interim number portability activity in South Dakota for over a year." Yet when you look at your exhibit, you show
A Right.
Q I was just wondering about that.
A After you deploy long term number portability in an area, you can no longer provision interim number portability. That's an FCC rule that you deploy long term number portability and after that you no longer can use the interim methods.
These five are ones that were provisioned prior to us completing long term number portability. So as we worked with CLECs to transition the interim arrangements they have in place, some used like remote call forwarding, we would transition those over to long-term. These happen to be five that just haven't transitioned.
Q Okay. Exhibit 22, which is the Liberty report, and then you'll need the SGAT also, which is 21, okay?
A Yes.
Q All right. If you go to page 52 in the Liberty report,

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and under Paragraph 1 there it talks about 9.13.1.1, do you see that up near the top?
A Yes, I do.
Q Okay. That paragraph basically says -- it says, "Qwest has agreed to the clarifying language that AT&T finds acceptable. That language is set forth below."
But I can't find that in the SGAT so can you tell me where that might be?
A I believe -- let me look.
Q And it's page 189 of the SGAT.
A Right. It might be helpful to explain how the SGATs evolved. Because the workshops were occurring simultaneously, the multistate workshops and workshops in the other states, we would sometimes reach consensus on language and then at the next workshop, different state, we would end up with changes to the very same section. So this particular section was changed several times.
And when we would go to the next workshop and we would make changes to these sections, we would bring back the changes that had been made to the previous workshop that would show the red line changes and reach consensus agreement there.
So all of these may have been wordsmithed several times throughout these workshops, but when we

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filed the SGAT at the conclusion of the workshops and filed the SGATs, it would show all of the red line changes to a particular section. So on this one -- and I do remember this one was rewritten several times or had changes made to it several times, but the language that is currently here is consensus language and I believe this actually was written at the Colorado workshop.
Q When you say "currently here," what document are you pointing at?
A I'm looking at the SGAT, Exhibit 21.
Q Okay. So bottom line, is the language on page 52 in the workshop isn't necessarily in there because Qwest has modified it?
A Correct. These were issues that were not disputed issues. It was a matter of clarifying the language. And so sometimes these sections were clarified multiple times in the different workshops. But the language that's currently in the SGAT was the final result of multistate Colorado, Arizona, Washington, Oregon, all of the changes that were made to that section.
Q With everyone involved in those processes agreeing to it or just Qwest put in there?
A These were -- like I said, if we made a change, say, in the multistate and the next state we would go to the

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Washington workshop, we would bring that language to the Washington workshop that would show like the red line that was done in multistate and then sometimes somebody would add a phrase there or change a word. We would take that red line then back the next time we would meet at the multistate.
Q My question is you keep saying "somebody." Is that somebody Qwest or is that somebody a group of people?
A It's a group of people. These were collaborative workshops. Attorneys like to wordsmith. So we had multiple word changes in these phrases, added punctuation. You name it, it was changed.
Q Okay. In Exhibit 23, which is the Liberty reports?
A Yes.
Q Okay. Page 76.
A Okay.
Q The last bullet on that page where it says, "The test by affidavit that all Qwest equipment at the office complies with the standard at issue," it states on there Qwest has agreed to that change?
A Yes.
Q Then if you look in the SGAT, which is page 89, I can't find that again.
(Witness examines document)
A It doesn't say affidavit. Both the Section 8.2.3.9 and

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8 2 3 10 both talk in terms of Qwest providing written notice of the noncompliance and what the notice will include

These two sections also were extensively modified and rewritten and revised through the workshops This language, I believe, was finally resolved with consensus The final red line changes to it, I believe, were done in the Oregon workshop

MR CATTANACH: Excuse me. I apologize Could I make sure I'm on the same page?

THE WITNESS: I'm sorry It does say in here it's the Item Number 4 Was that what you were after, Bob? It's the Item 4, a list of all equipment Qwest located at the premises in question together with an affidavit testing that all equipment meets or exceeds the safety standard

Q Okay How are we supposed to know this? I mean, we check the Liberty reports and then we look for this language

How are we as staff supposed to check the SGAT to verify what Qwest was told to be changed was changed? I lack confidence in that thus far.

A There have been a lot of reviews of the SGAT All I can say is that for my sections of the SGAT, that's part of my responsibility is to make sure that it's

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updated to reflect the consensus agreements that have been brought forward, which obviously these are very complex documents and very large documents.

They have gone through multiple changes We've had multiple workshops. And so bringing forward that language, I have reviewed the language in these sections, and to the best of my knowledge it reflects the consensus agreements that were reached in all of those workshops.

Q But do you have it anyplace that's footnoted so that I could look at that and say, oh, okay this came out of the Washington workshop, I can now go to the Washington workshop and see if that's what really happened?

A I'm not aware of any one place that all of these are footnoted

Q Is there any reason it couldn't be?

A It would be a monumental task, I think, to go back through the transcripts of many, many days of workshops.

Q But what's our other option? Trust me?

A Is there an issue with any of them?

Q Well, yeah We're not finding them. That's my issue. You're saying, you know, it was changed to this or that and our problem is we're not finding the changes that you -- we're not finding the basis for your changes

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A All I can say is at the end of workshops when we would file in the states, we file both a red line change or a red line copy of the SGAT that would show the changes and footnoted and the date of what workshop made the change along with a clean copy of the SGAT

Like I said, we would also bring forward that language to subsequent workshops If any CLEC thought that we missed any of those changes, they would raise those issues And we've had, you know, legal briefs where we've asked for comments on the SGATs and, you know, looked at the transcript to make sure that they matched So like I said to the best of my knowledge, the language in there reflects consensus

Q But those are CLECs that were at the multistate South Dakota purposely chose not to participate at the multistate so our CLECs could participate here

How are they to know without some sort of document footnoting, you know, that was the change or this -- there isn't I think the answer is there isn't; right?

A There isn't one document, and it's a very difficult process, like I described In some cases, one sentence may have been changed numerous times Sometimes it was a one-word change to try to footnote all of those

Unless there's a specific section where a

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CLEC here in South Dakota disagrees with the language that's in the SGAT, I don't know how we would be able to footnote each individual change

Q So you're telling us that the changes that are recommended by the facilitator and the changes by the Arizona, Washington, Colorado, Nebraska commissions have been made to the SGAT?

A To the best of my knowledge, the consensus agreements that were reached in all of those states have been brought forward into the SGAT for South Dakota

Q But that's a different question Consensus is different than Commission Ordered or facilitator recommended

A The consensus language has been brought forward As far as ordered language there may have been different orders out of the different states There's no way that you would have the same language on these sections

Q Made to the SGAT in South Dakota?

A Right If it was consensus language, it was brought forward There were the 15 disputed issues, and for those, states may have made different decisions in the orders that they released So the language may not be the same

Q What about that recommended by the facilitator? Have

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those been made in the South Dakota SGAT?
A On the disputed issues?
Q Any of his recommendations
A On the disputed issues, we made the changes that he had recommended in the SGAT There's only -- as far as my checklist items, there's only one issue that's not reflected in the SGAT that was filed and in my rebuttal testimony I indicated that we would, in fact, agree to that and I included language attached as an exhibit to my rebuttal testimony
MS CREMER I just need to check one thing here
Q In Exhibit 25, and that would be -- this might not be yours This might be Pappus
A Page?
Q I'm trying to -- let me see Page 47 Did you adopt any of Liston's testimony?
A No, I did not
Q Okay Then that's not you then
MS CREMER: I think that's all I have
MS AILTS WIEST: Any questions from the Commissioners?
COMMISSIONER NELSON: Well, I guess I have one And I'm not even sure what it is for

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sure But I share Ms Cremer's concern here that we don't know what you have and haven't presented to this Commission so we can verify it I mean, I'm having as much trouble as Karen is at getting my hands around what the SGAT really does say
I hear you say here you're under oath and I'm taking that to mean if you tell me it's there, that's what you've told me under oath and you know it's there If you don't know that it's there, I want you to make it very clear that you haven't looked and you don't have a clue if it's there
And I don't know how Karen and the staff and anybody else here is supposed to know what we're supposed to be looking at here And I can identify with the moving-target stuff but at some point this state, these proceedings, we have to start with some kind of basic can document and anything that changes to that basic document we agree to here today or until the future until these processes are over Otherwise, I have no way of knowing what went on and what's going on today, tomorrow, or somewhere else in another state or another jurisdiction
In this state and this docket, I want to know what document we're going to start with, and then

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we can start finding the changes that we're going to agree to So I don't know how we proceed from here She doesn't have an idea and I don't have an idea here and I'm not sure you do
THE WITNESS I review the SGATs for my sections that I'm responsible for We receive the documents I have language that I've agreed to in the workshops Like I said, we would take it back If it had red line language, we would present it to the next workshop and say this is what was changed last week in Oregon, is this agreed to?
If that workshop agreed to it, we also put it into the SGATs for those states Sometimes we would present that and then someone would want to make another changes to that same language
After the conclusion of the workshops if changes were agreed to, like I said, when we filed an update on the SGAT, we would footnote those and indicate this sentence that's red lined was agreed to such and such date and what the workshop was
That way for those filing on it if they objected to it, they could file an objection to it So as those were brought forward, and this is a massive effort on trying to keep these SGATs

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up-to-date, we brought forward the consensus language I have reviewed them I have people who work for me who have helped me try to review them
I feel comfortable that the consensus language agreements are in the SGAT for South Dakota
COMMISSIONER NELSON: Well I guess that for this state and for this Commissioner, I want to know that -- this meeting started -- these hearings started yesterday I want to know where the document is going to be that says where you were and what you agreed to on yesterday And then until this proceeding is over, that's where we go
I mean, I'm not interested in what happened in New York or Chicago or Colorado yesterday I want to know -- this started yesterday -- what document reflects the changes that you have agreed to as of yesterday, and then we will make our decision based on the changes that we kind of agree to
And you have a right to, you know, introduce and expect me to consider whatever language you want And that may be something that happened in Chicago yesterday or Colorado or Arizona or wherever but at someplace we can't continue to have a moving target that we have nothing to compare anything to And maybe that doesn't seem

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reasonable to you, but I have no way of knowing if you keep moving the target. And that's not fair to this Commission or fair to the people who are trying to intervene in it.

Someplace, we have to have a finished document and you had up until yesterday and when these proceedings started to introduce that. Or bring in papers that tell me where in that document you want to add changes that you would like us to consider that you made yesterday or today in some other state or some other SGAT.

MS. HOBSON: Let me see if I can help respond to that, Commissioner. Your Exhibit 21 that has been admitted into the record is the document that we were relying on for the purposes of this testimony that's being presented here and for the purposes of your decision. What Ms. Cremer is talking about is how Exhibit 21 compared to documents prior to Exhibit 21 in other jurisdictions and so on and so forth.

So that is past history and, frankly, I'm relieved to hear you say you're really not that interested in that. You want to know what a baseline is and where we're going from here.

We respect that. We want to give you that

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information, so we are giving you Exhibit 21, which is the basis of our case, the basis of your compliance with 271 to the extent it can be incorporated in Interconnection Agreements. So that's where we are.

I've told you that we are going to give you a revised version of that document because inevitably there have been some things pointed out that were mistakes, simply typographical type mistakes. We will clarify those. There have been some things that have happened since we've made our filing here last October that we will bring up-to-date so that people can see that. But those are not the issues that I understand Ms. Cremer to be complaining about.

Her concern is whether or not she can make sure Exhibit 21 complies with what happened prior to Exhibit 21's being filed. And I think her opportunity to do that is either to ask the witnesses on the stand as she has been doing or to submit some further questions to us. We've responded to some of those questions informally just between ourselves.

So to summarize, we've got Exhibit 21. That's the baseline. We have told you that we will file

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an updated version to clean up some of these issues that have come to light, and we intend to do that here in the next couple of weeks, or that our target date for that I am authorized to tell you is May 7. And we are shooting that hang on that date.

That document will be redlined with Exhibit 21, so that you will be able to tell that is what Qwest originally had. Exhibit 21, and that is how that has changed, and that is the footnote as to why that has changed. We will do all of that on or about May 7.

So that should give you that part of the information. Other than that, I'm not sure how did we get from an Arizona decision in May to a SGAT in October of last year, how many decisions did it get through. That's the part that we can't really go back and footnote line by line item by item and instead would hope to focus on those issues if there are any that are really causing concern to people as to whether or not that's going to work for them when they're trying to interconnect with us when they're trying to buy unbundled elements.

COMMISSIONER NELSON: My concern is

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this. The staff has consultants that they pay good money for advice. They can't give us advice on something they haven't seen. In my opinion, if you wanted to start with a document you're going to have done May 7 this year, we should have started that May 8 of this year or whatever you felt was appropriate.

I heard Ms. Cremer complaining about the changes that you said but I also heard her say she took Exhibit 21, which is supposed to be the SGAT, and she could not find the things in that document either, supposedly, it should reflect.

I'm sorry if you're frustrated at me because that seems confusing. But it doesn't seem that we have the information we need to make intelligent decisions and I don't think it's fair for me to make a decision or a recommendation to the FCC based on something you're going to show me May 7 after you people are long gone on May 7 and we don't have an opportunity to do anything about it.

So if you want it after that, when we make our recommendation and decision, feel free to file a new SGAT and so it reflects clearly what you really are agreeing to. I see it as an impossible task.

MS. HOBSON: I'm afraid I'm being

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[illegible] What we want you to rely on and what we want you to look at is Exhibit 21. To the extent that we agree to something here or we have already told you in prefiled testimony that something has changed since Exhibit 21 was created, that stuff is on the record.

So you have that information. All that I'm planning to do and all that we're expecting to do is to provide you one document where all of that is put together for you so that you don't need to refer from Exhibit 21 to rebuttal testimony that one of the witnesses filed or to the transcript where someone says on the record we're willing to make that change.

And what I don't think this Commission wants us to do is be in a mode where we have to say each time we draw a line in the sand last October and no matter how good an idea somebody else has to make this document better, we didn't do it because we drew a line in the sand last October. I don't think that's the right answer.

We want to be in a mode where we can be responsive and that's going to mean that from time to time where the platform was is going to have to be supplemented and changed and that's all we're

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talking about doing.

COMMISSIONER NELSON: Why shouldn't I have expected you to have that ready yesterday?

MS. HOBSON: Well, if you had had it yesterday, which you could have done and that wouldn't have been an unreasonable thing for you to do, had you done that, if something happened today or later on in this week while our experts are here to answer the concerns, not only the concerns of this Commission but the other interveners, then that document still wouldn't have been able to reflect that. So that's why we made the decision to wait until we have the opportunity to be here and hear what South Dakota was really concerned about.

COMMISSIONER NELSON: Well, I guess that's an answer, but it's not good enough for me.

MS. HOBSON: Well, if I can provide you any other information, I'd be happy to do that, but I'm afraid I'm doing the best I can with what we have.

We want you to look at Exhibit 21 as being the culmination of our advocacy here on compliance with 271. And I think that what you're hearing is that that document has been through many, many hands,

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many, many commissions, many, many CLECs, not the ones that are here but many other CLECs have had their opportunity to express their concerns and that's reflected in that document.

It's a good document. And we're not embarrassed about Exhibit 21, if you will, but we want to try to be responsive and that's why we want to give you another version at the end of these hearings.

COMMISSIONER NELSON: As far as I'm concerned, you should have brought to me the last best offer that you had to bring forward, and I should be able to deal with that. I mean, I didn't decide -- as a Commission, we didn't decide to join all of those other multi-states. So whether you like it or not, in South Dakota you start from scratch. You brought in a document. I want it on the table, your last best offer, and I want to know what it is I'm supposed to be looking at and comparing it to.

And I'm willing to go forward a little bit and see if this gets any better, but right now it's not going particularly well for myself.

COMMISSIONER SAHR: Ms. Hobson, what sort of changes do you expect between Exhibit 21

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and what will be filed on May 7? What sort of items do you think we'll be looking at as far as what will be red lined and what's going to be the genesis of those changes? Why will they occur?

MS. HOBSON: Exhibit 21 was filed, of course, last October. Since that time, there have been changes that Qwest has agreed to that CLECs have asked for that we think are appropriate and that make us easier to do business with. Some of those will be reflected in that.

Some of those changes are already in your record, if you will, or will be in your record by the end of this week because our witnesses have talked about them in their rebuttal testimony. So there will be those sorts of changes.

There are just some clerical kinds of mistakes and I think we've uncovered a couple of those today where sections weren't numbered. Incidentally, that numbering issue, as I understand it, was another state wanted those numbers removed and this was brought forward as a change and that change was one that was not very user-friendly for this state.

There will be those sorts of changes and then there will be the changes that Qwest has agreed to subsequent to its October 25 filing. And that's

[illegible] we're talking about here. I guess I'll consult with my colleagues and make sure I haven't left any other changes out.

Basically what we're trying to do [illegible] is be accommodating to our CLEC customers. As they gain experience in the market they learn more about what they need and what's really useful to them and what they care about and we try to accommodate that as we go along. So that's why you're going to see some changes.

COMMISSIONER SAHR: So we're talking the Exhibit 21?

MS. [illegible]: Yes.

COMMISSIONER SAHR: Obviously the [illegible] changes are major because the rebuttal will be part of the record and will have come before the Commission. Certain clarifications and those type of things, some of them have come before the Commission. It's strictly types of [illegible] that's understandable.

Is there going to be anything that you're going to be adding that will not have come before the Commission? And I'm thinking -- I'm wondering about some of the things that have been negotiated with the CLECs. Are they going to come in without

all the issues having come before the Commission or anyone here or -- present and represented by counsel?

MS. [illegible]: Tough question since we have one party in the case that is instrumental in a lot of these changes, namely AT&T, who isn't here right at the moment but we expect they will be. I'm going to turn this over to some of my colleagues here because they are more up to speed on some of the latest accommodations that have been made that maybe haven't been brought up in testimony and sort of take a check here.

COMMISSIONER SAHR: I'm not trying to go too far down the road but I'm trying to head a little more off Commissioner Nelson's question where I think a lot of it is what are we going to be missing -- are we going to be missing something that should be coming before the Commission or are we in a situation where this is going to be largely rebuttal changes, clerical changes, and those type of things?

And I know kind of the fairness or justice aspect there, but the what is it that's going to be part of that SGAT that we're not going to have an opportunity to review so to speak

MS. SACILOTTO: I don't know that I'll add clarity, but I'm going to attempt to and I hope somebody will correct me on my side of the table if I'm wrong.

My understanding is Exhibit 21 is the reflection of numerous, numerous workshops. And as Ms. Bumgarner explained and as I have witnessed as you go from state to state, the same sentence can be modified many, many times.

We have tried to capture all of those changes into Exhibit 21 and to bring forward all of those changes that CLECs agreed to across these multiple workshops and then to also lay on top of that the recommendations of Mr. Antonuk in the multistate proceeding. Being that he oversaw for seven states, it was a good benchmark given that each state Commission, including this one might reach a slightly different decision, he was a pretty good barometer of the states.

When we file an SGAT on or about May 7 -- in reviewing the rebuttal testimony, you will see that in a number of instances Qwest has said AT&T or somebody requested that Qwest do this or that. And Qwest in their rebuttal testimony said we will agree to make that change. So in the May 7

document, you would see the language reflecting our agreement to accede to that request from the CLEC.

At times, if possible, we attempted to include that language with the SGAT -- I mean, with the rebuttal testimony so that you could see it there. Where we did not have, you know -- where we were unable to get SGAT language together for the rebuttal filing, we will ensure that it is in the May 7 SGAT. So that's what you will see.

You will see -- it will make it much easier for the Commission because as you can see, there are 14 checklist items. We can gather all of those up that might be attached to Ms. Bumgarner's testimony, Ms. Simpson's testimony and put those in the May 7 document.

In addition, to the extent Ms. Cremer has identified typographical errors or inadvertent oopses, we will try to keep track of our oopses and fix the oopses in there. But, you know, what you have in Exhibit 21 is 90 percent -- 99 percent of everything that's been going through. But the things in May 7 will not addressing things in the past.

They will be responding to testimony that we received in South Dakota and that we reflected in

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our rebuttal testimony or maybe even here this week. We might get some good ideas while we're sitting here. That's my understanding of what we're attempting to do with May 7.

And I don't believe it is going to be as red lined as maybe some of the other things you have seen in the past. That one, I would also hope would be able to be -- because the changes will be fewer, it will be a little bit easier to follow.

COMMISSIONER SAHR: And I can appreciate the moving-target aspect of this situation. What I would want to make sure is that the parties and the staff and everyone here would have the chance to be able to comment on those individual things so that -- let's say it was an AT&T consensus that you make. Is that something that Black Hills Fibercom and Midco is comfortable with? Is that something staff is going to be comfortable with?

And I think that's -- I don't mean to put words in all of our mouths but I think that's part of the concerns, or at least that's what it boils down to for me, is make sure everyone does have a chance to respond to something before it becomes part of some sort of final document.

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Maybe the other people at the table don't need that chance to respond. I don't know, I'd be interested to hear from Fibercom and Midco if we're beating a horse to death or from staff or something. They may have legitimate concerns about the actual document being filed after the facts. I think there's probably procedural ways to deal with that possibly. Again, I'm not trying to make anything impractical but also giving them the same sort of opportunity that I would request if the shoe were on the other foot, so to speak.

MS. HOBSON: Sure. To the largest extent, we believe that the changes that you're going to be seeing you've already seen in the form of rebuttal testimony or you will have already heard about by the time these hearings are over.

But it is our anticipation that there will be a briefing schedule after this time and that would give the parties an opportunity to give you written comments on language that they felt was a surprise to them or somehow something that they wanted to further have you consider. I just don't anticipate that there's going to be very much of that, frankly.

COMMISSIONER SAHR: Thank you.

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CHAIRMAN BURG: Maybe a comment that I would throw in, what I'm hearing staff say is that we aren't questioning the validity of the Exhibit 21. It's the fact that we're having trouble making a connection between the changes that you've made and identifying where they fit in, number one.

I would sort of make the analogy of those code books. You've got a set of code books which are a specific place in time and each year the law changes so you put in a pocket edition. But those have to be well annotated or that pocket's of no value.

That's the thing I'm finding here, it's the difficulty of connecting the changes that are in the testimony to what is in that SGAT now, Exhibit 21. And maybe what I'm asking, is there a way that we can help -- that you can do something to help that between -- for the rest of this hearing? Because whenever there's been something in testimony, either original or rebuttal, it seems like because of the way the SGAT was written, there's no connection, there's not an adequate direct connection so that you know where that fits.

I'm guessing you're going to publish another one on May 7.

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MS. HOBSON: Yes.

CHAIRMAN BURG: That will probably be prior to any briefs or those kinds of things. So I'm guessing there will still be changes after May 7 to what that SGAT is that may come out in the briefs or something else. But that's why they need to be very adequately identified as to here's what is happening now on May 7, that should encompass everything up until then.

But anything that happens then, we've got to be able to go into the SGAT and say okay, here's where this fits or here's where the SGAT changes reflect what's in the brief. Everybody's agreed to it. It's not a matter anybody's disagreeing what's there. It's we're having a hard time getting that SGAT to reflect the changes that have been occurring because to me the way it was either numbered or -- that's what I'm picking up and that's what I was hearing. I guess what I'm asking is is there something that could happen tonight or tomorrow that would help us as we go forward to better know where to put what's in the testimony to connect with the SGAT?

And I've heard some of your witnesses have a difficult time saying, well, it should have been

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here but it wasn't here, and no, that's not the page it should have been on, that it looked like it should have been on this page

Not that anybody's disagreeing with what's being presented but it's that we can't find it in that Bible

MS HOBSON In that document? Well, I have a couple of responses, neither of which are the overnight response When we file the May 7 document, we intend to provide you two things A clean copy so you can read it, and a red line copy that's going to footnote every change between Exhibit 21 and the new May 7 SGAT

So that's going to be something of a road map for you to check those changes against But you're right, you're not going to get that until May 7 Then as you point out, that will no doubt be before the briefing is completed and this Commission has entered its decisions

What several other commissions have done and you may want to consider doing is making your recommendations on compliance contingent upon changes in the future but nonetheless based upon the record As I said this morning, this is always going to be a moving target If Qwest continues to

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be easy to do business with, it has to be because we're going to have to continue to accommodate our customers

But at some point, the Commission needs to have enough so that it can decide it's complied with 271 and that's, you know, where we're focusing right now is what does the record need to look like for you for 271 That's where we're relying on Exhibit 21 and any updates to 21 you'll see before --

CHAIRMAN BURG: But aren't you telling me that those updates are in some of the documents that are on this table?

MS HOBSON: In many cases, they are

CHAIRMAN BURG: That's the problem we're having is how do we find those updates and apply them to the SGAT during this hearing? It's not going to do any good if what you present us on May 7 includes some things that were not addressed because you didn't know where to look.

That's the problem that I am picking up from several parties is that they identify what's in the testimony, both original and rebuttal, and not even have a problem with it, but where does it apply in

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the SGAT? We shouldn't have any surprises on May 7 Those should have all been things that are talked about here It should be a compilation at that time

What I'm afraid of is right now I'm hearing there's a fear on the part of the parties that there are going to be some surprises because they didn't know how to convert what was presented in testimony into the SGAT And it sounds -- one of the points I heard was one other state has to have the numbers removed which should have happened -- you should have given us one without the numbers removed probably

MS HOBSON That was a mistake

CHAIRMAN BURG Is there a possible way to take that one with the numbers in it and identify where they should fit? That's what I'm hearing anyway

COMMISSIONEP NELSON It's just a whole host of things It's what Commissioner Burg just said Her information on where they have 911 and where they have basic 911 that stuff doesn't even -- you guys don't even agree on the record So I'm confused I mean, what we believe and what you believe aren't reflective of, I believe, what

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really exists and that's a problem

Now maybe I'm misinformed or I'm mishearing here, but it seems to me like this SGAT here I have no confidence in it anymore because maybe there's too many little things, and maybe they're not that many, but there have been several where it raises concern in my mind Like the SGAT seems to be to me to be something, it's the way you plan to do business, right, it's the way you're going to take care of this interconnection and making sure your networks are available to everybody Is not the SGAT a plan for how you plan to do business?

MS HOBSON It's an offer of how we will --

COMMISSIONER NELSON Exactly It's a way of complying with this checklist Then you go on further and after the commissions decide all over the country and the FCC decides you have met the compliance, then you come together and you have interconnection agreements, which basically say how you're really going to have to do business

MS HOBSON No

COMMISSIONER NELSON Well, that's a contract between you and somebody else about what you're going to do or not do And it seems to me

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the SGAT, as I heard you say today here as we looked at Exhibit 21, seems to include some of the recommendations that the multistate people wanted, not all of them. If they were disputed, they may or may not be there. And the recommendations of Anton (sic) or whatever his name was, some of them you liked and implemented and some you didn't.

So how in the SGAT Exhibit 21 do I know -- I'm interested a lot in what the multistate people said and what Anton said about that document, and I guess what -- at some point I want to know that the document reflects the best practices, not anything that you really -- I mean, if there's still disputed stuff out there, it seems to me the SGAT doesn't necessarily reflect the multistate thing in totality or the recommendations in totality or anything, except what you wrote down on that particular day which may probably reflect 90 percent of the multistate operating meetings that you had.

MS. HOBSON: Well, I can help with that one because in our SGAT we either adopt the Antonuk multistate facilitator's recommendations or in those very few cases where Qwest decided to bring the issue before this Commission and litigate

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it, if you will. Here, we have highlighted that in the testimony of the witnesses. And so it's in the record when we've told you every time and it's only a handful of times where we said Mr. Antonuk recommended X but we are presenting you with another alternative we think is more appropriate.

That's highlighted in the testimony so that part of the record is there. But what happened was that in addition to Antonuk, the same CLECs and other CLECs and other commissions continued work after he entered his orders. And so in some cases, there's Antonuk and then there's improvement, if you will, on the Antonuk language. And that, as Ms. Bumgarner has testified and Mr. Freeberg has testified is brought forward to the best of our ability, concurrent with October 25, which was the date that we filed it on.

So those kinds of matters, there's sort of two categories of things, but the first category that we've disagreed and we want South Dakota to deviate from something that Mr. Antonuk ordered is a very small number of items that are already highlighted in the testimony that the witnesses have filed.

CHAIRMAN BURG: Let me ask sort of a going forward question. I agree with you. I doubt

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if that SGAT will ever be absolute. I mean, there's any single day that probably will not be firm almost. And I think it's a living document. I think that's desirable. How do the changes in the future happen? We're going to make the changes in an order or in an acceptance some way of what happens here. But as five weeks or two weeks after the adoption of the Order from South Dakota and there's some change that need to be, how are those changes -- will they be brought into the SGAT?

MS. HOBSON: Well, the SGAT will periodically be updated to reflect these changes, but, for example, as new products are brought out and there will probably be people here that are a lot better qualified than me to talk about this. Kara, are you one of them?

MS. SACILOTTO: I'm not going to go that far. Well, for example, if the FCC issues a new rule tomorrow and defines some new kind of UNE or new whatever, there might be a language that we would adopted. But after this Commission renders its decision, I think there's one thing that perhaps there's a bit of confusion about it. The SGAT, we call it an SGAT, but it is intended to be available to any CLEC to be their Interconnection

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Agreement. It's just word -- it's like a standard interconnection offering so that you don't have to start from scratch at zero with no language. This is something to look at, and you can adopt this and sign it and it will be your Interconnection Agreement.

If, for example, Midcontinent decided that they wanted to sign the SGAT agreement, it would become a contract between the parties and any changes that were made to that contract would be a matter of negotiation between Qwest and Midcontinent.

We would obviously like to keep the document as a standard offering, sort of an off-the-shelf thing for after Midcontinent, the next CLEC who comes along and the next CLEC who comes along might want to use that. So this is what a CLEC can use as their Interconnection Agreement. And it's not an operating manual in the limited sense such as like perhaps the product catalog is that you've been hearing about. That is more of an informational document. This is intended to be a contractual document.

CHAIRMAN BURG: I understand that, and I think that's good. But let's just say

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That -- let's use your example that Midco and you are going to -- they want to use the SGAT but they said there's an area we think we did it this way rather than what's in the catalog would work better and we say we agree it will work better for both of us

That would become a deviation in that contract but does it also become an option for future?

MS SACILOTTO Well the Telecom Act is an interesting animal and it has this provision in it that's called picking and choosing

CHAIRMAN BURG Yes

MS SACILOTTO So once Midcontinent had an Interconnection Agreement with us that's approved by this Commission Black Hills Fibercom could then decide perhaps I would like to be a party to the you know KMC agreement I would like to have the Midcontinent agreement And so the opportunities for people to take advantage of that in that sense and there are obviously rules around picking and choosing You've got to take the good with the bad so to speak

CHAIRMAN BURG I understand that Then my question is that becomes a new part of the

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SGAT would that be correct?

MS SACILOTTO Well I think -- I don't think that it's necessarily part of the SGAT since it's a negotiated change between the two companies Am I now

MR CATTANACH Just a contract

MS AILTS WIEST After you file the SGAT won't you periodically do updates and file it with the Commission but anybody else files amendments to the SGAT and they can file amendments to

CHAIRMAN BURG That's what I was getting at How do we know what the changes are that are going to apply to anybody else? Are you going to do periodic updates -- would we have to act on them? Would that be the intent?

MS HOBSON To the extent there are updated SGATs filed they would be filed under the federal act and that would take effect in 60 days if you act on them and decide to reject them or whatever In addition to that, if there are changes, if the Midcontinent folks come up with a new idea and it's not reflected in the SGAT, for example, we can form an agreement with them and then others can opt into that And the way they

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will know about that is simply that the Midcontinent agreement will be before you and the Midcontinent agreement will be approved by this Commission

CHAIRMAN BURG Okay That was what I was getting at It will be approved by the Commission and then it will become a fact of this Commission and the SGAT for South Dakota so that would it be a change in the SGAT?

MS HOBSON It's not necessarily a change in the SGAT The way it's worked in practice and the SGATs -- this is kind of the Catch-22 we're finding ourselves in right now is that because it's an arduous process to produce these things and change these things, we sort of bundle up a clump of changes before we file a new one We don't file one every time there's a change in any state and we hope not to have to do that We hope we can kind of keep them updated over time But meanwhile, if there is something that's been approved by this Commission as an Interconnection Agreement, anyone else can opt into that

CHAIRMAN BURG But if it had not yet been approved by the Commission could they opt into it? Because you said you want to bundle them

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and do it on a periodic basis How would anybody know of a new option that came out of a contract?

MR CATTANACH The Commission approves the Interconnection Agreement so that's a matter of public record

CHAIRMAN BURG But it doesn't necessarily go into the SGAT at that point?

MR CATTANACH No Think of the SGAT as a separate document and the notion would be someone wishing to do business with us could look at the SGAT and say I like these things They could look at a new Midcontinent agreement and say I like these things That's the whole pick-and-choose process, Commissioner Nelson's point, give us your best offer

The truth is, we're talking about two different things here One is what's adequate for the purposes of 271 approval That's standard That's a bar and we've go to get over that bar What's your best offer? Well, our best offer hypothetically today is not as good as our best offer tomorrow because there may be something different or better that we can come to an agreement to But that doesn't mean we would have to do that for the purposes of 271 approval

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And I think where maybe we're -- perhaps it's just me getting a little confused here is what's the standard for 271. We think we've met that with the SGAT. Are there better terms this Commission can have the opportunity to approve in the Interconnection Agreement? Sure there may be but we would respectfully submit getting those better terms wouldn't necessarily be required for 271 approval. That would just be good policy in terms of better contracts. But you don't need to get there to find 271 approval.

So that's always the challenge of these things is we might have some issues here or there and say yes, you can change that, do that. Do we have to do that for 271? Maybe not. You can make an argument. Why argue? We're saying we're not going to argue about it, we'll just do it.

CHAIRMAN BURG: The one thing I'm having a little problem with is because they're having trouble connecting it in the SGAT, I'm not having confidence because of the numbering issue and that that even you -- you may even have difficulty getting them there because you put them in testimony in every way but I see a real disconnect between that testimony identifying

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properly where it fits in the SGAT.

That's what I find especially staff and some of the interveners having a problem with is where do I go to the SGAT to apply this change that you've made in testimony. Not that it's wrong it's probably good. It's probably an improvement. But if I can't go there and find it, how do I know it's going to get there in your documentation. And we're going to have to wait until the 7th to find out whether it all got there and then that's past the debate date, the time that we can work on it.

I'm not necessarily saying it's anything bad. I'm thinking most of the things that we've heard are probably good changes. But the lack of confidence is how the changes that are identified in testimony are getting to the SGAT because I find your witnesses as well as the interveners not being able to make a proper connection there.

MS. HOBSON: Well, I guess my response to that is that that's what these hearings are about. I mean, this is our opportunity to highlight those concerns that anyone has found with connecting the SGAT with our obligations under 271 and with our obligations under our contracts.

And while, you know, we've heard some

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exchanges during the course of the day about that today, there are literally hundreds and hundreds and hundreds of provisions in here. And if we can highlight the ones that are problematic for people during the course of these proceedings, then I think we're doing our jobs. I think all of us are doing our jobs if that's what's happening here.

Certainly anything that comes to a witness's attention when he or she is on the stand will get in there. That's for sure. These people take this very seriously. That's --

CHAIRMAN BURG: I guess just a final comment. What I would ask is if any of the interveners feel a lack of confidence because of the way it was identified that they're missing something, in other words there's something identified in testimony that is not going to get to the SGAT, I think we need to understand that.

MS. CREMER: Part of staff's problem all along has been that Antonuk's reports came out last May and continued through September, except for public interest and QPAP. Those were available -- that consensus language was available to be put in the October SGAT. And by and large, we have not found that consensus language. And

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that's our problem. They could have been in there and they're not. I have no confidence that come May 7, we're going to find all of that consensus language.

Staff asked in February for an update to the October SGAT to reflect the Antonuk report consensus language. Some of those changes were made but the consensus language is not in there that we find. We just absolutely cannot find it. That's my bottom line.

MS. SACILOTTO: I understand, you know, having lived with this, as crazy as it sounds, it does somewhat make sense. But what you have to realize is Antonuk issued his report starting in March of last year. And some of them, for example, came out in May of last year. Well, Mr. Antonuk was not the last stamp on the language that happened. He might have had his multistate workshops in the middle of the process --

MS. CREMER: I'm just going to interrupt you here. The problem is you didn't file anything but Antonuk's reports. If you're going to rely on the other states, you needed to do a better filing and that's the other problem we've had.

MS. SACILOTTO: If I could finish,

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he made recommendations on disputed language and he made comments about language that the parties may have agreed upon We might have agreed upon language for I'm just throwing it out as an example, Section 6 5 3 2 When we went to Colorado, we would present 6 5 3 2 and a different CLEC might say well maybe that language was fine for AT&T and WorldCom but me, CLEC, I think it should say this And we said, okay, we can live with that we'll make it say this

And after that, we might have gone to Oregon and CLEC X would say I think that 6 5 3 2 might be improved by saying this And somebody else might say I think 6 5 3 2 would be improved by eliminating it altogether And after -- that's a really good idea and strike it right out

And so what you might see in Mr Antonuk's report as reflecting consensus language was consensus language at that moment in time That moment in time changed and what we tried to bring forward was the most current consensus language, the amalgam of all of these processes so that you could see not just what the parties agreed to when they were in the multistate but what they agreed to in Arizona Colorado Washington

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And so when you look at the disputed language, you will see Mr Antonuk's recommendations When you look at anguage that was consensus, there might be little tweaks around the edges here and there because it got tweaked by further consensus later on down the road

MS CREMER: Then where is that in the record?

MS SACILOTTO: My understanding is that we have attempted diligently to have all of that reflected in Exhibit 21

COMMISSIONER NELSON: Therein lies part of my problem because it doesn't seem to me it is reflected in Exhibit 21

MS AILTS WIEST I think we need to take a break

(A short recess is taken)

MS AILTS WIEST I just had a few questions for you, Ms Bumgarner AT&T I know objected to the reservation fee when they cancelled space

MS BUMGARNER Yes

MS AILTS WIEST Does Qwest then reserve space for itself under the same process?

THE WITNESS: It's hard to make a

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direct comparison between Qwest setting aside space for itself in our own office as compared to CLEC reservation, but we do, in fact, reserve space or set aside space that we've planned.

When we do that it's that we have a specific job in hand that we allocate the space for that So we don't necessarily pay ourselves to set aside the space, but in terms of the methods that we use and the reservation of space, the length of time, it's the same as what we apply to the CLECs

MS AILTS WIEST: Okay But then if you decide later on that you don't need that space, it would be different than the CLEC if that you wouldn't have to forfeit any part of the reservation fee

THE WITNESS: Right

MS AILTS WIEST: That would be a difference Has any state deleted the reservation fee, that you know of?

THE WITNESS I think that we've had differing orders around the reservation fee, I think probably about three or so different versions of that particular section Part of it it started out concern about the cost involved with reservations

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MS AILTS WIEST: Right

THE WITNESS: And then we did reach agreement -- I believe that was in the Oregon workshop -- on offering another alternative which we called the space optioning, which was a lower cost way for the CLECs to actually option space, and it was based on a right of first refusal

Because I think the FCC's rules and the discussions that took place in the workshop expressed terms about warehousing of space, particularly for smaller CLECs that a large CLEC could come in and take a very large amount of space and if there wasn't any constant sequence associated with that, it may preclude smaller CLECs from getting space

But we did talk about the amount of money involved in that so we came up with the space optioning, which the right of first refusal more or less says you've reserved that space but now if someone comes in and they really want to put in a collocation job, you either need to go ahead and proceed with your collocation or you need to allow the other CLEC to take that space So that was the two options that we had

As far as the reservation fees, I think we

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have some different decisions in different states on how they approached that

MS AILTS WIEST Have any states told you not to allow for the forfeiture of that fee upon cancellation?

THE WITNESS I believe that we have a couple of states that they actually forfeit the full amount They came up with the flat fee, and it's a forfeiture of the full amount

I'm trying to remember I don't believe that there are any that didn't provide for some kind of forfeiture, but I'd have to check back through the different orders

MS AILTS WIEST Going on to -- AT&T has also objected to Qwest's charge for channel regeneration You stated that the report added language that provides for circumstances when the CLECs need not pay for them

What circumstances are those? Do you recall?

THE WITNESS I'm sorry Would you repeat the question

MS AILTS WIEST: Right The report provided language that provides for circumstances when CLECs need not pay for that regeneration fee

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THE WITNESS Right What Mr Antonuk had in his report would say that if there was space that was closer to Qwest's network -- because channel regeneration is required based on the length and size of the cable that you're using So if there was space that would have been closer and it wouldn't have required the channel regeneration, then we would not charge for it, if there was a choice we could have made

MS AILTS WIEST: Have any states eliminated that charge?

THE WITNESS Yes

MS AILTS WIEST: How many?

THE WITNESS: I don't know the exact count I think we've had some that have asked to include it in the indirect charges that are spread over all services So they may have approached it differently in the different states, but I do believe we have one or two that eliminated the charge for the channel regeneration

MS AILTS WIEST: And I noted that you have changed your position, I believe, on the interval, the forecasting and the 90 days and 45 days I know in AT&T's testimony they actually proposed specific language

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Did you adopt that in whole, or did you put together your version of what AT&T was requesting in that case? Do you recall?

THE WITNESS: I believe I attached as an exhibit on my rebuttal the language that was brought forward from I believe it was Arizona

MS AILTS WIEST: That wasn't necessarily AT&T's language?

THE WITNESS: No I think it approached their language in terms of the 90 days and not requiring the forecast, but it set out slightly different in terms of requesting the waiver And then -- I can't find the exhibit for it Excuse me

And then the third one that they brought up, which was the interconnect distribution frame collocation

MS AILTS WIEST: Uh-huh

THE WITNESS: I revised the language It's in the exhibit that I filed to reflect AT&T's proposed language

MS AILTS WIEST: Okay

THE WITNESS: It's MSB collo No 12, dash 12 from my exhibits

MS AILTS WIEST Okay

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THE WITNESS: That's the language that I brought forward That's language from the Arizona SGAT and then the revisions that I made that reflected AT&T's request on the ICDF

MS AILTS WIEST: Okay Going onto item 7, 911, I know you talked about the Intrado and locking process and the progress you've made in that And I know you also stated when you were summarizing your testimony that the locking -- even if it is locked, it would not affect the ability of a customer to dial 911; correct?

THE WITNESS: Right

MS AILTS WIEST: But in AT&T's testimony they did state the locking could cause a failure to update if the customer moves; is that right?

THE WITNESS: Right I said all the information is left in the database We never removed that information. When you unlock that record and the new service provider, anything that has changed they will provide the updates with their service order completion They send that update to Intrado on the data link at night So in those circumstances where the customer has both ported the number and moved at the same time the

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the address would be incorrect
The telephone number would be correct, but the address would be incorrect That's why we wanted to get a fix in place The whole industry needed a fix for this so that you can unlock and update those records
MS AILTS WIEST: So you think that it has been fixed completely It is your understanding --
THE WITNESS: Yes Intrado has implemented the industry solution They have validated 100 percent of the migrate records every day since they implemented
MS AILTS WIEST: Then going on to item 11 number portability, I believe that you have agreed to hold the disconnect reported numbers you stated to 11.59; is that correct? But you've added the words -- AT&T took issue with adding the words "to try" and I believe in your rebuttal now you used to use "best efforts"
Haven't other states omitted that language, "to try"?
THE WITNESS: There's only one state that omitted those words That was Colorado that changed those All the other, I believe, still

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have either try to or best efforts in, where we've updated the SGAT
MS AILTS WIEST: Uh-huh When you looked at Fibercom's testimony on number portability their witness said she had to go through numerous trouble tickets and often trouble tickets would get lost
Have you addressed that problem about losing trouble tickets all the time?
THE WITNESS: I'm not sure --
MS AILTS WIEST: Or do you disagree with their testimony?
THE WITNESS: I'm not sure that I would necessarily agree there are a lot of trouble tickets on those I think there may have been some confusion when reporting those. And I tried to describe that
Because these don't happen all that often to call in and report that you have a duplicate assignment I think that for some of the account managers and service managers they didn't understand what was being reported.
We just haven't had that many of them. It doesn't happen that often with the Qwest retail customers So I think when they were giving the

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reports they weren't familiar with them and they weren't really familiar with what action they might take
We have spent time talking with those account managers and service managers, trying to make them more aware of this issue and understanding what action they take Because we have to go through the retail side and actually contact the customer that got the duplicate assignment and take their number back So it's not a very pleasant experience for Qwest either
That's why we really wanted to get this problem solved It impacts both of us And it's not fun to call the customer and tell them you have to take the number back from them
MS AILTS WIEST: That's all the questions I have Did you have any redirect, Qwest?
MR CATTANACH: No
MS AILTS WIEST: Thank you You may call your next witness
MS SACILOTTO: Qwest will call Mr. Dennis Pappas.
DENNIS PAPPAS,
called as a witness, being first duly sworn in the

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above cause, testified under oath as follows:
DIRECT EXAMINATION
BY MS SACILOTTO:
Q Mr Pappas, I'd like you to take a look at what has been premarked as Exhibit No 44 It's Qwest Corporation's affidavit of Dennis Pappas, checklist item 4, unbundled loops dated April 19, 2002
Is that document true and correct to the best of your knowledge?
A Is there a copy of it?
Q Dennis, did you not bring yours?
A I didn't mark it with an exhibit number, though I'm sorry.
Q It's the April 19 document?
A Yes, it is
Q Thank you Mr Pappas, I would like you to look at what has previously been marked as Exhibit No 12 And that is Qwest Corporation's affidavit of Jean M Liston, checklist item 4 dated October 24, 2001
A Okay.
Q Are you adopting portions of Exhibit 12?
A Yes, I am
Q Could you please identify for the Commission on the record those portions of Exhibit 12, the direct

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Q ... Liston that you are adopting
A Certainly. I am adopting Section 1, which is the executive summary as it relates to unbundled loops. Section 2 Qwest complies with the FCC unbundled loop requirements beginning on page 4, line 12 and ending on page 14, line 10.
I also adopt the portions of this section beginning on page 18, line 1 ending on page 46, line 10. In addition to that, there are Exhibits JML-4 through JML 16.
Q Thank you. Mr. Pappas, could you look at what has been marked previously as Exhibit No. 13? This is the rebuttal affidavit of Jean M. Liston checklist item 4 dated April 2, 2002?
A Yes.
Q And are you adopting portions of that affidavit?
A Yes, I am.
Q And could you identify for the Commission, please, those portions of Exhibit 13, the rebuttal affidavit of Ms. Liston that you are adopting?
A Certainly. I will be adopting Section 1, once again the executive summary as it relates to unbundled loops. Section 2, incorporation of SGAT changes beginning on page 2, line 13 and ending on page 2, line 21. Section 3, access to unbundled loops beginning on

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page 3, line 1 and ending on page 18, line 4, and page 40, line 12 through page 53, line 18. In addition to that Exhibit JML loop-1.
MS. SACILOTTO: Thank you. Commissioners, I would ask that we admit into the record Exhibit 44 and those portions of Exhibit 12 and 13 that Mr. Pappas is adopting.
MS. AILTS WIEST: Any objections?
MS. CREMER: I have an objection to 13.
MS. AILTS WIEST: Okay.
MS. CREMER: Exhibit 1 as a part of Exhibit 13 is hearsay. I believe it's too far removed. What we have is a consultant's testimony. This consultant was hired by ROC. I think the testimony probably came in from multistate. I'm not even sure.
It's an attached to Liston's testimony who is now being adopted by Mr. Pappas. I think you'd have a closer connection to Kevin Bacon than you do with this particular exhibit. So I would ask that it be stricken.
And with Exhibit 5 that is -- or it's attachment 5 to Exhibit 13.
MS. SACILOTTO: Ms. Cremer,

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Mr. Pappas is not sponsoring that exhibit.
MS. CREMER: Just not No. 5 or
MS. SACILOTTO: No. He is No. 1 but not No. 5.
MS. CREMER: Okay. I'm wait.
MS. SACILOTTO: May I respond please.
MS. AILTS WIEST: Go ahead.
MS. SACILOTTO: Exhibit 1 to Exhibit No. 13 is the transcript of a discussion at the multistate workshops where Denise Anderson, who is employed by Maxim Telcom group, the project manager for the regional oversight committee, was specifically asked to come into the workshops and discuss her views as an independent third party of the negotiations that went on on the performance measures and the extent to which those negotiations discussed or related to the service interpretable guide, that is the Exhibit C to the SGAT the intervals will give you to our analog loop in five days and so forth.
To lay a little bit of background on this, the multistate workshops occurred, I believe, in the end of March and the very first days of April 2001. And during that there was a back and forth between

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AT&T and Qwest as to what happened during the ROC negotiations of the performance measures and who said what and what was considered.
And it essentially became what we would call in lay terms he said-she said. Mr. Antonuk decided that rather than you say this and you say that, let me bring in somebody who doesn't have a stake in this process who is sitting there and have them testify about it. That's what Ms. Anderson did.
I think that it's unique testimony in that she's not a party. She's not a CLEC, and it would be difficult to bring her around to all 14 states. In fact, she didn't go to any of the other states besides the multistate.
Also in reading Mr. Antonuk's resolution of this issue he relied quite heavily on this transcript. So to allow this Commission to evaluate both Mr. Antonuk's recommendations and the testimony of the parties, we believe that it would be beneficial to your decision-making to have this transcript in front of you.
What we attempted to do was to provide you with the entirety of Ms. Anderson's testimony on this particular issue as opposed to just the excerpts that we would like.

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And so I believe that it's very informative for this Commission so that you can have a different slice in to this dispute between the parties.

MS. CREMER: And I would like to respond. If she went to the multistate she could come to South Dakota. I don't care if she goes to all 14 states. We're just asking her to come to South Dakota.

Now it's my understanding is we have hearsay upon hearsay. We've got her take of what was said between AT&T and Qwest, which is even further removed.

MS. SACILOTTO: Well, she was there. It's not just that it was AT&T and Qwest. The ROC facilitators and the ROC participants and the project managers are also there. So, I mean, she is testifying about her firsthand knowledge of those particular events that occurred there.

And to understand Mr. Antonuk's report and his statements about his interpretations of what happened, you need to have the foundation for that. And that's what this is. This is, you know, key information that's not being offered by -- it's not Qwest's version of these events. It is an

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independent third party's version of these events.

MS. AILTS WIEST: I'll overrule the objection and allow the testimony. Did you move in 44?

MS. SACILOTTO: I --

MS. AILTS WIEST: Or parts of 12 and 13?

MS. SACILOTTO: I was moving in 44 and the parts of 12 and 13, and we got on to the objection. If you're overruling the objection, I would like 44 to come in as well.

MS. AILTS WIEST: So we have received into evidence the parts of Exhibit 12 as referenced by Mr. Pappas and Exhibit 13 and also Exhibit No. 44.

MS. SACILOTTO: Correct. And we previously introduced those portions of 12 and 13 that Mr. Brohl discussed yesterday. And then our intent is to close the loop, so to speak, with Ms. Stewart.

MS. AILTS WIEST: Right.

MS. SACILOTTO: Thank you.

Q. Mr. Pappas, do you have any opening comments?

A. Yes, I do.

Q. Before you begin could you give just a little bit of

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background about yourself?

A. Certainly. My name is Dennis Pappas, and I am a director in Qwest's local network organization and I work in the technical regulatory group. I've been involved with interconnection really since 1996 and at that time was the first state interconnect manager responsible for the implementation and project management of collocation in the states of Colorado and Wyoming.

In 1997 I became the group lead for the unbundled loop product, which we'll talk about probably in length today. In 1998 I became the group lead for the collocation team. In 1999 I took over as director of Qwest for a wholesale product marketing team.

In 2000 I took over the general manager and I had Qwest's central region and I had 75 CLEC accounts. At that time I was responsible for their interconnection needs and assisting them with those. I left briefly in 2000 to join Test Communications. Much like the companies that are represented here today they were a facilities-based CLEC providing not only voice and data but cable TV services and long distance. I was vice-president there and then subsequently president starting in December of 2000.

I left Test Communications in 2001, rejoined

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Qwest and was responsible to represent the product organization in the 271 workshops, and in December of this past year I was promoted to my current position. I've been with Qwest all total for roughly 24 years.

I'm here today to testify that Qwest is compliant with the FCC's requirements regarding nondiscriminatory access to unbundled loops, which we know as checklist item 4. The unbundled loop is a facility that extends from a distribution frame or equivalent in a Qwest central office out to a network demarcation point at the end user premise.

This demarcation point is defined as where Qwest's ownership of facilities cease and a competitive local exchange carrier, end user, owner, or landlord's ownership of the facility begins.

Qwest offers a variety of unbundled loops to the CLECS to assist them in meeting the needs of their end users. We really break these loops into two different groups. View one is the analog type of loop, and the other one is the digital capable.

Under the analog loop you'd have two and four wire voice grade type circuit, and most of the time it's used for exactly that, for voice grade, POTS type services.

Under the digital umbrella there's several

[illegible]

[illegible]

voltages and opens, of course

The third option was the coordinated installation with cooperative testing And it's exactly what it says It's a coordinated installation So let's say at 10 o'clock a CLEC would say they wanted a specific order, order this option, and somewhere between -- we have an hour window Between 9:30 and 10:30 we have to notify the CLEC that we're ready to start the work so they can notify that end user

We perform the work We then call them up We give them the performance testing results, and then we also work with them to perform cooperative testing And cooperative testing is strictly at the CLEC's request

The instances that I've been able to sit in on and listen to where they have us put our PTI test set on the end and they run a test to it, or they ask us to put a short on it and they test to the short and then they accept the circuit at that point

There's also the coordinated installation without cooperative testing I think that's pretty self explanatory The basic installation with cooperative testing is, once again, there's no coordination, it can happen any time during the day, but at the time that we do call them we then perform

cooperative testing, once again at their request

The last one is the project coordinated installation, which permits CLECs to obtain a coordinated installation for unbundled loops with and without LNP where CLEC orders unbundled DS-1 capable, unbundled DS-3 capable, or 25 or more DS0 unbundled loops The date and times are negotiated and handled on a first come, first serve basis and additional charges could apply if the CLEC requests this work activity outside of normal hours

I've talked a lot of order coordination, and that's really facilitated through the QCCC, which is the Qwest CLEC Coordination Center Prior to March 2002 Qwest utilized two centers, one that handled coordinated orders and one that handled those orders which required no coordination

Beginning mid-March we transitioned all the unbundled activity into the QCCC We made this move because the QCCC had established themselves as the center to handle all forms of order closeout and because of the process and personnel they had in place, the successes they had experienced, and the checks and balances they had instituted, we're confident this center will continue to lead to a higher degree of timely order completion

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All the products and services that I've just noted are in the Qwest product catalog other witnesses have spoke to today We continue to add, update, and modify information in the wholesale product catalog that documents each of the products and installation options noted above

This tool also contains several links, each connecting the user to a multitude of different sites from service order information to tariffs and interconnection agreements All of these products are now available to competitive local exchange carriers under Qwest's statement of generally agreed to terms, as well as through individually negotiated interconnection agreements such as the KMC agreement

Qwest currently provides unbundled loops to CLECs in South Dakota in a timely and nondiscriminatory manner Qwest's process is in place to make unbundled loops available to CLECs upon request and has performance indicator definitions, or PIDS, in place allowing CLECs and state Commissions alike to assess Qwest's unbundled loop service performance

Qwest is measured in two areas We've talked about ordering and provisioning, and that's the first measure, which is OP measurements and maintenance and repair, which are MR measurements. These indicators

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and their measurements were established in a collaborative process involving the Regional Oversight Committee, the ROC, with participation from both state commissions, staffs, CLECs, and Qwest.

Currently in the State of South Dakota there are approximately 27 CLECs operating under negotiated wireline interconnection agreements Current unbundled loop count as of the end of February 2002 is 1,975 loops in service Of that total approximately 95 percent of those loops are analog voice grade loops with the other 5 percent being spread between two wire nonloaded loops, DS-1 capable loops, and basic rate ISDN capable loops

Four CLECs in the State of South Dakota share a portion of the unbundled loop base. As a side note, throughout its 14-state territory Qwest has approximately 348,000 unbundled loops in service as of the end of February with 83 percent of those being voice grade loops and the remaining 17 percent being digital capable loops

Three CLECs in South Dakota have raised issues regarding Qwest compliance with checklist item 4 I'd like to focus on those issues raised by the specific CLECs. First, Black Hills.

Mr Ron Sheible on Black Hills discussed Black Hills

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efforts to obtain DS-1 loops

Remember back to the introduction in the current products line There's a big difference between what is currently available in the Black Hills contract and what is contained in the amendment sent to Black Hills on March 22 of 2002

What they're asking for is a DS-1 service at a four wire price The four wire LIS link in their Interconnection Agreement is simply that, a four wire circuit. Black Hills would be responsible for providing the network channel terminating equipment or NCTE at the end of the circuit in order for it to operate and transmit the bidirectional nominal 1 544 megabit per second signal they want to provide

If ordered without electronics they were correct that their loop would be somewhere between $31 72 and $45 46, depending on the zone, which is per their Interconnection Agreement

What the amendment contains is a DS 1 capable loop where Qwest will place the network channel terminating equipment and provide Black Hills with the same type of service they're now getting out of the special access tariff or what they say is $125 a month for somewhere between $17 54 and $87 89 a month If Black Hills were to amend the agreement with the

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product, they would be saving approximately $45 per month per circuit

Next there was some Midcontinent concerns As they voice the several open issues they continued to be worked by both members of the company during the monthly customer and account team meetings My understanding is that the issues list between the companies is now down between 1 and 3 open issues

The item I would really like to address are the apparent accidental disconnects of an end user while waiting for a service order to be worked Apparently, LNP was involved In the lessons learned in this Qwest has taken steps after learning this on 3-28 and we've trained the technicians in the Sioux Falls Wire Center on order reading and interpretation Our expectation is this training will alleviate this specific problem from recurring in the future

AT&T's raised five issues from which I'd like to respond Qwest build policy, conditioning charge refund, the intervals for DS-1s, the repair interval, and then redesignation of IOF to unbundled loops

On the first issue Qwest's SGAT and KMC's agreement reflect a balanced position on when Qwest will construct facilities on demand for CLECs beyond

commitments already contained in the SGAT and the KMC agreement. This includes an 11 step process which takes a look for line and station transfer, repairing defective pairs, will also take a look to see if there are any pending engineering jobs so we can -- we'll know the facilities will be coming at a later date and we can give them a due date committed and tied to that date.

We'll also do incremental work, such as placing a drop, increasing the tye pair terminations in our network interface device, increasing tye pair capacity in a central office, adding electronics to a system that hasn't been turned up yet and, as I spoke about early, conditioning a loop in order to make it compatible for whatever service these CLECs intend to put over it.

With regards to the conditioning charge, the multistate facilitators struck a balance on when Qwest should refund loop conditioning charges to CLECs because of faulty conditioning work. That compromise is included in the SGAT and the KMC agreement in Section 9.2.2.4.1.

Regarding the intervals in Exhibit C for the multistate or for DS-1 in a multistate facilitator agree that intervals Qwest's offers were heavily

discussed in the PID negotiations, and CLECs have a heavy burden of changing those intervals now. The multistate workshop discussions of these negotiations are attached in the rebuttal testimony of Ms. Liston, which I'm adopting as Exhibit JML loop-1. The retail parity for DSL loop is nine days.

AT&T also challenges Qwest's analog repair interval. I note that on OP-4 the average installation interval measure -- excuse me, the measurement on repair interval is a parity measure. Therefore, Qwest is providing CLECs with the same interval it offers to its retail customers.

The retail interval that we're speaking about for repair is a 24-hour window. AT&T suggests that that should be 18 hours for analog loops. The maintenance and repair performance measures are all based on a parity with retail. Qwest repairs their retail customers out of service in less than 24 hours.

AT&T claims it has additional work it must do on its end, therefore, the repair interval for Qwest should be shorter. If Qwest is performing the repair service for the CLEC, the CLEC is expected to confirm with its customer that the service is working before it closes out the trouble ticket with Qwest. Upon closing the trouble ticket with Qwest there's no further work

for the CLEC to do. Hence, there's no need to shorten this interval.

On issue five, it's the IOF redesignation, interoffice facility redesignation. Qwest will agree to include language in its SGAT relating to this issue. Qwest has proposed such language in Washington and would agree to include the language in the South Dakota SGAT or any other carrier's Interconnection Agreement.

For these reasons and those set forth above, the Commission should find Qwest satisfies the requirements of checklist item 4. This concludes my opening statement.

Q Before I turn Mr. Pappas over for cross examination, Mr. Pappas, could you look at the document that has been marked as Exhibit 45?

A I have it.

Q And could you identify -- we'll pass that out for the parties here.

Could you identify for the record what Exhibit 45 is?

A Certainly. Exhibit 45 is a Washington SGAT section, Section 9.1.4, which is the proposed language or the language for redesignation of interoffice facilities. Do I need to read it?

Q No. But could you read the provision again? It's

9.1 --

A I'm sorry. 9.1.1.4.

Q Thank you.

MS. SACILOTTO: At this time we would like to admit Exhibit 45 into the record.

MS. AILTS WIEST: Is there any objection? If not, it's admitted.

MS. SACILOTTO: Thank you. That's all my questions for Mr. Pappas for right now.

MS. AILTS WIEST: Do you have any questions, Mr. Gerdes?

MR. GERDES: May I take a moment to read this document, please.

MS. AILTS WIEST: Go ahead.

CROSS EXAMINATION

BY MR. GERDES:

Q Good afternoon, Mr. Pappas.

A Good afternoon.

Q I'd like to visit with you about a couple of issues that were dealt with in the rebuttal affidavit. The first one deals with reciprocity of trouble isolation charges, and it appears on Ms. Liston's affidavit on page 10.

A I've got it.

Q As I understand this issue, what we're basically

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talking about is repairing problems in the system and then deciding which between the CLEC and the ILEC -- in this case Qwest -- is responsible for paying for, number one, the testing to find the trouble and, number two, the actual repairs. Would that be correct?

A Yes, sir.

Q And if I'm understanding what you and Ms. Liston are saying, it's your position that the situation that Mr. Simmons complains about in his testimony has now been resolved; is that correct?

A I'm not sure that we've reached resolution on it or not. I believe we have.

Q Okay. But you are contending the issue is resolved?

A I am, yes.

Q Because of what the -- the changes that are outlined in this rebuttal affidavit?

A That's correct.

Q And if I'm understanding Mr. Simmons' complaint, he's complaining about the fact that he under certain circumstances -- or I should say Midcontinent under certain circumstances would be asked to pay Qwest for the test that is necessary to determine where the trouble is; correct?

A Yes, sir.

Q And, specifically, he is complaining about the fact

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that at least in the situation he was describing Midco was being asked to pay for the testing for trouble that occurred -- ended up occurring on Qwest's network; isn't that true?

A Yes, it is.

Q Okay. And has that situation been solved by this SGAT language that's quoted in the rebuttal?

A I think the SGAT language that was proposed addresses that issue, but this is an issue that kind of goes down below that.

Q Mr. Simmons would still be unhappy after that SGAT language, would he not?

A Yes, sir. He would be.

Q Because Mr. Simmons still could be required to pay for testing that you did where the trouble ended up being on your loop, not his.

A Yes, sir. Could I take a moment to explain why he would still be unhappy with that?

Q Sure.

A I was part of the team in -- I guess now it was probably October, November time frame that rolled out this change for trouble isolation. And what we did --

Q Excuse me just a minute. Trouble isolation meaning you're testing to find the trouble?

A Yes. That's part of it.

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Q All right.

A What we did is took a look at a sample size -- not a very large sample size of 16 repair tickets. And in that sample size what we saw is that we received either 11 or 12, and I'll be conservative and say 11, that the CLEC called us and said no dial tone.

As you read through the majority of the interconnection agreements today and our SGAT, there is a responsibility of becoming a local service provider for doing testing on a CLEC circuit. I could find the page in the SGAT so I could read it, and that will probably give you a better sense of what I'm talking about.

Q What I'm talking about is the language that Ms. Liston is saying solves our problem here. Is there some other language that she didn't use?

A No. I don't believe there is additional language. There is some reference I was going to make in the SGAT that cites that the CLEC is responsible for calling in a repair ticket to perform trouble isolation testing on that circuit.

Q Okay.

A Basically what we found in our survey was that CLECs were not doing that.

Q You're talking specifically about Midco now?

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A No. I'm talking in general. I don't believe there are any Midco circuits in this observation that we did.

Q I'm sorry. I thought we were talking about solving Midco's problem and whether or not this language solved it or not.

A I'm saying this isn't a Midco-specific issue. This is an issue across-the-board with all CLECs.

Q Okay. But, here, maybe we can shorten this up. If I'm understanding it correctly, if I am the CLEC and I say there's trouble out there and I test and I can't find it on my system so I call Qwest up and say there's trouble out there, we don't find it on our system, it must be on yours and you test and say, no, it isn't on ours either so we go along for awhile and it's still a problem so we test again and we say, yes, it's on your system and you test again and you find it on your system, you say, yeah, the problem was on our system.

Now can Midco charge you for the testing they did when they found the trouble on your system?

A No, sir.

Q Now let's just reverse that situation and put the trouble on your side. Can you then charge Midco for finding the trouble on Midco's system under this language?

A Under this language, yes.

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Q And, thus, we have Mr Simmons' problem, don't we?
A Yes, we do
Q Okay
A Can I ask a --
Q Sure
A When you said you called with a trouble report what did you offer me for trouble results?
Q I told you that I thought the problem was on your system
A That's not a trouble result And, see, that's the problem with this thing No dial tone -- I mean, a trouble report is, it's got 30 volts of foreign voltage on the ring side, it's got a short X ohms from the central office, it's got an open 15 feet out from the central office
Q Let's assume we told you the problem was on your side of the loop and that's as far as our testing could take us
A When we go out and find that trouble on our network we fix it The trouble that we repair on our network is fine When the trouble isolation charge and the testing charge apply is when we get reports such as you initiated right there that said it doesn't work.
Q No No That's not what I said In my hypothetical question I said we tested our side It's not on our

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side, it's on your side We tested and found it to be on your side That's the hypothetical issue that I stated
And then you say, no, it's not on our side And we test again and say, yes, it is on your side And you do, in fact, the second time find it's on your side We can't charge you for finding your problem
Yet, if you reverse that situation you can charge us for the testing That's correct, is it not?
A It is I would say if you can bring me a specific instance when that occurred, we'd be more than happy to investigate that and take a look at it
Q Well, I think that's what Mr Simmons talked about in his testimony That's what he talked about in his testimony
A We didn't see specifics on those tickets
Q All right Let's assume that what I say is accurate Are you going it change your policy then?
A That you would be able to bill us when -- no, sir
Q So where have we gotten?
A From our standpoint what we've gotten is we've now put that responsibility for that end user where it belongs, which is to the service provider to provide us with a good trouble report, hopefully test results that are legitimate, and that gives us an idea so that we can

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save time and drive to the location near where the trouble is and that we don't have to provide that initial test result like we do for our own retail customers
Q But isn't the CLEC time important too?
A Certainly I'm not --
Q Well, why can't they charge for their time if they're correct and the problem is on your side?
A Well I guess frankly for the 11 or 12 years that I was an outside net tech I never made a habit of dumping trouble -- at that time there were no CLECs but to a vendor side of the network just to not repair it I mean, if I'm out there, I would repair the trouble
Q Okay Are you going to charge for the testing?
A And I did thousands of trouble -- they're our own retail customers, and that's our responsibility as a local dial tone provider is to test those
Q I don't want to beat a dead horse to death but in her rebuttal affidavit page 11 Jean Liston says this language that she quotes addresses Midcontinent's problem and it doesn't, does it, not the specific complaint that Mr Simmons made?
A Not that specific complaint
Q Thank you As a part of your summary you indicated that the Midco complaint list is down to two or three

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open items As of when?
A As of me talking to their account team manager last Friday
Q Okay
A Is what I was told
Q But, of course, that's always a moving target We've been using that --
A Certainly
Q So it could be more now?
A I imagine it certainly could be From my understanding in speaking with her at some length, it's not as big as it once was
Q Sure
A All I was trying to establish is we're making progress on some issues
Q But my friends at Midco tell me they've made a lot more progress as the date of this hearing approached Would you agree with that?
A I have no knowledge I wasn't their account team I wasn't involved in any of those discussions
Q Then the other item I'd like to talk to you about appears on pages 14 and 15 of Ms Liston's affidavit
A The direct?
Q Of her rebuttal affidavit Excuse me
A 14 and 15 you said?

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Q Yes
A Okay
Q Now if I'm understanding this issue, this was a situation where we were coordinating in order to change an unbundled loop -- or excuse me an unbundled line
A That's correct, unbundled loop
Q And if I'm understanding Mr Simmons' complaint, what we had was that there was a failure to coordinate between your technician -- or at least meet the time frames that were prior agreed to between your technician and our technician Would that be correct?
A That's correct
Q And is this the item that you talked about in your introduction where you said that the technician had been trained to -- so that he knew how to do these switchovers?
A No That really wasn't the issue I was talking to a specific repair issue
Q Uh-huh
A This coordination it appears to me is more of an installation issue And I did speak to this, and that's the window that I talked about If it's a 10 o'clock coordinated cut, we've got between 9:30 and 10:30 to make that contact.
Q So what has happened since this incident Mr Simmons is

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talking about to cure that problem so it won't happen again?
A The coordination piece of it?
Q What has Qwest done so that they'll do the conversion at the right time?
A Well, in the QCCC I talked at some length about you know, the processes, the checks and balances they've put in place They still have a weekly meeting identifying those service orders that were missed for -- and identified the root cause of why they were missed And they tried to institute changes required They try to institute changes so ensure that doesn't happen again

Depending on loads, depending on what a installation tech gets caught on, I mean, there's a number of variables that can happen What we're seeing is we install a majority of our coordinated installation orders in the State of Minnesota at above the parity rate
Q Well, maybe you and I are not communicating Mr. Simmons says, "Porting problems have occurred, however, when some business customers reported to unbundled local loops. Business customers generally require a coordinated cut to minimize downtime during normal business hours. Some customers have been left

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without service when Qwest technicians began to cut ahead of the scheduled time and before Midcontinent switch technicians were ready to accept the traffic." Has that problem resolved?
A We expect that problem has been resolved by the retraining of the technicians in Sioux Falls
Q That's what I was asking You said you retrained the technician, and that is specific that corrected?
A The one ticket that I looked at, yes
Q Okay That's good This QCCC that has been instituted that was instituted in March?
A It's been up and running for some time now I believe late second quarter of last year just handling, as I said, the coordinated orders All other unbundled loop orders without coordination were handled through the Des Moines center
Q Okay So is it your testimony that this QCCC will help alleviate the problem that we just talked about?
A It's my belief that they will, yes But I mean they've had those coordinated orders all along, and we've seen a huge improvement because they're now those orders
Q Well, of course Media is concerned not only with its specific problems with Qwest but Media is also concerned other CLECs in the state don't have the same

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problems
So is there a quality-related program in place with Qwest to see that all of the technicians are better able to do these changeovers?
A There is We do retraining on that We issue documents And I'm not quite sure of the term we use but when something occurs like that we send out a field document to the folks in the network installation notifying them of the change of process or whatever that might be to help alleviate this issue
Q So there's going to be a time, I'm sure, when Qwest is going to be found to have complied with the 14 point checklist and you're going to be in the interLATA long distance service in your region and will you still have this zeal to make sure that it's done right for the CLECs just like for your own customers?
A That's my expectation we will still have the zeal to perform in the same manner we're performing today
Q That's encouraging And is that -- what is it that's going to make sure that that zeal continues?
A I believe it's probably the PID measurements that they've put in place that will continue to ensure not only the CLECs but the state commissions and the FCC that we're doing a good job at performing and meeting your needs

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Q Is that also a function of the QPAP?
A I believe it is
Q Yeah Okay
MR GERDES: Thank you That's all I have
MS AILTS WIEST: Fibercom?
MR EVANS: No, ma'am, thank you
MS AILTS WIEST: Commission staff
MS CREMER: Yes Thank you

CROSS-EXAMINATION

BY MS CREMER:

Q First of all, I think we need to clear up what exactly you adopted because either my affidavits are numbered wrong and lined wrong or yours are, or your Exhibit 44 is wrong
Go to page 5 of Exhibit 44 That's your affidavit; right?
A Yeah I'm going there Oh, there it is on the bottom, of course Okay I'm there
Q Okay Now I'm not Just a minute There we go You say that beginning on page 3, line 1 and ending on page 18, line 4 Now is that really right?
A Let me check
Q Yeah
(Witness examines documents)

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A I don't believe that's correct.
Q Okay What do you think it should be?
A I would say it would be page 3, line 1 to page 17 line 10
Q Okay
A My apologies to drop you off in the middle of a page
Q And then what about the rest of that, page 40 to line 12 through page 53, line 18?
MS SACILOTTO: We might have a pagination issue That's all Maybe it would help if we did it by topic, exactly, bold topic.
MS CREMER: Well, I don't know but you told me Ms LaFave's stuff wasn't in his stuff, but his affidavit says it is so I need to know I withdrew my objection so I need to know whether it's in or out.
MS. SACILOTTO: Ms. LaFave's exhibit that I believe you were opposing was Exhibit 5, and he did not adopt Exhibit 5. Ms. Stewart is adopting those portions of Ms. Liston's rebuttal affidavit that start with access to line splitting
MS CREMER: Okay. This is under tying Qwest data service and voice service
MS. SACILOTTO: That would be under access to line splitting so that would not be in

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the portion Mr Pappas was adopting
MS CREMER Maybe let's get those page numbers figured out
MS SACILOTTO If we can do it by heading, that might eliminate any discrepancy between pagination that might happen in the copying
MS CREMER Well, I mean it's your exhibit that you put in so I would think you would have had -- that you sent to all of us here So I don't understand why your copy wouldn't match my copy
MS SACILOTTO Well, the vagaries of a computer and a printer, unfortunately
MS CREMER But there's not a difference between a printer and a copier
THE WITNESS Can you hold for just a second? I think I may have figured out what's going on here
(Witness examines document)
THE WITNESS It must be a pagination problem
MS CREMER Well if you guys can figure it out and let us know, that would be great
MS SACILOTTO We'll be happy to do

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that
Q Let's start with and hopefully our numbers will all match, Exhibit 12, page 25
A I believe I'm there Which line?
Q It would be line 6 through 20 It's SGAT language, presumably SGAT language Do you see that? Is that what yours reflects? No This is in 12
A I'm looking, which is the rebuttal
Q No Direct
A I'm sorry
MS AILTS WIEST I'm sorry What was the page number again?
MS CREMER It's page 5 of Exhibit 12
A Okay
Q Okay Do you see the SGAT language on there?
A Yes, I do
Q Okay Now is this language the actual South Dakota revised SGAT language?
A No, ma'am, it's not It's a paraphrase of that language
Q Oh Why? I mean, I even read it, and I didn't pick that up out of there at all You're right it's similar, but why wouldn't you have just put the actual SGAT language in there?

everyone else on equal terms and conditions That is not a requirement It is only the one direction And that would be to fairly treat -- have the BOC treat the CLECs the same as they treat their 272 affiliate

MS AILTS WIEST Any other questions of this witness?

MR EVANS Yes, Ms Wiest, if possible

MS AILTS WIEST Go ahead

RECROSS-EXAMINATION

BY MR EVANS

Q I want to direct your attention to the Sunset clause quickly I believe the Sunset clause reads, in my opinion, Section 272(f)1, that essentially it is an automatic three-year cutoff unless the commission changes such three-year period by rule or order Would you agree with that out --

A If you're reading from the -- yes I would agree with that

Q Thank you I want to clarify that.

CHAIRMAN BURG By "commission" you mean FCC?

MR EVANS That's how I understand it, sir

A Thank you for looking that up

Q Sure Now will the Qwest employee who receive calls for local service receive any incentive pay when the customer selects QCC for its long distance service provider?

A You know, at the current time, any of those compensation issues, which is how I will refer to them, sales compensation approach, those plans are in very preliminary stages And it would definitely be an option that we would have to be able to compensate those employees if they sold particular packages But we do not have such a compensation plan in place at this time

Q Okay If that were to happen, do you envision any safeguards that might be put in place to make sure that those employees provide other options to those callers?

A And I guess that will be in the rules and requirements for those customer-contact folks right up front is that they offer other options to that customer to a point and then they can give them the additional information and sell them whatever plans might best suit that customer's needs

But, again, they will need to follow that party -- the equal access requirements that that customer understands they access to other carriers.

Q Currently, there are no other safeguards that are at least drafted that you're aware of?

A By "safeguards drafted"?

Q In terms of the topic we just discussed in terms of Qwest employees offering

MS HOBSON Excuse me I'm going to object This is outside the scope of any redirect and it is getting into the area of the activities of the BOC employees Ms Brunsting is a QCC employee and this is outside the scope of any of the testimony we've had in the case

MS AILTS WIEST I'm going to overrule the objection If you don't know the answer, just say so

Q Are you aware of any draft safeguards that are put into place --

A I'm aware of the protections that are in place today if I, as a customer, call in and I'm selecting my local service and they ask me what long distance carrier do I want They don't point me to any one today I believe that would still be that way as we move forward in the future except we will have additional advertising, et cetera But the same requirement will exist That customer will have the ability to select others and that will be so noted to them

MR EVANS Thank you

MS AILTS WIEST Any other questions? If not, thank you At this point, let's go off the record

(Discussion off the record)

(Exhibits 62 through 67 are marked for identification)

MS AILTS WIEST Okay I think we'll discuss the issue brought up by Qwest first with respect to local counsel being present I have looked into that issue and the Commission has decided that the local counsel does not need to be present at all times during the hearing

MR WELK Thank you

MS AILTS WIEST And so you may call your next witness

MR STEESE This is Chuck Steese on behalf of Qwest We have premarked several exhibits before Ms Stewart testifies Exhibit 62 is Ms Stewart's direct testimony on unbundled network elements generally Exhibit 63 is Ms Stewart's direct testimony on Checklist Item 5, transport Exhibit 64 is Ms Stewart's rebuttal testimony on Checklist Items 2 and 5 Exhibit 65 is Ms Stewart's direct testimony on emerging services Exhibit 66 is Ms Stewart's rebuttal

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Q That's the direct of Liston
A I'm talking about 8
Q I'm sorry 8 is the --
A Is that the unbundled loop provisions?
Q Yeah
A Excuse me
Q It's the unbundled loop NIDs, and line splitting checklist item 4
A I see that
Q You don't see that?
A I'm having trouble finding where you're at I'm sorry
Q Do you see anything that looks like that (Indicating)?
A Which exhibit number is it?
Q Okay It's Liston's Exhibit 12
A Yes
Q Okay And then go to the back of that, and she's got it numerically her exhibits It's No 8
A I will get there I'm sorry I passed it up Thank you
Q Now that's probably the greatest legend for ICDL flow there is However, what do any of those things stand for?
A First you need to understand the unbundling of a digital loop carrier system I talked about both integrated and universal Integrated --

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Q Okay If you could explain the difference between universal and integrated, and I think you just were
A Sure Integrated is where the carrier system is integrated into the switch So really in a central office we have no access to that to unbundle And so a process has to occur which allows you to unbundle the integrated pairgain system

Universal comes in, makes an appearance on a D-4 channel bank and from there goes over to the switch where they pick up the dial tone services So if you take -- like I guess the easiest way is the old SLC 96 world, there's four DS-1 that feed the system Each one of those is comprised of 24 DSO on DS-1 and in the central office on the universal system you have access to individual channels

You don't have that luxury with integrated pairgain Because of that and because of the complexity and expense of having to unbundled integrated pairgain, we take a look at doing as it says here, circuit cards LST is line and station transfer

So we would take a look at perhaps a customer that isn't working on pairgain and maybe working on a copper loop that's still one of our customers and do some kind of a line and station transfer in order to free that facility up for the CLEC making that request

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We then get into where we start talking -- where, you know, we do the investigation There's an INA di group, which gives us the ability out of the integrated system to pick a single DSO channel to provide that service

In that central office where there's not a INA di group then we start getting into longer intervals, 90 to 120 days If you have to order a COT in essence, what you're having to do there is deintegrate the integrate pairgain systems So you're having to break out the four DS-1s off the switch fabric, run those through a D-4 channel bank, in essence where they come out of, and then you provide the unbundled loop service on that individual channel
Q What was the INA di group?
A Di group Integrated network access I believe
Q What does it exactly do?
A Well, like I said, it's integrated into the switch fabric The INA di group breaks those DS-1s out of the switch fabric and allows you to gain access to them
Q On page 37 of this same testimony -- are you there?
A Close I am
Q Okay On line 9 it says, "For South Dakota all loops are located in zone 2" Do you see that?
A Yes, I do

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Q Okay And then if you go back to -- it would be Jean Liston's loop-14 exhibit
A I'm sorry I have 13 and 15

MS SACILOTTO Do you need a 14 Dennis?

THE WITNESS If I could
Q Is that your own or the official one?
A This is my own

MS CREMER Is the one that you matched up there from the Commission's Docket?

MS SACILOTTO We marked it yesterday I don't know where the court reporter's keeping the copies

(Discussion off the record)

Q Okay Did I tell you where on that yet?
A I don't think you did
Q Okay If you go to Qwest performance results, it says -- that first page right behind it There's a cover page for 14
A Uh-huh
Q And then the next page is Qwest performance results Are you there?
A It's got a list of graphs on it?
Q Yeah
A Yes

Q Okay In that first box it says checklist 4, unbundled loop analog installation interval zone 1, and it shows South Dakota as having one in zone 1

But I thought our testimony said we're only zone 2 So my question is why?

A And I don't know the answer to that question

Q Okay Do you have the SGAT up there? Or the Liberty reports, which would be number 25 And I think that's in that smaller pile right in front of you, or your own

(Discussion off the record)

Q Right here?

A Thank you

Q Okay On page 44

A I'm there

Q Okay Paragraph 15, which has started on page 43, but I'm talking about the paragraph that's right above paragraph 16

A Okay

Q Is it starts out, Qwest responded to three of these four requests, and it goes through them the last sentence being, "This issue can be considered closed "

I can't find these changes in the South Dakota SGAT. Do you know where those would be?

A No, not without looking.

MS. SACILOTTO: I can shed light on this, if you'd like my explanation, because I was recently posed with almost the identical question If you don't want -- I'm happy to offer it to clarify this for you.

MS. CREMER: Well, just as long as you understand it's not testimony.

MS SACILOTTO: I offer it for what it's worth, if the Commission would like. I'm happy to help If you don't want me to help, I'm happy to stay silent

MS AILTS WIEST: You can tell us where that language is?

MS. SACILOTTO: I can explain this provision and how we address this in the multistate process. Yes, I can

MS. AILTS WIEST: Okay.

MS. SACILOTTO: Section 9.2.2.9 was the subject of quite a bit of negotiation after the multistate workshop And the big ticket items that we negotiated with the CLECs on those provisions were the 30-minute holding the appointment and if Qwest missed the 30-minute hold of the appointment, it would waive the entire nonrecurring charge for the installation.

And if we failed to perform cooperative testing due to our fault or missed the appointment due to our fault we would waive the charge of the nonrecurring installation That is in the South Dakota SGAT

In addition what happened at the multistate is although AT&T's prefiled testimony talked about these issues what we really ended up adding to the SGAT was the sixth or seventh installation option that's called project coordinated installation

So part of what you had with and I can share -- I can understand how staff is having having not lived through it, people like prefiled testimony, and then when you get to the workshop process it didn't always get resolved in a manner that's entirely consistent with what people wanted in their prefiled testimony because they make compromises

And I believe what Mr Antonuk was talking about here is what AT&T requested in the prefiled testimony and then what subsequently got amended in 9 2 2 9 by the concessions that we made on the waiving of the charges and the holding of the appointment time and then the addition of the project coordinated installation option

MS AILTS WIEST: Okay

Q On the same page, 44, paragraph 17 the sentence, "IO testified that the SGAT Section 9 2 2 9 10 is referenced "

We don't appear to have that section Do you know why?

MS SACILOTTO I think Mr Antonuk has a typo in his report

MS CREMER Which is what?

MS SACILOTTO If you look right below it he says 9 2 10, and then in his in the block code he has 9 2 2 10 and then in the provision above he has 9 2 2 9 10

Q Okay On page 47?

A Yes

Q And paragraph 25?

A Yes

Q 10 2 10 3 is referenced, but the South Dakota SGAT does not have this section Do you know what should be referenced or where we could find that?

MS SACILOTTO I can ask Ms Bumgarner this question I have a feeling this might be an additional I'm speculating but in looking at this this could be another typographical error situation in the Antonuk report but I could

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ask Ms. Bumgarner this and we can bring you an answer back.

MS. CREMER: She's still here to testify?

MS. SACILOTTO: I think she's still here, yeah. I can ask her. Yeah. I can ask her that question, and we can clear that up. I think that will be pretty straight forward.

10.2 is a provision that relates to local number portability so she should be able to answer your question.

MS. CREMER: That's all I have

THE WITNESS: Okay. Thank you.

MS. AILTS WIEST: Do the Commissioners have any questions?

COMMISSIONER NELSON: I have one. Mr. Pappas, can I assume or are you willing to tell me when you adopted other people's portions of other people's testimony did you read the testimony and if there was a graph or a chart or some fact in there, do you know that -- verify that it was right?

THE WITNESS: I, right, read the testimony several times over the past week, yes.

COMMISSIONER NELSON: Did you verify

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the information in there to be sure it's accurate?

THE WITNESS: As much information -- yeah. I tried to verify every point in there.

COMMISSIONER NELSON: Why didn't you verify the numbers on this thing? That was part of somebody else's testimony; right?

THE WITNESS: It sounds like a rounding issue more than anything, if we're talking about one-tenth of 1 percent.

COMMISSIONER NELSON: I want to be sure I didn't misinterpret what you're saying here, that you actually did adopt it.

THE WITNESS: We're talking 3.4 or 3.5. It's probably a rounding issue.

MS. CREMER: My issue was, was it a timing issue? Was there different numbers we should be looking at? We don't know when it doesn't match up.

Did you use different numbers to get 3.4 than we had was the whole point. It's odd you would round.

MS. SACILOTTO: Well, I noticed that you pulled this off of the website on -- at least of the date on the bottom of the exhibit is correct, it is April 17, and then the testimony

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that you were citing from was the October testimony.

And I have no idea, but that was -- when you were asking the question that was something that a least jumped into my mind.

MS. CREMER: Right. But, again, he had no idea what the numbers were. He adopted t testimony and again we run into the problem they have no idea what the testimony is based on. He couldn't even give us the numerator and denominator.

MS. SACILOTTO: I think that misstates his testimony. He did both.

MS. AILTS WIEST: Did the Commissioners have anymore questions?

COMMISSIONER NELSON: That's it for me.

CHAIRMAN BURG: I don't.

MS. AILTS WIEST: In AT&T's testimony they mentioned -- I want to know if you'd agree with this that Qwest has altered their held order policy -- this is on conditioning of loops -- and determined that orders that are currently in held status will be rejected if there are no facilities and no current construction jobs

planned.

So if a new service order is placed by CLEC and no facilities are available, no construction jobs are planned, then the LSR will be rejected rather than be placed on held over? Is that correct?

THE WITNESS: It's not really correct. What happens is -- and we do the same thing on the retail side. We will take a look, as I said earlier, and we'll take a look for alternative -- doing bad pair recovery. We'll take a look at line and station transfers, pending engineering jobs.

When we exhaust all of those avenues we ser that order up to a center in Cheyenne, Wyoming retains that order for 30 business days with the hopes because of churn in the network there is going to be a facility free up.

If within that 30 business days the facility frees up, it's allocated, assigned to that service order, and that service order is released. So their characterization of how we handle the LSR isn't really accurate.

MS. AILTS WIEST: And then they also -- it was their position that Qwest should

refund conditioning charges if it's Qwest's performance or requires the end user to abandon the CLEC

Do you know if any state has accepted AT&T's position on that?

THE WITNESS: Certain degrees. They've talked about certain degrees of giving money back for conditioning In the multistate order Mr Antonuk, the facilitator, kind of broke it up that if -- you know, if it's Qwest's fault, basically or if the customer cannot receive service for, I believe it was three months, then there should be a conditioning refund as long as that money was actually paid to Qwest.

At the same time the AT&T claims -- there was really no way to put -- really no way to put any teeth -- or identify the actual claim I mean, the language they came up with in there were terms like unreasonable delay, poor quality. And I think I've got a note here, assigning fault is not easily or readily done when you're taking a look at unreasonable delay or poor quality because you don't know who that unreasonable delay or poor quality is attributed to.

So basically what AT&T wants is the ability to

say you condition this loop for me, two months later I have an end user customer who gets a better deal from ABC company and they leave, it's no fault of anybody's really, other than a marketing from another company and they want refunds on that amount

MS. AILTS WIEST: With respect to Mr Antonuk's report language, have other states changed that language, though, with respect to this issue?

THE WITNESS: I'm not aware that other states have changed that language.

MS AILTS WIEST: And then if you just look on page 38 -- or 39 on the rebuttal, of Ms Liston's rebuttal, on line 19 you mention the Black Hills new contract amendment.

Did you mean 2002?

THE WITNESS: I probably did. Did I say 2001?

MS AILTS WIEST: Yes It says 2001 there The new amendment was mailed March --

THE WITNESS: March 22, 2002 My apologies

MS AILTS WIEST: That's all I had Did you have any redirect?

MS. SACILOTTO: I just had a couple of questions, if I may

REDIRECT EXAMIANTION

BY MS. SACILOTTO:

Q Mr. Pappas, I want to circle back to the issue of trouble isolation charges you talked about with Mr - somebody like a last name like mine, I should be able to get other people --

MR GERDES: Gerdes. What did you want?

MS. SACILOTTO: I wanted to not butcher your name. I'm sorry. I ended up flippin my own page. Give me a second here.

Q If a CLEC performs for itself the trouble isolation tests that you described, finding the fault and the detailed tests and the fault is on Qwest's network, does Qwest charge for the testing?

A No, they do not.

Q Does Qwest charge for the repair?

A No, they do not.

Q Are CLECs required to go to -- have Qwest perform trouble isolation testing for them?

A No, they're not. It's basically their call. If they choose not to test for their own end user, they can certainly request we do it for them.

Q Is that what you were saying would be the charge?

A That's exactly what I was saying, yes.

MS. SACILOTTO: That's all I have.

MS. AILTS WIEST: Any other questions of this witness?

Thank you. Since it's almost 5 o'clock, I believe we'll adjourn for the day. And is 8:30 still all right to begin, or did somebody want to change that time --

MS. SACILOTTO: If we have a couple of minutes, maybe we can clear up the one quest you had about 10.2 from Mr. Antonuk's report. Would you like to clear that up?

MS. AILTS WIEST: That's fine with me.

(Discussion off the record)

MS. SACILOTTO: I really hope it won't be long.

(Discussion off the record)

MS. AILTS WIEST: Go ahead.

DIRECT EXAMINATION

BY MS. SACILOTTO:

Q Ms Bumgarner has returned to the stand and hopef she'll be able to elucidate or provide some insight onto the provision of Mr. Antonuk's report that we ha

questions about earlier.

A. Right. This was a question around the installation hours, and the comment about the SGAT sections refers to the loop section, the 9.2.3.7.1, and the Section 10.2.10.3.

I will tell you there's never been a 10.2.10.3 section of the SGAT so this is clearly a typographical error in Mr. Antonuk's report.

I wasn't at the workshop that talked about this particular issue. This came up under the unbundled loops, but there is a section of the SGAT in the number portability section that talks about our normal business hours, and that's 10.2.5.4.3. And that talks about the hours of our -- Monday through Friday, 7 to 7, talks about the hours in terms of the LNP managed cut with a CLEC provided loop.

So I'm assuming that's where their discussion came from.

MS. AILTS WIEST: Okay. Thank you. Does anybody have any questions?

If not, thank you. We will begin tomorrow at 8:30.

(The hearing concluded at 4:55 p.m.)

STATE OF SOUTH DAKOTA)
:SS CERTIFICATE
COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 23rd day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

STATE OF SOUTH DAKOTA)

:SS CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 24th day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler
Notary Public and
Registered Professional Reporter

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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

* *

IN THE MATTER OF THE INVESTIGATION
INTO QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271(c) OF THE TC01-0165
TELECOMMUNICATIONS ACT OF 1996

* *

Continued Transcript of Proceedings, Volume IV
April 25, 2002

* *

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,
JIM BURG, CHAIRMAN
PAM NELSON, VICE CHAIRMAN
ROBERT SAHR, COMMISSIONER

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Karen Cremer, Staff Counsel
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TRANSCRIPT OF PROCEEDINGS, held in the above-entitled matter, at the South Dakota State Capitol, Room 412, 500 East Capitol Avenue, Pierre, South Dakota, on the 25th day of April 2002, commencing at 8:30 o'clock a.m.

* *

I N D E X

Witness	Direct	Cross	Redirect	Recross
Mary Ferguson LaFave	4	--	--	--
Robert Stright	8	-	33	--
Michael Williams	26	61,65,69	75	--
Larry Toll	87	91	-	--
Mark Reynolds	96	131,134	--	--

Qwest Exhibit Nos.	Marked	Offered	Received
68 - LaFave Testimony	4	5	5
69 - Stright Testimony	6	33	33
70 - Liberty Report	8	33	33
71 - Williams Direct	24	26	26
72 - Williams Rebuttal	24	26	26
73 - South Dakota Blue Chart	24	26	26
74 - Regional Blue Chart	24	26	26
75 - South Dakota Performance Data	24	26	26
76 - Toll Affidavit	86	87	87
77 - Reynolds Testimony	94	98	98
77A Confidential	96	98	98
78 - Reynolds Rebuttal	94	96	98

(Exhibit 68 is marked for identification)

MS AILTS WIEST: Qwest, you may call your next witness.

MR. STEESE: Qwest calls Mary LaFave to the stand.

MARY FERGUSON LAFAVE,
called as a witness, being first duly sworn to the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MR. STEESE:

Q. Ms. LaFave, can you please state your full name for the record?

A. Yes. I'm Mary Ferguson LaFave.

Q. Do you have any corrections to your testimony to make today?

A. No.

Q. Can you please give a brief summary of your testimony?

A. Yes. The purpose of my testimony is to respond to certain portions of the AT&T comments that were filed relating to the obligation of affiliates of Qwest Corporation, the ILEC, to give access to or bundle their fiber facilities.

And my purpose is to state that there should be no such obligation imposed because at all times Qwest Communications Corporation, our long distance 272

subsidiary, operates at arms-length with the ILEC, Qwest Corporation All and any transactions between the two are posted on the website

And lastly and probably in this instance most importantly, QCC, the long distance 272 sub, does not own any fiber facilities in the state of South Dakota so that there is no way that that obligation in any way could be imposed

Q Is that all you have?

A Yes

MR. STEESE: We make Ms. LaFave available for cross-examination. We should make Ms LaFave's exhibit, her testimony, marked as Number 68 and offer that into evidence at this point in time.

MS. AILTS WIEST: Okay Exhibit 68 has been offered. Are there any objections?

MR. GERDES: Did she affirm her testimony? I didn't hear that I was reading

MS. CREMER: She was not sworn in

MS AILTS WIEST: She was.

MR. GERDES: As long as she confirmed it on the record.

MS. AILTS WIEST: Mr. Gerdes, do you have any questions?

MR. GERDES: No, ma'am, I do not Thank you

MS. AILTS WIEST: Black Hills?

MR. EVANS: No, ma'am. Thank you.

MS. AILTS WIEST: Ms. Cremer?

MS CREMER: No, I do not.

MS. AILTS WIEST: Commissioners?

CHAIRMAN BURG: No

MS. AILTS WIEST: I don't think you have any redirect You may call your next witness.

MR. STEESE: Qwest calls Mr Robert Stright to the stand. We would like to have his prefiled testimony marked as Exhibit Number 69.

(Exhibit 69 is marked for identification)

MR. STEESE: I'd like to ask one point of order as well as note that we would like to have marked one additional exhibit, Number 70, which should be to the hearing room momentarily. Mr. Stright is an independent consultant retained by the ROC

And two points along that line. First, in other states Mr Stright has acted as an independent witness, not a witness that Qwest has made available as a Qwest witness because he really

is retained by the commissions to perform various work

As a result, he provided his prefiled testimony and I'd simply ask for the opportunity to ask a few direct questions, if you will, after his summary before he's made available for cross-examination to make sure some points Qwest feels are important gets into the record

Then secondarily, Mr Stright completed the data reconciliation project late on Friday Certainly after prefiled testimony was made available The document we're going to offer as Exhibit No. 70 is his final data reconciliation report And given that that was just filed on Friday, we'd ask for that slight dispensation

MS AILTS WIEST: So the question is whether there are any objections to it being admitted?

MR STEESE: The question is, I suppose that some commissions want everything prefiled We obviously couldn't do that since this came about after the fact And secondarily, the real question is can I ask direct questions given Mr Stright is an independent witness and we had no part in creating his prefiled testimony?

MS AILTS WIEST: Are there any objections?

MR GERDES: I have no objection

(Exhibit 70 is marked for identification)

DIRECT EXAMINATION

BY MR STEESE.

Q Good morning, Mr Stright

A Good morning

Q Could you please state your name for the record?

A My name is Robert Stright, S-T-R-I-G-H-T

Q And can you first describe by whom you're employed and how you're involved in this proceeding?

A Yes. In fact, I'll do that and give just a brief statement I'm with the Liberty Consulting Group And about almost two years ago, the regional oversight committee hired Liberty to conduct an audit of Qwest's wholesale performance measures

That audit took about 15 months and we issued a final report on it last September After we had completed our audit of the various performance measures, some of them got modified by Qwest and there were some new measures introduced

And the regional oversight committee, or ROC, has asked Liberty to audit those changes or new measures Some of those have also been completed, and

we have a couple that we're still working on

Then last fall in the August September time frame, the ROC requested that Liberty conduct what has been referred to as a data reconciliation effort in which we took information from CLECs and information from Qwest to try to determine why they were getting different results. And our primary objective was to determine if any of that information showed that Qwest's performance measures were inaccurate

That effort took a little longer than most people anticipated, but as Mr. Steese said, we have issued a final report on that work last Friday. We did it on a state-by-state basis, and so there were some interim reports that provided the results of our work as of the completion of each of the various states. But we finished the last two of those states last week and then issued the final report.

That really is more than what you asked for, but that is also my opening statement.

Q Just a few questions then. When you issued your final audit report September 25, I believe, of last year, did you reach any conclusions with respect to Qwest's performance measures?

A Yes. Overall, we concluded that Qwest's wholesale performance measures accurately and reliably reported

on their actual performance.

Q When you were conducting the data reconciliation project, how many CLECs participated in that project?

A There were three; AT&T, WorldCom, and Covad

Q And how many CLECs were afforded the opportunity to participate in that project?

A To the best of my knowledge, all CLECs were invited. And I recall that Qwest issued an invitation -- that may not be quite the right word but a notice of their opportunity to participate to all CLECs in all of the Qwest states.

Q And how did Liberty decide which performance measures it was going to reconcile?

A That really was not Liberty's decision, but there was sort of a collaborative effort between Qwest, state commission people, and the CLECs. And Liberty participated in those discussions. And then there was agreement on the measures, products, and the states that would be included in the reconciliation

Q And the CLECs were given the opportunity to decide specifically which measures, products, and states?

A Yes.

Q And which particular products were identified to be reconciled?

A Interconnection trunks and a couple of forms of loops

were the products that were included in the reconciliation

Q Wasn't line sharing also?

A Oh, correct. Line sharing is an additional product that was included, yes.

Q Can you give a brief description of how the reconciliation process worked, how you got information and then once you got it, what you did with it?

A Yes. We received information from the CLECs that was intended to show what they thought the results were, and we also received summary kind of information, computer files and so forth, from Qwest as to which orders or records they thought made up the performance measure for a particular month.

And then we did a matching process, and where the records matched we were finished. Unfortunately, they didn't match very often. And so in cases where, for example, a CLEC thought an order should be included or excluded and Qwest thought the opposite, or in a case of a measure that is measuring how long it took to install a service and a CLEC may have thought it took six days and Qwest reported four days, something like that, then we had to dig behind that basic information.

We conducted interviews and we got a lot of information, backup logs and records, primarily from

Qwest but also to some degree from the CLECs, and attempted to determine why there was a difference.

And we found a lot of generic reasons, if you will, common reasons, why sometimes a CLEC's records and Qwest's records didn't match up. And in those cases, what we attempted to do was to determine whether -- to answer the question, is the way Qwest doing it consistent with the PID, which is P-I-D, which is the definitions or the rules, if you will, by how the performance measures are to be calculated.

In most cases, we were able to resolve those differences in that either one of the parties had a mistaken assumption about how records should be used in the performance measurement. In some cases, we found Qwest made some errors and those errors were reported by Liberty. And in some cases, the CLECs just didn't understand the measure well enough or didn't have the records to -- at a level of detail that was required to produce the performance measure.

There were obviously a few cases we had to say they were inconclusive results if simply the data conflicted and we could dig as far as we could and couldn't reach a resolution. But there were a relatively small percentage of the total number of records that we looked at

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But given that our overall objective was to determine whether Qwest was doing it right or not, what we did was in any case where we found a problem we issued a report and then received responses from Qwest and worked with them to reach a final resolution of those problems And really what controlled the length of our work is getting those matters resolved or corrected in some fashion

Q Mr Stright, approximately how many orders or trouble tickets did you look at or evaluate during the course of this reconciliation process?

A I'm not absolutely sure, but I think it's on the order of 10,000

Q And each one of these orders where you would get the Qwest data and the CLEC data, would you do that order by order or group by group?

A No It was on an individual order-by-order basis but obviously there was some we were able to deal with rather quickly or they had common features So it's not like we spent hours and hours on each of those, but certainly we were able to dispose of some and others did take quite a bit of research and work

Q And in terms of if you can give the Commission an idea of what an average order or average trouble ticket is comprised of in terms of volume of documentation

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A Well, some of them, particularly the more complex orders, like interconnection trunks, the backup documentation, including the logs and all the records associated with what happened from the time that order was first initiated until when it was completed made up many, many pages. Sometimes the logs and records approached 1,000 pages for one order It was a lot of information

Q And you said that if you found problems, you would issue a report What kind of reporting process did you use, and how many reports did you issue to Qwest?

A The procedure that they, ROC, implemented required vendors and Liberty, in this case, to issue observation and exception reports. I'm sure you may have heard of those. And in total, we issued 14 of those reports There was one exception and 13 observations

Q Are all 14 of those now closed?

A Yes. We got down to where there was just one left, and it was closed in our final report that was issued last Friday

Q Can you give a brief description of how those two -- or excuse me, those 14 reports broke down into human error and programming error and give a brief explanation of the difference?

A Yeah. There were fundamentally two types of problems

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And these 14 I believe broke down exactly evenly seven and seven meaning that seven of the problems that we found were what I would call system or computer programming type problems

An example of a little bit more description on that is that Qwest's computer code simply did not process the records correctly or did not consider all possible circumstances that might take place and resulted in inaccurately reporting performance measures That was one type of problem

The other had were generally what I would call human errors in that there were people involved at various stages of the process for orders or trouble tickets or whatever route we were evaluating And occasionally errors were made as one should expect errors in applying codes or getting the correct date or time on an order those kind of things

And of course we expected to see some of that, but in cases where what we saw was more in terms of the number that we expected to see or in cases where we thought there was any kind of a possible trend or routine mistake that the people just simply routinely not doing something correctly, then we would classify it in one of these other seven reports

Q You said that you expected to see some kind of human

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error Why is that?

A Well, because we all make mistakes, just as I mentioned the other day I went back and was reading our final report and noticed a couple of typographical errors Nobody's immune to it

Q When you found a programming error you said you had seven programming errors what would Liberty do to verify that Qwest had corrected that programming error?

A First we identified the problem and discussed it with Qwest and made sure that we were correct and that Qwest understood what the issue was

Typically what would happen then is Qwest would either make a correction or in some cases had already made a correction after the time that we looked at the information and we would compare the old computer code with the new computer code, after having discussions with programmers about that change, and then typically we would review that of records that had been processed with the new code to make sure that that problem did not exist

Q And once you verified that that problem did not exist has Qwest restated its data historically so the data the Commission will be looking at this week has been fixed of any problem of that sort?

A Yes Certainly the most recent information I believe

there were a couple of cases where for one reason or another Qwest could not go back earlier than June or July of last year and correct results

But certainly the recent results have been corrected of those matters

Q When you say "recent," if we were to present that November-to-February data to this Commission through Mr Michael Williams, that data would be clear of any of those programming problems?

A Yes To the best of my knowledge they are, yes

Q You then talked about human error How would Liberty evaluate those and what was your decision-making process on a general level for clearing those kinds of observations?

A We dealt with each one on a case-by-case basis looking at the nature of the error, the procedures that were used, the effect of those errors on the performance measure, and used our judgment as to whether the corrective actions that Qwest implemented to minimize the likelihood of those kind of errors in the future, whether those measures were commensurate with the nature of the problem.

Typically Qwest did things like conduct training, provided new procedures or what they call job aids, and in some cases provided some new tools or

programming that people would be using to enter various codes, dates, and so forth that went into making up these performance measures.

And we -- as I said, we evaluated that information, the training and all of those materials, and made a determination ultimately that those measures were appropriate, given the nature of the original problem that we had found

Q When you were looking at human error, to the extent that the human error was relegated to a specific period of time or was relatively long ago, at least in comparison to many months ago, was there times with human error that you were able to verify that Qwest had taken corrective action that had fixed the problem?

A Yes There were some of those seven reports that were limited to a period of time for various circumstances, just because of the way Qwest was conducting business or because of the nature of their dealings with CLECs

The period of time that we considered for the reconciliation was the first half of last year And so there were some things that were relatively new then and things that were being tried out differently, and there were some of those human-error problems that occurred during that period of time and we verified that they did not exist after that And I'm generally

talking about they existed during the first half of last year and not afterwards There were some also that we had no reason to think that those kind of errors may have still continued So there were both types

Q To the extent that you focused in on Qwest's training materials and things of that nature, when you were focusing on observations where you evaluated training and corrective action taken by Qwest, were any of those observations concerning human error that was rampant, that was happening with great regularity or did it just affect small percentages of orders?

A Generally they were small percentages Had they been significant or had a significant effect on the performance measure, we would have been more concerned and would have required additional testing or some measures to make sure that that problem didn't exist

But the kind of things that we're talking about, the percentages were very small I think that there was one -- probably the most significant of any of them in terms of just the numbers was we found some problems with recording of times that were used to determine an average time for fixing a trouble And in our sample, we found some errors in about 6 and a half percent of those records And that was of concern to

us

But somewhat compensating for that was these kind of errors sort of cut both ways In other words, sometimes they made Qwest's performance seem a little better and sometimes a little worse

And in that case, as it was in some of the others, we used the evaluation of the steps that Qwest took to minimize those errors to determine whether that issue should be resolved

Q Just a couple of more questions Did you find any instance where any Qwest employee was intentionally and routinely changing things to improve Qwest's results?

A No

Q And did you or have you at this point in time any conclusions about Qwest's performance data?

A We drew a conclusion in our final report that was similar to that in our audit report in that we believe that Qwest's performance measures accurately and reliably report on their actual performance

Q And at this point in time, you said your audit took 15 months At this point in time, approximately how long have you been evaluating Qwest's performance data?

A Well, from the very beginning it's been -- we're approaching the two-year mark The data reconciliation effort, as I said, started back in the September time

frame of last year and then we just finished last Friday. So I guess that's about seven months.

MR. STEESE: That's all the questions I have. I would note that the final report is not yet here, and that is surprising to me. And as a result, I'm going to ask Mr. Stright not be excused until he's had an opportunity to identify it and say that it's a true and accurate copy of his final report.

MS. AILTS WIEST: Did you want to move in Exhibit 69?

MR. STEESE: Yes, I would.

MS. AILTS WIEST: Is there any objection to Exhibit 69? If not, it's admitted. Mr. Gerdes, do you have any questions?

MR. GERDES: No questions.

MS. AILTS WIEST: Mr. Evans?

MR. EVANS: No questions. Thank you.

MS. AILTS WIEST: Mrs. Cremer?

MS. CREMER: I have no questions, Commissioners.

MS. AILTS WIEST: Commissioners?

CHAIRMAN BURG: None.

MS. AILTS WIEST: South Dakota

wasn't one of the states used, is that correct, for data reconciliation?

THE WITNESS: We did not use data from South Dakota but there was very few exceptions the work we did, in other words, evaluating Qwest's procedure or processes, applied to South Dakota.

MS. AILTS WIEST: And there were seven states chosen; is that correct?

THE WITNESS: Yes.

MS. AILTS WIEST: I'm just curious. How were the seven states chosen? It was a process. I was wondering if there was any particular criteria that you came up with those states.

THE WITNESS: I know that the parties involved wanted to make sure that there were some states in each of the three sub regions of Qwest. They have an eastern, western, and a central, and I know that was one consideration. And I believe the other consideration was -- it had to do with the three particular CLECs and their level of activity to assure that, in fact, there would be sufficient records to evaluate.

MS. AILTS WIEST: Okay. Thank you. Did you have any redirect, Mr. Steese?

MR. STEESE: Just one question.

REDIRECT EXAMINATION

BY MR. STEESE

Q. Wasn't it the CLECs that identified the particular states they wanted to reconcile data in?

A. Yes. To the best of my knowledge, in those discussions the CLECs identified the states, the products, and the months.

MS. AILTS WIEST: Thank you.

CHAIRMAN BURG: What three CLECs was that then that identified that?

THE WITNESS: It was AT&T, WorldCom and Covad were the three.

MS. AILTS WIEST: Any further questions of this witness? If not, thank you.

MR. STEESE: Like I said, I'm not going to excuse Mr. Stright yet. And our next witness will be Mr. Michael Williams. And if you can give us maybe two minutes because the copies were going to be also affecting Mr. Williams' testimony so if you can give us two minutes, I'll find out where we stand.

MS. AILTS WIEST: Okay.

(A short recess is taken)

MR. STEESE: May I make a request?

We just were told they would be here in less than 10 minutes with the documents. Mr. Williams' presentation will be much more brief and easier to understand when the color copies are here to receive. If we can take a brief recess and pick back up, we'll get Mr. Stright's exhibits introduced into evidence, release him, and have the charts there for Mr. Williams. We apologize for the delay.

MS. AILTS WIEST: No problem. Let's go.

(Exhibits 71 through 75 are marked for identification)

(A short recess is taken)

MS. AILTS WIEST: Qwest

Q. (BY MR. STEESE) Mr. Stright, do you have what has been marked as Exhibit No. 70 in front of you?

A. Yes, I do.

Q. Is this a true and accurate copy of your final data reconciliation report?

A. Yes, it is.

Q. When you were giving your summary before, were you summarizing the contents of this report?

A. Yes, I was.

MR. STEESE: That's all I have. I introduce 70

MS AILTS WIEST: Any objection to Exhibit 70? If not, it's admitted.

MR STEESE: We'd like to ask, unless there's additional examination, that Mr Stright be excused

MS AILTS WIEST: Any objection? If not, you're excused, Mr Stright.

MR STEESE: Qwest would call Mr Michael Williams to the stand

MICHAEL WILLIAMS,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

MR STEESE: Before Mr Williams testifies, we have premarked several exhibits for Mr Williams Several of them are very large We have his direct testimony marked as Exhibit 71 And it is one huge document Then his rebuttal reply testimony marked as Exhibit 72, also very large

Then passed out just earlier, two documents that are color charts We call them blue charts The first one is South Dakota specific It's Exhibit 73 Then the regional blue chart is Exhibit 74 And then last about an inch, inch and a half thick, is the most recent South Dakota

performance data which came out Sunday, Monday of this week with the most recent month It says, South Dakota, April 2001 through March 2002 on it, and it's Exhibit 75

COMMISSIONER NELSON: What number was that?

MR STEESE: 75.

DIRECT EXAMINATION

BY MR STEESE:

Q Mr Williams, do you have Exhibits 71 through 75 in front of you?

A I believe I do, yes

Q Do you have any corrections to make to your prefile testimony?

A No, I don't

Q Do you affirm that the material that's contained within that testimony is true and correct?

A Yes To the best of my knowledge, yes

MR STEESE: I would like to move the admission of Exhibits 71 through 75

MS AILTS WIEST: Are there any objections to Exhibits 71 through 75? If not, they're admitted.

Q Mr Williams, can you give a brief summary of your testimony?

A Yes I'd be happy to It's good to be back here in South Dakota again I had the privilege of being here a few times before, various parts of the state

I'm now the director of service quality for Qwest I've worked for Qwest since 1981 in a variety of capacities I'm in the wholesale markets division of Qwest, and so CLECs are my customer And my responsibilities include directing the policy regarding the guides R measurement and evaluation and reporte of our service performance results

I have been Qwest's lead representative and witness in the 271 activities since the beginning and have taken the lead in Qwest's participation in all the various workshops and forums that have been taking place in the ROC and in other places in developing the performance indicator definitions, or PIDS, as we've come to call them, and continue to work inside of Qwes to participate in guiding our continued efforts to produce these measurements on a regular basis and to ensure that we continue to abide by the guidelines and the definitions set forth in the PID so the results that we report are accurate representations and indicators of our performance

My purpose here is and has been to present our actual commercial performance results This is probably the major bulk of data that the Commission a the FCC will have to evaluate how well we are satisfying the 271 checklist This area covers almost every checklist item, and it represents what's actually happening by and large n all but about one measurem covers all of the activity that the PID define should be measured, all of it is captured in these measurements and gives you a rather comprehensive, intensive, and voluminous, as you have seen, representation of our performance

You have other information as well You've heard from Mr Stright as to his role in both auditing those measurements to determine whether we have truly we have conformed our measurements and the reporting to those PIDS And they carefully audited that and passed our results as being true to that definition

And also in the data reconciliation, which looks at the inputs to the measurement process

Q What do you mean by "inputs," Mr Williams?

A Those would be the data that you have coming from th source, whether it be a technician recording a time or a completion in the field or whether it be a trouble ticket closing, those kinds of inputs are the kinds of information that then is gathered collated

consolidated, and calculated into these measurements results

And so the audit covered that process of measuring and calculating but the data reconciliation looked at the front end to make sure that what was feeding in to that was reliable and accurate in producing results

You also have the OSS test that is just winding up, which has a variety of purposes, but one of the outcomes of it -- it's sort of a byproduct, if you will, because it generated data just like a CLEC would generate data, and our measurement systems captured that as well And so you'll see kind of a confirmatory output there that will follow this

When I'm done, I think what you will see is I'm kind of telling you the end of the story first -- is that there is such a clear pattern presented by our performance results that is clearly a pattern of satisfying the checklist and that you would be able with this data to conclude that Qwest is satisfying the checklist items, subject to successful completion of the OSS test

Now it's a daunting question at first to say how is Qwest doing it, but with the focused purpose that we have here and with the guidance that the FCC

has provided now in numerous orders approving 271 applications, we have some pretty clear and concise guidance With respect to our performance, we're typically measuring and comparing how well we are providing service to our CLEC community and how well we are providing service to our retail market and comparing the two

Sometimes there's a good comparison to make, and the FCC says that when that exists then the standard to be met is that the service quality must -- or that the service must be provided in substantially the same time and manner

And so you'll see that our performance measurements focus on those dimensions extensively and almost exclusively, things like how long does it take to install a service, what percent of the time are commitments met, how accurately are we installing And similarly for repair of service, how long does it take to repair service, what percentage of the time are we completing the repairs within expected windows of time, how accurate are those repairs and, further, on the whole, what's the rate of our trouble

So those are the kinds of measurements that help us show that we are providing service in substantially the same time and manner for CLECs as we

provide for retail customers And that's where we hav a standard called parity And we report that in that manner In a moment, I'll give you an example of how to see that in our results

Now where there is not a retail comparison available, such as perhaps collocation where we don't collocate with ourselves, we are ourselves and so that's unique and there's a benchmark And there are others where the parties -- even where there might be retail comparison under the circumstances, the partie in this collaborative effort agreed upon a benchmark a being more representative of what everyone felt would provide an efficient CLEC with a meaningful opportuni to compete

So that's the second kind of guideline where you don't have a parity comparison to make then and do have a benchmark to meet The standard is that w need to provide an efficient CLEC with an meaningful opportunity to compete

Q When you say "benchmark," do you mean an absolute of performance? Can you give an example?

A Yes A benchmark is what we call a clear bright line It's 90 percent, for example commitments met You that percentage If you are at or above that, you are considered to have met that benchmark, satisfied that

benchmark Or six business days might be a benchm for an installation interval for loops In fact, it is And anything that's six days or better would be considered satisfying that benchmark

The FCC gives great weight to standards of this nature, whether they are parity standards that have been specified as to retail comparison or fixed benchmarks that have been collaboratively developed The FCC basically makes a simple evaluation if you have met the standard, inquiry over

If you have not met the standard, then there is additional review You don't automatically fail You look further to see is there a meaningful difference here, is it competitively significant, is it an isolated occurrence? And more importantly, they step back and say this many times in various of their orders They look across the entire checklist They don't look at just one measurement of performance bu they step back and look at the entire checklist

And even in that they have -- there is an example where -- perfection is not expected for HICAP loops, for example They found in one case that there was a pattern that wasn't totally satisfactory but in the total picture across all the other products, they found that the ILEC was still satisfying the checklist

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With that kind of a background, my testimony has provided both the direct testimony and the rebuttal and then today we've provided the additional results I believe it's Exhibit 76

Q 75

A 75 Which gives you the very latest report of results, through March, consisting of 268 pages of results How do you wade through all of that? Well, I would like to present you a tool that can help you It's in the form of Exhibits 73 and 74 73 being South Dakota specific, 74 being a regional view

And the thought there is this tool can take that 268 pages or so and it presents the results in a more condensed fashion, in a manner that you can visually and quickly determine by an objective representation of the results, one that is pretty well fixed, as I'll describe to you in terms of how we got that And you can quickly see what the pattern is And so I'll describe that in a moment

But first let me, if I could, use an example from the detailed result so that you can see how you would interpret parity and how you would interpret benchmark I was going to go originally from our February result report, which what's the exhibit there?

Q 75

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A I'll use 75 That will probably be easier, since that was most recently placed before you First in looking at the parity, it's in the vicinity of page 168. Let me zero in

Q 169

A 169 now? The newer publishing has added a page. You can see from this, a very typical layout of these reports You have at the top the checklist number that this page is talking about And that's true all throughout the report It's in checklist order. Checklist Number 1 is found toward the beginning and so forth and you work your way back We're now by this page looking at Checklist 14 as an example. Resale residence installation So it describes the product at the top of the page

Then we start with this page and subsequent pages looking at various measurements dealing with the provisioning or the installation of residence service, residence resale service. And this particular page starts out with commitments met It says, "installation commitments met," and you see those tables of results And there's four tables going down the whole page

Each table represents a different measurement, the first one being, as I say, commitments

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met The second being installation interval The third and fourth are dealing with delay days, saying when we're late, how long -- and how late on average are we

And then further, each one is in a particular desegregation so the results on this page are dealing as you can see, to the right of the title of each table Dispatches within MSAs, there's another disaggregation of dispatches outside MSAs in subsequent pages and another one where there are no dispatches so you have geographic and functional disaggregation so you can weed out and filter out and separate out differences that may be due to only that factor and not to our performance

Q What do you mean by dispatch?

A A dispatch is where the installation requires that a technician be sent to the field to do work or, in other words, dispatched to the field So that's what we mean there There are some installations that don't require dispatch, and that's reported later The MSAs are the metropolitan statistical areas the government sets So those are pretty well boundaries that are commonly used in various industries

But now to look at how to read these and how to interpret, each table has a number of columns The

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first column being the month for the results on that line, the second, third, fourth, and fifth columns are dealing with the CLEC results, the numbers related to what we're doing for the CLECs on this service

The CLEC num, or numerator column -- and the CLEC denominator column, those are just telling you the high-level input to that calculation, saying if you divide the second column by the third column, then you get the fourth column, which is the result

So as an example, looking on the first table, the bottom line, March '02, the most recent result, if you go to the third column, the CLEC denominator, that means there were 51, if you see that number, orders that were dispatched with an MSA in March for residence resale and the preceding column 50 means, that that's what we met in terms of commitments We met 50 commitments out of 51 orders And so you divide 50 by 51 and you get 98 04 percent or roughly 98 percent commitment met

CHAIRMAN BURG: Can I ask you what do you mean, "met"? Is that to a standard?

THE WITNESS: It's to the commitment And so -- and the PID defines this It's usually what we call the original due date that when we offer the service and we set a due

date and we say we'll be done by this day, if we meet that, then the commitment is met

There's also a thing called an applicable due date that says, well, what if a customer changed and called up and said wait, I need it a day later or something then we go by the applicable due date when the customer changes But if Qwest changes it, we don't We stay with the latest applicable due date and that's the commitment we measure against

CHAIRMAN BURG: So you're saying if you missed one there, it just meant you didn't meet the commitment, it didn't mean you never got it done?

THE WITNESS: Right And that's a good point, bringing you to the next chart The table says now what did that result in in terms of actual average intervals

A Now you do see 51 If you look at the second table down in March, you see 179 and then you see 51 in the third column That's not always the same. And in this case it is and the reason is there are some different exclusions

In the first table for commitments met you're excluding customer-caused misses Naturally you

wouldn't count that against Qwest But in the next one, we count customer-caused misses, but we subtract out the delay time So in this case, there wasn't that difference You have 51 and 51 I just wanted to point out you may see differences between the two denominators

Here we have the 51 orders, and the 179 is a cumulative number of days So you take the interval for each order, each of those orders, and add them up and you get 179 total days spread across those 51 orders and you divide 51 into the 179 to see what is the average And the average is 3 51 days as this shows in the fourth column of that second table

So that includes the missed one Commissioner Burg's point is that, you know, if it was missed by a long shot, that will contribute to this average going up

Q Mr Williams, why don't you focus on the final chart on the page where you see an OP-6B delay for facilities reasons, the one miss

A Yeah This one is a good example where you can see it clearest This last table measures for those misses how late were we specifically And that one order was two days late And so it results in an average of two days in this particular case But we also compare with

retail and say on average when you're late with retail how late are you

Now with that introduction, let's look a little further and explain the rest of the table and then conclude with an evaluation The column after the result column, which I guess is the fifth column in is labeled "Standard deviation " That's just a statistical number just for informational purposes It doesn't really factor into the result because we use the retail standard deviation to determine the statistical parameters And that's why retail standard deviation is not shown here, because it is factored into the next-to-the-last column, which I'll get to in a moment.

But it is a measure, the standard deviation, it's just an indication of the variability of the performance; how spread out are the data points in terms of how do they cluster or not cluster around the average, are they spread out or not

Now the next columns, the 6th, 7th, 8th columns that start with the word "Qwest," Qwest num , or numerator, and denominator and end result Same concept that we just went over with the CLEC except this is for retail How many in that first numerator column were met out of how many total orders So in

March, it was 378 out of 395 for a 95 7 percent commitment-met level

Now you have these comparisons In this case, it's pretty easy to see 98 is greater than 95 so the CLECs are getting a higher commitment level on that month on average than the Qwest retail

Let's look at the preceding month, though 89 74 percent in February for the CLECs and 96 18 Here's an example where it would appear the CLECs are getting less commitments met And so the question is, what does that mean? You would kind of expect even in an ideal parity situation to have variation and parity might have you bouncing in and out Parity one month and maybe not the next or some combination

But the statistical columns at the end help you evaluate what -- can this difference that you see, particularly if a CLEC appears to be worse, that's where the statistics really become more helpful Is that explained simply by the normal variation that exists in the performance? That kind of a normal variation can come from just the fact that the environment in which these things happen have different situations

No two customers are exactly identically situated even though they're buying the same product

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You know, no two customers are exactly the same situated. And no two Qwest employees perform exactly the same way. So you have a number of factors that complete a normal understandable level of variation. And you want to know is this difference meaningful or is it just explainable by that kind of reality.

And the parties have agreed upon statistical ways of figuring that out. And they settled on a concept of 95 percent confidence. Because we start out from the presumption that parity exists. It's kind of like presuming innocence. And then you say, is there evidence sufficient to show that it's not parity?

And the standard that the parties agreed on is you draw the line at 95 percent. You say the difference is significant if it goes beyond that line, that critical value that would say, hey, if it's out here, we're 95 percent sure it's different and not due to normal random variation. Or better, 95 percent or better.

So the modified score is a number, that's the next to the last column. The word "modified" comes from the fact that we use retail standard deviation, not the CLEC. So we're holding the variation almost as a standard to the retail variation, not to the CLEC variation. And it gives you a number and statisticians

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will tell you that that number -- when you hit the 95 percent level, is 1.645. That's available in almost any statistical table for a one tail test.

So you can look here and say, well, if this number is less than 1.645, then it's within the critical value and you could say the difference is simply due to normal variation. If it's 1.645 or greater, then you know with 95 percent confidence or better that this difference is real. I mean, it's significant statistically, numerically. Now the parity score in the last column is supposed to help you do that math so you don't have to remember 1.645. Also it takes into account the fact that the critical value is not always precisely 1.645 when there is low volume.

And the parties agreed upon additional statistical tests when there's low volume. And that's been defined basically -- 100 or less; 100 or less orders or 100 or less trouble tickets. We apply different tests.

You'll hear the name permutation tests or proportions. Permutation is used for intervals, and proportions used for percentages. It's just that simple. And it adjusts the critical value. So rather than get all that complexity, the parity score does that for you. It puts in the correct critical value,

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subtracts it out from the observed Z score, and figures it out for you so that if the parity score is zero or positive, it's a statistically significant difference. If the parity score is negative, it's not statistically significant.

So it's kind of an easy matter then to just run your finger down that column and everywhere you see a negative, don't worry that's not significantly significant. In this particular chart there's one number that's barely positive, 0.01 on the February result, the next-to-the-last number.

Now out to the right, you can also see the graph that puts it visually so you can see these data points. The CLEC's marked with an X and the retail with a dot connected by lines so you can visually get an idea.

I think that covers me on how do you look at parity. And it's a simple matter then of saying if it's a negative number in the parity score column, it's considered to be parity because the evidence shows that it either is within that critical range or if there is not much evidence, then there's not much evidence to say it's not parity.

Q If you're going to move to benchmark.

A Yes.

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Q The page number would be 98.

A 98. Yes. You can see the charts are pretty much laid out the same way as the other example, but there's one difference and it's seen most clearly in the graph. In the legend of the graph, it has a solid horizontal line that says "benchmark." And in the case of the first one on this table, it's 90 percent.

And on the graph you see a solid horizontal straight line that represents that benchmark on the graph. And so, like I say, that's a bright line test. And in the ROC, we call it the stare-and-compare standard where you just look at it and if you are on that line or in a good direction and you see the good arrow, it tells you -- reminds you, I guess, you could say what's good. Sometimes more is better and sometimes more is not better. But if you're above that, you're in good shape.

Similarly, you can see the first one being 90 percent, the second table down being an interval the benchmark it says is six. If you look at the PID, it says six business days. And in all of the recent months, seven recent months, almost eight, we are meeting that benchmark in those recent months for this product, which happens to be unbundled loop analog, in dealing with the installation.

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Now with benchmarks, they take precedence We may also for additional information, as you can see, report a parity comparison Because there was one that the experts early on had talked about And so that's on here as well You can see the parity scores. But because there's a benchmark, the benchmark takes precedence So even if we were meeting parity but not meeting the benchmark, we would be considered missing the standard for these measurements that have benchmarks

Q And for the CLEC, would be true as well; right?

A Right If you were making -- or if you didn't have parity and you were making the benchmark, it's the benchmark that governs

You reach a point with parity that you'll hear me say throughout the rest of this that the statistical tool is just a tool You can get statistical significance that really isn't meaningful significance It tells you, yes, there's a difference, but the amount of the difference is so minuscule it's as if the statistical tool is almost too precise

It's like measuring mountains with micrometers It's just very precise And it is such when there's a lot of volume So you'll see with things like calls to centers or with billing, you'll

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see lots of volume and you may get a statistical difference that is minute And so that's why the FCC looks beyond that difference and says, well, does this mean anything? So you'll hear me address this as well

Having done that now, that's the building block for how to evaluate And now how do you turn 268 pages of that into something readily understandable and something you can make conclusions from? We've offered the Exhibits 73 and 74 I'll look primarily at 73

These are what we've come to call the blue charts because they are color coded in shades of blue And I'll use those colors to refer If you look at the legend on page 1 of Exhibit 73, I'll spend most of my time explaining this because the rest of the time if you fully understand the legend, you can go through the rest independently And I'll just highlight a few things after that

But you can see we have four categories, A, B, C, and D, that we've talked about here and we're saying the FCC looks at the most recent few months, three or four months So for this purpose, we took out of that big exhibit and looked at just the most recent four months

We said how can we objectively characterize this in a simple visually-clear way Well, let's look

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at the number of misses, how many months were missed Not how many orders but how many months did a given measurement or a given product make or miss its standard, as we reviewed before

If there are 0 misses, that's clearly satisfying We're saying if there's one miss out of four months and if that miss is not in the most recent month, that would be a pretty clear indication that that's, you know -- inquiry over, as the FCC might act So we say that's Category A, we color that dark blue and that's how I'll refer to it is dark blue

Now Category B deals with the other case where what if that one miss is within the most recent month of data or what if there's two out of four months It's kind of like splitting the difference almost and saying well, we would suggest that still indicates supporting the checklist It doesn't show a pattern of differences or problems But we provide comments on those just to further amplify what that represents But it's pretty objective There's either two months were missed, the standard, or one in the recent month, the most recent And I'll call that medium blue

Then Category C is, well, there's three months that had a miss of the standard You might

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think, well, how can you possibly say that supports the checklist if you're missing three out of four months? Well, there is where, again, like the FCC, we go underneath, behind it and say well, what does it mean? Is it competitively significant? Is it an isolated situation? That kind of a question And if we can provide that kind of an explanation that is based on the things we've seen the FCC allow, then we color it the light blue

And finally, if we can't provide an explanation, that's Part D, we're saying we can't say that this supports -- I think there's only one like that, and I even have an explanation for that one in this chart But why wouldn't that say we failed a checklist? Because one isolated situation by itself doesn't do that The FCC has never turned down an application because of that kind of a situation So you'd have to have grays everywhere before you'd start saying you failed the checklist Again we're looking at patterns, and I think that's the key

Now inside those legend boxes, you can see we wrote range of results and then a line and four-month average What that means is whenever there's a light -- medium blue or a light blue in the charts throughout, we'll also provide additional information

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so that you have an idea without looking at the big detail right now what's the range, what's the low and the high on that four months

And further what's the four-month average, which means you know it's not a simple matter of taking the four results and dividing by four We try to make it as if it were a combined result We take all the numerators and add them up and all the four denominators and add them up and divide the two to get a true four month average So you get kind of a good idea right there

And sometimes that is enough to explain why it's light blue and not gray If you see a tiny number -- when low is good and you see a tiny number in the four month average, that's sometimes enough to say why it's not gray and why it would still, nonetheless, support, conditionally, the checklist

Finally, the last thing on the bottom of this legend sheet has to do with volume Because volume gets to the issue of materiality and meaningfulness And there are a lot of cases where you may have low volume If it's less than 30, we put a diagonal slash across the square If it's less than 10, we put a double diagonal or an X across the square If there's no activity we just leave it blank but put a dash in

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to indicate we didn't forget And we apply those only to the squares that are not dark blue

You could go back and try to apply it to the dark blue, but you're really going beyond the question when you try to do that, cluttering the chart unnecessarily Because we're starting out -- we're not trying to prove parity, and we're not trying to prove how well we're doing for CLECs with regard to retail We're trying to start with the presumption of parity, as the parties have agreed, and say what's the evidence say about whether we're not So presume parity and then say is there evidence to say we're not.

So even in a low volume case with not much to go by but it says what it says and if it doesn't contradict the presumption of parity, then we give it a dark blue and we don't feel the need to clutter the chart further with volume indications But to that point, I would say we don't advocate this tool is used by itself in total, exclusive of the details These details are there for examination and especially where they're lighter blue, you can go right to those results and see the whole picture for those results.

The beauty of this tool -- and maybe we could move to the second page as an example page It's ordered by checklist item But the beauty of it is at

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a glance you can see the pattern And for interconnection, it's clearly dark blue, except for one item And you look at 0 to 0 and 04 month average in the lower right corner of the chart for MR rate, trouble rate You have -- does the comment indicate -- see we will comment on light blue You have to go to the additional decimal point to even see the difference

So here's an example why the statistical significance does not translate into competitive significance That is outstanding service by any objective measurement So that gives you an idea -- you can also see the layout here We have provisioning at the top, repair at the bottom It turned out to be convenient to stick trunk BOCing in the middle But different charts They'll be oriented similarly with sometimes provisioning taking up an entire page and repair taking up an entire page

You'll see the product particularly down the left side so this is the his or local interconnection service of trunks you'll see the category of desegregation Zone 1 and 2 as you see here

And then going across the page, you see typically the measurements and a little reminder of what they are, the OP-3 being commitments met, OP-4

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being intervals and so forth, OP-5 new service trouble meaning what percentage of the time 30 days of an installation did we have a trouble report You've seen some of those already

So that gives you kind of an overview of how the report's laid out Perhaps I could just highlight a few results that are -- that seem to be the ones that rise to the top in terms of importance and interest

Let me start on page -- I think it's page 7 but let me look. No Page 6. This is dealing with flow-through, which means what percentage of the time does a local service request, or LSR, what percentage of the time does it flow through our ordering system, through the interface that the CLEC sends it and to the point of creating an order without human intervention, what percent of it is flowing through to that point

You can see two tables here One's called PO-2A and the other PO-2B. PO-2A is a diagnostic measurement at present and will probably continue to be so. "Diagnostic" means we just collect the data and report it for information Sometimes it's diagnostic Sometimes it's just additional information

But this one, PO-2A deals with all LSRs, whether they were supposed to flow through or not, whether they will ever have the possibility of flowing

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through or not what percent did flow through So you won't see percentages approaching 100 in this range. And we report the most recent month just because it's been improving and the standard has not applied

The second one, PO-2B, this is out of those that should flow through So these are the ones that are eligible They really ought to flow through normally, what percent really did And you can see those percentages You can see they're high The blue indication here is not the same quite as the other charts because they were based on four months This is just a one-month view The reason we've done that is because that benchmark was only recently established, as fact in January, and the most recent month on this report is February But these high percentages are all meeting the standards and the PID will indicate that

Now where you have low volumes with IMA-EDI, if you felt a need to look at that, that's where you can look at the region results that are depicted on Exhibit 74 on page 7 And you can see they're all blue

But I would just refer you there if you have a concern about low volume Maybe there's some volume here but it's low and you'd like to have a bigger picture of Qwest's capability You can look to the

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regional result

And we would suggest that so doing is consistent with what the FCC has done as well when they have an applicant state who for whatever reason in the particular product and measurement has low volumes. They have looked to what they call an anchor state and they've done that on more than one occasion So this is our way since we have 14 states and many of them have different degrees of being small and low volumes, that we are offering a region result as a way of getting an idea of what Qwest's capabilities are

Let's see Let me note another thing on flow-through that's kind of important It's related in Footnote 2 More recently, the FCC has said that it doesn't consider flow-through to be a conclusive measure of the nondiscriminatory access It's found that the more conclusive measure is the outcome Flow through is just a sub process detail And you could do poorly on flow-through and still have a good outcome in terms of getting the order met on time.

And they noted and we have noted that flow through performance can be and is often affected by CLEC behavior Because an efficient, effective CLEC can have a higher percentage of flow-through on the very same measurement, very same products than another

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CLEC

So while this one has a benchmark now, it's a different kind of benchmark There are benchmarks and there are benchmarks. Benchmarks can sometimes be sufficient for automatic consequences such as used in the PAP, performance assurance plan But some other benchmarks such as this one are not appropriate to that because you really have to look behind the data to see what was the CLEC influence here And that doesn't lend itself to an automatic consequence

So you say well, what's the benchmark for? The benchmark is to trigger something Well, in the case of this measure, it's simply to trigger a review for any party who's interested in it and to compare trends in relation to that benchmark

CHAIRMAN BURG: How would you know that you had low volumes in this because it's all percentages?

THE WITNESS: Okay That's where you would go to the detailed results And we're coding it that way and representing that -- although in flow-through it's just by the no activity on those dash lines But in some of the other measurements where we have the diagonal slash across the sell or the double diagonal, you can

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look behind those here and see the volumes are less than 30 or less than 10.

By looking at the CLEC denominator column, and that's the third column in, that's the column And then further because we're looking at four months, we do a four-month average and we say if the four-month average is less than 30, then -- or less than 10 --

MR. STEESE: Mr. Williams, before you continue, I apologize We got these at the last moment and I'm looking at Footnotes 2 and 3 on Exhibit No. 73 and they're cut off. And we're looking at Exhibit 74 and Footnote 2 is also cut off here slightly

Mr. Williams explained what was in Footnote 2. I just want to mark or have noted in Footnote 3 -- I think you can get a pretty good idea of what we're saying in Footnote 2 But if you look at Footnote 3, it's supposed to say low volumes in certain areas should suggest the Commission look to region results to see how Qwest performs with higher volumes.

And it looks per volumes It looks like nothing's cut off. Just to make sure that's explained

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A Another highlight would be on -- two pages -- page 8, billing. This is one where we typically have high volumes. There's lots of billing records.

You see some light blues here. And here in looking underneath the data, so to speak, you find our explanations tell you two things: one, back in the November, December time frame, these measurements did their job. They captured a problem. Now it turned out that problem was also being dealt with in the other workshops, the 5QAT workshops and so forth. And we undertook the corrections which resulted in billing adjustments and so forth, which these measurements in turn captured.

And those adjustments were seen properly as errors, errors in accuracy for BI-3A, for example, that's billing accuracy and billing completeness, BI-4A, but we also see when you go back to the details and when you look at our comments that these late result reports show that we have fixed that problem, that upon researching to that and fixing it, the results came back ok, and in January and February you can see it and it continues in March. If you look at Exhibit 76, you'll see it continues in March.

Q Do you mean 75?

A 75. I had originally marked mine 76. Okay. I'll

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change that right now. There we go.

PO-7, the bottom two items, are affected by a different problem. It was a programming problem in a new release where there was a glitch in a new release that caused certain notifications of billing completion didn't happen. It only put out the first one in a group instead of a whole group, each member of the group. And that was caught by the measurement and it was -- as we fixed it, and the results for January and February show that we have repaired that problem. And so here even though you see the light blue, you can see from the underlying data and from our comments that we're basically now in the dark blue area. And March continues to bear that out.

The next page, page 9, deals with another recent interest, the UNE-P or UNE platform results. Again, just looking at the page, you see a pattern of blue, a pattern of satisfying the checklist. And where there are exceptions, you can see comments that we believe still say that the results support the checklist.

An example is in the OP-3 column, that's the first column of blue numbers under UNE-P centrex, to the right of that in the dispatch out of MSAs you see that there is at least one or two months of -- that

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missed the standard. But you look at the overall performance of 93 percent, it does have low volume, less than 30.

But you look at the comment, and it gives you some more details, saying that it was 93 percent for CLECs, versus 94.1 percent for retail. So it's very, very close. It really fits the spirit of what I've seen the FCC describe as the standards being an objective attempt to quantify what it takes. To approximate, in fact. They use the word "approximate." An objective attempt to approximate what is needed.

So we say in that parameter this, while not quite meeting it, is still quite supportive of meeting the checklist. Even if it were gray, I submit looking across the product there's so much blue there, the pattern remains satisfying the checklist.

You can look further, the next page or two get into unbundled loops of all the various kinds that are shown there. Lots of products that don't have any activity here in South Dakota but that's where if you wanted to look further, you could look at the regional result in the corresponding page and see how Qwest's capabilities are generally so if those volumes did appear, you would have some confidence we could perform in provisioning and repairing. A pattern of blue,

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though, and the one exception is, of course, a low volume. But the evidence is saying we're satisfying the standards that the parties have agreed to.

The next page showing repair, again, some low volumes. I'll point out that sometimes in repair, low volumes are especially good in the sense that's exactly what you want. You don't want a lot of volume of comparing if you can help it. MR-8, the trouble rate, being the main indicator of that. So low volumes are good in that example.

I think that's all I was needing to highlight at the present time on those results.

Let me just conclude my summary by going back kind of to the beginning and saying that as you look at all of this, this tool gives you a way of looking at the pattern. And we have seen the FCC doing that, they've said that they do that many times. They don't look at just an individual performance measurement and make a conclusion on that alone. And even consistent problems across a particular product might not be in the context of the total checklist item. They look at whether we've met the negotiated standards and if we have, inquiry over. And if we have not, then they look to the additional details.

But as these blue charts bear out, the

patterns demonstrated across all the checklist items are parity. And I think you'll find the Commission can conclude and I think any party can say there is no evidence here that says we fail any checklist item and that indeed a very, very clear demonstration that we satisfy all the Checklist Items in really quite an excellent manner. That would conclude my summary.

MR. STEESE: We now make Mr. Williams available for cross-examination.

MS. AILTS WIEST: Do you have any questions, Mr. Gerdes?

CROSS-EXAMINATION

BY MR. GERDES

Q. Good morning, Mr. Williams.

A. Good morning.

Q. I want to ask you a few questions about the standard intervals that are dealt with in performance measurement. First of all, who sets those intervals?

A. The standard intervals, when you use those terms, "standard intervals," are established in either Interconnection Agreements or typically now that we have the SGAT. They are established, I believe it's Appendix C of the SGAT where standard intervals for different services are laid out.

Q. And so if they're going to be changed, what are the

criteria for determining that a change will be made? As an example, if Midco has an Interconnection Agreement with Qwest and if one of the standard intervals is changed, does that represent something that would be negotiated, or does Qwest just do it?

A. No. It's not unilateral ever. In the SGAT, there's procedures for dealing with that, which I'm not totally familiar with, but I'm aware of the change management kind of a program. And then individual interconnection agreements that -- where a CLEC chooses not to avail itself of whatever terms and an SGAT might choose others. But it's a negotiated standard one way or the other.

Q. So if a CLEC had a problem with the change in a particular standard interval and it was more or less just announced, that CLEC should contact their account manager to find out the particulars? Would that be the answer to the question?

A. That's usually the case is to first check with the account manager. And there might be something that the CLEC was not aware of. But, again, I would be very surprised to see a unilateral change that Qwest does without involvement of other parties.

Q. Okay. And then secondly and on a different subject, as you know, South Dakota is a state with few people and

large distances, correct?

A. Relatively, right.

Q. And we tend to get a little paranoid sometimes about people in Washington not understanding special problems caused by those demographics. Would you agree that that might occur?

A. I could imagine that, yes.

Q. And so is there any special consideration that is given in these performance results for small markets or small LECs when you're talking about these percentages? Because obviously if I have 10 customers and one customer has a problem, that's a bigger problem to me even though there's a 90 percent success rate than if I have 10,000 customers, if you understand the thinking.

Is there any special consideration given to that in doing this analysis, either at Qwest's level or all the way up to the FCC?

A. I have never seen -- you know, that would almost sound like some anecdotal type information. I suppose anecdotal information might trigger a question in someone's mind, especially if it starts to jump up and appear in more than one place.

But here broadly, these measurements are focused on the 271 checklist and following the FCC's guidelines in what it takes to satisfy the checklist.

So these are not as operational, if you will, as what it sounds like you're talking about. Those things are very important and me being part of wholesale markets, I'm aware of some of the things that happen generally, and the concern and the attention is given by us in satisfying our customers in trying to deal with those cases.

But they don't form -- unless they do rise to a level of a broad issue affecting our results or something or, you know, showing that there's a pattern of discriminating or something like that, then it's outside of the radar screen of 271 but very much in the radar screen of our wholesale markets.

Q. One example that would occur to me would be if problems would bunch up, in other words, that I would still be within the parameters of your 271 compliance in terms of gross statistics but they'd bunch up and perhaps all be located at one CLEC, as an example, within a given category. Do you follow?

A. I understand, I think, what you're saying. What about that?

Q. Would there be some special consideration for those circumstances?

A. I'm not sure what you would be thinking of. I am aware of maybe the reverse of what you're thinking of and

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where that kind of bunching, if you will, can happen from a variety of sources.

If a CLEC is operating predominantly in a particular area and you have an incident in the network, then naturally that CLEC is going to have a clustering of problems associated with that incident.

I've seen the FCC accept from other RBOCs in, I think probably their performance assurance plans some mechanisms for actually offsetting the effect of bunching coming from a single large event. Because it's sort of -- it's an isolated incident but just by its nature of being large happened to affect one CLEC more than another or a clustering because that CLEC happened to be in that area operating more than maybe some other.

MR. GERDES: Thank you. That's all I have.

MS. AILTS WIEST: Mr. Evans.

MR. EVANS: Thank you.

CROSS-EXAMINATION

BY MR. EVANS:

Q. Good morning, sir. If I understand your testimony, is it typical that CLECs are getting better service than Qwest retail at this point in South Dakota?

A. Because of the purpose here, it's hard to just blanket

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say better than. They're receiving at least equal. That's what the measurements and the statistics are designed to prove. They are not designed to prove conclusively that CLECs are getting better service. They're designed to say is there evidence to say that they're not getting at least equal.

And so I can't go quite that far. I wouldn't be surprised to see that there's some cases where that's happening, but on the whole it's at least equal.

Q. Okay. So do you think that this will continue to be equal should Qwest be able to enter into the interstate long distance market?

A. Yes.

Q. Now I'm curious as to what you base that belief on. Could you explain that to us and the Commission?

A. I guess probably two or three things. One is we see the wholesale market as a viable market and have committed extensive resources to that. In fact, Qwest worldwide is probably more wholesale than it is retail. So we see it as a viable market. We see it as one we need to provide quality service in. And I having been in wholesale for many years, I've seen no exception to that.

Second, the measurement focus, that alone has helped us and our CLECs work together in keeping the

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focus on measurements. And even if there was nothing but just the look, it's the old concept that says performance measured is performance improved. That very fact alone has had an influence that I believe would be ongoing. And even without a performance assurance plan, for example, I believe you would continue to see enough focus and pressure to allow -- to any extent that somebody thought we weren't going to continue, that that would do it. I've seen it already.

And finally, the third fact is there will be performance assurance plans. The FCC will not approve your application unless there is something like that. They say that you can also have the equivalent but there's been no practical better alternative that anybody's found yet.

So there will be a performance assurance plan which will provide significant incentives in terms of penalties or payments that we would pay if -- and I would note, by the way, that where those PIDS are in the performance assurance plan, those are automatic consequences. They do not allow for explanations unless we can come with some showing of for force majeure or something. But we will take a payment hit, if you will, when we don't meet the standard where the FCC might approve 271 on that very same performance,

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the penalty plan may penalize because even though it's slightly off the benchmark.

MR. EVANS: No other questions. Thank you.

MS. AILTS WIEST: Ms. Cremer, do you have any questions?

MS. CREMER: Well, we think so.

CROSS-EXAMINATION

BY MS. CREMER:

Q. If there are 0 transactions for the month, is that considered successful and gets Qwest a dark blue?

A. Not necessarily. There's two or three different possibilities. One, if 0 transactions -- indicates a trouble rate. If there are 0 trouble tickets, that's the best possible performance and therefore would clearly be dark blue.

If there is a 0 in a month but because we're looking at four months, there's not 0 in the other months, then the blue would be based on what data there is. Only when there is no month in the four with activity -- so it's not just one month without activity or no transaction but all four months, then it would be a blank white square with a dash in it and we would say there's nothing happening.

Q. If in two months you had no transactions, in two months

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you had one transaction in each?
A Right.
Q You would get a blue box?
A If these transactions met the standard.
Q Right. If they met the standard?
A Right. Because that's all the evidence there is. It doesn't say we don't meet the standard so it's blue.
Q And then in those -- when you only have one or two transactions in a month versus categories that have a lot of transactions, is there a weighing factor? I mean, do some weigh more heavily?
A Not directly. That's something I guess that is left to the reader, if you will. Because you would start to weight on a chart to the extent you aggregated things. But since we're not aggregating beyond what the measurements report, basically we're only looking at four months. I guess that's the amount of aggregation there is, there's no need to do any of that kind of weighing.

So what's left is for the person who has to make some conclusions from this to say do I need to do weighting. Is there some need to? If I had a mixture of cases where you just had a consistent case of failing standards in one case and a consistent case of passing them in another across lots of measurements on

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one product, then you might want to weigh in your mind what's more important.

And I think the FCC did that with a HICAP service that was having problems across a lot of measurements. But the other non-HICAP services in the nonloop category were not. They were fine. I guess they in effect weighted that situation and said, well, we're going to watch that but that alone is not enough to fail the checklist in light of what's happening elsewhere. So there's that kind of qualitative weighing that we have seen the FCC do.

Naturally when you have volumes, that would indicate things that are important to the CLECs because they're ordering them. And so, yeah, you would tend to weight that more with something with less but you would only need to do that if there was a real mix of results, which we don't seem to have. We have a pretty clear pattern across high and low volume of good performance.
Q How few successful orders in how many months does it take for a performance measurement to qualify and get a blue box? Does that make --
A How many? I missed the first part, how few?
Q How few successful orders in how many months does it take for a performance measurement to qualify for a

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dark blue?
A For a dark blue? We haven't established a minimum. It was pretty much based on what I said before about your question with no transactions.
Q Uh-huh.
A If you have one in any of the four months, you just ask yourself what does the evidence show. And if that one met the standard, then it would be blue. So there's no -- that's how few it could be is one. Now in the context that you can look at regional to see how well we're doing as well to get some higher volumes --
Q On Exhibit 75, and it's page 72.
A Okay.
Q And then that second box, the graph, am I reading that right that that's not good? Because the arrow is pointing down for good but yet this seems to be on the rise.
A The last three months, there's a trend downward. Retail is inching upward. If you look at January, it's 3.59 days, February 3.43, which is better, and March at 2.94, which is yet better. So that's what you see.
Q Okay. But am I reading that right, that's a not good one? It's not going in the right direction or it wasn't there for a while and now you're saying that it is? Okay. I just wanted to make sure I was reading

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that right.
A The difference is not significant in the last two months. In the older two months, December and January, it was significant in terms of the difference.
Q Okay. Then if you go to page 9 of Exhibit 73, is that measurement reflected on page 9?
A You're talking about OP-4C. It is. If you look in the second column of color coding, under OP-4 intervals, and the third box down that's colored with the lighter or medium blue that says 2.7 to 3.0 days is the range.
Q Right.
A That's where it's captured.
Q Right. So it got the B range, the light blue box; is that right?
A Yes.
Q Okay. And that's because they only look at four months whereas really if you looked at 12 months, you may not give that that color?
A Right. We haven't seen the FCC do that. They've been looking at --
Q Right. I understand that. I just wanted to check.
A We think recent performance is more indicative of where we're going.

MS. CREMER: That's all I have.
MS. AILTS WIEST: Do --

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(Discussion off the record)
COMMISSIONER SAHR: Mr Williams, going forward, how long do you need to continue to track these standards?
THE WITNESS: For the entire foreseeable future, I don't see an end to it for now Certainly as long as performance assurance plans are around and maybe longer than that in the sense that we may agree to continue to provide data
COMMISSIONER SAHR: And I'm just curious Have you ever seen a correlation between a high volume of activity in a certain area and performance standards? I mean, if there's a sudden demand for a certain service, for instance, and then is there any sort of drop off in performance or does it stay pretty consistent?
THE WITNESS: I've seen a mixture I don't recall details, but I have been conscious of that kind of thing Because that was part of the function of the OSS test to do a capacity test to see how we do So that's where that question will really get answered I've seen only the kind of mixture that would say, well, it's kind of mixed I've seen cases where demand has jumped up

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and sometimes performance has gotten better. I've seen it stay the same, I've seen it change
COMMISSIONER SAHR: This may be out of the realm where you're comfortable answering the question but it's something that came up over the last few days Some of the parties have expressed concern about what happens if South Dakota sees a cutback in personnel
Have you seen any sort of correlation between reduction in force and performance standards, either better, no significant change, or worse?
THE WITNESS: I haven't been aware of that, and it wouldn't necessarily change it. It would depend on the relationship of load to demand But I'm not aware of any problem of that nature These measures would capture the effects if somehow somebody did not match the resource to the demand. These measurements would capture that.
COMMISSIONER SAHR: If there were to be a -- let's say there's a cutback in personnel and a problem occurs, through these measurements we should be able to note those, is that correct, as far as what the measurements are measuring?
THE WITNESS: Right. I was going to say not having them do anything more than they're

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designed to do, but, yes, to the point they're designed to capture performance I think they'll show that.
COMMISSIONER SAHR Although it may not be specific to personnel, that is one of the reasons for continuing on with the performance type testing would be to note if for whatever reason the problems are occurring or to note the trouble areas?
THE WITNESS: Certainly we do that How long it would be necessary to have external reporting of that is another question Where you see businesses, for example, that serve lots of customers with very important services who are not necessarily reporting anywhere near as much as this is reporting, they're held accountable by the marketplace, the competitive marketplace and those kinds of things But, you know, to the extent we have agreements to continue we certainly would and it does provide that information
COMMISSIONER SAHR: Then you talked about the -- I think it was Exhibit C to the SGAT is where a lot of these standards are found
THE WITNESS: I need to be careful there When you say these "standards," the

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standards in the PIDS, in the performance results, are different standards than the SGAT The SGAT is setting interval standards for the purpose of guiding the establishment of due dates, for example It's a process, an operational kind of guideline
Whereas the PID standards are negotiated by the parties and they are the standards that reflect the outcome of that process of setting the due dates and the outcome of performing to those due dates So they're a little different, but the PID establishes the standards for performance
COMMISSIONER SAHR Thank you for clarifying that Do you know, do any of the states varied the standards that you defined as far as the intervals are concerned?
THE WITNESS: Let me think The ROC, as you may know, is largely a 13-state collaborative with Arizona doing it's own By and large, they have been the same Arizona had a different standard for PO-2 flow-through than the ROC did Colorado in turn, when looking at its PAP, wanted to look at a different level yet from that Actually it's more Arizona, I think, Colorado is, which has a slightly more lenient standard than the ROC

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Let's see I don't remember There may be some other nuances, but nothing major. They're pretty much the same And, in fact, there's an effort being considered by the ROC, which Arizona is participating in, to unify the PID standards across the 14 states And that's yet to be finalized But we're kind of in the beginning stages where the ball's in our court now to propose something, and there's not a yet deadline for that.

COMMISSIONER SAHR: Thank you.

MR. STEESE: Commissioner Sahr, before we move on, can I make sure I understood your question? Was the question going to the PID standards or the standard intervals for providing service?

COMMISSIONER SAHR: It was going the standard intervals

THE WITNESS: Oh, I was going to the PID I'm sorry

COMMISSIONER SAHR: But I found that interesting too

MR. STEESE: Mr. Williams isn't the particular person, and since we've had all of our witnesses that have talked about the various services already come and go, I realize I'm a

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lawyer but you might find this helpful.

There have been a few services where the standard interval that applies has been debated in the workshops, for example, in front of Mr Antonuk

The example that comes directly to mind is line sharing where at the time we were providing a five-day standard interval and as Ms. Stewart testified yesterday, we reduced that to three days voluntarily and the commissions had actually supported the five-day interval So there are intervals that have been the subject of debate and discussion during the course of the workshops for the most part that commissions have come out the same on those

At the same time, there are some tariffs that are a vestige of history that are somewhat different in some states for different services, two days to three days for POTS, for example. So you might have some slight differences amongst the states based on the standard interval.

And the Exhibit C to the SGAT sets forth the intervals for unbundled network elements, which I believe are 100 percent uniform -- I'm not 100 percent positive, but the more tariffed typed

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services are based on what's set forth in your state tariff

COMMISSIONER SAHR Thank you

MS AILTS WIEST Any other questions?

CHAIRMAN BURG Just one I'd have Not having had a chance to make that number of comparisons, do you see the South Dakota and the regional running pretty parallel?

THE WITNESS: Pretty much so Maybe because there's so much blue on both of them, that's why it's easy to say yes they generally are

CHAIRMAN BURG: And, of course, South Dakota also ends up with quite a few low volume, not adequate so those are all going to be blue Of course, that's where there could be a deviation otherwise

THE WITNESS. Blue or blank, yeah

CHAIRMAN BURG Yeah Okay

MS AILTS WIEST Any other questions from the Commission? Any redirect?

MR STEESE: Some brief redirect

REDIRECT EXAMINATION

BY MR STEESE:

Q Mr Gerdes asked you a question about some clustering

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that could affect a particular CLEC Does Qwest report its performance data not only on a regional basis, not a state aggregate basis, but also on a CLEC specific basis?

A Yes

Q So the CLEC can actually look at the individual reports and compare it to the state aggregate reports and see if they are getting disproportionately affected?

A Yes And those reports also compare them against the same retail standards that the parties negotiated and agreed to in the aggregate

Q And I know you're not the performance assurance plan witness and Mr Reynolds will be next so if you feel uncomfortable answering these, just feel free to tell me that

The performance assurance plan has automatic penalties that flow if a performance standard is missed; right?

A Right

Q And the data that goes into the performance assurance plan, is that the state aggregate reports, the CLEC-specific reports, or both?

A Both

Q So to the extent that a CLEC, an individual CLEC was disproportionately affected, the performance assurance

plan has attempted to take care of that with automatic plans that would go in part to the specific CLEC?

A Right. In fact, the perform assurance plans are predominately CLEC affected rather than aggregate driven.

Q Mr. Gerdes also asked you a few questions about standard intervals. Do you recall those?

A Yes.

Q Let's assume that we had a standard interval that in Mr. Gerdes' question were thinking they might actually go up. Let's assume they go down and get shorter. Are there times that we have offered CLECs without even a change to their Interconnection Agreement the opportunity to seek things in a faster period of time?

A Yes.

Q But to the extent that the interval would go up or increase, look worse to the CLEC, that's something that would have to be negotiated if there was, in fact, a contract provision that guided what we had to do?

A Right. And the effect of that would show up in the measurements in terms of the longer intervals that would probably result.

Q Mr. Evans asked you a few questions about how we could sustain our ongoing level of performance. Do you recall those?

A Yes.

Q During the course of the OSS test, has Qwest tracked the amount of money it's spent developing processes, procedures, et cetera, to make sure that not only is our performance good now but it is sustained over a period of time?

A I believe we have. I haven't seen those numbers and that tracking, but I'm aware that we've done that.

Q I wanted to ask a few questions about Ms. Cremer's questions, just to make sure that the blue charts are understood.

And you were describing what it took to make something a blue box versus a dash or white. And you said for MR-8, the overall trouble rate if there was no troubles in a month, that's the best possible performance, and it would be marked blue. Do you recall that?

A Yes.

Q What would you say about OP-6 instances where there was an opportunity for an order to be delayed but there was no delays that occurred at any time in the last four months?

Would that be blue or would that be a dash?

A That would be a dash. I'm thinking. No. Wait a minute. Delayed days -- again, it depends on if you've had installation activity. If you've not had installation activity, it would be a dash. If you had installation activity, as represented in OP-4 or OP-3, then, again, having no delay is perfect. That's just what you want. So that would be blue.

Q So when you're looking at this particular blue chart, you're looking for a lot of blue, but to the extent that there isn't blue and it's in a category like OP-6 delays or instances where you have trouble, you're looking for not only there to be information in the box but it's good to see slashes or Xes?

A Yes. It is a good thing to see low volumes in those and also OP-5, which is the new service quality.

Q Then Ms. Cremer also asked you questions about what I'll call weighting, should we put more weight on certain subjects. Do you recall those?

A Yes. I remember.

Q When you look at the FCC's obligation placed on Qwest, does the FCC require Qwest to establish by a preponderance of the evidence that it meets each aspect of the checklist?

A I'm not sure I understood your full question. Could you do that again.

Q Does Qwest have to prove it meets each item on the checklist or only those with volumes that are

substantial?

A We have to show we satisfy the checklist. They don't penalize us if we have an area where there's low volume, if that's where you're coming from.

Q If you look at the low volume situation, Qwest uses the regional chart to supplement for low volume?

A Right. And the FCC has done that with anchor states in other cases.

Q And what did they do -- does the OSS do the same thing?

A Yes.

Q So the OSS test and regional are both intended to supplement volume?

A Yes. And in particular with the OSS test the parties looked across all products and selected those that they felt really needed the attention of sufficient volume. Some of them already had enough volume. Others might not, depending on the state. But the parties negotiated and concluded upon a list of products that was the list that was important and anything left off of that was agreed was not critical.

Q When you look at the blue charts and even beyond it to the Exhibit 75, which has all the underlying detail, is that some of the orders? Do we measure a portion of the orders or all of the orders that fit into an individual category?

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A Generally so. There's one measurement that does it differently, the preorder response time, where it measured simulated transactions. But when a measurement is defined it generally takes all the activity. These aren't just one out of 10 orders it's all of the orders that apply.
Q So the blue chart represents what the CLECs have ordered in South Dakota across all checklist items?
A Yes.
Q And what has the FCC said about the importance of commercial data like -- well, actually Qwest is performing in the marketplace for CLECs in South Dakota?
A They found in the very first orders and ever since then that commercial data is the most "probative," is the word I think they used. All of the other possible information were supplemental, but the commercial data was the most probative.
MR. STEESE: That's all that I have.
MS. AILTS WIEST: Any further questions of this witness? If not, thank you.
MR. STEESE: He may be excused then?
MS. AILTS WIEST: Yes. Qwest, you may call your next witness. I will tell people that we are taking our lunch break at 10 to 12:00.

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MR. STEESE: We have a changeover from lawyers and witnesses so let me clear out.
MS. HOBSON: I'm told the summary the next witness is going to give is probably going to run up to if not past the designated lunch hour. So we have a couple of suggestions. We could either break for lunch early or with a little bit more administrative time, we might be able to put Mr. Toll on.
(Discussion off the record)
CHAIRMAN BURG: Do you think his summary could be done in 20 minutes?
MS. HOBSON: No. Not this witness. It will be more like 30 for the witness on the stand for Mr. Reynolds. Mr. Toll's summary won't be very long.
CHAIRMAN BURG: It's up to you. It's your witness. I don't care how you do it.
MS. HOBSON: If there's no objection, I think it would make more sense to put Mr. Toll on, if he doesn't object.
MS. AILTS WIEST: Okay.
(Exhibit 76 is marked for identification)

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LARRY TOLL,
called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MS. HOBSON:

Q Could you please state your name and tell the Commission where you work and in what capacity?
A My name is Larry Toll. I'm the state vice-president for Qwest in South Dakota.
Q Mr. Toll, you've been handed Exhibit No. 76. Could you briefly identify that for the Commission?
A That's the affidavit I submitted with the October 25 filing.
Q Do you have any changes or corrections to that exhibit?
A No. I do not believe so.
MS. HOBSON: Qwest would move the admission of Exhibit 76.
MS. AILTS WIEST: Any objection? If not, it's admitted.
Q Mr. Toll, I guess I should ask you, would you currently affirm the contents of that exhibit now that you're under oath?
A Yes, I do.
Q Do you have a summary that you would like to give the Commission?

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A A brief one. My affidavit provided some background on how we got to the point we are today. As I look around this table, there are a few of us that have been involved in this business for a number of years. There are also some new people.
So I talked a little bit about how the modified final judgment in 1984 was the act in time that resulted in US West at the time not being able to offer interLATA long distance service, long distance outside the State of South Dakota.
And the 1996 Act created the opportunity and a method for us to get back into that business. And that, of course, is why we're here today.
My affidavit also had information about competition in South Dakota, trying to supplement Mr. Teitzel's testimony. And I believe it is alive and thriving in South Dakota. We have all forms of competition in this state. And while I have not looked at it recently, at one point in time I know we had competitive offerings in every one of the Qwest exchanges in this state.
We've got homegrown companies here that are participating in this process. Two of them are here and another couple, DTG, which was eventually bought out by McLeod, and Northern Valley are examples of

other facilities based companies that are homegrown South Dakota companies FirstTel started in Sioux Falls Now Ionex, which was a major reseller in this state

And I did a little analysis looking particularly at the facilities-based competitors, and those competitors are also our customers obviously But looking at the exchanges in South Dakota, almost 70 percent of the customers in exchanges served by Qwest have an alternate facility going by either their business or their residence

Consumers are going to benefit from this competition When we get into the long distance business, the interstate long distance business, we start with 0 percent market share We've got a public that's getting smarter and less tolerant of telemarketing So for Qwest to be able to get in to make a dent in that market, we're going to have to have a pretty good offering And that's where some of that $16 million that Dr Hausman talked about, where that will come from

This proceeding has been about our compliance and determining our compliance with the 271 requirements What you've seen is an SGAT that was offered that was based initially on the Antonuk

findings and there have been some changes to that. I think there's two kinds of changes that I've seen in that SGAT One is changes required by the FCC to meet the law, and the other is changes negotiated with our customers, the CLECs so that they have better terms and conditions than even in the Antonuk

The SGAT is obviously not the only option available to our customers They can come negotiate with us if they don't like the terms and conditions or they have specific terms and conditions to meet their business plan We stand ready to do that.

Prior to me, you've seen a group of real experts And I'm not going to make an assumption on Mr Reynolds, although I've seen him in the past, and he fits the quality of the witnesses that we've seen. And they've highlighted their testimony for you. I'm proud to be associated with that group. They're a group of really competent professionals. They've demonstrated that Qwest is open for business, that we have demonstrated our network is open to our competitors, it's irreversibly open, and we've demonstrated our compliance with 271. We look forward to bringing the benefits of that competition to our customers

That concludes my testimony.

MS HOBSON: Thank you Mr Toll is presented for cross-examination

MS AILTS WIEST: Do you have any questions, Mr Gerdes?

MR GERDES: I have no questions Thank you.

MS. AILTS WIEST: Mr Evans?

MR EVANS: I have no questions either Thank you

MS AILTS WIEST: Ms Cremer?

MS CREMER: Yes, I do Thank you

CROSS-EXAMINATION

BY MS. CREMER:

Q Would you agree with me that the total number of Qwest retail access lines is dropping? It's currently about 231,000?

A Yes I would agree with that

Q When it drops below 200,000, will Qwest have to come before this Commission to have its rates set?

A You know, I'd have to look at the law That's a possibility, though.

Q That's -- you know, the cutoff is 200,000 for that

A I believe that's --

Q Right? Then you would agree with me there?

A Subject -- yeah. I'd have to look at the law That's

probably a legal decision.

Q Who do you consider South Dakota's facilities-based providers to be?

A Well, obviously, the two that are sitting here are facilities-based Midcontinent provides services through a variety of methods, their own facilities Their fiber hybrid coax network is one way Black Hills Fibercom is obviously predominantly facilities based. The original DTG portion of McLeod is obviously mainly facilities based.

Northern Valley in Aberdeen is facilities based. And there are others that use their own facilities to do more specific things but if you're looking at particularly residence and business local exchange providers, I think that would be the bulk of them.

MS. CREMER: Okay Thank you That's all I have

MS AILTS WIEST: Commissioners?

COMMISSIONER NELSON: I guess I have one question, and I think it's more to clear up the record because I wouldn't agree that this Commission really sets Qwest's rates anymore I thought that's what Karen said

Does that change the legislature's ability to

do that? Right now, they set your rates

THE WITNESS: Right now, there's a cap on the local rates set by the legislature

COMMISSIONER NELSON: That doesn't change -- does that change if you go down to 200,000?

THE WITNESS: I think that was the question that Ms. Cremer was asking, if we go under 200,000

COMMISSIONER NELSON: And the answer?

THE WITNESS: I'd defer to my attorneys on -- it's what the law says. I think it speaks for itself. But I believe that's true

COMMISSIONER NELSON: You believe it's true? Okay. Thank you

MS. AILTS WIEST: Any other questions from the Commissioners? Any redirect?

MS. HOBSON: No redirect.

MS. AILTS WIEST: Thank you, Mr. Toll.

When would the Commissioners like to come back? 1:15? We'll be back at 1:15

(A lunch break is taken from 11:35 a.m. to 1:15 a.m.)

(Exhibits 77, 77A and 78 are marked for identification)

MS. AILTS WIEST: Qwest, you may call your next witness

MS. STANG: Thank you. Good afternoon, Commissioners. My name is Lynn Stang and I'm in-house lawyer for Qwest Communications. For our next witness, I'd like to call Mr. Mark Reynolds.

Mr. Reynolds, would you state and spell your name for the record, please

MR. REYNOLDS: Mark Reynolds, M-A-R-K R-E-Y-N-O-L-D-S

MARK REYNOLDS,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MS. STANG:

Q. We'll assume the spelling of your name is the same prior to being under oath. Could you go ahead and tell the Commission what you do at Qwest?

A. Yes. My title is senior director of finance and in that -- under that title I have responsibility for regulatory finance throughout the in-region Qwest states, the 14 former US West states. And as a part of that responsibility, I have the responsibility for advocacy of our performance assurance plan and also the

implementation of that plan

Q. Did you have occasion to file testimony in this proceeding, both direct testimony and rebuttal testimony in the form of affidavits?

A. Yes, I did.

Q. Are you able to affirm today that that testimony is true and correct?

A. Yes. The one exception that I guess I would note is that the confidential exhibit that I have filed that has some estimated price-outs under the PAP were based on the best data that was available at the time. That data changes over time.

If you recall the testimony of Mr. Williams, there are things that can change that testimony. I have since reviewed some changes to the numbers and I can tell you that the numbers would be in the same range as they are in that confidential exhibit but they are not exactly the same.

MS. STANG: I'd like to ask at this time that Mr. Reynolds' testimony marked as Exhibit 77 with the confidential attachment marked as 77A and Exhibit 78, which is the rebuttal testimony, be admitted.

MS. AILTS WIEST: Are there any objections?

If not, they're admitted.

MS. STANG: Thank you.

Q. Mr. Reynolds would you provide a summary of your testimony, please.

A. Yes, I will. My affidavit presents Qwest's performance assurance plan, or QPAP as we call it, for the Commission's consideration in its deliberations regarding Qwest's Section 271 filing. The purpose of such a plan is to demonstrate that Qwest will continue to fulfill its obligations under Section 271 of the Telecommunications Act.

A PAP is not required for a Section 271 application, but the FCC has found that such plans constitute probative evidence that a BOC will continue to meet its Section 271 obligations and that its entry would be consistent with the public interest.

I would like to briefly review for the Commission the most important points it needs to consider in a review of the QPAP. Specifically, I will discuss the criteria that the FCC has provided with regard to what constitutes an acceptable performance assurance plan, how the QPAP itself was developed, a review and explanation of the QPAP.

I will actually ask for some audience participation at that point where we'll look at the

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QPAP and I'll familiarize you with certain sections of it so that you can find your way around the document, a general summary of how the QPAP satisfies the FCC's criteria, and lastly, I will generally respond to some of the issues that have been raised by some of the other parties in the proceeding and then finish with a discussion of plan selection.

First, I'd like to discuss the FCC's criteria. The FCC evaluates performance assurance plans as a part of the public interest review. The FCC has emphasized that a PAP is appropriate if it falls within a zone of reasonableness. Now what does that mean? A plan meets that test, they say, if it has five general characteristics. And the FCC has provided these five characteristics in virtually every plan that has come before them as sort of their acid test for performance assurance plans.

First, it must exhibit potential liability that provides a meaningful and significant incentive to comply with the designated performance standards. Second, it must have clearly articulated, predetermined measures and standards which encompass a comprehensive range of carrier-to-carrier performance.

You heard Mike Williams this morning talk about the standards. This plan uses the same

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standards.

A reasonable structure that is designed to detect and sanction poor performance when it occurs, a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal. And lastly, reasonable assurances that the reported data is accurate.

For the purposes of this proceeding, these criteria represent the standard of review for this Commission to evaluate the QPAP. My testimony demonstrates that the QPAP Qwest has filed in South Dakota meets these criteria and thus it will be acceptable to the FCC.

I'd like to talk for a minute about how the QPAP was developed. Initially, Qwest used the SBC, Southwestern Bell Telephone, performance assurance plan that they submitted to the FCC for approval in their 271 application for the State of Texas and that plan was approved by the FCC. And similar plans have since been approved by the FCC for SBC states of Kansas, Oklahoma, Missouri, and Arkansas.

Qwest submitted that QPAP for consideration before a collaborative workshop with state staff members and CLECs under the auspices of the regional oversight committee or the ROC, R-O-C. This process

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was known as the post entry plan or PEPP, P-E-P-P, collaborative. The facilitators for the PEPP collaborative were Maxim Telecommunications Group and the National Regulatory Research Institute.

There were five workshops that were held from August 2000 to May of 2001, and initially 11 states participated. The sessions resulted in substantial consensus with many CLECs over three major structural aspects of the QPAP. The performance measurements to be included in the QPAP, which basically rely on the same ROC-developed performance indicators or performance measurements that Mr. Williams reviewed for you this morning.

The statistical methodology which determines whether the performance meets the standards. You heard Mr. Williams talk a little bit about methodology. The QPAP uses a similar methodology, a similar statistical methodology that the parties agreed to. It's a modified Z test in the use of critical values. And the basis for the payment amount to be applied to nonconforming results.

Other modifications made during the PEPP collaborative include the following: And some of these may not be meaningful to you at this time, but when I walk through the plan a little bit I think you'll

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understand better what I'm talking about.

The first one is the deduction of a graduated de-escalation of payment levels. And I will explain when I take you through the plan how payment levels de-escalate for consecutive months of nonconforming performance. And Qwest agreed to have those plans de-escalated in a step-down fashion rather than go back to the initial based payment immediately upon a single month performing performance. As I say, it will become clear when I refer you to the table in a few minutes.

We changed the Tier 1 and Tier 2 measurement weightings for some of the performance measurements to be responsive to CLECs for Qwest. By measurement weightings, I mean what type of payments each measurement would have. That was a point of discussion among the CLECs and Qwest and the staff members, and Qwest made some concessions during that PEPP collaborative workshop.

Adoption of the CLEC proposed payment structure for collocation. Qwest agreed to adopt a per-day-late type structure that came out of a performance assurance plan that had been agreed to in Michigan, I believe.

And finally, inclusion of a per-measurement structure for region-wide measures. These are measures

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that cannot be calculated on a CLEC-specific nor state-specific basis And Qwest agreed to develop a separate structure for those And once again, I will review these in just a moment when we get into the actual review of the plan, which is right now

I would refer you to my exhibit -- I believe it's called MSR QPAP-1, and it should say Exhibit K, performance assurance plan on the front page

Q Mr Reynolds, that would be of your direct testimony; correct?

A Yes Of my direct testimony, yes And if you would turn to page 20 of that document, it's called Attachment A Attachment 1 -- I apologize It's called Attachment 1 is a listing of most of the performance measures that are included in the performance assurance plan

The performance measures or PID form the basis for the QPAP These matrix encompass a broad range of carrier-to-carrier activities, including OSS access, gateway access, preorder, ordering, provisioning, maintenance, repair, billing, number portability, and network logging And as you've had a very thorough review this morning by Mr Williams, I won't go into any more detail But you can see listed along the left-hand column the various categories of

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performance measurements

There are over 35 categories of measurements, and I would tell you that under many of these headings there are 30 to 40 subheadings For example, if you look at OP-4 where it says, "installation intervals," that's an installation interval for all of our products All of our products have a submeasurement under that installation -- or that major category heading, for example, unbundled loop When I say "All of our products," I mean products under Section 251 of the act But, for example, unbundled loops and LIS trunks would fall underneath that

The PIDS have either a parity or benchmark standard I think Mr Williams went into that this morning that where there's an analogous retail service, we can compare it to it's a parity standard The PIDS were established by the ROC and including the CLECs, Qwest, and the regulators, and they've been audited twice by the Liberty Consulting Group -- and I believe you heard Mr Stright talk about that this morning -- and also by Cap Gemini in the Arizona review of the performance assurance plan

The payment structure, and I would refer you first to page 5, Table 2 The payment structure for the QPAP is a two-tier self-executing payment plan.

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The payments are made without any proof of harm We treat these in the nature of liquidated damages The Tier 1 monthly payments that are made to CLECs, the payment levels are listed in Table 2 And you can see that they have high, medium, or low designations And if you take a look at the first month payments you can see that low is 25, medium 75, and high is 150

Those will ramp up or escalate based on consecutive months of nonconforming performance So if Qwest for a particular metric had nonconforming performance for six straight months and it was under a high measure, the payment level would be $800 for that particular measure And that's how you would read this table

Attached to this table, if you notice below it, it says "per-measurement caps." There are only a few measures that have measurement caps as a part of the PEPP collaborative Qwest dispensed with payment caps for many of the measures, based on CLEC's request to do so, and opened the caps up to full payment levels We did not do so for the billing measures because they have very unique denominators that require a payment cap Otherwise, it would just be exorbitant payment levels So you can see actually on page 6 of that exhibit you can see the payment cap levels Once

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again, those only apply to the billing measures

The calculations, and we don't need to go into any detail with this, but the calculations are described in Section 6, pages 5 through 6, including escalation. And I just described how escalation works It is described in more detail in Section 6 2 Section 8 actually walks you through a detailed process for how we actually do the calculations and how we apply the calculation in a parity type measurement, we apply the statistics to that

Tier 2 payments are made to the state They're a little bit different than the CLEC payments in that they're based on aggregate CLEC demand; that is, we add all the results together for all the CLECs to determine if payments are due to the state for Tier 2 payments The Tier 2 payment matrix is Table 4 It's on page 7 And you can see that the high is $500 The medium is 300, and the low is 200 These are much more in the notion of incentive type payments Now understand that for a given nonconforming performance, Qwest could be paying both a Tier 1 payment and a Tier 2 payment So it can get to be fairly significant for continued months of nonconforming performance

There's also a payment cap that goes with the Tier 2 payment, and that's listed right below the

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per occurrence

Calculations, there are -- I would point out that there are some additional Tier 2 measures and an additional Tier 2 payment schedule that immediately follows Table 4 It's Table 5 And these are the unique Tier 2 measures that I discussed previously, the region-wide measures And you can see that they are very different than the other ones in that they actually have sort of a severity factor built in to our miss column

Where it says "Performance," you'll notice 1 percent or lower has a certain payment From 1 percent to 3 percent, it ramps up These are paid out on an aggregate basis and they're paid out on a 14-state basis So you can see the 14 state payments, and then you can see the individual state payments there as well

The indication of whether a measurement is Tier 1, Tier 2 or both can be found, once again, turning back to Attachment 1 If you take a look in the columns to the right-hand side of that matrix, you'll notice Tier 1 payments and Tier 2 payments. You'll also notice the designations high, medium, and low That will tell you a lot about the measurement. It will tell you, for example, if you look at PO-5,

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which is the third measurement down. Okay. That has a low Tier 1 payment so you know that the base payment of that will be $25 You follow on over, and you see that it has a medium Tier 2 payment That would be $300. But that particular measurement has both Tier 1 and Tier 2 Some of them do not, and others do

The statistical measurements in the PAP. Parity standards require the comparison of Qwest wholesale data and retail data to ensure that Qwest is providing an equivalent level of service to its wholesale and retail customers Qwest uses statistical tests to reduce sampling errors due to small sample sizes in the variation of the data. Mr Wilson went -- or Mr. Williams went into the statistical tests in some detail this morning so I won't go into too much detail. Now they are explained in the performance assurance plan in Sections 4 and 5 on pages 2 to 4.

The limitation section of the QPAP is found in Section 13, pages 13 through 15, and they include the following provisions. First, that the PAP will not become effective until Qwest receives 271 authority from the Commission Effectively, the PAP is the quid pro quo for being allowed into the interLATA market. We're willing to offer this performance assurance plan to ensure our performance is consistent with what we

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presented to the FCC to get into that particular market

PAP payments to CLECs require there be an approved Interconnection Agreement between Qwest and the CLECs That's just a logical reasoning there in that this plan covers the elements and the services offered in Interconnection Agreements so logically you'd have to have an Interconnection Agreement in order to have this plan Force majeure limitations, those are fairly standard Force majeure, in fact, the John Antonuk performance assurance plan references the SGAT force majeure limitations

There's a provision that PAP payments are treated as liquidated damages and are, therefore a reasonable approximation of any contractual damages that may result from nonconforming performances Qwest treats Tier 1 payments as liquidated damages because CLECs are compensated without having to prove any harm This doesn't mean CLECs can't seek other remedies CLECs can seek noncontractual remedies based on a provision which has been previously approved by the FCC. And finally, there are provisions for offsets to avoid duplicative payments

Audits, the audit section in the QPAP is Section 15 It's pages 16 through 17, and it includes

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the following in the way of audits It includes a two-year audit of PIDS with a high risk of inaccuracy And that's as substantiated in the Liberty performance measure audit report

Qwest will choose and pay for the auditor for this two-year audit There will be an annual audit of the financial systems used to calculate the PAP payments, and Qwest will also fund that audit as well and will use the same auditor

Qwest and CLEC disputed-issue audits are also included in Section 15 Those are limited to two a year. The initiating party would fund those audits unless it's found that there's a deficiency that's the other party's responsibility and fault And then they must fund. There is also a provision for root-cause analysis that would be conducted for any second month of consecutive Tier 2 misses To the extent that a metric does not have a Tier 2 measurement, it only has a Tier 1, we would use aggregate Tier 1 to determine whether we do a root-cause analysis so that we would sort of cover the field as far as conducting root-cause analysis

Finally, the six-month review can be found in Section 16, page 18 This is the section of the QPAP that allows for change It provides for a QPAP review

every six months by Qwest, the CLECs, and the Commission to determine if performance measurements should be added, deleted, or modified. This provision allows for change to occur in the QPAP.

I'd now like to talk about how the QPAP satisfies the FCC criteria that I reviewed a few minutes ago. We believe that it fully satisfies the five criteria. First, Qwest will place 36 percent of its 1999 ARMIS net revenue for South Dakota, which is approximately $15 million, at risk under the South Dakota QPAP. The FCC has repeatedly found that placing this level of net revenues at risk provides meaningful incentive for a BOC to maintain a high level of performance.

Second, a PAP should contain clearly-articulated and predetermined measures and standards that encompass a broad range of carrier-to-carrier performance. The PIDS included in the QPAP as a result of the ROC post-entry performance plan collaborative are comprehensive. They cover a broad range of carrier performance and activities including gateway access, preorder activities, ordering, service provisioning, repair, network performance, billing functions for resale, transport, unbundled loops, and other wholesale services.

The QPAP satisfies the third FCC characteristic by providing a reasonable structure that is designed to detect and sanction poor performance when and if it occurs. The QPAP started with the statistical methodology and payment structure of the Texas PAP approved by the Texas Commission and the FCC and Qwest has made further refinements to that Texas PAP and provides more -- that provide more payment opportunities to CLECs.

Fourth, the QPAP contains a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal. The QPAP provides self-executing payments, meaning that Qwest's obligation to make payments is triggered automatically without a hearing as to either liability or damages to the CLECs and states based on monthly performance results. There are only limited exceptions to Qwest's obligation to make payments and Qwest has the burden of proving in a particular case that application of an exception is appropriate.

Finally, the QPAP provides reasonable assurance that the reported data are accurate. The QPAP contains extensive data validation and auditing safeguards that are patterned after FCC-approved performance assurance plans. The performance

measurements have undergone two separate comprehensive audits of data collections, calculations, and reporting functions by two independent auditors. In addition the CLECs have an opportunity to request audits of individual performance measurements, and the QPAP also provide for audits of the financial accounting system.

I would now like to walk through a brief review of some of the issues raised by the other parties and sort of summarize Qwest's response to those for you.

First in regard to escalation. And we talked a little bit about payment escalation when we reviewed the plan. It's the provision in the PAP payment structure that allows Tier 1 payments to CLECs to escalate consecutive months of nonconforming performance.

Mr. Stacy argues a limit on payment escalation after six months is appropriate. If you remember the table we walked through, you saw the highest payment was six months. Mr. Stacy believes that's inappropriate, that that should continue to increase for every month that Qwest continues to be nonconforming. Furthermore, he believes that QPAP payments should remain at escalated levels even after conforming performance by Qwest. That is if it works

its way up to $1,500 after X-number of months it should stay there, even if Qwest has years of conforming performance. He believes that unlimited escalation of payments that would never de-escalate are a deterrent against poor performance and an economic incentive for good performance.

Mr. Stacy offers no studies to support his theories and nothing to suggest Tier 1 payments that have escalated to the six-month level are not sufficient compensation and incentive, especially with the addition of Tier 2 payments, which I pointed out when I reviewed the plans. There's a high likelihood Qwest would also be making fairly significant Tier 2 payments.

In my reply affidavit, I point out a six-month limit to payment escalation has repeatedly been approved by the FCC in Texas, Kansas, Oklahoma, Arkansas, and Missouri. I also provide a matrix of simulated payment levels at the six-month level, and beyond which reveals that such payment levels would provide many years of free service for a wholesale service such as unbundled loop which costs approximately $20.

Finally, the idea of requiring payments to escalate with no chance of de-escalation is draconian

and would produce windfall payments to CLECs.

Qwest has already built in a slower step-down function to its payment escalation than currently exists in the SBC plan already approved by the FCC. What that means is in SBC when those payments ramp up to the six month level, one conforming month of performance takes an $800 payment down to 150. In Qwest's region as a concession to the CLECs, we built in a gradual step down so we have to have six months of conforming performance before we step down to the conformance level.

Tier 2 triggers is another issue that was brought up. In the QPAP, the Tier 2 payments are triggered only after three months of nonconforming performance. They don't start the first month. They are triggered three months later.

Mr. Stacy opposes the Tier 2 trigger as potential disincentive to Qwest to take immediate action, while Mr. White of Fibercom doubts if a three month Tier 2 trigger is what the FCC had in mind for performance expectation.

With regard to Mr. Stacy's concern, Qwest will already have incentive to fix problems that trigger Tier 2 payments because it will already be paying Tier 1 payments to CLECs. Also because Tier 2

payments are purely incentive, they are three times the level, the base level, of the Tier 1 payments.

Essentially the trigger allows Qwest an opportunity to fix the problem before it's required to make a payment. Because payment calculations lag performance reports by about 30 days, it is difficult to even determine if a problem exists sooner than 45 days after it happens. Then there is the time needed to correct the problem. Because Tier 2 nonconformance is indicative of problems at an aggregate CLEC level, the fix may take some time.

Finally, with regard to Mr. White's query as to the FCC's expectation in regard to Tier 2 triggers, they have approved five plans that include the same Tier 2 triggers contained in the QPAP.

Next I'd like to turn to the use of Tier 2 funds, the funds that go to the state. In my affidavit, I offer to accept some language proposed by AT&T for Tier 2 funds held by the Commission and that they may be used for any purpose allowed to the Commission by state law. Because some states do not have the ability to receive and direct such funds, the discretionary and administrative fund provisions contained as in the Utah step stipulated performance assurance plan may be attractive to this Commission.

Essentially, the Utah provision allows Qwest to set up escrow accounts to receive Tier 2 payments which would be subject to disbursement by the Commission -- by Commission directive for management of the plan or for other telecommunications initiatives.

Next I'd like to talk about 100 percent order cap on misses for interval measures. It's a little bit of a complex issue so I'll go slow. The issue involves the unique method used to determine nonconforming performance and subsequent payments for interval measures.

If I recall when I went through the schedule of measures, I pointed out OP-4, which is a measure that measures our ability to meet intervals. The calculation involves determining the average interval for both the wholesale service and its retail counterpart by dividing the sum of all the days it took Qwest to provision the service by the number of orders in the reporting period. So you end up with the average number of days per order and you compare the average number of days per order for the wholesale side to the retail side.

A percentage is then developed by subtracting the retail average from the wholesale average and dividing by the retail average. If the wholesale

average is more than twice the retail average, the resulting percentage will be greater than 100 percent.

The QPAP limits that percentage to 100 percent, and therein lies the rub. The percentage is multiplied by the total wholesale orders in the reporting period to determine the number of payments that Qwest must make for its nonconforming performance.

AT&T believes there should be no limit to that cap, that 100 percent cap. They believe there should be no cap there at all. And they believe that because they think that it is a measure of severity; that is, we ought to continue to ramp that up so you're paying penalties on more orders than actually existed.

Qwest alternatively believes that such caps are appropriate because they represent a compromise between measuring severity up to the 100 percent level but not require payments in excess of the actual number of orders submitted by the CLEC.

The FCC has found such a limitation is appropriate in five previous plans it has approved, and in every state in Qwest's region so far the state commissions and recommendations have come out in favor of such caps with the exception of Washington, that I'm aware of. They have agreed that such limitations are appropriate in other states.

Regarding the actual cap, the cap gets a lot of attention, the overall cap on total payment liability Several parties challenged Qwest's cap on total payment liability of 36 percent of its ARMIS 1990 net return. 15 million for South Dakota That type of formula actually came from the initial plans submitted to the FCC for New York, by Bell Atlantic and for SBC for Texas And so it's not as if Qwest plucked that out of thin air

We decided to go get something that had been approved by the FCC and that they found was significant and meaningful So we used the same criteria that they had proposed before The other parties argue for no cap at all or a procedural cap that can be raised by the Commission So you would set a level and then Qwest would have to come in for a review by the Commission and the Commission would determine whether to leave that cap in place or allow it to escalate

The FCC has clearly found that a 36 percent hard cap, that is one that's not subject to opening up again by a Commission -- that the 36 percent hard cap proposed by Qwest provides adequate incentive and has repeatedly approved plans with such caps Additionally, in Qwest's region both Idaho and Washington commissions have found a 36 percent hard cap

acceptable The opposing parties sought no reason why the South Dakota circumstances are unique --

MS CREMER: You know, I'm going to object My problem is my witness hasn't testified and we have nothing in the record and he keeps saying, you know, Mr Stacy says this and Mr. Stacy says that Well, Mr Stacy hasn't said a word yet on the record

Now if they want to call him back in rebuttal, I have no problem with that, but I do have a problem with him telling you what Mr Stacy believes and says and thinks and whatnot

MS AILTS WIEST: Any response?

MS STANG: Well, we have offered in Mr Reynolds' testimony -- rebuttal testimony has been admitted and is part of a record And I think the purpose of a regulatory proceeding in filing prefiled testimony is for efficiency reasons and other reasons we would be able to address that testimony

I would be very surprised if that testimony were to change And I guess if she knows that it might, then we should know that But I think it's completely appropriate for Mr Reynolds to summarize both his direct and his rebuttal

testimony

MS CREMER: I don't have a problem with him summarizing his rebuttal, but he does not need to say what my witnesses will state My witnesses will state what they will say

MS AILTS WIEST: Doesn't his rebuttal already address some of the things that

MS CREMER: It does, but I think he can do it in a very generic manner like all their other witnesses He keeps saying Mr Stacy says Well, Mr Stacy has not said a word yet

MS AILTS WIEST: Well, the objection is overruled I believe when he refers to what Mr. Stacy's saying, it's based on his prefiled testimony

Is that accurate, Mr. Reynolds?

THE WITNESS: That's correct

MS AILTS WIEST: Go ahead

A Next I'm going to return to the reporting fee The QPAP has a provision that requires Qwest to pay $500 for each day that its monthly performance assurance plan reports are past due AT&T believes that this fee should be roughly in the neighborhood of $5,000, so 10 times the amount proposed by Qwest

Because Qwest will be compiling such reports

for all 14 of its states on a consolidated basis, if it is late in providing such reports, it will be late in all 14 states. Using AT&T's fee structure would result in a $70,000 fine per day for being a single day late for all states in Qwest's region Such a fine is clearly unfair on its face and especially given the fact that late reporting is not a customer-affecting transgression

Audits The QPAP contains audit provisions in Section 15 that cover a systematic two-year audit of performance measurements, an annual audit of financial systems used to calculate payments and Qwest or CLEC initiate audits The provision requires Qwest to fund the measurement and financial systems audits while Qwest or the CLECs will fund -- will fund the -- the initiating party will fund their own audits, and subsequent responsibility will be determined depending on whether there's any material deficiency discovered on behalf of either party

Without offering any specifics, Fibercom explains that the QPAP audit provisions are not sufficient to protect the CLEC and that Qwest should be required to fund such audits Qwest believes the QPAP audit provisions fairly cover the plan from performance measures to financial systems and is willing to fund

such audits.

AT&T complains about a number of issues associated with the audit provision, including Qwest's ability to choose an auditor, limits to CLEC-initiated audits, limits to measurements that would be audited. Although Qwest believes that its stand-alone audit offered in the QPAP is sufficient, it would also be willing to offer a multistate collaborative audit envisioned by the facilitator in his report from the multistate proceeding.

The collaborative audit allows the commissions to choose the auditor, extends the measures to be audited to include low-risk as well as high-risk measures, and allows an independent auditor to decide whether CLEC-initiated audits are necessary. Qwest believes that a coordinated multistate audit is the most efficient and effective way to audit the QPAP.

With regard to the six-month review, the six-month review, as I said previously, is the process that allows for limited changes in the QPAP, including the addition, deletion, and modification of performance measures. The review will be a collaborative effort including Qwest, CLECs, and the Commission, but any changes must include Qwest's agreement.

Mr. Stacy and AT&T believe the Commission

should retain the authority to change any aspect of the plan during the six-month review. AT&T further contends that the provision allows Qwest to unilaterally make changes to the QPAP.

First, the six-month review provision does not allow Qwest to make unilateral changes to the QPAP as AT&T contends. Second, if CLECs or even Qwest were allowed to make unilateral changes in any aspect of the plan, or the Commission, it would render the entire plan illusory and unworkable from Qwest perspective.

Qwest is entitled to know the limit of its financial liability prior to accepting such a unique plan that includes liquidated damages, self-executing payments to CLECs without having to have any proof of harm. Not withstanding these concerns, in the spirit of comprise, Qwest would be willing to modify the QPAP that I submitted in my testimony to allow for the arbitration of disputes over new measures and to allow that arbitration to come before the Commission.

I would point out that a similar review provision has been approved by the FCC for Texas, Kansas, Oklahoma, Arkansas, Missouri.

Indemnity. Midcontinent believes that Qwest should be responsible for making retail service quality payments to CLEC customers in cases where such payments

were due to Qwest's performance.

Qwest disagrees. Under the QPAP, CLECs receive liquidated damage payments and are not required to prove any harm for such payments. These payments are intended to be a complete remedy, and thus it is not appropriate that Qwest also be liable for retail service quality payments.

Finally, disputes over whether the CLEC or Qwest was responsible for the retail service quality failure would likely lead to litigation that contravenes one of the FCC's guiding principles that such a plan limit needless litigation.

The effective date. Midcontinent suggests that the effective date for the QPAP performance results be when the state Commission issues its consultative report but the payments not be assessed until after the FCC approves Qwest's 271 application.

Qwest is willing to provide QPAP reports with payment estimates based on monthly performance measurements prior to Section 271 approval. Qwest is already provisioning such mock bill credit reports in 10 of its in-region states. Qwest agrees with Midcontinent that actual payments for nonconforming performance would not commence until after the FCC approves Qwest's 271 application for South Dakota.

And, finally, plan selection. Because the South Dakota Commission is deliberating on 271 matters relatively late in the overall 271 process for the Qwest region, a number of recommendations on performance assurance plans have been made in other jurisdictions.

Qwest would remind the Commission that the performance assurance plan it submitted for approval is substantially based on plans that have been previously accepted by the FCC. In fact, as I indicated in my review of the concessions that Qwest made at the PEPP collaborative workshops, the changes to the plan have all been to the benefit of CLECs in hope of reaching agreement.

It should be noted that the QPAP has a heritage of balance through negotiations, first between SBC and the CLECs for their original Texas plan and next between Qwest and the CLECs in the PEPP collaborative. Without submitting such a balanced plan, AT&T and other parties to this proceeding would now have this Commission pick and choose from other plans and other Commission's decisions in order to cobble together a plan that would have serious financial implications for Qwest and contain provisions clearly not required for FCC 271 approval.

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This is the process that led to the recent PAP orders in Montana and Wyoming that have resulted in plans that create so much financial risk for Qwest that they are unacceptable

The problem with cobbling together performance assurance plans by picking and choosing the harshest provisions from a variety of plans is that the result is a one-sided plan that has lost the balance of the give-and-take negotiations or a thorough review process

For example, the Utah stipulation took over three months of intense negotiations to reach a balanced agreement Qwest would ask that this Commission consider the importance of such balance in a plan as it deliberates on this performance assurance plan

In return, Qwest is willing to provide the Commission with several options for its consideration. First, in response to a number of issues raised by other parties, I have offered in my rebuttal affidavit to make a number of modifications to the performance assurance plan filed as an exhibit to my initial affidavit

These modifications include the following: We would be willing to update the annual cap based on

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the most recently available ARMIS data, rather than have it be based strictly on 1999 data We would be willing to change the use of Tier 2 payment provisions, such that the payment may be used for any purpose allowed by the Commission under state law For applying interest to over and under payments, Qwest would be willing to use the prime rate rather than the one-year treasury rate

And just for a point of reference, the one-year treasury rate is in the 2 percent range, and the prime rate is close to 5 percent

Use of prior MUX data to determine if Qwest missed or made a benchmark standard where volumes are too low to permit rounding to anything except 100 percent standard This was an issue that was raised by one of the CLECs that concerned them on low volumes And we are willing -- that is the provision that sort of came out of the John Antonuk multistate decision

Audit provisions that implement the multistate facilitator's report. These are the collaborative multistate audit provisions We're willing to include those in this performance assurance plan

The multistate dispute resolution provision,

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which cites to SGAT Section 5 1(a) dispute resolution provision for resolving disputes over the meaning of QPAP provisions and how they should apply The dispute resolution provision currently contained in the QPAP filed with my initial testimony is much more limited than that So it opens up dispute resolution as to the meaning of QPAP provisions and how they should be applied for the entire plan

A provision that allows for the arbitration of disputes over new measures to be conducted before the Commission And finally the force majeure provisions that implement the multistate facilitator's report.

And there were five enhancements to that Number one, that we reference the SGAT force majeure provisions, that force majeure applies only to benchmark measures, that we give notice -- advanced notice of a force majeure event within 72 hours of it having occurred. Forecasting would be limited to what is required in the SGAT, and finally we would limit exceptions to the duration of the triggering event

Alternatively and as another option for the Commission, Qwest is willing to offer the PAP that is filed in compliance with the multistate facilitator's report if that plan is adopted in its entirety

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Some of the additional provisions over and above the plan that I submitted in my testimony, it has a flexible cap provision that allows the cap to migrate upwards to 44 percent for consecutive months of nonconforming performance and downward to 30 percent for consecutive months of conforming performance

It has a payment equalization provision that ensures that CLECs would be paid equally under the plan no matter when they incurred payments under the plan So a CLEC coming in very late in the plan year, if Qwest had reached the cap under normal provisions, would not be paid. But payment escalation ensures all CLECs are paid the same percentage owed or the same percentage of money available under the plan

Collaborative audits, arbitration over new measures, there's a minimum payment provision for CLECs with small order volumes that would be included Modified Tier 2 triggers to account for intermittent misses, MA.

And finally Qwest is also willing to offer the Utah stipulation modifications to the multistate PAP. They include in addition to the Antonuk PAP or modifications to it -- when I say Antonuk, I mean the multistate facilitator's report -- a 44 percent hard cap with a 24 percent initial procedural cap These

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are the provisions of the Utah stipulated agreement that is the overall payment cap in reference back to when I was talking about the 36 percent cap, the $15 million, that is a modification of that

The ability of the Commission to determine if after review payments should escalate So that at the six month review payments would -- the Commission could review payments that had escalated to the six-month level and determine whether, based on Qwest's efforts, whether they should allow those payments to escalate or leave the limit in place

The removal of Tier 2 triggers only after Qwest's overall performance falls below a certain specified level And the ability of the Commission to serve as the presiding and determinative body at the six month review Additionally, all changes that would emanate from the six-month review would be subject to a 10 percent payment calling The creation of a discretionary and administrative funds for disbursement of Tier 2 payments, and, finally, optional multistate or stand alone audit and plan administration provisions

In conclusion, Qwest has submitted to the Commission several options for a balanced performance assurance plan that not only satisfies the FCC's

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criteria but in most respects has been repeatedly approved by the FCC

And that concludes my summary statement Thank you

Q Thank you, Mr Reynolds I just have a couple of follow up questions When you talked about offering to the Commission the regional audit that had been recommended by Mr Antonuk, was that as an alternative rather than addition to the audit provisions that are currently in the QPAP filed with the South Dakota Commission?

A That was as an alternative

Q Okay And then I think also there was a part where you discussed mock reporting that had been requested by Midcontinent Was that -- and that you indicated that Qwest was willing to do mock reporting with payments starting after FCC approval for South Dakota

The payments would be based on Qwest's performance after FCC approval, rather than on the mock reporting, is that correct?

A I think what my statement was is that Qwest would be willing to provide mock reports that indicated what the payment levels would have been had the plan been in place and we would be willing to do that prior to FCC approval We are already doing that, as you know, for

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ten of the other states in our region and we would be willing to do that today. And that provides a state report to the Commission so that they can take a look at the Tier 2 level of payments and it provides Tier 1 payment summaries to the CLECs and we would be willing to do that

Once again, though, that does not constitute payments Payments would only start after FCC approval.

Q And my question was based on the performance after FCC approval, rather than on that prior performance

A Yes.

Q Okay.

A Yes.

MS STANG: I'd like to make Mr. Reynolds available for cross-examination.

MS AILTS WIEST: Mr Gerdes?

MR GERDES: No questions.

MS AILTS WIEST: Mr Evans?

MR EVANS: A few questions Thank you.

CROSS-EXAMINATION

BY MR. EVANS:

Q Mr. Reynolds, good afternoon Black Hills Fibercom has an existing Interconnection Agreement with Qwest

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How do you envision that a CLEC such as Black Hills Fibercom would take advantage of the QPAP?

A It's our understanding that an amendment to that Interconnection Agreement would allow you to add the QPAP into it

Q What type of amendment would you envision? In other words, I would be interested are there any other provisions that would have to be drafted into the agreement as well from the SGAT?

A The only other provisions that I'm aware of that need to travel with the QPAP -- and it would only be, I believe, for the purposes of the QPAP -- would be Section 5.1 8, the dispute resolution provision And once again, it would be for resolving disputes in conjunction with the QPAP. I think that might be it Oh, I'm sorry. The force majeure provision from the SGAT too Because the QPAP relies on the force majeure provision.

And let me make a clarification of that The QPAP that I filed in my testimony does not rely on the force majeure provisions in the SGAT. The Antonuk or the multistate QPAP does. That was a provision that John Antonuk added, that we need to have consistent force majeure provisions between the two documents So that would be another one

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Q Are there any others that you're aware of?
A Not that I'm aware of
Q Are there any others someone else might be aware of in terms of Qwest, something might be enforced later?
A Possibly my attorney She seems to be reaching for the microphone

MS STANG I would just say I'm not familiar with your Interconnection Agreement And I think that you know, it would probably -- for each agreement, there would probably need to be some scrutiny of that

But I think the general answer to your question is that we intend that the PAP is something that CLECs can opt into and as Mr -- as that as almost a stand alone provision, an exhibit and with the revisions that were suggested or recommended by Mr Antonuk in the multistate proceeding which we adopted, because that particular PAP relies on by reference some provisions of the SGAT, for instance the dispute resolution section, and some language in force majeure that may not be currently in the parties' interconnections, you'd have to either opt into those or by reference incorporate those into your agreement

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But again, I would think that we would look at each agreement to make sure we weren't missing anything But generally the PAP is intended as a stand alone provision that can be incorporated into existing interconnection Agreements.

Q Would there be a point during these proceedings that Black Hills Fibercom might know precisely what provisions it would have to opt into?

Has that happened in other state proceedings?

A It hasn't to date In fact, this is the first time that particular question has come up

MR EVANS: Thank you.

MS AILTS WIEST: Ms Cremer

CROSS-EXAMINATION

BY MS CREMER

Q Good afternoon Are you an economist?
A No
Q Do competitors operating in the same competitive market usually cooperate with each other, for example, is McDonald's likely to help Burger King to attract customers?
A It doesn't seem logical to me, but I'm not familiar with that market
Q Absent regulatory restrictions, what incentives does Qwest have to comply with the terms of the SGAT?

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A Well, it's federal law through Section 251 to provide those services
Q Right That would be regulatory restrictions Other than that, does Qwest have any sort of incentive?
A Well, Qwest is selling services to wholesale customers so I would think it has plenty of incentive to please its customers
Q If there were not regulators overseeing this process, would Qwest invite competitors into its local market?

MS STANG: I'm going to object I think the question is vague I'm not quite sure whether Ms Cremer's addressing or wants the witness to address the PAP provisions or the SGAT provisions or exactly when you're talking about this process or incentive to comply, exactly what obligations you are asking about

MS CREMER: I think my question is clear He's an expert

MS AILTS WIEST Objection overruled

A I'm sorry Could you repeat it, please
Q If there were not regulators overseeing this process, would Qwest invite competitors into its local market?
A I would have to know a lot more about the circumstances There are all kinds of partnerships

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that take place in American business today There are different players in different niche markets, and you would have to know the exact circumstances to understand or be able to answer that question
Q Does the fact that Qwest is currently seeking 271 relief in its local serving territories provide Qwest with an incentive to provide good service to CLECs today?
A I think that it is an incentive I wouldn't say it is the only one
Q And that is what I said, an incentive.
A Yes.
Q Qwest wants 271 relief so it will have access to additional revenues by entering the long distance market; isn't that correct?
A Yes
Q In terms of dollars, how much will Qwest gain by receiving 271 relief in the 14-state area region?
A I don't know the answer to that
Q Who would?
A I don't know.
Q Qwest hasn't made any sort of a business plan, they just leaped right in, lept right in, leaped right in?
A It's not my area of the business I'm sure they haven't leaped right in

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Q Who would that be?
A I don't know I honestly don't know
Q Would you say it's probably in the millions of dollars?
A I have seen studies of market share that is available, and I would definitely say it's in the millions of dollars, yes
Q Should Qwest receive 271 relief, would it still have the same incentives to cooperate with the CLECs?
A I believe that it would I believe that even without a performance assurance plan it would because it has one thing hanging over its head and that is the ability by the FCC to pull Qwest 271 authority And that is huge That probably is more of an economic incentive to Qwest than the performance assurance plan because if Qwest invests hundreds of millions of dollars getting into a market it certainly does not want to jeopardize it through poor performance
Q So it, say, Qwest was granted that and then for whatever reason the FCC attempts to revoke that 271 authority, wouldn't there likely be hearings and testimony and rebuttal and probably even take longer than this original process has taken?
A That I don't know I do know that in the early going for Bell Atlantic New York that when there was one what if you'll excuse the term, of problems of

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Bell Atlantic on one of their metrics, the FCC was in there immediately There was a huge fine involved, and they actually restructured some of the performance measurements for that company and they upped the overall cap on that company And that happened in a very short period of time
Q Did Bell Atlantic or would Qwest have to give up those long distance customers it had won while it was awaiting the FCC to make that decision?
A Are you asking whether Bell Atlantic had to?
Q Did Bell Atlantic or do you anticipate Qwest would have to give up the customers it had won?
A I would suppose it would be a fact-specific determination
Q In your opinion, is it likely?
A I suppose if the transgression was severe enough, it could be I mean, that's really up to the FCC It did not happen in the Bell Atlantic case
Q Would you agree that Qwest's cooperation, whether through the regulatory requirements or through its own incentives, is critical to the development of competition in South Dakota?
A I think that Qwest's participation and cooperation I think that has come to pass under the act is important and I think the FCC realizes that and I think Congress

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realized that in the passing of the act and FCC subsequent rules and regulations under the act
But I would also state that there are niche markets that are available to competitors and competitors have done very well in without too much interaction with Qwest So, you know, there are markets and there are opportunities available outside of interfacing with Qwest
However, if you want to be very specific and talk about basic exchange service to customers and being able to purchase portions of the network that these customers may not have in the early going, I think Qwest is an important part of that
Q Do you agree that the SGAT plays an important role in this area?
A I think that the SGAT provides a common baseline for competitors. I think prior to the SGAT, there were a lot of interconnection agreements that sprung out of arbitrations and many of those interconnection agreements were based on one template
This now allowed for a common single template that allows competitors to pick and choose those provisions that would fit their needs And from that perspective, I think that it was a task well done and well needed to be done

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Q Do you agree that the mechanism designed to enforce the terms of the SGAT is the QPAP?
A Not necessarily
Q Okay Who is the QPAP to benefit, the CLEC or Qwest?
A In what way, I guess I would ask? Monetarily, obviously the CLEC benefits
Q Okay Thank you Do you want to turn to your Exhibit 77, page 10 Are you there?
A I'm there.
Q Okay Beginning on about line 7 through line 10 and it's where you talk about the purpose of QPAP is to create significant financial incentives to Qwest to ensure against backsliding on service performance once Section 271 approval is given to enter long distance markets
How do you define significant financial incentives as it's used in that portion of your testimony?
A Well, I think I use it in conjunction with our proposal for the overall payment cap of 36 percent of net return and, you know, we believe that that is significant And it's been accepted by the FCC as significant Any type of measure like that usually needs to be defined somewhere along the lines, especially one that might be as arbitrary as that is

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Q As arbitrary as what?
A As arbitrary as what constitutes significant
Q I thought you meant the 36 percent
A Well, the FCC approved that and they have repeatedly approved it and they have provided explanations of why they believe that's significant. So I mean, that's a guideline for us to use, and that's how I use the term in the context of my affidavit
Q How does Qwest measure that significant financial incentive?
A I guess I just answered that
Q Okay. That's the 36 percent?
A Yes
Q Isn't it true that Qwest -- isn't it true that Qwest didn't do any financial or economic analysis to determine that 36 percent?
A Qwest did not develop the concept or the idea or the percentage 36 percent. It used what had already been submitted to the FCC and approved by the FCC, that's correct
Q Can you explain what kind of services Qwest currently provides that would be included in the South Dakota ARMIS data?
A Yes. I believe the ARMIS data includes all regulated services for the State of South Dakota, both interstate

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and intrastate
Q So is that interLATA toll?
A Yes
Q And switched access?
A Yes
Q Local calling features?
A Yes
Q What kind of products that Qwest currently provides would not be included in the ARMIS data?
A Nonregulated products
Q Does Qwest expect to make a profit from offering interLATA toll to South Dakota customers?
A Yes
Q Once Qwest receives 271 approval, will Qwest's revenue and operating expenses from offering interLATA toll be included within the BOC's ARMIS data?
A Yes
Q Does the Qwest QPAP limit the QPAP payments to 36 percent of the '99 South Dakota ARMIS net return?
A The document, the QPAP document that I filed in my testimony as Exhibit 77, does limit it to the 1990 net return. We have made the offer in my rebuttal affidavit to update that annually
Q And wouldn't that just mean that Qwest would be paying less than 36 percent after that?

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A I guess I don't understand.
Q Well, I mean, not less. Every year -- so you're willing to have that as a moving target, but it's going to be capped at 36 percent of that moving target so every year the amount is going to be less and less and less; right?
A It theoretically could be
Q Yes
A Mr. Antonuk explained that by freezing it at 99 percent, you have a certain fixed amount.
Q We'll take that 99 percent. Thank you.
A I'm sorry. Did I say 99 -- I meant 39 --
Q We'll take that one too.
A No. But by freezing it at a fixed 1999 level, you had some certainty. If you allowed it to be updated annually, then essentially you go with whatever Qwest's net return is for the following year. So there is some risk to that, especially if you've been following our financials.
Q Would that be -- that would be similar to that fuzzy math that you accused Black Hills of, or isn't that the same fuzzy math that Enron and Qwest is --
A This is all too true --
Q -- investigating? Yeah. I think so. Is the intent of the QPAP Tier 1 payments to be a form of compensation

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to the CLECs?
A Yes.
Q A CLEC that chooses to resell Qwest facilities does so with the intent to make a profit; isn't that correct?
A I would hope that that would be part of their business plan.
Q And poor performance by Qwest could result in the CLEC not getting a customer and thus not making a profit on that customer; isn't that correct?
A To the extent that that customer was purchasing -- I suppose that your hypothetical is that they were purchasing the service from Qwest, yes
Q The intent of Tier 1 payments is to compensate the CLEC for lost profits due to Qwest's poor performance; is that correct?
A I think that that's part of it, yes.
Q So the intent of Tier 1 payments is to be a form of compensation which would put the CLEC in a similar financial position had Qwest performed as it should have, in other words, it would make the CLEC whole?
A I guess from an overall perspective that that is the intent of a liquidated damages scheme, is that Qwest will pay out a certain amount for every nonconformance that it has in conjunction with the rules in lieu of making specific payments for each time the CLEC

[illegible]

Q [illegible] state may create [illegible] authority [illegible]

A [illegible]

Q [illegible] I can give you a [illegible] on it. You [illegible] Qwest has made with regard to the 271 and then go on to cite language from [illegible] balances [illegible]

[illegible] in the [illegible] Act state commissions are to ensure there's a balance?

A I don't think that the Telecommunications Act deals with the performance assurance plan. I'm [illegible] and balance and fairness

Q Do you have a cite or a page number or paragraph?

A I'm telling you that the Telecom Act does not deal nor require performance assurance plans so there would be no reference

Q Has the FCC ever approved a RBOC's 271 application without a PAP?

A Not that I have not.

Q You know, you talked about that evaluation criteria, the five standards that the FCC said should be [illegible] that the PAP should have? Do you know what I'm talking about?

A Yeah.

Q Does it [illegible] or whatever. Where in that [illegible] does it say that state commissions should consider Qwest's so-called concessions?

A I guess I don't understand the nature of your question. My concessions come from an attempt to respond to CLEC [illegible]. We should have to resolve issues over this plan [illegible] put forward. Those are where my concessions come from.

My discussion of balance is that plans that have undergone intense negotiations on both sides where both sides have given something to gain something in return and be reasonable generally to both sides. They both realize they've given something in return for that to now come before a commission and allow a commission to pick the harshest provision from Montana and the harshest provision from Idaho and the harshest provision from Colorado, essentially the balance [illegible] of that type of action.

And I don't think you come up with a plan -- number one, you come up with a plan that is very harsh on Qwest and that probably will be unacceptable. You know, Qwest has worked through these issues with the parties and all we ask is that the Commission honor that, that they take a look at that as part of their deliberations when they're considering a plan. That's my reference to balance.

Q The bottom -- I'm sorry. Go ahead.

A And you probably won't find that anywhere in the FCC or in the act. But I think it's a reasonable consideration for regulators to include in their deliberations.

Q But I think bottom line, you would agree it's up to the individual state commissions to make their determinations based on the record in front of them; isn't that correct, in the public interest?

They look at what's best for the consumers of South Dakota, and that's what they make their decision on.

A I think that that's true. And, you know, I am a part of that process, and that's why I'm asking them to please, you know, honor the balance that has been included in some of these agreements.

Q Well, what if those concessions that you've been willing to give are deemed by this Commission not to be in the public interest? They shouldn't go along with that just because you think it's a good idea, should they?

A Well, the Commission -- you know, the Commission will do what the Commission will do. I mean, I represent my company and I'm trying to make my case to this Commission and I'm trying to make it in as reasonable a fashion as I can. And I think what I put forward are reasonable ideas for the Commission to consider.

And I'm not trying to steal the Commission's authority or tell them they need to do it a certain way. I hope that I've presented everything in a thoughtful manner for this Commission's deliberation.

Q You state at one point in your testimony that with respect -- that the arguments put forth by Fibercom and staff with respect to Qwest's potential liability, these are muted by the FCC's 271 orders approving caps. Is a cap required?

A The FCC has stated that it believes that a 36 percent hard cap constitutes significant and meaningful incentive.

Q But have they stated that there absolutely has to be a cap?

A To my knowledge, I have not seen that statement.

Q Has the FCC ever approved a cap that was different from the cap Qwest proposed?

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A Yes
Q Or is proposing? In order to do an analysis of Qwest's profitability with the 30 percent -- excuse me, with the 36 percent payment, in order to determine if Qwest would remain profitable under that 36 percent cap, what sort of an analysis -- or what sort of information would the parties need to do that type of analysis?
A Well, first I would recommend that you evaluate the amount at risk for Qwest Corporation as a whole. And I can tell you because I've done the math that the 36 percent of 1999 net ARMIS return is an amount over $600 million for Qwest
Q What is it in South Dakota?
A It's 15 million
Q Okay
A And so that's where you'd need to start
Q Can you tell me what the major components of calculating profit are?
A The major components of calculating profit? You need to have total revenues You need to have expenses. You need to have an idea of what your taxes are. You need to have an idea of what your interest is. And, you know, depending on whether you want to put something away for depreciation or not might be helpful as well

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Q Okay And who would be better equipped to have that information, perform that type of analysis, Qwest or one of the intervening parties in this matter?
A For Qwest or for their own results?
Q For Qwest If we're trying to figure out if this 36 percent cap is appropriate, who is best equipped to perform that analysis? Who would have the information?
A Well --
Q On profit -- well, those things you just listed for me, profits --
A Your question is a bit confusing because of the word "appropriate" can be -- the 36 percent cap and a cap in general, once again, you have to look at the guidelines There's only one guideline and that's what the FCC has accepted and adopted and they've accepted it again and again and again.
Q Okay That's not my question. My question is in order to do an analysis, who's going to have the financial information regarding what you just listed for me, cost revenues, that sort of stuff, Qwest or one of the intervening parties here?
A Once again, your question is not real clear, but I will attempt to answer it. If you mean for our own products and services, Qwest as a normal part of its business with the regulators files reports with the regulators

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regarding its revenues and expenses
Qwest also in countless rate and price dockets, files cost and price information Qwest's revenues, Qwest's profits should not be a surprise to commissions or it should not be a secret Qwest is also required to file with the FCC all kinds of documents regarding its financials
I guess my answer is the data is readily available
Q The facilitator claims that other costs have been ignored by those opposing hard cap costs associated with the enforcement proceedings and a revocation of 271 approval Do you know, where did the facilitator get the information regarding the cost that's he's referring to?
A I think he was talking about them generally
Q In general?
A That's how I read it It was not my understanding that the facilitator had figures before him when he made that statement
Q Did Mr Antonuk state in his report that Qwest will make investments in equipment in which the expense is incurred over one year but the impact on its performance occurs over several years, the result is that Qwest won't know what its costs -- excuse me, "the

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result is Qwest won't know its cost for the years involved " Do you recall that?
A Yes
Q Does Qwest employ accountants?
A Yes.
Q Is it your opinion that those accountants understand the concepts of amortization and depreciation?
A Yeah I think generally they would
Q Given that Qwest has accounting staff who understand these concepts, do you agree with Mr Antonuk then that the item for which the expenses are incurred in one year can have continuing effects on performance in subsequent years presents an insurmountable problem for Qwest in calculating the annual marginal cost of providing a given level of service?
A Yes
Q Has Qwest ever had trouble in regulatory proceedings following FCC or Commission rules regarding depreciation or amortization?
A Please repeat that last question
Q Well, you said you agreed with Mr Antonuk
A Maybe I should explain why Maybe it obviates a need for your next question You would need to know, you would need to be able to match up the event with the penalty And you don't know that in advance You

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can't conduct marginal cost compliance unless you understand what the cost object is. And you have no cost objects before you before you have the nonconforming event take place. And so it's very difficult in advance to try to determine what that is.

If you spread those costs out over multiple years and you pay the penalty in one year and you pay the cost of compliance over multiple years, it becomes almost, well, in Mr. Antonuk's estimation, an impossible task to try to do. And I agree with him.

Q. Qwest embarked on the path of seeking 271 relief about four years ago; is that correct?

A. I think that's probably pretty close.

Q. Nebraska '98 would probably be about --

A. Actually, I think Montana beat Nebraska to the punch.

Q. Okay. When Qwest began that process, did it know its exact costs and exact benefits?

A. Its exact costs and benefits of what?

Q. Of seeking 271 relief.

A. I am not aware of it. I would assume that analyses were done on sizing, what the interLATA market looked like and what that meant, but I was not involved in those studies.

Q. But it would be unlikely they knew what its exact costs were going to be?

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A. I'm sorry?

Q. It's unlikely they knew the exact costs of these things and what it would take to get 271 readings; right?

A. I think at that point in time, they did not know what their costs would be.

Q. Did that uncertainty stop Qwest from proceeding?

A. Well, obviously I guess it hasn't. I think that that's been answered.

Q. In part of your testimony, and again I can point to page and line number if you would like me to, when you're talking about compliance, you state that compliance is not under Qwest's control. Whose control is it under?

MS. STANG: I'm sorry. Could I have the page and line for my benefit?

MS. CREMER: 13 and 5.

MS. STANG: Thank you.

A. Page 13.

Q. Yes.

A. And line 5.

Q. Yes.

A. Is this my rebuttal or my direct?

Q. I believe it was in your direct. Oh, no. It would be your rebuttal. I'm sorry.

A. Okay. Thanks.

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Q. Do you see it, "Mr. Stacy's claim that a cap is unjustified because what Qwest pays is entirely under Qwest's control is simply untrue"? Do you see that?

A. Yes, I do.

Q. If it's not under Qwest's control, whose control is it under?

A. Sometimes it's under the control of the whole regulatory regime that ends up adopting the performance measurements that Qwest is going to be measured by.

Q. But wasn't Qwest a part of that determination of what it was willing to comply with?

A. It was a part of the initial -- it was a part of the initial forum, the ROC forum that determined that. But on a going-forward basis, decisions about adding new measures may well be decided by state commissions over Qwest's objection. So to the extent that that happens, that can be out of Qwest's control.

Q. So are you telling this Commission that you're not sure that Qwest has the ability to comply?

A. I don't think I'm saying that.

Q. Okay. I thought that's what you were just saying. Are you telling us that Qwest can comply?

A. I believe Qwest will try to comply with whatever requirements are laid out for it. I can tell you right now, though, I mean, based on mock reports that we have

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nonconforming performance even though our overall performance levels may well be in the 95 to 99 percentile. The plans that we've structured are quite harsh, severe plans and we end up paying out. It doesn't mean that Qwest is doing anything dramatically wrong. All of the RBOCs that have filed to the FCC are making payments to CLECs under their performance assurance plans. That happens.

Q. Well, should we then wait until these performance measures are more properly designed before we go forward with this 271?

A. I don't think that's what I'm saying. I'm saying you ought to be prudent in decoding and defining what the plan looks like up front rather than making it unlimited financial liability for the company.

Q. If these standards were fixed more to Qwest's liking, would Qwest accept a higher cap or a removal of the cap?

MS. STANG: I'm going to object. I think Ms. Cremer has mischaracterized Mr. Reynolds' testimony with respect to the issue. He has stated a concern over new measurements and I don't believe that she is understanding that in terms of his last response, not with respect to the current PIDS that are in the PAP.

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MS AILTS WIEST: Objection overruled If she's mischaracterized it, he can correct it

Q Did Qwest agree to those standards with the thought that the commissions in the Qwest region would fall in line with Texas and all of those other states you listed like Oklahoma or whatever in the SBC region who set the payments so low that noncompliance could be treated as a cost of doing business?

A I don't think I can answer that question because I don't believe in the premise of it

Q Okay With respect to the Tier 2 payments, you acknowledge that those payments are designed purely to provide an additional incentive to Qwest to comply; that is correct?

A That is correct to the extent that those payments do not go to CLECs and they go to the state, they don't have a compensatory value

Q So an incentive could be either a positive or a negative, it can correct behavior one way or the other either by assessing someone -- either taking their money or giving them money, depending on their behavior, right?

A I agree

Q Okay And would you also agree with me that the most

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effective incentives are those that occur immediately?

A Not necessarily

Q And when is that -- can you give me an example of when it's ever been effective to have an incentive applied long after an infraction?

A Well, I think in areas where the rules are somewhat vague and unclear or the circumstances are difficult to determine exactly who's right and who's wrong, it may well warrant a little bit of time to allow the parties to sort out the issues. And situations like that, being real quick to the stick, so to speak, probably is not prudent behavior

Q Would you agree with me that human nature being what it is, most people pay their bills on time or early for the very purpose of not having to pay a late fee or in some cases you actually get a percentage off for having paid your bill early?

A Unfortunately because I'm in the world of finance, I can't agree with that.

Q Oh, well that's because you're in utility finance.

A I think that there are some people who are motivated by that, but there's an equal number that rely on --

Q Pay the late fee each and every month?

A Pay the late fee every month.

Q You obviously run with a different crowd than I do.

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What is the impact of Qwest's noncompliance for three months from the CLEC's perspective? If you were in Black Hills' shoes what's the impact of Qwest's noncompliance?

A Is that just a general question?

Q Yeah I mean, put yourself in their shoes How would you feel?

MS STANG: Well, I'm going to object to that question, calling for speculation

MS CREMER: Well, that doesn't even require a response on my part

It certainly is not speculative He is in the position of a BOC. I think he can put himself -- he's a local company He can put himself in the position of a competitor without a great stretch He's an expert witness

MS AILTS WIEST: Overruled

A I have absolutely no idea It would depend on the fact-specific issues I mean, they may be just fine There may be no customer damage There may be nothing involved with the customer In fact, they might not even know about it, you know, so once again we have to be fact specific I might add though that the three months you're talking about, if you're talking about the three-month Tier 2 trigger, the CLECs get paid

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Tier 1 payments go out every month So the CLECs don't know that.

Q Okay So if you're a CLEC provider and you had a new end-user and you promised them service on January 1 but you didn't provide them dial tone until April 1, is that customer likely to take service from you as the CLEC or -- well, is he likely to take service from you?

A I think customers generally are impacted by not meeting commitment dates I will admit to that But I can tell you that the way that the metrics work is that the CLECs could be promising their customer commitment dates beyond our intervals

And that can affect our metrics, strangely enough. We can end up having metrics that CLECs can affect, and we end up having to pay out on it because of the way they do business I mean, that once again goes back to the question of control over these metrics, is the way that they work, in some circumstances, Qwest doesn't have control over them

Q If that noncompliant behavior continues on the part of the BOC, CLECs would have a difficult time competing with Qwest in South Dakota, wouldn't they?

A Once again, I'd have to know --

Q Well --

A -- what the noncompliant behavior was

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Q. I applied service on January 1 and I get dial tone on April 1 and I'm the end user. And if it happens contractually, the CLEC is unable to provide that, is it likely that the CLEC is going to have a difficult time complying with Qwest?

MS. STANG: I'm going to object because that assumes quite a bit of facts not in evidence, and Mr. Reynolds has once again -- she's asking him to speculate once again, and I believe he answered her question already once.

MS. CREMER: Do you want a response?

MS. AILTS WIEST: Objection overruled. I think it is a hypothetical.

A. It would really -- once again, it would depend on the evidence and the facts specific to it. Suppose, for example, let me add to your hypothetical that Qwest was unable to provide its own customers with service until October 1 but it was giving the CLECs service on April 1 even though the orders came in in January. I mean, it's a costly type situation, and so CLECs may do real well in that situation.

MS. AILTS WIEST: At this point, we need to take a break, 15 minutes.

MS. CREMER: Okay.

(A short recess is taken)

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Q. (BY MS. CREMER) As part of your rebuttal testimony, you talk about stiff financial consequences. Does that have a bell, page 18, line 31? My question to that is just what amount would you consider a stiff financial consequence?

A. I'm sorry. What was the line number?

Q. Page 18, line 31. Are you in the rebuttal?

A. Yes.

Q. If noncompliance continues for a half a year, then they face the stiff financial consequences." Do you see that?

My question is what amount would you consider to be a stiff financial consequence?

A. You're asking me what I consider or what the facilitator considers?

Q. No. What do you consider, or how do you define a stiff financial consequence?

A. I believe that the -- I mean, in the context that this is in, it has to do with the escalated payments, Tier 1 payments. And I believe that, you know, an $800 payment for missing an order on a $20 service is a fairly stiff financial consequence.

Q. And then I assume you're on page 19, line 3. You refer to Mr. Antonuk's considered judgment on this question.

Can you tell me what portions of the record would support what you consider to be Mr. Antonuk's considered judgment?

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A. Yes. They are Mr. Inouye's testimony and I believe they're confidential and the exhibits are CTI-5 and they include estimated payments for various types of services under several metrics.

Q. And that's part of our record here today?

A. No. You asked me what this was referring to.

Q. Right.

A. In the multistate proceeding.

Q. Okay.

A. And you asked me what was in that record.

Q. Right.

A. So I'm telling you. And I don't know the answer to your second question whether it's in this record or not.

Q. Okay. That was the other part. Was that -- that exhibit you refer to, does that include an economic analysis?

A. I guess I don't know what you mean by "economic analysis."

Q. Did someone do an economic analysis on the escalation issue?

A. There is a table that is very similar to the table that's in my rebuttal affidavit on the prior page, and

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then there are also estimated payment levels based on the existing performance for the nine states that were involved in the multistate proceeding. And they include not only the type of information that's included in my confidential exhibit but also more specific information on individual metrics.

And so that's probably the best review of the type of information that's in that exhibit. I don't know what you mean by economic -- they're all economic analyses, but I don't know if that satisfies what your question was about.

Q. You state that Dr. Griffing should have offered concrete facts and economic studies in order to support his arguments regarding the appropriate incentive levels.

Did Qwest offer concrete facts and economic studies to support their argument regarding the payment levels supported by Qwest in this case?

A. Yes, it did, in CTI-5, in that document, in the multistate document. This is all referring to Dr. Griffing's input into the multistate proceeding.

And Qwest did offer, in fact, it encouraged the CLECs and Dr. Griffing and anybody else to come forward and refute Qwest's claim that its payments were way more than sufficient compensation.

Q Whose burden is it in these hearings to bring forth
evidence, studies and facts? Who bears the burden here?
A Well, I think Qwest does bear the burden of making its
case And I think what I just responded to your prior
question was that we bore that burden
We brought forward proof and we asked the
other parties to refute it if they could and they
didn't So I think we carried our burden
Q Has Qwest's performance to date been acceptable? Go
ahead
A Yes
Q I terminated part of the question because it went on
and on What I guess that I'm getting at is based on
their current performance, would they be making any
payments?
A Yes
Q Would it approach the 36 percent of revenues?
A I guess I don't know what you mean by "approach"
Q Is it at 34 percent?
A No
Q Is it at 35 percent?
A I don't know the exact percentage
Q Okay Would removing the cap cause Qwest's payments
under QPAP to rise if Qwest is complying with the
standards?

A No
Q What circumstances do cause Qwest's payments under QPAP
to rise if the cap is removed?
A What circumstances?
Q Right
A I thought you just asked me if it did
Q Right
A And I said no
Q Right But what would cause Qwest's payments under the
QPAP to rise if there were no cap? I mean, what --
would noncompliance be the only thing that's going to
cause -- at this point you said they would be making
some payments but nowhere near the 36 percent or you
don't know
So I guess my question is what would cause
that percentage to rise?
A Well, the 36 percent is a fixed percentage, but payment
levels are based on the actual payments in the tables
that I reviewed with the Commissioners earlier times
the number of nonconforming events
Q Right But if the cap were removed, I guess was the
hypothetical I was giving you If there were no cap,
my only question was what would cause Qwest to maybe
have to pay more than 36 percent, and in looking I
assume the answer would be noncompliance; is that

right?
A It's a combination of nonconforming occurrences times
payment levels or payments, prices Well, it isn't
prices, it's payments
Q On page 34 in this same exhibit, line 7, it states,
"The Texas plan requires mutual agreement to any
changes to existing performance measures and this
remedy plan, though it permits arbitration of new
measurements and their classifications" -- yeah "The
Qwest plan similarly provides changes shall not be made
without Qwest's agreement"
My question is has the FCC approved language,
that language, in any of the QPAPs?
A Which language are you referring to?
Q The language that Qwest is promoting here, that changes
shall not be made without Qwest's agreement?
A Well, I think our point is is that our language is very
similar to the mutual agreement, which would require
SBC's consent And so what we're saying is they're
very similar, and the FCC has approved the SBC language
again and again
Q My question is have they approved the language you're
promoting which changes shall not be made without --
A The exact same language?
Q The exact language

A No, they have not, to my knowledge
Q And just back to page 27 there, and it's lines 12
through 14 Actually I think it's in your original
A The same page?
Q Yeah. But I think it's in your original where you talk
about -- did you find it?
A Yes, I did.
Q "Qwest also believes that bill credits are necessary as
a matter of equity between Qwest and CLECs" Does
Qwest assess late payment fees on the CLECs?
A I don't know that. I think that would be a part of
their Interconnection Agreement.
Q Do you know who would know that, or it would just be
particular to each Interconnection Agreement?
A It would be particular to each Interconnection
Agreement And I can't give you a name right now who
would know that, somebody that is familiar, you know,
with the pricing that's included in the contracts.
Interconnection Agreements would know that
MS CREMER: Thank you That's all
I have
MS AILTS WIEST: Commissioners, do
you have any questions?
CHAIRMAN BURG: I have one You
said that you would adjust the payments under caps

so that all CLECs would receive a proportionate share; is that correct?

THE WITNESS: That's correct.

CHAIRMAN BURG: Would this mean that no payments could be made until the end of the year so you would know whether there needed to be a proration and how that should be prorated?

THE WITNESS: No. The way the payment equalization would take place -- and when I said we would be willing to do that, that's part of the multistate plan.

What happens is is that you keep a running monthly total, and when your monthly total reaches the monthly cap level -- for example, if you had a cap of $12 million, and in the third month you exceeded 3 million -- so you keep a running cumulative total -- you start to scale back payments to all CLECs proportionately so that you remain under the cap.

Now if in a subsequent month you don't pay out anywhere close to the cumulative level of the cap, you would make up. So, I mean, CLECs are not going to go without payments due.

But what it allows you to do is on a real-time basis continue to scale payments back. If it looks

like you're reaching the cap and if you're not reaching the cap, then you make up in those months you're not so that by the time you get to the end of the year -- let's say that there were payments due, you know, like a million dollars above the 10 million range that you had for a cap for a year. Everyone would have been scaled back to 90 percent of their payments. That is the algorithm that we work into our payment tables, such that all CLECs are made whole with the amounts of money that we pay out.

CHAIRMAN BURG: All CLECs are made whole with -- I don't know what you mean by "made whole."

THE WITNESS: That is that all CLECs receive an equal proportional share of the moneys made available.

CHAIRMAN BURG: They're not necessarily made whole according to the --

THE WITNESS: That's correct. Yeah. Up to the level of the cap.

CHAIRMAN BURG: But who would determine when you start scaling back? Is that a arbitrary decision?

THE WITNESS: No. It's part of the

algorithm. In fact, it's included in the Antonuk -- the John Antonuk multistate report. He includes an actual algorithm, and we have defined that in our multistate plan.

We explain exactly how that calculation is done. And it happens automatically. We would embed that in our financial systems, such that if we ever reached the cumulative monthly cap in any given month, we would start to factor it back.

Then in subsequent months if we happen to drop down below that cumulative level, we would go ahead and make up those payments to the CLEC so that, yo know, at any given month everyone is, you know, where they need to be.

CHAIRMAN BURG: This cap seems to be a pretty important point with practically all parties. I mean, you seem pretty concerned about not removing the cap and others have recommended that it did.

I'm just trying to visualize from a public-interest standpoint what kind of a situation we'd have if you were going to go above what that 36 percent cap level is.

THE WITNESS: I think quite honestly you'd be in pretty dire circumstances for Qwest. I

mean, if Qwest was at a level -- and I would imagine that if we had poor performance for one state, we probably -- because there's so much of our common systems across the region, if we had poor performance in all of our states, $600 million is a lot of money so --

CHAIRMAN BURG: Okay. And, of course, you're looking at it from Qwest's standpoint --

THE WITNESS: Yes.

CHAIRMAN BURG: -- we're saying that's a lot of money. We're saying that's a lot of mess from our standpoint, you know, as to -- I'm just trying to say, you know, once you get close to that incentive to upgrade service to me kind of deteriorates. You'd rather accept the cap than you would to have to make the expenses that it's going to cost to get there.

So I'm somewhat concerned of the incentives that are developed by having a cap.

THE WITNESS: Well, like I say, you know, $600 million is a lot of money, and that is -- you know, the FCC has found that those levels are significant and that they are meaningful incentives for these companies.

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You know, in fact, they even ruled that to require companies' open ended checkbooks is not really what they had in mind.

And so you know, for Qwest -- the way Qwest views this thing, unlimited financial liability is more or less unacceptable. I mean, that's a pretty tough pill for us to swallow that you would have just an open ended plan.

CHAIRMAN BURG: I understand that and I hope it never reaches that and I presume that it won't, but to me the kind of service qualities that we're going to have to make that happen are unacceptable. And there comes a point to me which I'd rather see a new company come in and take over than I would to continue to have the kinds of complaints and problems that we have if service quality was to such a point that you're even reaching the 36 percent, let alone unlimited.

But you could still stay in operation -- you know, that cap, you're saying that allows us to kind of keep operating, and I'm not sure that I think that's what the desirable situation is when we get to that from a public-interest standpoint.

THE WITNESS: Let me respond in another way. I have a strong belief that if Qwest

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got even a quarter of the way to a 36 percent cap, the FCC would be in the middle of an investigation quicker than you can bat your eyes.

They moved in to Bell Atlantic New York when they determined that there were some missing orders, and they did an immediate investigation. Bell Atlantic was nowhere close to having problems with their cap. In fact, they were a fraction of where their cap was at the time. It was not a cap issue, but it was a problem.

And I think the solace that I can give you is that you're not in this alone. You know, this is -- this is our -- this is what we believe is a necessary piece of our 271 that we're going to submit to the FCC as part of their public-interest test.

They're going to be very concerned if we're anywhere close. Like I say, it would surprise me if they allowed us to get to even a quarter of the cap before there was some significant investigations.

CHAIRMAN BURG: I basically agree with you, or at least I hope that's the situation.

That's why I'm a little puzzled by the problem of maintaining the cap. Because I hope it's

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irrelevant.

THE WITNESS: It's a little bit of a lightening rod. I think people -- it is one of the areas of the plan that I think everybody understands and so everybody tends to have an opinion. And there's been a lot of ideas offered on caps.

You know, we continue to come back, though, to the guidance given by the FCC, and we think that's reasonable. I mean, we're offering that they have approved before, and we think that's a prudent approach.

CHAIRMAN BURG: Sometimes you have more faith in the FCC than I do. That's all I have.

COMMISSIONER NELSON: I have a couple of questions. Can you explain to me again -- I might have been daydreaming here or something when you were explaining what the 36 percent is. And so I want to be sure what it's based on. I want to be sure I really understand what it's based on.

My understanding is it was based on the percent, 36 percent, of the unregulated revenue.

THE WITNESS: No.

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COMMISSIONER NELSON: From unregulated services.

THE WITNESS: Of revenue from regulated services.

COMMISSIONER NELSON: Oh, right. From regulated services.

THE WITNESS: Yeah. And we're going to check on that. At the break we started questioning, you know -- I realize that your regulation here in South Dakota may be different from some states and what you deem is regulated or unregulated.

We're going to check to find out what our calculations entail. We are basing it on the ARMIS Report, what we report to the ARMIS, which is a -- it's a report to the FCC of what typically constitutes regulated revenues, basic exchange services, interLATA toll, switched access services, features, things like that.

And I'm pretty sure that's what we've captured for South Dakota, even though you may have some eccentricities in the way you do regulation here, that is, you may have deregulated certain of those services. I believe we still report to ARMIS.

But I'm not going to sit here and swear to it

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today. We'll find that out, and we'll make that available to you.

COMMISSIONER NELSON: Okay. And you said that Qwest wouldn't be comfortable with an open ended checkbook, if you will, on those things so that's why you -- Qwest likes the cap.

But would you agree that basically the checkbook really wouldn't be open-ended because Qwest controls the checkbook?

I mean, there aren't any fines if you perform and make the standards that you've negotiated. So in that regard it's not an open-ended checkbook. You control the money.

THE WITNESS: I would definitely agree that, you know, Qwest through performance can reduce its financial liability to a certain extent.

I think we talked about how there are some circumstances that Qwest doesn't have total control over and -- but I wouldn't disagree with what you're saying, that we do have some control over that.

The cap, though, I think is important to us, as I said before, as a limit on our financial liability. It's been granted, companies from other states. And I think that in and of its own right

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is an important factor too in the way that we're viewing capital markets and what our plan looks like, vis-a-vis other companies' plans.

For example, when financial analysts are evaluating a Qwest corporation or Verizon and all of Verizon's performance assurance plans have 36 percent hard caps on them and Qwest all have open-ended caps, that's something potentially a financial analyst might take into account.

So, once again, there's kind of a fairness issue. And, like I say, the FCC has sort of laid a, you know, pathway of repeatedly approving those caps.

COMMISSIONER NELSON: I guess I've kind of been -- and maybe I've been around more and I've been in the legislature more than the FCC has been. It's been my experience serving on judiciary that generally speaking when we looked at caps on anything, like liability damages and stuff or malpractice and those kind of things, generally speaking it wasn't the public that benefited from those. And I'm not sure they're going to be benefiting from the ones we're looking at here.

Your definition of "significant" is different than mine. You told me you thought significant was

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an $800 payment on a $20 charge. Well, in South Dakota we have a $1,000 payment to consumers in this state on maybe a $5 charge. That's what the slamming penalty is in this state.

So when you compare that, it doesn't seem to me -- and it seems like to me it depends on who that customer is and how important it was that they get their phone. If you missed a date for establishing service for a business, I mean, that guy could have lost well over the $800. So, you know, what was significant to you was not necessarily significant to him.

And I've dealt with numerous complaints of late where people lost -- and although we don't allow those kind of damages in South Dakota right now, people lost a lot of money because somebody didn't make that $20 call or installation on the date that it was promised, you know. And there's no way to really calculate that.

So when I looked at what you proposed as remedies, they didn't really necessarily seem significant to me.

THE WITNESS: The only thing that I would respond to that is you have to also consider -- you know, I was looking at one payment

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There's a strong possibility -- and, once again, I would refer you to the record from the multistate. You know, we actually add up potential payments for multiple metrics.

A service order can garner payments for nonconforming performance. One service order can garner multiple payments. So we could end up paying multiple times the $800. I mean, it would be in the 2,500, $3,000 range for a $20 service.

So I didn't want to mislead you. It may not only be one payment. It would be multiple payments we're making on that service.

COMMISSIONER NELSON: I agree. The other question I have is like when you talked about this cap and the 36 percent, you said you picked the -- Qwest picked the 36 percent because it was a number that the FCC has approved in the past. Is that the rationale for the 36 percent?

THE WITNESS: That's correct. I mean, our logic there was that, you know, the FCC has set its guidelines on what is in the public interest and it's just a logical -- it seems to me it's the logical course for Qwest to follow to say, well, what is the guideline FCC and we read their orders and they say 36 percent constitutes

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significant incentive and we adopt that So it just makes sense that when we file we would use the same criteria

COMMISSIONER NELSON: Would you agree that the FCC said they would be making these 271 decisions on a state-by-state basis?

THE WITNESS: Yes

COMMISSIONER NELSON: So what might have been when they looked at the particulars in, let's say, Arizona or whatever if they picked 36 percent and I don't know what their cap is or whoever picked 36 percent. 36 percent seems to me to have been an arbitrary number.

It may or may not have been relevant to South Dakota It may not be relevant to Qwest in South Dakota

THE WITNESS: I don't disagree with you And I think I included in my testimony that, you know, I didn't see anything significantly different about South Dakota that would warrant a different cap, and I didn't see any of the other parties bring forward that we need another cap because South Dakota is so different

And so I maybe look at that the other way that we didn't see anything different about South Dakota

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to constitute you know, using a different cap level

COMMISSIONER NELSON: For me, the point is that in South -- 36 percent might have been relevant from the states that Qwest looked at before It may have been relevant for one of them or may have been relevant for all of them who adopted it Assuming they looked at it on a case-by-case basis, it might be But it may not be necessarily relevant in South Dakota just because it was a number -- I would feel better about it if you told me it was related to something other than it was an arbitrary number you picked out of a hat

THE WITNESS: Well, maybe I need to -- we picked it up from what another company filed with the FCC However, the FCC's interpretation of that number is to put one-third of your total revenues in a state at risk is significant and that it constituted the market that the competitors were seeking to gain in the first place And so that's the logic the FCC used in accepting the 36 percent in the first place

We did use another company's idea there only because they went before us and they sort of plowed the ground and the FCC made determinations as to

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what they thought was relevant and significant

But the FCC did use some rationale on why they believe that a third of your net revenues, you know was a significant amount and that it did relate to the market that the competitors were seeking

COMMISSIONER NELSON: I'm done Thank you

COMMISSIONER SAHR: Mr Reynolds, you talked about three sets of modifications to the PAP that Qwest would be willing to agree to?

THE WITNESS: Yes

COMMISSIONER SAHR: Would you be able to put those together in some type of exhibit or some type of document and make sure that we file it to the parties and to Commission staff and to the Commission so that we have the ability to analyze those and perhaps ask some questions about those still within this proceeding?

THE WITNESS: Yes We would be happy to do that

COMMISSIONER SAHR: Thank you And then I had a question about the cap and how it relates to damages Let's say for instance, I'm a LEC and I have let's say $300,000 in damages that

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I could actually prove through maybe a typical contract type case or tort type case and let's say with the relationship to the cap or based on what the Tier 1 lines would be in that case I would recover and it may, in fact, be higher than the 300,000, but let's say it was a situation where it would be less than the 300,000

Would I have any possibility to recover the difference between let's say it was 200,000 and I could show $300,000 in damages Would I have any ability to recover that additional $100,000 or am I just or is that completely out?

And realizing it could go the other way I mean could recover 500,000 for $300,000 in damages I don't know I'm just curious to how it relates to other claims you might be able to file under law

THE WITNESS: That's a good question and I'm tempted to defer it because it's more of a legal nature And possibly my attorney could answer it

But I would clarify, because I think we need to clarify for the record I think what you're asking is is that somehow in the CLEC payments were limited by the calculation process that I

was talking. That is, you were bumping up against the cap to instead of $300,000 that you were owed, we only paid you 200 in accordance with payment application, would you be able to seek the additional $100,000 because you felt you could prove that in a court of law that those were your actual damages.

COMMISSIONER SAHR: Right. That would be my hypothetical, and I'll direct it then to Ms. Stang.

MS. STANG: Thank you. We do treat -- just like the Texas plan, in fact, we adopted almost verbatim their language right out of their plan, treat the Tier 1 payments as liquidated damages.

So the answer to your question is if they were provisions, services that were covered by the PAP, we're talking about the same conduct, the same activity, we would treat them as liquidated damages and the payments, the Tier 1 payments, then are in settlement of those claims.

But our rationale for that is keep in mind that they are not having to ever prove any harm prior to that point and they are keeping then payments that maybe in the realm of, you know,

thousands and thousands of dollars when they have not established harm or may indeed have never incurred harm.

I mean, we could have missed an order by an hour and it could have triggered $1,000 payment for that order and they never had the harm nor did they have to ask for the money. So the concept is one of liquidated damages which is to say we're going to settle this issue for this particular kind of claim contractually.

COMMISSIONER SAHR: And I'll ask my own redirect question, an advantage of being up here.

The flip side of that is, just to make sure I understand how the system would work, there could be a case where the CLEC could recover a half a million dollars through the Tier 1 payments when it could only show $300,000 in damage.

MS. STANG: Right. And that's exactly right.

COMMISSIONER SAHR: Or zero damages.

MS. STANG: Right. Zero damages. And that's the reasonableness we think of treating them as liquidated damages. And, again, the FCC's approved that in every Texas plan, even most

recently and the plans they approved most recently, Missouri and Arkansas.

COMMISSIONER SAHR: That's the way I thought it worked. I just wanted to make sure.

THE WITNESS: The reason they did that, that satisfies one of their criteria to keeping this thing from turning into, you know, a litigation fun fest. You know, they essentially wanted self-executed payment and this would take care of itself rather than have everything end up in court.

MS. STANG: I should say yes, in fact it probably is a little bit different than traditional liquidated damages in that they don't have to go to court to seek it.

We make the payment, as Mr. Reynolds said. After just receiving the reports Mr. Williams talked about, we generate those reports one month. The next we make the payment. Keep me honest here. But we just make it unless we can prove one of those exceptions that are in the PAP.

COMMISSIONER SAHR: Thank you.

CHAIRMAN BURG: I have an additional question. What has been the agreement in the states where you've already gone through 271 as far

as whether they use the 1999 ARMIS or whether you're graduating it?

I'm a little confused as to -- did that offer to make it current year just -- was that proposed here, or has that been adopted someplace?

THE WITNESS: That's been brought up in almost every state, and we have sort of conceded it and said if you really want it, you can have it.

The state commissions, the recommendations that have come out to date I believe have been somewhat split. Some of the commissions have looked at it and said, you know, I'd rather have the fixed amount. You know, 1999 was a pretty good representative year, we're going to go for the fixed amount.

Others have ordered we institute the prior year ARMIS results.

CHAIRMAN BURG: Is that a pick-and-choose approach? Can we do something different, or are all states going to have to do the same thing?

THE WITNESS: No. That's -- you know, this is what the deliberations are about.

CHAIRMAN BURG: In other words, we could -- in our order or in our decision, we could

say that this is the procedure that will be used in South Dakota?

THE WITNESS: Yes

CHAIRMAN BURG: Thank you

MS AILTS WIEST: Any other questions from the Commissioners? Any redirect?

MS STANG: No redirect

MS AILTS WIEST: Thank you At this point, I believe Qwest has no more witnesses

MS HOBSON: We have no more direct witnesses

MS AILTS WIEST: Direct witnesses And currently we have AT&T was scheduled to be next and they're not available until Monday so it's my understanding that we will not be meeting tomorrow and we will meet again Monday morning

Did the Commission want to meet at 8:30 or 9:00 on Monday? Any preference? I don't know if we've told AT&T, but we can let them know.

CHAIRMAN BURG: Not really

COMMISSIONER NELSON: I don't care

MS AILTS WIEST: We'll meet at 8:30 on Monday

Was there anything else that we needed to discuss prior to that?

MS HOBSON: Not that I'm aware of

MS AILTS WIEST: Oh, as far as that exhibit, can you give that to us by tomorrow or not, that we requested, that Commissioner Sahr requested?

MS. STANG: I'm just having to think of -- I think that's possible because I think what we will provide you is a sample of the multistate that we've offered in another jurisdiction just so you get a sense of how we red-lined that -- or what that QPAP says as a result of Mr Antonuk's direction

And the other thing that we'll provide for you in the record so you can see the terms is the Utah stipulation that we filed with a cover pleading So I think that's doable.

MS. AILTS WIEST: Oh, okay.

COMMISSIONER SAHR: And I'm interested in the modifications so if you can give us the entire document, that's great. But just even the bullet point of the modifications would be useful too

MS STANG: A bullet point. That might be easier for you to see then.

THE WITNESS: Lynn, I already have

that So we can add that to the other two documents I have a bullet point of what the modifications were

MS STANG: Let me consult with my client after this We'll try to get you something by tomorrow If that looks like it's going to be too soon because we can't give you something we think is understandable we'll beg for Monday But I think we can do it tomorrow

COMMISSIONER SAHR: Okay Thanks

CHAIRMAN BURG: Let me ask a question along that line that did occur to me Mr Sahr asked for those changes

Are any of those changes different than what was in your rebuttal testimony to Mr Stacy?

MS STANG: Yes

CHAIRMAN BURG: Have you guys offered anything that was not included in that rebuttal?

MS STANG: Yes

CHAIRMAN BURG: Because I remember reading part of that and a lot of them were indicated

THE WITNESS: You're right

MS STANG: And I think what's

helpful about giving you the documentation is that you can see the language, and it's not just conceptual It shows you two different plans And I think what Mr Reynolds is saying, you know we're offering them sort of as this one or that one, but you can see that certain provisions are treated a little bit differently And if one is, you know, if its entirety acceptable, that's what we're trying to get to is resolution So I think that the language may be more helpful so that you won't have to wonder how does this actually look when it's written out

MS AILTS WIEST: Okay Thank you If that's all, we'll see you Monday morning at 8:30

STATE OF SOUTH DAKOTA)
:SS CERTIFICATE
COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 25th day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

STATE OF SOUTH DAKOTA)

:SS CERTIFICATE

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Cheri McComsey Wittler
Notary Public and
Registered Professional Reporter

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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE INVESTIGATION
INTO QWEST CORPORATION'S COMPLIANCE
WITH SECTION 271(c) OF THE TC01-0165
TELECOMMUNICATIONS ACT OF 1996

* *

Continued Transcript of Proceedings, Volume V
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BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION,
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ROBERT SAHR, COMMISSIONER

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TRANSCRIPT OF PROCEEDINGS, held in the above-entitled matter at the South Dakota State Capitol, Room 412, 500 East Capitol Avenue, Pierre, South Dakota, on the 29th day of April 2002, commencing at 8:30 o'clock a.m.

* *

I N D E X

Witness	Direct	Cross	Redirect	Recross
John Finnegan	21,88	34,68,81,96	85,91	--
Kenneth Wilson	110	147,178	--	--
Larry Toll				

Qwest Exhibit Nos.	M	O	R
5 - Confidential	6	6	6
79 - QPAP Proposals	10	10	10

AT&T Exhibit Nos.	M	O	R
1 - Colorado PUC Decision	7	21	21
2 - Decision of Motions for Modification and Clarification of the Colorado Performance Assurance Plan	8	21	21
3 - First Order on Group 1(a) Issues From Wyoming PSC	8	21	21
4 - Order For Denying Petition For Reconsideration and Setting Public Hearing and Procedure From Wyoming PUC	8	22	22
5 - Final Report on Qwest's Performance Assurance Plan and Responses to Comments Received from Preliminary Report on Montana PSC	8	22	22

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AT&T Exhibit Nos.	M	O	R
6 - 30th Supplemental Commission Order	8	21	21
7 - Nebraska PUC Commission Order	87	21	21
8 - Finnegan Testimony	22	22	22
9 - AT&T's Verified Comments Regarding Performance Data	22	22	22
10 - Affidavit on interconnection collocation, and rehal	110	110	110
11 - Affidavit on reciprocal compensation	110	110	110
12 - Affidavit on unbundled loops	110	110	110
13 - Affidavit on right-of-way, 911, and E911	110	110	110
14 - Affidavit on emerging services	110	110	110

(Exhibit 79 is sealed for confidentiality)

MS AILTS WIEST: At this point, I believe Thursday Qwest was finished with all their witnesses. The Commission had requested some documentation from Qwest, and we're currently making dockets. I noted that was sent by e-mail. So when we get those documents then -- were you going to -- I was going to mark them as exhibits. Was that all right with you guys?

MS HOBSON: Okay.

MS AILTS WIEST: Before we begin with AT&T, are there any motions that we need to discuss first?

MR RICHARDSON: Yes. Qwest has a Motion. Good morning, Commissioners. I'm William Richardson from Wilmer, Cutler & Pickering and I have provided the parties a copy of a Motion that we've filed this morning to admit into evidence as highly confidential Exhibit No. 5, which I think has been already reserved for this purpose, evidence which consists of data requests from AT&T with respect to Track A.

Qwest and AT&T have entered into an agreement respecting the confidentiality of this material and we would like to have that marked now as highly confidential Exhibit No. 5 and introduced into

evidence.

(Exhibit 5 is marked for identification)

MS AILTS WIEST: Are there any objections? We did reserve Exhibit No. 5 for this purpose.

If there are no objections, we will admit Exhibit 5.

Are there any other motions?

If not, I believe we can begin with AT&T's first witness.

MR WEIGLER: Thank you. I'm Steve Weigler, W-E-I-G-L-E-R, from AT&T, senior attorney, and my witness today is John Finnegan, F-I-N-N-E-G-A-N. Mr. Finnegan is the senior policy witness for AT&T and he will be testifying on the areas of Qwest's performance assurance plan and on Qwest's performance.

Before we begin our testimony, we have a series of exhibits that we marked last Monday through our Counsel, John Lovald. I think it was Jim Reinhardt (sic) who was here. Would it be appropriate to pass them out at this time? I ask the Commission --

MS AILTS WIEST: Are these not prefiled ones?

MR WEIGLER: Well, what most of them were were through statements of supplemental authority that we filed supplemental to our testimony. So they are part of the 271 record that we filed, part of supplemental testimony. I'm sorry, supplemental authority, but they haven't -- they're not attached to our testimony.

MS AILTS WIEST: Okay. You can just describe it. Go ahead. What was your first one?

MR WEIGLER: The first one is the Colorado Public Utilities Commission's decision on remand and other issues pertaining to the Colorado performance assurance plan.

MS AILTS WIEST: Would you like to mark that as Exhibit 1?

MR WEIGLER: Please. Thank you.

MS AILTS WIEST: AT&T Exhibit 1.

(Exhibit 1 is marked for identification)

MR WEIGLER: The second one is decision of motions for modification and clarification of the Colorado performance assurance plan. With the tribunal's permission, I'd mark that as AT&T Exhibit No. 2.

MS AILTS WIEST: Okay. That will

be Exhibit 2.

(Exhibit 2 is marked for identification)

MS AILTS WIEST: Go ahead.

MR WEIGLER: The third is the first order on Group 5(a) issues from the Wyoming Public Utilities Commission.

MS AILTS WIEST: That will be Exhibit 3.

(Exhibit 3 is marked for identification)

MS AILTS WIEST: Okay. What was #3?

MR WEIGLER: Exhibit 4 is order denying petition for reconsideration and setting public hearing and procedure from the Wyoming Public Utilities Commission.

(Exhibit 4 is marked for identification)

MS AILTS WIEST: Go ahead.

MR WEIGLER: Exhibit 5 is the final report on Qwest's performance assurance plan and responses to comments received on preliminary report from the Montana Public Service Commission.

(Exhibit 5 is marked for identification)

MS AILTS WIEST: Go ahead.

MR WEIGLER: And Exhibit 6 is the 30th supplemental order, Commission Order addressing Qwest's performance assurance plan from

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the Washington Utilities and Transportation Commission

(Exhibit 6 is marked for identification)

MR WEIGLER: There may be an Exhibit 7 It's right now in a UPS boxed being shipped and that would be fresh off the press as it's the Nebraska Public Utilities Commission order regarding Qwest's performance assurance plan

MR STEESE: Mr Weigler, are you going to mark that as Exhibit 7?

MR WEIGLER: Please And that will be my exhibits at this time

MS AILTS WIEST: Okay And those are the only exhibits we have so far for AT&T

MR WEIGLER: Right

MR GERDES: Do you have extras?

MR WEIGLER: I do For anyone needing copies of these exhibits, I could pass them out at this time

MS AILTS WIEST: Will you be referring to them in the testimony? Or would the parties like to have a copy of all of these exhibits right now?

MR GERDES: I would I thought I had them, but I don't

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MS AILTS WIEST: I don't think we have all of them I remember getting at least two of them, but I don't remember getting all of these

(Discussion off the record)

MS AILTS WIEST: At this point, we did receive at the request of the Commission last Thursday, we did request that Qwest submit their alternative QPAP proposals that came out during the hearing They did send an e-mail with those proposals last Friday, and we have now made copies of them I would propose to mark all of the -- the entire submission as Qwest Exhibit 79

(Exhibit 79 is marked for identification)

MS AILTS WIEST: Is there any problems with doing it that way?

What it consists of is the attached letter, and Exhibit A is actually entitled Exhibit K, performance assurance plan, and then attachment B, I'm sorry, attachment B is the stipulation between Qwest and I believe Utah and attached to that is another performance assurance plan with a different date of filing

So is there any objection to the admission at this time of Exhibit 79, Qwest Exhibit 79? If not, that will be admitted

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Now I believe we're ready to begin with AT&T's testimony

JOHN FINNEGAN

called as a witness, being first duly sworn in the above cause, testified under oath as follows

DIRECT EXAMINATION

BY MR WEIGLER

Q Good morning Mr Finnegan Will you please state your name for the record

A My name is John Finnegan, F as in Frank I-N-N-E-G-A-N

Q And Mr Finnegan, what is your address?

A My address is 1875 Lawrence Street, Denver, Colorado 80202

Q And what is your position?

A I'm a senior policy witness with AT&T

Q In your position did you have an opportunity to work on the Qwest performance assurance plan?

A Yes, I did

Q And before we go into what you did on the Qwest performance assurance plan could you please state what you do as a senior policy witness for AT&T and what your qualifications to do so are?

A I've been working for the last five years, actually since the Telecommunications Act, on performance measurements issues, operational support systems

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issues, the regional oversight committee or ROC OSS test, as well as the Qwest performance assurance plan I've been AT&T's primary representative on those efforts and discussions

Q How long have you been in the telecom industry?

A Coming up on 19 years

Q And through that period of time have you had -- what have you done in the telecom industry?

A I started off working for Western Electric the manufacturing side of AT&T at the time on supplier quality management issues And since then I've been in a variety of different positions In 1995 I was with AT&T in the organization that was first investigating the opportunities for local service market entry for business customers

Q Now could you describe your involvement in the Qwest performance assurance plan?

A Sure The Qwest performance assurance plan in some respects evolved from the regional oversight committee OSS test There were performance measurements developed through the ROC OSS test and the collaborative effort was working pretty well at the time and it was agreed and decided that since this collaboration had worked so well on the development of the performance measurements there would be some

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benefit to carrying that forward with the development of the performance assurance plan So the regional oversight committee. I believe it was sometime very early in the year 2000 when the efforts to collaboratively develop a performance assurance plan started

So I was involved from the very beginning first with the development of performance measurements and then in some of the discussions and policy type discussions on what a performance assurance plan should look like and what it should include

Q Mr Finnegan, how long did that process last?

A The first process, what's called the post entry performance plan or PEPP, P-E-P-P, started in January of 2000 and it ended in about March of 2001

Q Could you describe the circumstances on how it ended?

MR RICHARDSON: I'm going to object to this I'm not sure I understand what the purpose of this is We can certainly stipulate Mr Finnegan is qualified to testify about the QPAP but I think his direct testimony has been prepared already We don't think this is an opportunity to supplement his direct testimony

MS AILTS WIEST: I don't think this actually is even supplementing, is it?

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MR WEIGLER: No It's just giving a background or --

MS AILTS WIEST: The objection is overruled Go ahead.

Q Go ahead, Mr. Finnegan.

A I've lost my train of thought

Q The circumstances on how it ended.

A Oh, we had been discussing higher-level policy issues and some ideas on how key elements of the performance assurance plan should be handled. Qwest, I guess from my perspective, took objection to some of the positions some of the CLECs were taking, thought we had come far enough with respect to the development of the plan and said that's it, we're not going to negotiate it anymore, we'll take whatever agreements we have and work with that at the individual state level

The CLEC's position was we had reached what were some fairly significant agreements and it was slow and tedious, but we were making progress. And I believe I speak for all the CLECs when I say we were disappointed it ended early. For another one, two months we probably could have wrapped up a lot of issues, and it was disappointing that we didn't get that opportunity

Q What happened then?

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A What happened then for a period of oh probably two or three months, nothing was really happening officially Unofficially, we were making some efforts to try and get Qwest back to the negotiating table which eventually did happen Qwest agreed in a different forum to come back and in a multistate fashion talk about some of the areas where we had agreement and also some areas where we didn't have agreement

One difference was in the PEPP proceeding discussions we were focusing primarily on the higher-level issues and hadn't really gotten down into what I call the contract language With the second effort, the multistate effort led by the facilitator John Antonuk, we focused a lot more on the contract language, and that was more of an adversarial proceeding where there really wasn't any negotiation it was more put your testimony in send your witnesses for hearings And the facilitator John Antonuk based on that, came out with a facilitator's report on how he thought a performance assurance plan should look

Q After Antonuk, or Mr Antonuk came up drafted his Qwest performance plan or recommendation what happened in the process after that?

A John Antonuk filed his report at the individual states and at that point his participation ended From there

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the individual states took various actions Some requested additional comments, some their staff would file a report on how they would recommend changing the Antonuk report And that's been going on since -- I can't even remember when the Antonuk report came out but obviously in South Dakota and other states it's still going on

Q What states have come out with -- to your knowledge have come out with orders regarding the Qwest performance assurance plan?

A The state of Washington came out with an order Wyoming, Nebraska, Colorado -- I think they came out with an order I may be a little off Technically at least the hearing Commissioner came out with an order

Q If I could correct the record that's Exhibit 1 and a full Commission did come out with AT&T Exhibit 1?

A I believe those are the states that came out of the orders Oh, Idaho

Q And did you have an opportunity to review those orders?

A Yes, I did

Q Okay And did you have an opportunity to put together testimony -- oh, and one question Strike that

Does AT&T have some concerns about the QPAP as it stands as Qwest has proffered it?

A Yes AT&T has had several concerns with the QPAP as

Qwest has proffered it and we've expressed those concerns in testimony and comments throughout the states where it's subject for discussion

Q And in your review of the other commissions' orders, have those commissions also had concerns with the QPAP as it stands?

A I don't necessarily know what they were thinking, but through their actions they did change some fairly important areas of the QPAP. So I think it would be safe to say they wanted to change some of the recommendations that facilitator Antonuk had made

Q I note today Qwest has proffered an alternative QPAP based on a stipulation between the Utah advocacy staff, primarily Judith Hooper of that staff and Qwest

Could you describe what that stipulation involves, to your knowledge?

A The Utah advisory staff was the first state to come out with a recommendation on what to do with the Antonuk report. That was probably in October of 2001. It came to hearing in Utah. There were various aspects that Qwest was not happy with and expressed that dissatisfaction. Based on that dissatisfaction, the Utah Commission directed the advisory staff to negotiate with the parties to see if they could come to some collaborative agreement on changes to the plan

Qwest objected to the participation of the CLECs and it became, from our perspective, a private negotiation between the Utah staff and Qwest. Judith Hooper of the Utah staff would on occasion contact us and at a very high level describe what some of the ideas being bandied about in the discussions with Qwest were, but we are not permitted to see any of the actual language that was being discussed or see any of the actual language that Qwest was proposing

Based on that, there was a stipulation that came out, and the stipulation from AT&T's perspective had reversed some of the earlier decisions or recommendations that the Utah staff had made and from our perspective it turned what had been a fairly good recommendation in terms of providing Qwest with the appropriate incentives, significant and meaningful incentives, and greatly reduced those. So we have filed some comments the last couple of weeks or so taking objection to it

It is still a recommended stipulation or stipulation between the advisory staff and Qwest and it has not been acted upon yet by the Utah Commission

Q Is it advisory staff or advocacy staff?

A Advocacy staff.

Q And does the Utah stipulation at all address AT&T's

concerns with the Qwest performance assurance plan?

A I don't know if it necessarily addresses concerns as much as created concerns. We had thought it was a fairly good plan, didn't have that many overall concerns. There was certainly some things in the first recommendation that we didn't like, but we didn't push back very hard and say you needed to change things.

Now that the stipulation has come out, we've got some fairly significant concerns

Q Does your testimony address AT&T's concerns with the Qwest performance assurance plan?

A Yes

Q And do you affirm the truth and veracity of those comments?

A Yes

MR. WEIGLER: If I could ask that AT&T's testimony of John Finnegan regarding the Qwest performance assurance plan be marked as Exhibit 8

MS. AILTS WIEST: Exhibit what?

MR. WEIGLER: 8. We have a copy. This was prefiled so I don't think that I needed to bring copies

MS. CREMER: I was going to say it was prefiled. It should be in the Commission's

original file

MS. AILTS WIEST: Right. We just didn't bring up the whole original file

MR. WEIGLER: Is it okay if Mr. Finnegan works off that testimony if need be and maybe the court reporter shares and we'll give it to the court reporter after the testimony?

MS. AILTS WIEST: That's fine or else we can get up the original from our files downstairs, too

Q Now, Mr. Finnegan, in reviewing

MR. WEIGLER: I ask that Exhibit 8 be admitted into evidence

MS. AILTS WIEST: Are there any objections? That was just Exhibit 8?

MR. WEIGLER: Right

MS. AILTS WIEST: Hearing none, Exhibit 8 has been admitted

(Exhibit 8 is marked for identification)

Q Now, Mr. Finnegan, do you have Exhibits 1 through 7 in front of you?

A Yes

Q And you indicated before you had the opportunity to review Exhibit 1 through 7?

A Yes

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Q And did they form part of the basis of your testimony?
A They did, although at least the Washington decision had come out after I filed my testimony
Q Is it consistent with the principles of your testimony?
A Yes
Q And did you rely on the same concepts?
A Yes

MR WEIGLER: I move Exhibits 1 through 7 to be admitted into evidence

MS AILTS WIEST: Are there any objections to Exhibits 1 through 7? If not, they're admitted

MR WEIGLER: Just to note, Exhibit 7 is currently in the UPS truck

MS AILTS WIEST: Yes We will be getting that

MR WEIGLER: Hopefully

Q Mr Finnegan, could you describe issue by issue AT&T's issues with Qwest's performance assurance plan as it stands?
A Sure The first issue is what's called the escalation of payments And what had been agreed upon and had been done in other states such as Texas, Oklahoma, Kansas, Arkansas and Missouri was on a particular performance measurement if Qwest's performance was

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worse than the standard and that performance continued over several months, consecutive months of poor performance, the payment amounts got higher every month that they had consecutive performance So a payment amount may start at $50 and go up to $100, $150? $200, $250 for every miss of a performance measurement and it would factor in also the volume of the CLEC transactions.

What Qwest was proposing was what was called an escalation would stop at six months And after six months if the penalty amount or payment amount was $600 and they continue the poor performance through seven, eight, nine, ten, eleven consecutive months, that that payment amount would stay the same regardless of the additional months of consecutive poor performance

Our position was these payments represented an incentive to Qwest and it should provide them with an incentive to fix their performance. And if they are at the six-month level, finding that payment amount is not enough to change their behavior or change their actions such that they can get the performance back to where it should be. Rather than capping it at six months, it should escalate continuously until they did feel the pain enough where they decided we need to do something about this, let's fix our performance

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So one issue was continuous escalation of payments versus capping or stopping the escalation at six months Our position was to provide the proper incentive and let it continue to escalate past the six month period

In our comments we did the same discussion of how that should be done and what some language should look like

There was another issue something called the per occurrence scheme What the per occurrence scheme tries to do in calculating the performance payments that would be due is two things One, it tries to factor in how much volume a CLEC is doing So under the per occurrence scheme if I was a CLEC doing business in South Dakota and I had received poor performance in a given month and I had 1,000 transactions and there was a second CLEC that had received the same poor performance in that month but only had 200 transactions, what the per occurrence scheme recognizes is the CLEC that had 1,000 transactions' worth of poor performance should receive more payments out of the plan than the CLEC with 200 occurrences of poor performance So that's one thing it tries to do

The other thing it tries to do is factor in

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how bad the performance is It's called the severity that the per occurrence payments are a function of the severity of the miss So for instance, if the standard of performance is you have to install something in five days and Qwest installs it in 10 days for my CLEC and installs it in 20 days for another CLEC, both CLECs would have received substandard performance or longer than what the expected standard would be And what the per occurrence scheme says is the CLEC that got it in 20 days had a more severe miss of the standard, would receive more payments than the one that had gotten it in 10 days

So the per occurrence scheme and the payments due for poor performance are the function of both the volume of CLEC transactions and the severity of the miss

What Qwest had proposed in its performance plan was it wanted to cap the severity of the miss at essentially 100 percent So to give you a numerical example, and I hope I can get the math right, if the standard to install something was five days and Qwest installed it in 10 days, what you would do is take 10 days minus five days divided by five days and that ends up to be 100 percent They miss the performance standard by 100 percent

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Now if you had 15 days and the standard was five days, the performance of the CLEC was 15 days, you would take 15 days minus five days is 10 days divided by the five-day standard is 200 percent They missed it by 200 percent The performance was twice as bad as it was for the 10-day performance

What Qwest was proposing was cap that so the worst the severity could get was 100 percent So the CLEC in that example that had received services installed in 15 days would be due the same amount as the CLEC where Qwest had installed it in 10 days or five days sooner So there was no additional incentive once Qwest's performance had degraded to a certain point to do anything better

What we were proposing is there's no need to put a cap on the severity of the performance It's nothing more than trying to protect Qwest from its own poor performance And consistent with the notion of the per-occurrence scheme, the worse their performance gets, the more severe the deterioration from the performance standard, the higher the payment should be Qwest wants to cap it at 100 percent, and we are disagreeing with that

One of the issues that I'll just talk about briefly because it's more of a legal issue than

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something I'd be comfortable dealing with are the notions of exclusivity and offsets. What we are attempting to do is certainly there is the performance assurance plan and that takes care of where Qwest has poor performance. There's an agreement that when the performance gets poor, there will be X-amount of payments due. But that may not reflect what our actual damage was or it may not reflect some particularly egregious or intentional acts on the part of Qwest.

So what we've argued is if there's some other legal remedy out there to cover Qwest's performance, that should be available to us to pursue it if it's appropriate

There's some issues on when and under what conditions we could pursue those remedies Once we pursue those remedies, there is also a concept of what's called offset. Again, this is more of a legal material, but my layperson's understanding of offset is if we were to receive payments under the performance assurance plan and then seek some additional remedy through a state court, a district court, a federal court, some other court of competent jurisdiction, if the court awarded judgment for essentially the same performance, the court would be able to offset the amount of judgment by the payment we would have already

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received through the QPAP

The issue as I understand it, is rather than have the court of competent jurisdiction or appropriate jurisdiction determine the offset Qwest is saying they want the right unilaterally to offset the payments and we don't believe that's accurate and I'm sure that will come up more in briefs

One of the other issues we had was on ongoing audits One of the points the FCC has provided guidance on of a performance assurance plan is after the plan is put into effect it wants some reasonable assurances that the performance data on an ongoing basis will be accurate And that generally points to some sort of audit, some independent third party audit

As I understand it, and I should note I haven't seen what Qwest filed on Friday, but as I understand it, Qwest wants the unilateral right to choose the auditor We think that's not necessarily a good idea We'd rather have that Commission choose the auditor or participate in a multistate effort that would choose the auditor And I have to say A, B, C anybody but Qwest can choose the auditor But not to have Qwest with the unilateral right to select the auditor is something we would not be happy with

One of the other issues in audit can be

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audited Now there's two types of audits One is the independent third party audit, and that's generally been agreed to occur say every year every two years on a more infrequent basis

Another type of audit is a CLEC requested audit where sometime during the audit period when the independent third party has scheduled to do an audit, the CLEC may detect something that looks strange with the data that Qwest is reporting and the plan allows the CLEC to request an audit of performance measurements

What Qwest is trying to do is limit the number of performance measurements that a CLEC can look at In the performance plan itself I haven't counted it up but a ballpark estimate would be there are probably about 30 to 40 performance measurements that are covered in the performance assurance plan

Qwest is attempting to limit the number of measures that can be audited in the CLEC specific audit to, I believe, two per year If there's significant problems, two may not be enough There's an additional caveat that if there's another CLEC having that measure audited the first CLEC can't request that so they're attempting to restrict the opportunity for CLECs to request an audit

And there's also some concern with the scope of the third-party audit and what exactly the CLECs can and can't -- or what would be the scope of the audit, how many performance measurements and the depth of the audit.

One of the more key issues is change control that as much as we try and put smart folks on the plan to work it through, a lot of this is unplowed territory. And to think that the plan should never change is probably assuming too much as to the process that went into it.

We're going to learn things. We're going to find unexpected results. Qwest is going to find unexpected results. And there should be an ability to modify the plans as the years and months after Qwest has received 271 relief passes.

The problem is, from our perspective, Qwest is trying to assert unilateral change control or at least unilateral veto power on the plan. And just to give you an example, in the Texas plan when discussing change control there was language in there to the effect that -- list some specific elements of the plan and say these plan elements can't be changed unless there's mutual agreement of the parties.

In Qwest's PAP, the parts of the plan that

can be changed, Qwest says these parts cannot be changed without Qwest's approval. Well, that essentially gives Qwest veto power and allows them not only to veto any change that a CLEC or the Commission may want to make, but it also allows them to make unilateral changes to the plan.

With that language in there, we're concerned that they can pretty much water it down post entry. What we had been and have been arguing is that the Commission should maintain the authority to approve any changes to the plan. The Commission's going to be in the best position to be the neutral party, so to speak, acting in the best interest of the residents of South Dakota, and we'd much rather have the Commission involved in some of these decisions on what can be changed in the plan and what can't be changed in the plan than Qwest.

Now one of the elements that has been discussed is the regional oversight committee process has worked well in trying to get these types of issues resolved and addressed. And I'd just like to say that I think that's worked well. It could probably help South Dakota and the other states in the Qwest region, but I do recognize that ultimately the South Dakota Commission should have the ultimate say, even if there

were a recommended decision or [illegible] decided issue or a recommendation out of the regional oversight committee process on how a plan should change, that the Commission here should have the ultimate say on what goes and what doesn't. But the ROC process that we've been following in the OSS test can move the Commission up the learning curve and reduce the effort on everybody.

Those are pretty much the highlights of AT&T's concerns on Qwest's performance assurance plan.

Q Mr. Finnegan, could you clarify what occurred in Colorado as far as how it fits into the process with the rest of the states?

A Colorado was a little different. They started off as part of the ROC effort on the plan development and then right before it started, I believe it was December of 1999, they took off and decided to do their own effort. The Colorado Commission hired as a special master Professor Phillip Reiker from the University of Colorado. He's a law professor and he had done some work with the Department of Justice.

That process wasn't really a negotiation. It was a case where Professor Reiker would not actually get the parties together. Some time each of the parties, both some time from the parties and based on

their individual insights, he came out with a recommended performance assurance plan.

That performance assurance plan the parties had an opportunity to comment on. After they did comment on it there was a hearing commissioner Raymond Gifford, who reviewed the recommended Colorado performance assurance plan from Professor Reiker as well as the parties and he came up with some modifications to what Professor Reiker had developed and put out an order on that.

There were additional comments by the parties. There were some further changes made. But there were three issues that -- three or four issues that Qwest was fairly concerned with. They were escalation of the payments. The Colorado Commission went with pretty much a consensual escalation approach. There was an issue of change control. The Commission or the Hearing Examiner in Colorado went with what I call shared change control in some areas and ultimate authority of change control on -- for the Commission on other items.

The hearing commissioner had proposed that access would be included, performance requirements for special access service would be included in the scope of the plan. And there was an issue of what Qwest

could and could not change without Commission approval That was the fourth issue

There was some further discussion on those four issues, how to best implement them, and the Colorado Commission came out with a final -- I guess it would be a final order where they said here it is, we've heard all of your concerns, we like this plan, Qwest, say you are going to approve this plan or we are not going to recommend 271 approval to the FCC

Qwest, it was last week or the week before, did have one of their officers of their company say with a couple of minor changes, more clarifying changes, they could accept the Colorado PAP And I understand those changes were accepted

Q And, Mr Finnegan, is that the Colorado performance assurance plan that's located on Attachment A of Exhibit 1?

A Yes

Q Thank you Mr Finnegan, if you could conclude your testimony Do you have anything else?

A No

MR WEIGLER: I open AT&T's witness John Finnegan on QPAP for cross-examination

MS AILTS WIEST: Qwest, do you have any questions?

Wyoming Commission had ordered and Qwest had generally proffered language out of the Utah's stipulation as being consistent with that order

Q And I don't believe you have submitted the Idaho order have you?

A No

Q Was there a reason --

MR WEIGLER: I believe we submitted it as supplemental authority in this state

MR RICHARDSON: That's been filed

MR WEIGLER: I believe so If not we will be doing that The same with Nebraska

Q And of the issues you have discussed today, did the Idaho Commission agree with AT&T on any of them?

A I believe the Idaho Commission generally went with the Antonuk report with the exception of the change control issue But I would have to check the Idaho order

MR WEIGLER: I would say the Idaho order speaks for itself, and we will be submitting it Mr Finnegan speaking off the cuff but to the contrary, it went mostly with AT&T's issues minus one issue of exclusivity

MR RICHARDSON: I guess we can discuss that in the brief

MR WEIGLER: Please

MR RICHARDSON: Yes. Thank you

CROSS-EXAMINATION

BY MR RICHARDSON

Q Good morning, Mr Finnegan

A Good morning

Q Mr Finnegan, I'd just like to go through a couple of the exhibits briefly that involve some of the PAP orders from some of the other states that were introduced this morning

The Washington order, that's an interim order; is that correct?

A Yes There's a notice to the party that describes it as an interim order It's on page 75 And I don't have the exact exhibit number

Q I believe that's Exhibit AT&T 6.

A On AT&T 6, page 75, there's a notice to the party that describes how the Washington Utilities and Transportation Commission considers an interim order.

Q And with respect to Wyoming, it's true, is it not, that Qwest has recently, following the orders submitted here, made an additional filing in Wyoming alerting Wyoming to the Utah proposal?

A I'm generally aware of that I haven't seen the specific language But my understanding is Qwest had to make a filing that was compliant with what the

Q Finally with respect to the Colorado process, you describe the role that Professor Weiser played during that process I believe you said it was not a negotiation It was not a plan drafted by Qwest, is that correct?

A That's probably a fair statement It was an unusual process and there might be some Qwest language that ended up in the plan but I believe Professor Weiser would claim ownership of the document and authorship

Q And in that process, did Professor Weiser meet with the parties individually or collectively?

A For the most part, it was individually There may have been one joint meeting with AT&T and Qwest but my recollection of the process, it was primarily with Professor Weiser and some of the Colorado staff and the parties individually

Q And this process of meeting with the parties individually, wouldn't you agree that that was similar with the approach that the Utah advocacy staff recently took?

A I don't think it was as distant We had language more specific to the ideas that Professor Weiser was talking about I don't think I would characterize it as similar to the Utah process

Q But you did not meet primarily on the Colorado process

with Qwest when Qwest met with Professor Weiser and vice versa, is that correct?

A That's correct. But one fundamental difference is the Utah process produced a joint stipulation between the Utah advocacy staff and Qwest. And with Professor Weiser, it was his own document. So where in Utah Qwest appeared to be involved in the crafting of the stipulation, as you had pointed out on one of your previous questions, that opportunity was not available in Colorado, and that was generally a Professor Weiser document.

Q And Professor Weiser gave the parties an opportunity to comment on his draft, did he not?

A Yes.

Q And the Utah staff provided opportunities for all parties to comment on the stipulation; is that correct?

A We did have an opportunity to comment on the stipulation. So far, there's been no action on the part of the Commission to respond to those comments.

Q Mr. Finnegan, if we could address some of the issues in your written testimony about some of the provisions that you've been discussing this morning. If you would first turn to the so-called six-month cap. Do you have a copy of the QPAP as proposed in South Dakota?

A I don't have a copy of any of the QPAPs and I don't

know what -- given Qwest's latest filing, I don't know what their latest proposal would be.

Q I'm referring to the exhibit that's attached to Mr. Reynolds' direct testimony that you were responding to.

A I don't have a copy of that with me.

MS. AILTS WIEST: We should have a copy.

MR. SENGER: Number?

MS. AILTS WIEST: 78. Well, his direct was 77 so it's probably attached to his direct; is that correct? 77.

MS. FORNEY: Did you say it was attached to 77?

MS. AILTS WIEST: Yes, it is.

MR. RICHARDSON: It should be MSR QPAP 1 attached to his direct testimony.

A I have it in front of me now.

Q All right. If you could turn to page 5 in the table there, do you have that?

A Yes, I do.

Q Is that the table that reflects the so-called six-month cap on escalation?

A Yes.

Q Now on page 11 of your testimony, you refer to this as

a provision that is "in violation of the FCC's guidance." Isn't the table here identical to the table provided in the Texas plan?

A Yes.

Q And all five of the SBC plans, including the Texas plans, were approved by the FCC; is that correct?

A I don't know if it's fair to say they approved the plans. They were granted 271 relief in part with the plans you just referenced.

Q Those plans were attached to their filing, were they not?

A Yes.

Q And the parties had an opportunity to comment on them, did they not?

A Yes.

Q The Commission found no objection to them, did it?

A As far as I'm aware, they haven't.

Q And in its review following the Texas plan and the Kansas plan and the Oklahoma plan and the Arkansas plan and the Missouri plan, didn't the FCC refer to the fact that those subsequent plans were modeled on the Texas plan?

A I don't recall the specific references.

Q Are you familiar with the Utah stipulation that you've been referring to, the terms and conditions of that?

A Yes. Some parts more than others.

Q Isn't it true that the Utah stipulation would provide for greater escalation opportunities than the escalation plans in the Texas -- the escalation provision in the Texas plan?

A Technically, yes. But if I recall the Utah stipulation, the conditions under which the escalation would occur were so stringent that it was unlikely they would ever be triggered.

Q Do you have a copy of that?

A I do not.

MS. HOBSON: It's Exhibit 79.

Q Exhibit 79.

MR. WEIGLER: I have it. I could give it to him.

A Should I keep hold of Exhibit 77?

Q Yes. Could I direct your attention to page 23 of Exhibit 79 and specifically Section 16.3.

A I must not have the right exhibit. Mine seems to stop at page 8. This is the stipulation between advocacy staff and Qwest regarding the performance assurance plan.

MS. AILTS WIEST: It must not have the attachments. If you could find Exhibit 79.

A Page 23 you're referring me to?

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Q Yes. If you would look at page 23 Section 16 2 and Section 16 3, just take a minute to review those provisions

(Witness examines document)

A All right I've reviewed it

Q Okay Now in 16 2, the Utah stipulation says that at the time of the six-month review, the Commission may consider whether the Tier 1 payment for such measurements -- for any such measurements should continue to escalate beyond the six-month payment level identified in Table 2, which is what we've been discussing "The Commission shall base its decision on whether Qwest, through reasonable and prudent efforts could have limited such payment and whether continued escalation is in the public interest"

So doesn't this provision provide this Commission -- if it were to adopt this provision with the opportunity to determine whether escalation is in the public interest

A It does. The specific concern we have with it is it effectively places the burden of proof on the Commission that the Commission would have to determine that Qwest could have done something And our concern was the Commission's not going to be in the best position to determine what Qwest could have done and

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what was reasonable or prudent to have done in getting its performance back to where it should be

Q Isn't that the kind of thing the Commission is competent to address?

A The issue from my view is not the competency of the Commission It's more so the burden of proof issue This to me as a layperson looks like the Commission would have to figure out what Qwest could have done I'd rather see some language, and I don't have any specifics, in here to have Qwest have to prove something more so than have the Commission have to prove something

Q You would agree, would you not, that this provision is more generous to CLECs than the provision in the Texas plan?

A Generally speaking

Q Okay. Mr Finnegan, I'd like to move now to another area of your testimony which involves a so called Tier 1 trigger In Section 9 1 2 of the QPAP which is I believe, Exhibit 77, the attachment to that

A I was thrown I didn't know if I should be looking at my testimony or -- what page of Exhibit A was it?

Q This is page 10 And I would direct you to Section 9 1 2 Now that's the so-called three-consecutive-month trigger for Tier 2 payments is

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1 that?
2 A That's correct
3 Q Now Tier 2 market payments is the State of
4 South Dakota correct?
5 A There are payments in the State of South Dakota that's
6 correct
7 Q So this doesn't have any effect or consequence as it is
8 at CLECs correct?
9 A Subject to check I'd have to agree with
10 Q Now you say at page 18 of your testimony that, here
11 again "Qwest's proposal does not comport with the
12 FCC's guidance"
13 Now the FCC has accepted the plan with the
14 same feature is that correct?
15 A Well as I had testified before I don't know if they
16 accepted the plan per se There are 271 road guides
17 with stipulations that included these provisions
18 Q Three month triggers for Tier 2 payments?
19 A Yes
20 Q Now you say in your testimony on the Arizona
21 decision of this proceeding do you not?
22 A Yes
23 Q Isn't Mr Antonuk's proposal for a one or a two month
24 trigger more generous than the provision contained
25 in the plan? More generous to the state of the

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1 case
2 A Yes
3 Q And are you aware that Qwest has agreed in its
4 testimony that with its move for Arizona's proposal
5 with respect to the state of South Dakota
6 A No
7 Q I'd like to now move to the so called 100 percent cap
8 on payments Now this provision which is complicated
9 by me to understand but I understand the right
10 now has to do with a limited subset of the kinds of
11 payments received under the plan I have correct?
12 Applies in some situations but not others
13 A That's correct
14 Q And isn't this a situation where the payment mechanism
15 applies multiple times by a single CLEC
16 A It could under multiple plans I don't know the
17 order
18 Q But there is an averaging concept in this payment
19 mechanism is there not? In other words if a CLEC
20 has as you indicated 1,000 orders it would be an
21 averaging process you would look at the number of days
22 for each order and take an average calculation, would
23 you not?
24 A Yes
25 Q So if the impact of the average for that

severity factor built into that average?
A Yes I'd say that's a fair characterization
Q And this payment mechanism for multiple CLEC orders over an average interval period that we're talking about here, that factor is multiplied by every single one of those CLEC orders under the plan; is that correct?
A Yes
Q So, for example, if a CLEC were provided service that complied with the relevant standard for 999 of the orders but failed with respect to one of the orders, the average would be multiplied by all of 1.000, not one, is that correct?
A Not really because with the average measurement, there is not a standard applied per order The standard is applied to the average as a whole So it's really not accurate to say it would be a miss on 999 of the orders and one -- or, excuse me, met on 999 of the orders and a miss on one order

You miss the average or you make the average. There's no such thing as missing an average on an order-by-order basis That's contrary to the notion of an average
Q Well, if I could direct your attention to the Exhibit A to Exhibit 77 or the actual plan in South Dakota,

Section 8 2 1 2, Step 3
A Can you say that section again?
Q Sure 8 2 1 2, Step 3
A Okay
Q It says for each performance measurement, the total number of data points shall be multiplied by the percentage calculated in the previous step and the per occurrence dollar amounts in the Tier 1 table

So isn't it true that the percentage calculation that you've been discussing would be multiplied by the total number of data points, not just by the ones that flunk?
A That's correct There is multiplication by the total number of data points
Q Now have you reviewed Mr Reynolds' rebuttal testimony with respect to this issue?
A No, I have not
Q I'd like to direct your attention to that for a minute That would be Exhibit 78
A I have that
Q Okay If you would look at pages 25 to 26 of that, Mr Reynolds provides two examples of how this 100 percent cap works I'd like you to review that

(Witness examines document)
Q Just so you understand, I have only one question about

this, just for you to let us know whether you believe his calculations are correct
A You mean did he do the math correctly?
Q Yes Those are two hypotheticals about how the 100 percent cap might work, given CLEC misses of different severity And the point of his examples is to demonstrate that the greater the severity of a miss the greater the payment And he works through the examples using the formula of the provision that we've just discussed

And my only question to you is whether you agree that he's calculated the payments that would be required to be made under the plan assuming those facts?
A Well, his math is certainly correct I don't agree that, assuming the facts, that the facts are, indeed, correct As I talked about previously in one of my questions, he introduces a notion of a miss on an order for an average measurement And I think that's an inappropriate assumption to make

As I talked about before, you miss an average or you make an average on the whole You don't miss an average for two orders
Q Yeah I'm not asking you to confirm his characterization about the way this works I'm just

saying if these were the facts under the plan, would this be the correct payment that would be made?
A Well, one thing that he doesn't put in his assumptions is -- and I'm making an assumption of his assumptions -- that Qwest's performance has been deficient six or more months in arriving at that $800 payment level
Q That's correct That's the stepped up escalated six-month level And if this worked -- I accept your point on that
A So if you assume Qwest has had deficient performance on an average measurement for six or more months for a high classification of a measure, the payment amount yes, it would be $800 per occurrence, and his calculations in arriving at the payments based on that would be correct
Q Now here again, you say on page 27 of your testimony that Qwest departed from the Texas plan approved by the FCC

The 100 percent cap is now in the Texas plan is that correct?
A That was a modification made by the Texas PUC after the FCC had approved the plan or had granted SBC 271 relief with a plan that didn't have the cap
Q And the same 100 percent cap is contained in the

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Oklahoma, Missouri, and Arkansas plans; correct?
A Yes. And then what that tells me is the FCC has granted relief to plans that had and did not have the cap. It should also be noted that in the SBC-Ameritech merger agreement, the FCC had required SBC to have this calculation without the cap in there. And as I referenced in my testimony, there were some letters back and forth between SBC and the FCC where SBC was trying to get out from under the no-cap provision of the plan.

What the FCC eventually did was say we had this no cap in there for the right reasons; the more severe -- in this case SBC's performance, the higher the per occurrence amount should be. And it was immaterial to the FCC that the per-occurrence amounts could theoretically exceed the number of CLEC data points.

But what they did note is since the Texas Commission had, subsequent to the first plan that was attached to their application, put the cap in for reasons of administrative efficiency, they would allow the 100 percent cap to be into the merger agreement calculations as well.

So the FCC, if you want to take their history, has shown a preference for no cap on the

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severity for these interval measurements. They've since modified it, in my view, at the preference of the states.
Q Well, in the original Texas plan, the issue never came up, did it, because it wasn't in the plan?
A Right. Because they were following the FCC guidance that had existed in the SBC-Ameritech plan.
Q Isn't it true that in the footnote 13 51 of the New York order the FCC specifically rejected AT&T's argument that the plan did not take account of severity and misses?
A I don't recall that footnote.
Q Do you agree with Mr. Reynolds that Colorado, Montana, Wyoming, and the Arizona staff have rejected your position on this issue?
A Can you take them one by one?
Q Colorado.
A No. I wouldn't agree with Colorado. Colorado has a severity scheme, but they approach it in a different way. In Colorado, there's a provision in the plan that does cap the number of payment occurrences at 100 percent. But then in a different section, they put in a different form of escalation. They call it a multiplier. And that's essentially increasing the payment amounts for the more severe misses. It gets at

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the same result that you're going to pay more if you have a severe miss than they just go through it mathematically in a different way.
Q Are you talking about a multiplier based on the severity of the miss or the number of months of payments?
A A multiplier based on the severity of the miss. It's actually in the Colorado plan, Section 7.4, table 4. And I've got it -- I don't have the exhibit number, but it's decision on remand and other issues pertaining to the Colorado performance assurance plan. Can someone help me with that exhibit number?

MR. WEIGLER: Decision on remand, did you say, Mr. Finnegan? That's Exhibit 1.
A On Exhibit 1, if you turn to Attachment B, this is the Colorado performance assurance plan recommended SGAT language, and then turn to page 7, there is a -- for interval measures in the two columns to the right. What this is essentially doing is applying a multiplier more severe Qwest deviation from a standard on interval measures.
Q I'm sorry. You're saying which table?
A Table 4, page 7.
Q Okay. This is not a 100 percent -- or this is not an averaging mechanism, is it?

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A It is. What it's doing is saying if you've got really bad performance and the per occurrences would have been in excess of 100 percent or you would have had more payment occurrences than CLEC orders, what you do is cap that at the total number of CLEC orders, and once you have that total number of CLEC orders, and let's use our 1,000 example that we're talking about, depending on how far graded the CLEC performance for interval measures are, you multiply that payment total by this multiplier that can go up to as much as five times.

So if you want to look at it, it's sort of a different way of letting the payment occurrences based on a severe miss get as much as five times higher or 500 percent higher than the number of CLEC orders.

So long answer to a short question. I don't agree that Colorado rejected AT&T's notion of the more severe the miss, the higher the payment.

Montana, they did reject it, but in their most recent order they said they would consider it again once the six-month review came out. Nebraska was that in your list?
Q Wyoming.
A Wyoming. I don't think they mentioned it at all. My recollection is that didn't get mentioned.

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Q When you say it didn't get mentioned, it wasn't a feature of Mr Antonuk's report that they objected to, correct?
A Correct
Q Idaho?
A Idaho, I haven't looked at that plan in a long time. I don't recall one way or another
Q Are you familiar with the Idaho Commission's decision?
A Not as much as some of the other decisions
Q And the Arizona staff?
A The Arizona staff, I did review that last week, and they have the 100 percent cap in there
Q I'd like to now move to the so-called 36 percent cap issue on total annual payments that you address in your testimony Now in its exceptions from Mr Antonuk's position, AT&T endorsed a 44 percent cap; is that correct?
A That's correct
Q Now on page 31 of your testimony, if you would turn to that, Mr Finnegan, there you are referring to a so-called procedural cap approach adopted in Louisiana. And then on page 31 at the end of the second full paragraph you say, "as this Commission has found, this method is preferable because it allows an in depth review of the reasons for Qwest's poor performance

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before determining if and when an absolute cap should be set "
Where did this commission find that?
A The commission I was referring to was the Louisiana Commission
Q Okay And what was the Louisiana procedural cap?
MR WEIGLER: Do you want him to quote from the Louisiana order or ··
MR RICHARDSON: What was the number that was triggered?
MR WEIGLER: It was a 36 percent cap
A I don't recall a specific cap on that
Q Now would AT&T, based on the Louisiana proposal, would AT&T object to a cap that gave this Commission the authority to determine in the public interest whether the cap should be raised?
A Generally, under certain conditions
Q You touched briefly on the subject of liquidated damages and offset, and you say at page 39 of your testimony, "there are always damages when ILEC wholesale service is inadequate "
Mr Antonuk found that AT&T had not provided any evidence of such damages in the hearing in the multistate workshop. Is that correct?

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MR WEIGLER I'm going to object to that The order speaks for itself and that's not what he said
Q Has AT&T provided any evidence in this proceeding of that damage?
A We provided some comments and testimony in the multistate proceeding where we talked generally about the types of damages that could occur when a BOC or Qwest fails to perform We talk generally about lost revenue We talk generally about increased ··
Q I'm talking about in this proceeding Have you provided any evidence in this proceeding about that?
A Well, the reason I was hesitating is I don't know what has been filed or what record has been brought from the post entry performance plan process into this record
Q Isn't it true that in Minnesota, Qwest asked in a data request for such information and AT&T did not provide any?
MR WEIGLER: Objection That's to a wholesale service quality standard Docket It's not even on the same issue, and it's irrelevant to this proceeding
MS AILTS WIEST It is a different issue?
MR WEIGLER Yeah It's the

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wholesale service quality standards in Minnesota that they ··
MS AILTS WIEST Sustained then
Q Now in the absence of a liquidated damages provision, a CLEC proceeding, for example, under a contract theory would have to prove that in fact it was damaged by a miss of a performance standard; correct?
MR WEIGLER Objection, calls for a legal conclusion
MR RICHARDSON: Well, this is the subject of the witness's direct testimony
MS AILTS WIEST Yes Overruled
A Can you reask the question, please
Q Sure If there were not a liquidated damages provision applicable to the situation and the CLEC were proceeding under a contract theory, the CLEC would have to actually prove that it was in fact damaged by a missed performance standard; correct?
A That's my general understanding
Q And it would also have to demonstrate the amount of the damage; correct?
MR WEIGLER: I would ask for clarification of that question Establish to who and what? I mean, establish to this Commission, establish to a court of law? I would just ask for

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clarification

MS AILTS WIEST: Do you have a clarification?

Q. I'll restate the question. Proceeding under a contract theory, whether to the Commission or to a court, in the absence of a liquidated damages provision would the CLEC not have to show how much it was damaged in order to prevail?

A. I don't know.

Q. Does the QPAP bar tort or antitrust actions?

MR. WEIGLER: If you know, Mr. Finnegan.

A. I don't know. Is there a specific section you're thinking of?

Q. Yes. If you would look at Section 13.5.

MR. WEIGLER: As Mr. Finnegan indicated, this is an issue that's primarily legal. I mean, it's something that if you want me to testify to it. But it's a legal issue that lawyers have briefed traditionally in other commissions. We've argued this with lawyers in front of the commission because my witness is more of a policy analyst witness. It's true he understands the issue basically, but the concerns are fairly complicated legal issues that I understand a lot

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more than my policy witness as far as the areas of exclusivity offset.

So maybe he can answer the basic questions, but I've briefed it. I'm willing to brief it legally, I'm willing to argue it. But it's not something that my policy witness necessarily has a -- he doesn't have a law degree. The issues of liquidated damages offset the issues of -- what liquidated damages encompass under the law are clearly legal issues that either I would ask that we brief or I answer the questions.

MS. AILTS WIEST: I think the question, though, was a simple question, and if you know it, are those provisions in that SGAT?

A. Can you reference the section again because I'm not finding it.

Q. Section 13.5, the last sentence reads, "the applications of the assessments and damages provided for herein is not intended to foreclose other noncontractual legal and noncontractual regulatory claims and remedies that may be available to a CLEC."

A. And if I recall, your question dealt with antitrust and --

Q. Tort claims.

A. Tort claims. I don't know if antitrust or tort claims

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would be noncontractual legal or noncontractual regulatory.

MR. RICHARDSON: Well, I would think the appropriate thing would be to strike this part of the witness's testimony since counsel indicated he has no competence to testify in this area.

MR. WEIGLER: I'll adopt that part of the testimony.

MS. AILTS WIEST: Which part are we talking about?

MR. WEIGLER: Exclusivity and offset. It's something that I'm familiar with the legal issue more than my witness. My witness is familiar with it.

MR. RICHARDSON: Well, I don't know that we can switch horses midstream.

MR. WEIGLER: The issue here is not 13.5, it's 13.6, which also indicates that we would have to give up our remedy for antitrust and for any tort damages. So the issue here -- I think the counsel is pointing to the wrong section. If you want to ask my witness, our concern is on 14.6, would you take away what's listed in 13.5.

MR. RICHARDSON: We'd be happy to

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brief this for the Commission. I don't think it's probably worth pursuing any further.

MR. WEIGLER: I agree. It's also in Mr. Finnegan's testimony.

MR. RICHARDSON: I would again renew my Motion to strike it from his testimony.

MS. AILTS WIEST: You're going to have to give me a page and what you want to strike specifically.

MR. RICHARDSON: This is the Section G beginning on page 33 of his testimony and extends to page 46. This is the part that deals with liquidated damages and offset.

MS. AILTS WIEST: At this point, let's just take a break since it's 10:30. 15 minutes.

(A short recess is taken)

MS. AILTS WIEST: The Motion to strike is denied, and you may resume your cross-examination, Qwest.

Q. (BY MR. RICHARDSON) Mr. Finnegan, I'd like to move finally to the area of the six-month review process under the QPAP.

Now you had indicated earlier this morning that in AT&T's view, as I recall your testimony, that

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it was important to preserve a role for the Commission at the six-month review in light of the -- I believe the term was unplowed territory that we're dealing with here. Do you recall that testimony?

A Yes

Q And isn't the fact that we're dealing with unplowed territory here the exact same reason that Mr. Antonuk felt that it was appropriate to cap Qwest's potential liability annually and at the six-month escalation?

A I don't recall specifically his rationale for coming to those conclusions

Q Now I'd like to direct your attention to the Utah stipulation that's been filed by Qwest. Again, that's Exhibit 79. If you would look at page 22 of the red lined QPAP attached to that stipulation.

MR. WEIGLER: I'm going to object and put something on the record. The Utah stipulation was not part of Qwest's direct testimony filed in this case. It wasn't part of Mr. Finnegan's response and it wasn't part of Qwest's rebuttal. My understanding is Qwest filed it on Friday.

So to ask Mr. Finnegan to review a stipulation and ask questions about that stipulation, I realize Mr. Finnegan might have the knowledge of the

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stipulation independently, but to the extent he's asked questions on it, it really became part of this particular case on Friday and AT&T has not had the opportunity to review this in South Dakota specific terms.

With that being said, I don't mind allowing my witness to answer the questions proffered by Qwest, but this really isn't part of the South Dakota case. It was entered on Friday. And to ask Mr. Finnegan to opine on positions and how they relate to South Dakota, it doesn't seem appropriate at this time.

MR. RICHARDSON: Could I respond to that?

MS. AILTS WIEST: Go ahead.

MR. RICHARDSON: It seems to me a little inconsistent with the idea of providing us with four or five orders this morning from other states to which Qwest had no objection. These are things happening in other states. They're relevant to this Commission's consideration. The same is true of the Utah stipulation that's been in AT&T's possession for some time. They've commented on it in Utah. And it seems like what AT&T's position is is that we put in the provisions we like and we

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take out the ones we don't, similar to the provisions of the QPAP.

MS. AILTS WIEST: I think we'll go forward with this. I understand this was put in on Friday but to the extent Mr. Finnegan can answer the questions, just go ahead and ask them.

Q (BY MR. RICHARDSON) I'm sorry. I don't remember whether there was a question. What I was getting at was Section 16.1 on page 22 of the Utah stipulation.

Do you have that in front of you, Mr. Finnegan?

A Yes, I do.

Q Now this provision which deals with the six month review process does provide the Commission, in that case the Utah Commission, with the right to change control, I believe is your phrase, with respect to a number of measurement issues, does it not?

I'm just directing your attention, if this would help, to the phrase at the bottom of the page or the sentence, "any disputes regarding adding, deleting or modifying performance measurements shall be resolved in a proceeding before the Commission and subject to judicial review." The previous sentence is "any reclassification of performance measurements must be approved by Qwest."

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A Yeah. I see those two sentences. And I was reviewing both of those sentences in light of your question. So could you reask the question?

Q Well, the question is whether this provision would provide the state Commission, subject to judicial review, with the right of authority over adding, deleting, or modifying performance measurements in the six-month review?

A I'd have to think through it. Because what concerns me is the, "any reclassification of performance measurements must be approved by Qwest" language, and how that relates to a dispute.

In the first sentence if there's a statement that says it must be approved by Qwest and the second sentence is talking about disputes, those on its face seem at odds with one another.

Q Moving to the Colorado plan that you mentioned, isn't it true that in Professor Weiser's initial report he agreed with Qwest that changes to what he referred to as the basic architecture of the Colorado plan should not be subject to unilateral change by the Commission?

A I believe that's the case. It was where both parties had to agree. The Commission had to agree and Qwest had to agree.

MR. WEIGLER: Could you support with

a specific exhibit so my witness can clarify? Do you have a specific exhibit that you're asking about or are you just talking about an order that's not in the record?

MR. RICHARDSON: I think the witness understood the question

MR WEIGLER: Well, I'm not sure he did so I want to find out if there's something he can refer to so he can check it to see if --

Q Did you participate in Professor Weiser's process, Mr Finnegan?

A I've had discussions with Professor Weiser, yes

Q Did you review his initial decision?

A Yes

Q Now I'd like you to turn, if you would, to the most recent Colorado decision that you've introduced into the record this morning. It would be AT&T 1 Okay

This is the decision on remand, the most recent one adopted March 27, 2002

A Yes I have that Thank you

Q Okay If you would flip back to the very back of that, there is a red line -- and I'm looking at the change control provisions or the six month review provisions on page 24, Section 18 7

Do you have that?

A Yes.

Q Okay Now, as I understand this exhibit, the red lining or the underlining here reflects changes that were made to the Colorado PAP in light of the remand to Professor Weiser; is that correct?

A I believe that's correct

Q And in 18 7, there are certain provisions, 1 through 7, that are not eligible for change at the six-month review but only at the three- and six-year review, subject to Section 18 7 1; is that correct?

A Can you repeat your question just to make sure -- I was skimming through 18.7 and 18 7.1

Q Subject to 18.7.1, which I'll get to in a minute, Section 18.7 lists seven items that are eligible for change only at the three-year and the six-year review; correct?

A In 18 7, yes.

Q So, again, subject to 18.7 1, those would not be subject to review by the Colorado Commission at the six-month review; correct?

A Well, in 18 7 1, it's sort of strange language 18 7 says these areas will be eligible for change only at the thre- year and six-year reviews But then 18 7 1 appears to carve out an exception that says the Commission can have these areas changed at the

six-month review subject to judicial challenge

Q Well, it's not just judicial challenge is it Mr Finnegan? It's an automatic right of stay in a court if the Colorado Commission attempted to do that isn't that correct?

A Yes Automatic stay during the course of any judicial challenge up to the issuance of a final nonappealable order on the merits

Q And Item 7 on this list is any proposal that does not relate directly to measuring and/or providing payments for nondiscriminatory wholesale performance correct?

A That's what it says

MR RICHARDSON: Qwest has no further questions

MS AILTS WIEST: Before we go on I believe everybody has been given a copy of what we were going to mark as Exhibit 7 and that's the Nebraska order is that correct? And if the court reporter could mark that at this time That would be AT&T Exhibit 7

(Exhibit 7 is marked for identification)

MS AILTS WIEST: That's already been admitted into the record Mr Gerdes, do you have any questions?

MR RICHARDSON: Now that we have

this, could I just take a minute to review this to see if I have any questions about it?

MS AILTS WIEST: Go ahead We can -- if you have any questions - that's fine I was going to go on with cross while you were reviewing Is that fine?

MR RICHARDSON: Could I just have a couple of minutes to look at it?

MS AILTS WIEST: Okay

(Mr Richardson examines document)

MR RICHARDSON: No further questions Thank you

MS AILTS WIEST: Mr Gerdes do you have any questions?

CROSS EXAMINATION

BY MR GERDES

Q Good morning, Mr Finnegan

A Good morning

Q Very briefly do you understand Midcontinent to be a small-volume CLEC?

A I don't understand it but if you tell me that I'll accept it

Q Okay All right And would you agree with me that for small-volume CLECs it may be somewhat more important to deal with their customers as people rather than as

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simply numbers or averages? Would that be correct?
A I would hope that would be correct for large-volume CLECs as well as small-volume CLECs
Q And so one of Midcontinent's major concerns is making sure that Qwest, after they receive their 271 certification, has the same zeal in providing good performance and good service to Midcontinent as they do right now when they're applying for that certification
That would be a legitimate concern of a small volume CLEC, correct?
A Yes
Q Okay. And so when we're dealing with averages and statistics, one of the problems is that there's no face on those numbers from the standpoint of the small volume CLEC, correct?
A That's correct. There's also some statistical problems for low volume CLECs
Q Well, and, of course, I think it was Ambrose Bierce that said there are lies, damn lies, and statistics; correct?
A That's correct.
Q And so would it be fair to say that the QPAP is perhaps the one thing that hopefully will protect the small-volume CLECs -- or at least that's the purpose of it, to protect all CLECs, but from our standpoint,

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small-volume CLECs after 271 certification comes?
A Yes. After they've devoured the carrot of 271 relief, the QPAP will be the stick that remains
Q So this is something that's important for all CLECs but of course us small-volume CLECs view it as being very important
A Yes. And AT&T views this as very important as well
MR. GERDES: Okay. That's all I have. Thank you
MS. AILTS WIEST: Black Hills, do you have any questions?
MR. EVANS: No questions, thank you.
MS. AILTS WIEST: Commission staff?
MS. CREMER: No questions. Thank you
MS. AILTS WIEST: Do the Commissioners have any questions?
COMMISSIONER SAHR: Let me just check and see because I want to make sure that I've had my questions answered. I just want to review my notes for a minute.
All the questions that I had were answered during the cross-examination so I don't have any further questions
MS. AILTS WIEST: Do you have any

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redirect?
MR. WEIGLER: Very briefly.
REDIRECT EXAMINATION
BY MR. WEIGLER
Q Mr. Finnegan, do you have Exhibit 1 in front of you?
A Yes. This is the Colorado remand decision.
Q Let me just make sure I have it in front of me.
If you could please turn to Section 8.0 and specifically Section 8.2, is there a limit on -- a cap on escalation in Section 8.2 of the Colorado plan?
A No, there's not.
Q And did Qwest agree to the Colorado plan?
A Yes
Q Could you please turn to 18.7 of the Colorado plan, same exhibit, Exhibit 1.
A I have that.
Q Doesn't the language in the first sentence of 18.7 allow changes outside the six-year review, three-year and six-year review if the changes are highly exigent?
A Yes, it does.
MR. WEIGLER: No further questions.
MS. AILTS WIEST: Any further questions of this witness? Okay. Thank you.
COMMISSIONER SAHR: Actually I knew I had one question that didn't get answered. It

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was back to the issue of audits and you talked about whether or not audits should be limited, and I think we had a proposal -- one party's proposing two audits per year, is that correct?
THE WITNESS: I don't think AT&T is proposing two audits per year. I believe we'd be satisfied with one audit per year.
COMMISSIONER SAHR: And with the audits so they're driven by the CLECs, I think in that case we had talked about -- or you had discussed not having any sort of limitations on those audits -- what's your position -- here's my question. What is your position on the number of audits that would be appropriate for a CLEC to request during a particular year?
THE WITNESS: Just to clarify, the one audit per year I was talking about would be with the independent auditor. On the CLEC-requested audits, I don't think there should be any limitations on the number.
The way the provisions are generally set up and I can't recall the specific provision number but there's somewhat a loser-pays aspect. So if the CLECs were to request audits just to make Qwest jump through some hoops and there was no audit

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findings that pointed towards some problems in Qwest's data it would be the CLEC that would pay for the audit So there's not this incentive for the CLECs to have three four five six seven audits per year The CLECs are going to want to maintain it and they're only going to do it on a, quite frankly exceptional basis

The concern was not only was Qwest attempting to limit the number of audits but they were attempting to limit the number of performance measurements that could be subject to an audit And I believe Qwest's proposal was a CLEC could request two audits per year but only two performance measurements per audit So a CLEC would be limited to four performance measurements per year If there's 40 or so performance measurements, that's not a lot of the total performance measurements in the audit

So we would just as soon see a limit on the number of audits and no limit on the number of performance measurements Similar with the number of audits, if we were to say we want to do a CLEC requested audit on all of them and we didn't have good reason to do that, if it turned up there was no problem with Qwest, we would have to pay for

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it

So, again, there's mechanisms in there to keep the CLECs from abusing the audit provisions. And given those mechanisms exist, I don't believe it's necessary to limit the scope of the audit artificially

COMMISSIONER SAHR: You are correct, what I was thinking about and working through the issue in my mind were the CLEC-requested audits

Is there any particular state you could point us to where you think the language that's been adopted concerning audits is particularly strong -- I shouldn't use the word "strong," that you would point to as a good example of audit language?

THE WITNESS: Washington had some good audit language in their order. They haven't suggested the specific language yet I believe that will come in a compliance filing. But the approach they took and the decisions they made I think are a good model

COMMISSIONER SAHR: Thank you.

THE WITNESS: You're welcome

CHAIRMAN BURG: Can I follow up with one on that? You indicated I believe earlier something about that they said if a particular

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performance item was being audited in one state it could not be done in another? Was there something to this effect?

THE WITNESS: Yes

CHAIRMAN BURG: What's behind that? Can you explain that a little further and what your position is again?

THE WITNESS: I think what's behind it is Qwest is somewhat preparing for the worst case where they might have 13 states doing audits and multiple CLECs doing audits all at the same time putting a drain on their resources

I understand the concept of trying to coordinate some of these audits or try and avoid duplicative activity The way the language was crafted, though, it really doesn't provide sufficient protection

Let me give you an example Let's say Midcontinent has requested an audit of the OP-4 performance measurement, and then AT&T comes along and says unbeknownst to us that Midcontinent had made the request, we also want to audit the OP 4 performance measurement We would be precluded from doing so by the proposed Qwest language but there's no provision to even share the results of

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the Midcontinent audit

So it limits what the CLEC can do, but it doesn't have any fall back, so to speak, for the CLEC So while on the one hand Qwest is trying to limit the duplicative efforts and the number of audits that are going on, on the other hand there's no provision for the sharing of information, there's no provision for, say, taking the benefit of what Midcontinent found and bring it to AT&T

The other problem is it's, I believe limited in a given year So if, for instance, Midcontinent requests an audit in January and AT&T requests one in November or December, we wouldn't be able to do it pursuant to the Qwest provisions A lot can change in a year There may be some new issues coming up, but, again we'd be artificially limited So we're very concerned about the limiting language.

We're sympathetic and had we followed the collaborative effort a little farther, I think we could have come up with some language to balance those somewhat competing goals We efficiently did not have duplicative efforts but on the other hand to make sure that there is sharing of these efforts and that there's not undue restrictions on audits

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as processes in systems change

CHAIRMAN BURG: Using your example was it also their indication that if Midcontinent, for example, did an audit on the item that you were talking about in South Dakota, that AT&T could not request one in Colorado or New Mexico or Washington?

THE WITNESS: That was my understanding. At one point on the Qwest language, I don't know how or if they revised it in their Friday alternative approaches, but it seemed state specific too.

CHAIRMAN BURG: Do you see -- I think you mentioned something or something came up anyway in a discussion of whether there should be a continued ROC collaborative on things like this. Do you see a benefit to that?

THE WITNESS: I do see a benefit, particularly for the independent audit. The processes and systems that Qwest uses to collect, analyze, and report data are pretty much 14-state wide. And they don't have separate processes for South Dakota data than they do for New Mexico data. So I think there's a lot of advantage to having ROC involved in some of the independent

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audits.

As far as the CLEC specific, I think there still can be some collaboration, but for someone like Midcontinent or Black Hills Fibercom, they might not have the resources to key up with what's going on in ROC. And you want to be able to certainly use what's available in ROC but not use it to the exclusion of any other avenues that might or should be available to the smaller CLECs that are not participating in the ROC.

CHAIRMAN BURG: Let me take the example then you, as a larger CLEC, let's just say that you found a problem with one of the performance items in one state or because you talk about they will be using the same procedures in all 14, it might be likely that it would be occurring in others.

What approach would you see to doing that if you did it in one state and got a satisfactory approach, would that be adequate for a company like AT&T?

THE WITNESS: It generally has been. But some of the issues can be CLEC specific. And I'm going to be talking a little bit later on today about the data reconciliation. That was generally

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the approach we found. If we found a problem in one state, there was an assumption it carried through through all the states. If we didn't find a problem in one state, it was an assumption we wouldn't find that problem in the other states if we hadn't looked.

But that was going with the same, for our perspective, pretty much the same AT&T data. Because we don't have a lot of state specific data collection processes either but that's not to say there might be something unique about the way Midcontinent does something or the way Black Hills Fibercom does something different than AT&T but causes a problem.

So I think there is going to be some applicability of both positive findings in an audit and negative findings in an audit that will carry through state to state, but if a CLEC, whether it's a large or small CLEC, has reason to believe something got missed and there is a problem, there should also be that ability to pursue it without having heard, well, we just passed the OP audit five months ago so this is not right for discussion that Midcontinent may have an issue with the accuracy of the OP-4 data in South Dakota. I

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wouldn't want to see that.

CHAIRMAN BURG: So let me push this a little farther because I think this is an important issue. If one state brought up a performance audit on an issue, how would you see the collaborative working? Would it be publicized somehow that that audit request has been seen in any one state and is there any other states that have had similar requests or see some problems?

THE WITNESS: I think that would be a good approach. You'd certainly, to the extent it's relevant, have to protect some of the CLEC-specific requests, specific confidential or proprietary information. But a website where you can see a list of who's requested audits and what states and what performance measurements and what were the findings and whether there was a Qwest problem or not, I think that would help. And the very nature of having the website I think would help to minimize or reduce the number of CLEC-specific audit requests.

CHAIRMAN BURG: Could this -- in your mind, could this forego the request that you've had that because one CLEC brought an audit request on a particular item, then no other CLEC in

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that same state could do that? I think that's a proposal you had indicated Qwest wanted Would this be a way to sort of satisfy that?

THE WITNESS: I think it would satisfy it in part If the information was available and they got a clean bill of health or got a passing score on the audit, that would certainly influence us in whether or not we requested the audit

CHAIRMAN BURG: Especially if it were done on a multistate area; right?

THE WITNESS: Right

CHAIRMAN BURG: Okay That's all I have

MS AILTS WIEST: Okay Any further questions?

MR RICHARDSON: Could I just ask one follow up question on that?

MS AILTS WIEST: Go ahead

CROSS-EXAMINATION

BY MR RICHARDSON:

Q Mr Finnegan, could you read the last sentence of Section 15 4 of the QPAP in South Dakota? 77A I'm sorry

MS HOBSON: Attachment A to 77

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A 15 4 What was the question?

Q Just read the last sentence

A "Qwest agrees to inform Commission staff and all CLECs of the results of an audit "

MR RICHARDSON: Thank you

MS AILTS WIEST: Any redirect, Mr Weigler?

CHAIRMAN BURG: Let me ask a follow-up on that Would that also indicate, though, there would be a notice that there was even an audit occurring? I see a difference between getting only the results of an audit occurred and the fact of having any input into that audit as it occurred or being forestalled from doing an audit of your own because of it

THE WITNESS: And I think there's also a difference of what does it mean by "results " It could be as cryptic as we found no problems, we looked at this measure in this state and found no problems. You don't know what they investigated You don't know what the audit plan was You don't know what the audit scope was. That's certainly not contained in that last sentence that I read

And as you point out, if there was notice that

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somebody was thinking of doing an audit in South Dakota on a particular performance measurement, that could if it were noticed in advance, give CLECs an opportunity to say, you know, we think we got this problem so while you're doing it, take a look at this specific aspect of the performance measurement as well And that language is not in there

COMMISSIONER SAHR: Just so that I understand this and I'm following along with Chairman Burg's line of questioning, if a CLEC requests an audit, there's no requirement that notice needs to be given to the other CLECs at that point in time, is that correct?

THE WITNESS: I don't believe there is

COMMISSIONER SAHR: So if another CLEC, say, for instance either had identified a problem and just hadn't requested an audit or perhaps maybe didn't even understand the scope of a potential problem, if there's a cap on the number of audits requested by CLECs then they might be if the cap were met with the number of audit requests by other CLECs, then until they actually saw the results they would not have any opportunity

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to participate and then would also be foreclosed from requesting an audit themselves, is that correct? And that's a long question

THE WITNESS: That's my understanding I think one other issue too in this loser-pays type of CLEC-requested audit if Midcontinent requests an audit and then I call them up and say, you know, by the way, can you add these three or four items within the scope of the audit, if that factors into a decision of whether there's material problems with Qwest's performance results, they may end up paying the bill

There may be incentives for CLECs because of this loser pays to not be as cooperative with each other unless they were to do things such as agree to share the costs of the audit or agree to some percentage sharing That could affect how much CLECs are willing to cooperate with each other

COMMISSIONER SAHR: Has anyone proposed an approach that would involve notice of request for audits to the other CLECs?

THE WITNESS: I don't know if I've seen that specifically So I'd say no, no one has proposed that yet

COMMISSIONER SAHR: What would your

question be of that type of approach?

THE WITNESS: Generally I think it's a good idea. I don't like to waste efforts and have work done twice.

If there's a notice process such that folks might be able to influence the scope of the audit and what gets audited, I think that's a good thing. On the other end, there's some concerns about this loser pays provision and who's going to pay for the audit that is going to result in some details that would have to be worked out. But I generally agree and would support the notion of notice of CLEC requests for audits prior to the audit being conducted.

COMMISSIONER SAHR: I have no further questions.

COMMISSIONER NELSON: I guess I have a couple. Who are you requesting the audit -- who do you go -- if you're a CLEC and you want an audit, who are you going to ask for the audit?

THE WITNESS: Well, hopefully it will be the third party auditor that's been selected with some role by the Commission. So there will be a third party auditor identified that will do the larger yearly audits.

In the interim period, if a CLEC wanted to request an audit, I would view it as the same auditor that's going to be doing the larger yearly audits.

COMMISSIONER NELSON: So you're proposing that there be a yearly audit and the Commission hire somebody to do that or do it themselves, right?

THE WITNESS: Yes. Generally the approaches have been the Commission -- or our recommendation would be the Commission, with the advice and counsel of the CLECs and Qwest, assuming a multistate and some of the other state commissions, would select one auditor, and the auditor would be paid for out of the Tier 2 funds. These are the funds paid to the state. So it wouldn't come out of the Commission's pocket. It wouldn't come out of Qwest's pocket. It would come out of the Tier 2 funds. And through those Tier 2 funds, that would support the annual audit.

That same auditor would be used if there was a CLEC specific audit. And for a CLEC-specific audit, the CLEC would be responsible for the cost of the audit, unless it were demonstrated that after the audit there was a problem and the CLEC

was right, there was something and Qwest had to change and recalculate and it resulted in a different result, then Qwest would pay for it.

COMMISSIONER NELSON: Are you familiar with the Nebraska language dealing with the QPAPs and the audits?

THE WITNESS: Somewhat familiar.

COMMISSIONER NELSON: Well, maybe I didn't read it correctly but it's my understanding in Nebraska they decided that audits are always Qwest's responsibility because the QPAP exists for Qwest's benefit. And so they didn't buy into the loser-pay syndrome or whatever.

THE WITNESS: That's certainly an approach, but to give the devil its due, I think you need to have some sort of limit on the number and types of audits.

If it's a case where any CLEC can request an audit at any time and Qwest has to pay the bill, that's probably a little excessive. If -- and I'll have to review the language. If they're saying for the annual audits Qwest has to pay for that because it's their plan, I can understand that.

COMMISSIONER NELSON: I gather that it's at least my interpretation the Nebraska audit

language is that they have to convince the Commission that the audit's warranted and then if that Commission decides it's warranted, then they would be responsible for cost.

Is that your understanding? Because I might not have interpreted it appropriately.

THE WITNESS: Well, I think the issue might be you're more familiar with the language than I am. I don't recall that specific language in Nebraska.

COMMISSIONER NELSON: You don't remember reading it or you're just not familiar with it?

THE WITNESS: I don't remember reading it.

COMMISSIONER NELSON: Okay. Thank you.

MS. AILTS WIEST: Any other questions? If not, I believe Mr. Finnegan can go onto his next issue.

DIRECT EXAMINATION

BY MR. WEIGLER:

Q. Mr. Finnegan, your next issue that you're testifying on is Qwest's performance, and I believe you've given your qualifications to address that issue.

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Did you file testimony on that particular subject?
A Yes, I did.
Q And do you affirm the testimony is truthful and based on your knowledge gained from your workings in the help?
A Yes.
Q Okay.
MR. WEIGLER: I move Exhibit 10 -- I'm sorry. It's 9 into evidence, the testimony of John Finnegan related to Qwest's performance.
Q Do you have it titled?
A I don't have that in front of me so unfortunately I don't have the title.
MR. STEESE: Just to move this along, it's entitled AT&T's verified comments regarding performance data. And Qwest would have no objection to its admission.
MS. AILTS WIEST: I have Exhibit 9.
(Exhibit 9 is marked for identification)
Q Mr. Finnegan, could you summarize your testimony regarding Qwest's performance?
A Sure. With Qwest's performance, what we're relying upon is Qwest performance data. We went through a long process of developing the performance indicator

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definitions, or the PIDS.
PIDS are the yardsticks against which we're going to measure Qwest's performance against most of the Section 271 checklist items.
Our ideal state would be that the data speaks for itself, that with the standards in place when we review the data, we can see through their performance against those standards, whether they're passing or they're not passing a checklist item.
Unfortunately, we're not at that point yet. There's still some questions as to the accuracy of Qwest reported performance data. They're being retested by KPMG in the ROC OSS test. They're scheduled to come out with their findings sometime in mid to late May.
The problems that KPMG were finding got into some of the nuts and bolts of performance measurement reporting. A lot of the performance measurements measure how long does it take to do something. And there's usually a start time, there's a stop time, there are some conditions upon which Qwest is allowed to exclude an order from the calculations. There's conditions that exist under which Qwest is allowed to exclude time from an interval. Let's say it's a trouble ticket. Some customer's service is out of

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service. Qwest visits the customer to try to repair it and finds that the customer is not there. That's called no access time. So there's measurements where interval pieces are allowed to be excluded from the measurement.
What KPMG has found in its evaluation of its OSS performance results is that Qwest is not always accurately reporting or recording the start time for some of these interval measures. They're not always accurately recording the stop time. They're excluding orders they should not be excluding. They're excluding time they should not be excluding.
And based on some of this, Qwest has gone back and it is recalculating data and saying, yes, we made a mistake, KPMG, you're right, we do have some problems and because of what you've identified, we've got to go back and recalculate the data.
Qwest has claimed it's fixed the problems. It's produced some recalculated results that I believe came out in a set of performance results in mid April, mid to late April of this month. I don't know what exhibit number it is or whether Qwest has even submitted it as an exhibit.
But Qwest is claiming the problems that KPMG identified, these have all been fixed, our data changed

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from the data they presented in March and now there's new data, accurate data, that you can rely on in April.
Well, KPMG hasn't concluded that the fix produced the intended effect yet. And hopefully Qwest has fixed those problems, but until KPMG verifies that those problems have been fixed, we really shouldn't be spending all that much time on data. Because if they're recalculating it and let's say KPMG finds they haven't fixed the problems they've identified, we could be in May looking at more data that finally is accurate.
So what we're arguing is rather than make decisions now based on data that is still suspect in the eyes of KPMG, the auditor, the more prudent course of action would be wait until KPMG has finished their evaluation, wait until Qwest has responded, if necessary, to the results of that evaluation, and to do anything before that would be premature.
They're scheduled to come out with their findings somewhat coincidental with the OSS final report. So in terms of schedule, the OSS report will be contingent upon Qwest fixing these data problems and should they fix the data problems, a report will come out.
So they're linked. I guess what I'm trying

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to say is there's no rush to pass any judgment on the results. It's not going to move you along any faster to come to a conclusion on Qwest's ultimate compliance or noncompliance with 271. That's going to be waiting for the critical path item of the OSS test.

The South Dakota specific data I saw that Qwest had presented last week, what I call the blue charts. And one of the things you have to keep in mind with the blue charts is for whatever reason, there was not a lot of data in the state of South Dakota. It appeared the services that were primarily being provided by Qwest to CLECs in South Dakota were resale services for residents and unbundled loops.

Those are just a couple of the services that Qwest offers. And if you just looked at the South Dakota specific data, you're not going to have a lot to go by. Well, Qwest will use the blue charts to demonstrate they're compliant in the checklist items. What they failed to show is for a lot of these checklist items or the BOCs performance measurements, they're basing compliance on maybe one order or one transaction in four months. Or they're basing compliance on the absence of any data at all.

That's not a lot for the Commission to go by. You have to look past the blue charts to see what

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volume of South Dakota specific data there is. And for those checklist items such as unbundled dedicated interoffice transport or some of the unbundled loop services other than analog loops, there's not going to be a lot of South Dakota specific data to base your decisions on.

What I would recommend is in addition to the South Dakota specific data, you need to look at two other additional data points. One is the Qwest regional data. As we had talked about a little bit this morning or earlier today, a lot of Qwest processes are region specific. So if there's only one or two unbundled dedicated interoffice transport orders in four months in the state of South Dakota and you have to make a decision on whether or not they're compliant with Checklist Item 5, you're probably better off looking at the regional results where there may be 50 or 100 in a given month to get an indication of what Qwest can do at higher volumes.

The other data point you can look at on performance is the OSS test. For some services like the enhanced extended link, or EEL as it's affectionately known, there's not a lot of data even regionally yet. The ROC had anticipated some of these situations and had done process audits where in the

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absence of commercial data KPMG did an independent evaluation of what was Qwest's capability. If there were no CLECs buying this service, could KPMG find whether or not they were capable of providing this service if a CLEC had indeed requested it.

That's going to be part of the performance report and it's going to be some supplementary information that I think it's important for this Commission to consider when they're pondering the issue of checklist compliance or not.

That concludes my summary.

MR. WEIGLER: With that, I proffer Mr. Finnegan for cross-examination.

MS. AILTS WIEST: Do you want to move in Exhibit 9?

MR. WEIGLER: I thought I did that. I didn't?

MR. STEESE: Without objection.

MS. AILTS WIEST: Exhibit 9 has been offered and admitted.

Do you have extensive cross-examination?

MR. STEESE: I think we can finish in about 10 or 15 minutes.

MS. AILTS WIEST: Let's go forward.

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CROSS EXAMINATION

BY MR. STEESE:

Q. Mr. Finnegan, good morning.
A. Good morning.
Q. Can you describe AT&T's customer base in the local market in the state of South Dakota?
A. I believe we serve large business customers through a service called AT&T Digital Link where we are using special access circuits to get access to the specific customers. We are obtaining interconnection trunks to connect with our switch and we are using number portability.
Q. So the services that AT&T is using in the state of South Dakota that are on the 271 checklist are interconnection trunks and number portability?
A. Yes.
Q. No unbundled loops?
A. Not that I'm aware of.
Q. No unbundled dedicated interoffice transport, or UDIT?
A. Not that I'm aware of.
Q. No resale?
A. No resale.
Q. No subloops?
A. No subloops.
Q. Directory listings?

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A There might be some directory listings
Q What about UNE P or unbundled network element platform?
A No I don't believe so
Q So the issues that AT&T is raising with respect to those specific checklist items aren't based on any specific experience here in the state of South Dakota?
A The reason I'm pondering the question is some of the comments were based on the OSS test and there was some CLEC or there was some South Dakota specific activity
I'm not limiting my comment solely to AT&T's experience I'm including in my comments AT&T's experience as a participant in the ROC OSS test and the data efforts associated with that test
Q Do you have any idea of the volume of customers you have here the large business customers you've talked about?
A I don't know
Q Is it more than 10?
A I'd really it's not a lot I would be afraid to venture a guess on an over-under
Q Let's turn then to a few questions you kept your comments brief I'll keep my cross-examination brief
I took the summary of your testimony to

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basically be Commission, volumes matter in determining whether or not Qwest meets the checklist; correct?
A Yes
Q And when you look at what Qwest has presented to this Commission, it has not only presented the South Dakota specific testimony but also regional performance data; correct?
A That's correct But my concern is if you just look at the Qwest blue charts, it's not going to be evident where there's low volume or high volume for a particular checklist item And it can lead to a misimpression
Q That was not my question My question is in this particular case, Qwest also presented its regional performance data; isn't that true?
A I believe you do or did
Q And one of the places you recommend the Commission turn to determine whether Qwest meets 271 requirements is to its regional data; correct?
A Correct
Q And Qwest has presented its OSS testing information to this Commission, correct?
A I don't know what you mean by "OSS testing information"
Q The OSS test reports will be coming to this Commission

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from the ROC test
A Yeah But I had heard your question that you had provided or
Q I will rephrase Qwest has and/or will be continuing to be providing to this Commission information from the ROC OSS test?
A Yes
Q And that's the other place that you recommend this Commission look to determine whether or not Qwest meets the requirements of Section 271?
A Yes
Q And, in fact, a draft report did issue from KPMG I think you referenced it earlier that required some retesting, correct?
A That's correct
Q And didn't that report find and my numbers might be slightly off Correct them if they're inaccurate 504 of 512 testing requirements were met to date correct?
A I don't know I haven't gone through the counting
Q When you look at the OSS test, the OSS test itself actually has the pseudo-CLEC or Hewlett Packard submitting orders for particular items and Qwest actually provisions those in some instances correct?
A That's correct
Q Does it, however, provision or is Qwest provisioning

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in the OSS test interconnection trunks for the pseudo-CLEC?
A They're not physically provisioning but there was some process review
Q Are they provisioning collocation?
A No
Q Are they provisioning UDIT, or unbundled dedicated interoffice transport?
A No
Q What about 911 trunks?
A No
Q What about turning on NXXes?
A No
Q What about resold PBX, DSL, DSO, or DS-1?
A Resell PBX, I believe they were looking over the shoulder of CLECs as they placed those transactions and that was, if I recall, an exception a problem that was identified by KPMG that Qwest took as closed unresolved So in terms of your question, if you consider provisioning as KPMG looking over the shoulder of the CLEC, they did evaluate the provisioning
Q You didn't answer the question with respect to resold DSL, DSO, or DS-1
A I don't believe they either looked at the shoulder or looked over the shoulder or actually provisioned

resold DSL, DSO, or DS-1
Q So when you're looking at what KPMG is doing, you talk about the fact that they are actually going to be providing their own data for this Commission to evaluate There won't be data around several services that this Commission is being asked to look at; isn't that true?
A I missed the first part of your question Are you talking about from the OSS test?
Q Correct
A Yes That's correct
Q And so the data that this Commission will have to evaluate is the very data that Qwest has provided it with already, that being South Dakota specific data and regionally -- regional data as well; correct?
A That's correct, the data that it will have available But if the data is inaccurate, that's a problem And KPMG has not concluded that the data is accurate yet

So once KPMG has come to that conclusion, the answer to your question would be yes, hopefully by that time Qwest will have submitted some data that KPMG considers reliable
Q You're not suggesting, are you, that KPMG is evaluating data from orders that it never submitted or that were never submitted in the OSS test, are you?

A I'm not suggesting that What I'm suggesting is, for instance, one of the findings that KPMG has deals with when you're counting how long does it take to install something, do you count Saturday as a business day And what KPMG found was Qwest was not always counting that right Sometimes it should have counted it but it didn't Other times it didn't count it, but it should have.

While that problem is a fundamental problem, it can cut across multiple services So KPMG may find that they're miscounting or Qwest is miscounting intervals on 911 trunks or resold DSL, DSO, DS-1

If you're making these fundamental mistakes in how you're collecting data and you have these region-wide processes that are multistate in nature, the fact that you may find it on one particular service does not mean it doesn't exist on other services as well.
Q Let's talk about that. The exception that KPMG has outstanding is Exception 31 20; is that correct?
A That's correct
Q And you were on tag calls where Exception 31 20 was discussed; correct?
A That's correct
Q When it was discussed, it was discussed in relationship

to OP-4C, as in cat that affects UNE-P without a dispatch, residential resale without a dispatch and business resale without a dispatch -- that correct those three specific services?
A That was the genesis of the Exception 31 20
Q And you say that was the genesis of 31 20. Are you aware of KPMG even suggesting that 31 20 goes beyond OP 4C to other products and services?
A Well KPMG is pretty closed mouth about what they're doing On one of the tag calls -- in light of what had been in my view the genesis of the exception I asked them directly what services are you retesting for this issue And they declined to respond to that question

If it were as simple a matter of it's only these services that you mentioned -- then they could have responded But the fact that they don't leads me to believe there's a possibility they may have other services that they're currently being affected by this problem
Q You testified in the state of Washington last week didn't you?
A Yes, I did
Q And you testified that the reason why KPMG didn't provide that information was because of reasons of test blindness because Qwest is supposed to be blind to the

orders that the tester is submitting; correct?
A Yes That's part of it But as I said before, it was only those three services and it was just denying the obvious I don't think they would have denied the obvious
Q Are you aware of KPMG mentioning any other services that this Exception 31 20 deals with other than UNE-P residential resale, and business resale?
A Well, I think that gets to semantics They didn't mention any other services But they didn't say it was just those three services
Q The entire discussion of that call, however, focused on those three specific services, didn't it?
A The results that were being discussed were those three services
Q You mention that there are a number of products that don't have high volume here in the state of South Dakota, correct?
A Yes
Q There are two services, however, that you specifically mentioned had substantial volume, retail DS-0 resale and analog loops, correct?
A I don't know if I'd call it substantial They're in the neighborhood of five hundred orders completed in a month

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Q And would you agree that in addition to those two services, number portability also has substantial volume?
A That one I didn't look at specifically I don't recall the numbers
Q Can you look at Exhibit No 71? It's a huge document If I can carry it up there it would be much simpler One of the exhibits attached to Exhibit 70 is the February results from the state of South Dakota
Do you have the number portability data in front of you?
A Yes
Q And would you classify that as also having substantial volume?
A It has more volumes than the unbundled analog loops and business -- or excuse me residence resale
Q So when the Commission focuses its attention on checklist items, certainly Qwest must pass each item on the checklist is that correct?
A Are you asking me if they do pass or --
Q They must pass Qwest must establish that it meets each item on the checklist correct?
A That's correct
Q But the Commission certainly should be guided by the fact that when CLECs are ordering higher volumes in a

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particular area that's the area of need for CLECs in the state Is that a fair characterization?
A Yes
Q You said that KPMG has an outstanding exception for performance data, but Liberty Consulting also audited Qwest's performance measure; correct?
A That's correct
Q And also reconciled certain measures of Qwest with various CLECs, including AT&T; correct?
A Correct
Q And Liberty Consulting concluded in its audit that Qwest's performance measure generated accurate and reliable results, correct?
A That's correct But we have taken exception to how they reach some of those findings
Q In the audit?
A In the data reconciliation
Q I asked audit first
A Oh
Q So they concluded in the performance measurement audit that Qwest's processes generated accurate and reliable results; correct?
A Yes But with a caveat In that audit, they assumed the Qwest input data was accurate In assuming accurate Qwest input data Qwest; after an extended

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period of time, was finally able to convert that raw data into PID-compliant performance results
They didn't have the visibility or very much visibility into the accuracy of the raw data That visibility is and has been provided through two mechanisms One is the data reconciliation efforts that Liberty Consulting had undertaken where CLECs provided data, Qwest provided the CLEC data for the same transactions and Liberty compared the two to find out if there were any problems with how Qwest was calculating it
The other aspect is HP, as the pseudo CLEC in the OSS test, is sending transactions in, keeping track of score card on those orders, when did it get sent in when did we get a firm order confirmation, when did we complete And from those raw data points, they're producing their own independent calculation of the pseudo-CLEC results and then comparing that to Qwest results --
Q Mr Finnegan, your question is -- your answer is well beyond the scope of my question If you could just try to focus on my question, I'm sure your counsel on redirect can ask you any questions he thinks you need
On the data reconciliation effort, AT&T participated fully in that; correct?

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A Yes
Q And you asked Liberty to reconcile data for analog loops and interconnection trunks; correct?
A Yes
Q Qwest didn't limit AT&T in any way to the products it reconciled data for, did it?
A It did not
Q And when you look at the reconciliation effort by Liberty, while AT&T takes some issue with certain aspects of what Liberty did, Liberty did finish that work, didn't it?
A Liberty thinks it finished it I don't agree they finished it
Q And Liberty concluded that Qwest's data after the reconciliation is accurate and reliable, didn't it?
A Yes
MR STEESE That's all the questions I have
MS AILTS WIEST Mr Gerdes, do you have any questions?
MR GERDES No questions
MS AILTS WIEST Fibercom?
MR EVANS No questions Thank you
MS AILTS WIEST Commission staff?

MS CREMER We have no questions
MS AILTS WIEST. Commissioners?
COMMISSIONER NELSON: I have one question Had AT&T been here last week, you might have been exposed to this too On a repeated basis, I was told the performance assurance plans were voluntary And you agree that they are, right?
THE WITNESS I view it as --
COMMISSIONER NELSON They're not required by the 1996 Act, let's say that
THE WITNESS They're technically not required, but it seems to be a proforma or a de facto requirement It's voluntary with a gun to your head
COMMISSIONER NELSON: Well, would you agree, though, they weren't really required originally but now they probably are required after -- I can't think of any state that's granted 271 approval that really didn't require in the future at least performance assurance plans Would you agree?
THE WITNESS: Yes
COMMISSIONER NELSON: Okay Thank you

MS AILTS WIEST: Any other questions from the Commission? Any redirect?
MR WEIGLER: No
MS AILTS WIEST: Thank you, Mr Finnegan At this point, let's just go off the record and talk about scheduling
(Discussion off the record)
MS AILTS WIEST: We'll reconvene at 2 o'clock
(A lunch recess is taken until 2:00 p m)
MS AILTS WIEST: AT&T
MR WEIGLER: Thank you AT&T calls Kenneth Wilson.

KENNETH WILSON,

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MR WEIGLER:

Q Mr Wilson, will you please state your name for the record?
A My name is Kenneth Wilson
Q Your address?
A My business address is 970 11th Street, Boulder, Colorado
Q And what is your profession?

A I have degrees in electrical engineering from Oklahoma State University and the University of Illinois I've been in the telecommunications field for approximately 25 years
Q And have you had the opportunity to review various areas relating to Qwest's 271 entry into South Dakota?
A Yes I have
Q And what areas have you reviewed?
A I filed testimony in this case on quite a number of the checklist items interconnection, collocation, emerging services, reciprocal compensation, number portability, resale In fact, almost all the checklist items
Q Okay And do you have those various -- your various comments in front of you?
A Yes, I do
Q Okay And could we go through could you go through item by item just so we can have them marked to introduce into evidence?
A Just to say which ones they are?
Q Right Please
A Yes The first one would be my affidavit on interconnection and collocation and resale It's a document that we filed It's 47 pages long The second one is an affidavit on reciprocal compensation Checklist Item 13, and I believe that's 16 pages long

The third one is my affidavit on unbundled loops and local number portability and that affidavit is 70 pages long The next one is my affidavit on rights-of-way and 911 E911 and that affidavit is 25 pages long And then the last document on emerging services is actually verified comments they've verified That document is 40 pages long
MR WEIGLER If we could in order mark the affidavit on interconnection collocation and retail as Exhibit 10, the affidavit on reciprocal compensation as Exhibit 11 the affidavit on unbundled loops and LNP -- is that rights-of-way and 911 and E911 in the same document, Ken?
A Yes, it is
MS HOBSON That's not what he said
MR WEIGLER Oh unbundled loops and LNP is a separate exhibit, right So unbundled loops and LNP 12 rights of way and 911 and E911 is Exhibit 13, and emerging services is Exhibit 14 And AT&T moves these affidavits
Q Before I do that, Mr Wilson have you had the opportunity to review the affidavit that you prepared?
A Yes I have worked on this material for many years

now
Q Okay Is it based on your knowledge?
A Yes, it is
Q Okay Is it truthful to the best of your knowledge?
A Yes, it is

MR WEIGLER: AT&T moves Exhibits 10 through 14 into evidence

MS AILTS WIEST: Are there any objections to Exhibits 10 through 14?

MR CATTANACH: No objection

MS AILTS WIEST: If not, they're admitted and I'll give the court reporter a chance to mark those

(Exhibits 10 through 14 marked for identification)

MS AILTS WIEST: Okay You may proceed

MR WEIGLER: With the permission of the Commission, Mr Wilson will go through all areas of Exhibits 10 through 13 instead of taking them piecemeal and then by cross-examination if that's appropriate

MS AILTS WIEST: Is there any objection? If not, go ahead

Q Okay Thank you Mr Wilson, could you please summarize your testimony?

A I will briefly go through these one at a time just hitting some high points so as to not take too much of the valuable time here

First let me look at Exhibit No 10, which is AT&T's position on interconnection, collocation, and resale. Interconnection is really the lifeblood of competitors getting into the market with facilities in South Dakota So we have to look very closely at what Qwest is offering in terms of interconnection

AT&T has brought forth a number of points that are still in dispute Though we have settled on many, many issues with Qwest, there are still some issues that we need the Commission to rule on

The first is indemnity If Qwest fails to provide interconnection in a way that allows the CLECs to serve its customers, the CLEC may have great problems with its own customers And the provisions that we're asking for in this section would call Qwest to indemnify us in case our customers have problems due to Qwest's failure to provide adequate interconnection trunking

The secondary that we bring forth in interconnection is on entrance facilities These are the trunks that go from the CLEC switch to the Qwest switch And the issue here is Qwest has really broken

the trunking into two pieces They require the CLEC to first get an entrance facility piece from the CLEC switch to the nearest Qwest switch and then they require direct trunk transport from that switch to wherever the CLEC wants to take the traffic And we think that this should be one piece and not two pieces So the issues surrounding that have to do with how Qwest is breaking the trunking into two pieces where more efficiently and cost effectively it should be considered one piece

The next issue that I bring forth is on charges that Qwest levies on CLECs within the Qwest central office And these are called EICT These are merely jumpers within the building, within the central office, and we think that it is not right for Qwest to charge the CLECs for these facilities because the CLECs in the CLEC office have the same facilities So we think that it is more proper for neither the CLEC to charge Qwest for the same thing nor for Qwest to charge the CLEC So we would ask that the Commission disallow Qwest charging for these jumpers within the central office

The next issue that I bring forth is the CLEC has considerable distance between the CLEC switch and a Qwest switch Qwest has said that it will only

build facilities 50 miles to the Qwest switch when Qwest is out of capacity

It's very clear in the FCC's orders that Qwest has the obligation to build interconnection trunk facilities from the Qwest offices to the CLEC office I can find nowhere in the FCC's rules that would permit Qwest to force the CLEC to build past the 50 mile limit So we ask this Commission to do away with this 50 mile limit on building interconnection facilities

The next issue that I would mention in the forecasting of interconnection trunks Qwest has proposed some provisions that would require the CLEC to in a sense pay back Qwest if facilities don't get used when Qwest builds them based on a CLEC forecast And we think that this isn't correct because the CLEC could be forced to abandon some customers if Qwest wins them back for example And it would not be right for the CLEC to have to pay back for facilities when potentially Qwest could have won back customers and caused the traffic to leave the CLEC before it had a chance to start providing service

The next issue in interconnection is a provision that Qwest has in the SGAT to take back trunks from the CLEC Qwest is concerned as the CLECs are, about efficient use of trunking However with a

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new business like the CLECs have when they come into a state, it's important to allow excess trunking in case -- in the cases where the CLEC has new customers coming on line. So we feel that the provision that Qwest is asking for is unreasonable given the newness of the CLEC's business.

The last issue in interconnection is the requirement in the SGAT for separate trunk groups for long distance and local service. Qwest has the ability to take these calls in single trunks and to separate them in its switch and we are, in fact, doing that in a number of states but they have not permit us to do that in South Dakota and some of the other states. So we think for efficient trunk usage that the Commission should allow us to have combined traffic on these trunks.

So that's a very brief summary of my affidavit on interconnection. Next, a few issues on collocation.

One concern that the CLECs have had is that Qwest turns their collocation offerings into products. And when they do that, there are sometimes differences between the product offering and the practices that Qwest associates with those products and the SGAT where we have really defined what Qwest must give to the

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CLECs. So we've provided some examples and some issues there around the productization of the collocation offerings that Qwest has in the SGAT.

The second issue on collocation is where Qwest is calling, at a skyscraper or an apartment building where the CLEC may need to bring its facilities right to the building, Qwest is calling that collocation. And to my mind, collocation is when you go into a Qwest building you want to put your equipment there and we have the rules that are associated with that.

When I go to a terminal or just a panel at an apartment building and I need to just hook my wires up, I don't think that should be called collocation. So this is one issue that has been in dispute with Qwest and we're asking the Commission to rule on.

The next issue on collocation is regarding collocation intervals. Qwest has extended some of the intervals for gaining collocation we think in unreasonable ways. And especially in remote collocation situations, we think the intervals are excessive and we would like the Commission to look at the overall time interval and make it as short as possible for the CLECs to gain various types of collocation.

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The fourth issue on collocation is regarding the regeneration of signals within the Qwest central office. If Qwest requires the CLECs to put their equipment, say, in a corner of a basement in the central office, it may necessitate trunking within the office between the CLEC's equipment and, say, unbundled loops to be regenerated. And we feel that when regeneration is required within a central office like that, that the CLECs should not have to pay for it because the regeneration is usually necessitated by the fact that the CLEC did not get the best space in the office. We may be relegated to a distant corner where it requires a longer link to get to the equipment.

The last issue on collocation is regarding pricing of several types of collocation. Qwest still has some of the collocation elements in some types of collocation on an individual case basis, ICB. And what that means is we have no real price that we can look at to see how much will it cost to do this type of collocation. So we're requesting that Qwest provide actual costs for CLECs on those situations so that we will know how much it will cost us to go into that facility.

The third set of issues in Exhibit 10 is resale. And while there are not very many issues left

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in this resale section, there are two which to we would like to draw your attention. The first is on service quality indemnity. And even though there are performance measures and potential penalties that I believe this Commission will rule on, we feel that the CLEC should get the full benefit -- and the CLEC's customers should get the full benefit of any wholesale or retail standards and penalties that Qwest might incur, that the CLEC should get those same types of reimbursements from Qwest if the resale service that we're giving our customers causes the CLEC to have to pay its retail customers.

So essentially we're asking for a pass-through of penalties within the state of South Dakota. If you have, for example, retail penalties on Qwest where if a customer doesn't get service, for example, for two months, if they are required to pay penalties, then the CLEC customers would also expect the same treatment and we would like Qwest to reimburse us if that happens when we're using resold services.

The second issue in resale is a dispute we've had with Qwest over what happens with misdirected service calls. Generally, a new customer from a CLEC may be confused by where should they call if they're

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getting resold service from the CLEC, they may be confused and call, say, the Qwest service center instead of the CLEC service center

What we're asking is that Qwest redirect those calls to the CLEC, which they've agreed to do, but we are also asking that Qwest not use that as a sales opportunity for those retail customers unless the customer asks about Qwest's service And Qwest has not agreed to add some language that would prevent them from using unsolicited -- in an unsolicited manner using the opportunity for a sales call

So that's a summary of the issues in Exhibit 10 Let me move to Exhibit 11

Exhibit 11 is my affidavit regarding reciprocal compensation Reciprocal compensation goes hand and glove with interconnection Reciprocal compensation is the means by which both carriers compensate each other for the carrying of local calls between their switches

We have just a few issues left on reciprocal compensation. The first is regarding language in the Qwest SGAT on Internet service provider calls; in other words, calls that go from Qwest to the CLEC or vice versa that are destined for the Internet And there are some very slight differences in language there

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The FCC has pretty much taken the majority of the issues off the table, but there are some language issues there we would like this Commission to look at We think our language is closer to what the FCC has ordered

The second issue is one that I mentioned a moment ago and that is the 50-mile limit on interconnection trunks This is also an issue for reciprocal compensation and we bring this up in this section as well.

The third issue is the single-point-of-presence language that Qwest has in its SGAT. It does not give the CLEC full flexibility and choice and the ability to get interconnection at any technically-feasible point. And we point out in the affidavit how the language should be changed and what the Commission should do to give the CLEC the full flexibility that the FCC has required of Qwest

And the last point in reciprocal compensation is an issue regarding ratcheting, what's called ratcheting of service. This one's a little interesting to contemplate.

If I have, say, a trunk that's like a big pipe that I had originally bought, say, for private line services for long distance, if there's extra

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capacity in that pipe we think that the CLEC should be able to use that capacity for unbundled elements as well as interconnection all in the same pipe

We don't say we should be able to mix the traffic up on a single trunk, but on the single pipe we should be able to have these different types of traffic

This is no different than having a road or say, an interstate highway and you want to be able to put different kinds of traffic down it, cars, trucks buses and we don't think it would be right or efficient to have to build a separate road or separate highway for buses for example We should be able to put all the traffic on the single pipe and work out the appropriate costs in an appropriate and equitable manner So that issue is one that's called ratcheting and it's more completely described in the affidavit

Exhibit 12 is my affidavit on unbundled loops and local number portability. Checklist items 4 and 11 Let me first talk about a few issues in regard to unbundled loops The first issue is Qwest's obligation to build capacity when the CLEC needs it

This has been a disputed issue for four years now with Qwest and we would ask that this Commission take the reasonable approach that we think we have put

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forward and that is that Qwest should be required to build new facilities when Qwest runs out of facilities on routes that it currently has

In other words if there's a big customer in a city in South Dakota and the CLEC wants to serve that customer as well if Qwest has run out of facilities we think that Qwest should be required to build new facilities because it's easier for them to augment their existing facilities than it is for a CLEC to dig up the ground and put in its own capacity

So we think it's reasonable that Qwest be required to augment its current routes for the CLECs And this is a change in the way that Qwest sees this Qwest has said that its only obligation is to build when it would build for a retail customer or a provider of last resort's kind of situation But we think its obligation is to, in fact, extend its network, augment it where it already has facilities We're not saying that they should build to a completely new place for a CLEC We're saying that they should be required to make more facilities available where they have run out in current routes

Kind of a corollary to this issue Qwest has a new policy where they actually cancel CLEC orders for loops when they are out of facilities of a CLEC

places an order for unbundled loop to Qwest and Qwest later comes and says we've run out of facilities there. Qwest's new policy is to cancel that order rather than to hold the order until facilities are available

This does several things for Qwest It helps them make -- it helps them look like their performance measures are better than they are because rather than having an order for a loop that sits for weeks or months, they cancel the order so it's not counting against them in their performance measures

The second issue is it's really discriminatory with respect to retail customers Qwest doesn't cancel the order for retail customers If a company or subdivision needs new facilities, Qwest will hold those orders until new facilities are available

And the third issue is it takes the CLEC out of the queue for new facilities when they're built The CLEC would have to resubmit its order once it learns facilities are now available When Qwest has facilities, it puts us out of the queue Retail customers of Qwest's may go get in the queue of the CLEC when that happens

If anyone has questions while I'm going through, please feel free, or we can do that at the end, whichever you prefer

Another issue in unbundled loops is the refund of conditioning charges When a CLEC wants to provide digital subscriber lines to retail customers, many times, especially in areas where the loops are longer, we will need Qwest to take bridge taps and load coils off of the facilities so that we can provide the high-speed data lines.

What we are asking is that when Qwest charges us -- and usually this is a charge amounting to hundreds of dollars, when Qwest charges us for doing that, if the service we then have on that loop doesn't allow us to provide the digital capability, in other words, it's poor performance, that we should get a refund from Qwest. So this is no different in concept than if you had a new line at home and it wasn't satisfactory. You paid Qwest to install it and you said it's not working, I'd like my money back, that's essentially all we're asking.

The next issue on unbundled loops is regarding loop qualification When you're trying to provide digital services over the loops, you need to get the exact information on how the service is provided, how long is the loop, what are its technical characteristics You need to know in detail what that loop is like so you will know if you can provide the

digital service you want to provide

And while Qwest has provided the CLECs with some tools to do that Qwest has not allowed the CLECs to access the Qwest LFACS LFACS database LFACS is the principal tool and depository of information on the loops it's the loop facility loop that tells Qwest see exactly what is on that loop And while the Qwest tools that they are giving the CLECs use some of the data from LFACS it does not have everything on it that LFACS has And we would like the ability to access LFACS in the same way that Qwest engineers can use LFACS And we believe that the FCC has in fact ordered ILECs to give us this ability

The next issue on unbundled loops is the ability for CLECs to use the mechanized loop test on a preorder manner And this again it would give the CLECs additional capability to see if a customer's loop would handle data And what we want to do is to use the mechanized loop test that's MLT in order to get a better feel for what that loop can handle

We think it's reasonable for the CLEC to be able to use this tool and we think that Qwest should allow that

The fifth issue on unbundled loops is a revision of some of the loop intervals Qwest has

arbitrarily changed the loop interval for DS 1 That's the pipe DS 1 handles 24 voice grade channels It's a facility that has been in use for many, many decades and Qwest has recently raised the number of days that they will guarantee that we can get these kinds of loops in

In the past, the interval for getting DS 1s was five days in densely populated areas and seven days in lower density areas Qwest has moved it to nine days in all areas, and we think that should go back to the intervals that we had in the past

The sixth issue on unbundled loop is what's called a redesignation of interoffice facilities into loop distribution facilities Qwest, in their network, divides their plumbing and their facilities into two types One is called interoffice facilities and these are generally facilities that go between Qwest's central offices or switching points, and the other are distribution facilities which can be used for going to the end user or the retail customer

And we think it's reasonable for Qwest to redesignate interoffice facilities to be used for loop distribution facilities when Qwest runs out of loop distribution facilities So we think it's efficient to redesignate spare capacity rather than to build new

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spare capacity.

When Qwest runs out of loop facilities, we should look to see if there is spare capacity anywhere else before we should start digging up the ground and putting on additional capability.

The last issue on unbundled loops is the provisioning of loops over integrated digital loop carrier. Integrated digital loop carrier is a type of remote terminal that many companies use to aggregate traffic in a remote location and bring it into a central office. And you use this where the distance to the loop -- to the end user may be, say, 6 miles or more.

And the problem is that these facilities are aggregated in such a way that the terminal in the central office is integrated in the Qwest switch. And it becomes more difficult to break out an unbundled loop for a CLEC. But it's not impossible. And what we're asking is that we get a little better language and a little more assurance that Qwest will, in fact, provide the unbundling of loops that are currently riding on digital loop carrier. And so we have some language there regarding that.

I have a few comments in this affidavit on line splitting. Line splitting is where you want to

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provide both voice and data over the same loop and what we are asking is that Qwest lease to the CLECs their splitters. And this is the little device that splits the voice side from the data side. We're asking Qwest allow the CLECs to lease these a line at a time and not have to put in hundreds of splitters and pay the price for those before we can get the first customer.

So it's an efficient way to get CLECs in the data market to give us the line at a time splitters.

I have a few issues in this affidavit on the network interface device. The network interface device is the little box on the side of your house where the telephone lines come off of the poles or from buried conduit and they go to the side of your house and they attach to the inside wire of your house. And on a normal residence like mine, it's a little box that sits on the side and my phones are connected to it and Qwest's wire comes into it.

When you go to an apartment building or an office building, it becomes a much bigger box. And what we're saying is that we should get the ability to first remove Qwest's circuits from that box if there's no additional capacity. In other words, say Qwest is providing service at this apartment building but the owner wants to go with a competitive provider. Rather

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than put a whole new box on the building, we think it's efficient for Qwest's circuits to be disconnected and appropriately capped and the CLEC circuits run into this interface device. So that's one of our issues on NIDs.

The second issue on network interface device is that we think even in the case of where we were just getting the leasing from Qwest the inside wire -- this is the wire, say, from the basement of an apartment building up to individual apartments. If we're leasing that from Qwest, we should be able to get to lease the network interface device from them as a separate device if we so choose.

The last issue or major issue in this affidavit is on local number portability. There are really only a couple of issues remaining on number portability. The first is a revision to the metric OP-17, which is part of the ROC metrics. We think that this needs to be modified to account for the next-day disconnect.

Next-day disconnect has been an issue for some time with Qwest. There have been problems where if, say, a residence customer is not home when a CLEC shows up to provision their circuits that sometimes they were getting disconnected. And we have put some

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processes in place that will help to prevent that, but we think that the metrics have not caught up with the new language that Qwest has put in its SGAT. And we also have some language issues that we would point out in my affidavit where we think Qwest hasn't properly updated the SGAT for this new process. So we would like the Commission to look at that as well.

Those are all of my comments on Exhibit 12.

Exhibit No. 13 is my affidavit on rights-of-way and 911, E911. There are just a couple of issues still at dispute on these topics. First, in right-of-way, there are two issues. One is the access that Qwest will give to CLECs for the agreements that Qwest has with a property owner on accessing the property owner's building for telecommunication services.

If that agreement is not publicly filed, the CLECs are having some difficulty getting the agreement from Qwest. Qwest maintains that many of these agreements are confidential, but we have yet to see any of the confidentiality language that would prohibit Qwest from actually showing this to a proper CLEC.

So we go in to some detail in this affidavit as to the details of this dispute, and we're asking this Commission to rule in our favor to give us better

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access to these agreements Without these agreements, we don't know what rights we would have to getting right of way into or onto the property to provide our own services

The second issue on rights-of-way is regarding the 45-day interval that the FCC has mandated for Qwest to respond to CLEC requests for access to poles and ducts And the problem is that the current SGAT language and the forms that you have to fill out give some exceptions to Qwest where they can go far over the 45 days in some circumstances And the FCC has pretty clearly said they have 45 days So we're asking that the Commission give us the proper language so that Qwest meets the FCC rules on this

Now onto issues of 911 911 and E911 provide the ability for customers to dial police, fire, ambulance in an emergency situation So it's very important that CLECs get the same quality of 911 service to their customers that Qwest customers enjoy

The first issue is a feature that Qwest for some time had prohibited the CLECs from taking advantage of And this is called PSALI It's public switch automatic line identification.

Basically what this does, in an office building, if the office building has its own private

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branch exchange, PBX, the PBX will not allow 911 to see what office the call is coming from. So in other words, if you're on the fifth floor in office 511 and you call 911, the 911 operator will just see it's that building They won't know where to send emergency services for a heart attack or such

So this feature, PSALI, actually will allow the PBX to send the correct office information to the 911 operator And while Qwest has now started to provide the capability or to say that they're going to provide the capability to the CLECs, we have not seen that as a standard feature for CLECs to take advantage of So we're asking that be fully in place and Qwest show it's in place before their 271 is passed.

There have been in the past delays of unlocking the 911 database When a customer ports their number to a CLEC, there has to be a change in ownership of the 911 record If I move after -- if I move my house or, say, I move across the street or something after I port my number, my new CLEC provider AT&T in this case, would have to be able to notify the 911 people of this new address

If they don't have the ability to do that, the fire trucks will go to the wrong place And while Qwest has put a new compact capability in place in the

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last couple of months, we are not yet sure this will take care of all the other problems What has been happening is we port the number but Qwest has not unlocked that 911 database so the CLECs could not change the address or other information They were locked out Sometimes they took weeks and even months to get the number unlocked so we could put in the correct information There is a fix that Qwest has started to implement but we are not yet sure that this will work in all situations

Lastly on 911 we have had situations in other states where AT&T interconnection trunks were accidently disconnected by Qwest technicians And we're asking that Qwest reinforce its rules and its procedures for protecting CLEC 911 trunks so that there is no accidental disconnection as we have seen in the past

It's true that Qwest says they will mark the CLEC's 911 trunks the same as they mark the Qwest trunks, but the problem is, in my view, when Qwest marks its own 911 trunks, there's Qwest on both sides of that. When they're dealing with a CLEC trunk, Qwest is only one end of that The CLEC is the other end And I'm not certain they've done everything they need to do in the Qwest switch and the switching processes

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so that they don't disconnect a trunk from a 911 tandem

And those are all of my comments on Exhibit 13

Exhibit 14 are AT&T's verified comments on disputed issues relating to emerging services And I have verified these comments and will just briefly go over a few of the issues

The first issues are regarding dark fiber Dark fiber is the leasing by Qwest to CLECs of optical fiber that has not yet been lit That means it doesn't have the electronics on it so it's not transport yet It's fiber that can be used for transport The CLEC would lease it as dark fiber and put its own electronics on it

There are three issues left with respect to dark fiber The first is that Qwest is requiring CLECs to pass a local use standard for dark fiber on what's called an enhanced extended loop, an EEL, E-E-L The EEL is a loop and transport In other words, if there's a person out in a rural area and Qwest has an office out near them but the CLEC can't collocate there, it would be too expensive and maybe they only need a few loops, the CLEC may want to get a loop plus multiplex and transport

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And the FCC said you can do that but when you do it, you have to assure Qwest that this is mostly being used for local service and not being used mostly for long distance service

Qwest is applying this same rule to dark fiber, and I don't think that's appropriate Dark fiber hasn't been lit so it's not transport It can't be defined as transport The CLEC would have to make it into transport So I don't understand how we could apply the rules that the FCC has set up for loop plus transport to a dark fiber

The second issue on dark fiber is the question as to whether or not Qwest is making available to CLECs dark fiber that was put into South Dakota by what we call classic Qwest In other words, before the merger, we had Qwest and US West and Qwest is now saying that only the facilities that belong to US West should be available to CLECs But it's our feeling that as part of the merger that Qwest should be required to allow CLECs to have access to dark fiber that was originally put in place by classic Qwest And we address those issues in these comments.

And the third issue on dark fiber is the situation where Qwest either jointly builds facilities or has a third party build facilities on its behalf

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And in this joint build kind of arrangement, we feel that Qwest should give to the CLECs dark fiber that Qwest would have the access to.

In other words, if Qwest could get capacity on this span of fiber, then the CLECs should be able to get capacity as well. And Qwest has -- is still disputing as to whether in a third-party arrangement -- in all third-party arrangements it should be required to allow the CLECs to use capacity built by the third party. And so we would like the Commission to examine that

I next switch to a couple of packet switching issues Packet switching is generally considered to be different types of capabilities that give data and high-speed data to the end-user. Most often this is in the form of DSL, digital subscriber line, but it could be ATM, asynchronous transfer mode, A-T-M, or other types of packet switching.

Qwest has put in the SGAT restrictions on when Qwest will unbundle packet switching. Some of those restrictions require the CLECs to collocate in remote locations out in a rural area, in a suburb, wherever it is, and many times this is not economically feasible for the CLEC to do. So if we ever want competition in some of these areas, we need to make the restrictions looser and to allow packet switching to be unbundled when it's not economically feasible for the CLEC to collocate in that location

The second restriction that we would like you to investigate is one that requires there to be copper loops available for the CLEC in these situations And what we're saying is that if they're insufficient copper loops for the CLEC, that then Qwest should also unbundle the packet switching If there are two or three loops available and I need to serve a dozen customers, it's unrealistic for me to have to start marketing in that area where I know there are only three rather than to unbundle the packet switching So that's what we're asking

Now I have some issues on subloop which I would like to address The first is subloop unbundling is the capability for the CLEC to get part of the loop, not the whole thing When the FCC first made their orders, we talked about unbundling the loop but it then became apparent there are many situations where you need part of a loop And what we're asking, the remaining disputed issues are about five, and I'll go over those quickly

The first is access to the network interface device And we talked about that a few moments ago

What we are asking with the network interface device with respect to subloop unbundling is the CLECs get the right to access the network interface device when it's part of the subloop in the same manner that we would access it as it is, which is an unbundled element itself, the network interface device So we are asking for some language changes for that access to the network interface device

Also kind of a related issue is a definition of the network interface device in the subloop section Qwest has really changed the definition of the network interface device in the subloop section, and we think it should be changed back to the FCC-required definition

There are also various encumbrances to the CLEC's access to the network interface device and to other building terminals where we need to connect to subloops, and we have some comments here that addres how we think that should be unencumbered

The next issue is that Qwest is requiring the CLEC to submit a service order when all we want to do is use the inside wire, that little piece of wire that goes from the terminal at the basement of an apartment building up to the apartment itself, that wire that probably will lease for 25 cents a month, they want us

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to submit service orders for each of these So one of my analogies is this is like having to place -- if you want 100 bolts at the hardware store, you have to submit a separate order for each bolt We don't think that's reasonable We think we should be able to do this in a more efficient way by telling Qwest how many of these we're using and paying for the correct amount rather than submitting an order for each and every bolt

The next issue is Qwest is requiring an inventory of facilities at these apartment buildings for subloop And we think that that is unreasonable These are panels where multiple players come in If each player -- if each CLEC marks their wires correctly and clearly, including Qwest, we think that this should be all that is necessary So we don't think that an inventory of these facilities is needed. Qwest has not inventoried most of these terminals since they were built so why inventory them now

The last issue is that we think Qwest should create a website for these apartment buildings. In other words, for ownership of the inside wire. In many cases Qwest -- some cases Qwest owns the inside wire and in other cases the property owner owns the inside wire And the CLEC needs to be able to quickly

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determine who owns it so that we can do the proper things if Qwest owns the wire We need to start paying them for it and do whatever else is necessary. So we think it would be very efficient for Qwest to have a website where they keep a tally of the apartment buildings in each town where Qwest owns the inside wire and then we don't have to go through a five- or 10-day process to determine whether Qwest owns this or not. Qwest should know whether or not they own it and put that out so that CLECs can know immediately.

And that, I believe, is all that I wanted to say in terms of summary.

MR WEIGLER: With that, I'd invite questions for Mr Wilson

MS AILTS WIEST: Qwest, any questions?

MR CATTANACH: Thank you. For ease of following, I'm going to try to ask these questions in the same order that Mr Wilson presented his testimony

CROSS-EXAMINATION

BY MR CATTANACH:

Q You talked initially about indemnity issues, Mr Wilson Have there ever been instances in South Dakota where this actually has come up?

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A I don't know of any in South Dakota know of issues in other states

Q Thank you Likewise, you talk about some discussion about entrance facilities and EICTs How many times has this issue come up in South Dakota?

A I'm not sure how many times it's come up in South Dakota

Q Has it ever come up?

A I don't know

Q Just to be clear, on the 50-mile direct trunk transport, Qwest's position is not that we won't do it but if hypothetically Qwest and AT&T said you want more than 50, we say let's talk about it, if we can't come to some agreement, and only then, we'd come to the Commission and ask them to help sort it out, right?

A I believe that's what the language says, but we think it's clear that the FCC said that Qwest needs to provide the facilities

Q Well, wait a minute The FCC said there can be some reasonable limits on what we have to do, didn't it?

A No I don't recall that

Q You don't recall the order from the FCC that says there can be a reasonable limit on this?

A I don't think what they were saying applied to this distance I think it applied to other issues

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Q But you agree that the FCC said an ILEC's obligation to build is subject to reasonable limits?

A I don't recall the exact wording of it, and I don't know that it had those exact words.

Q Something to that effect You would agree with that, wouldn't you?

A I don't recall the exact language

Q The issue on regeneration charges, you remember that right?

A Yes, I do

Q And isn't it fair to say that Qwest's position is only if we could have gotten you closer such that regeneration wouldn't have been required, then you wouldn't have to pay it; right?

A I've never heard that qualifier on this. It's always been you pay for regeneration, as far as I know

Q Did Mr Antonuk, in his resolution decision, indicate that if Qwest could have placed you closer so that they weren't required, then you wouldn't have to pay?

A I don't recall that, but I haven't seen any change in the SGAT that would reflect that, any qualification in the SGAT for that

Q Talking about ratcheting for a second, you do recall that Mr. Antonuk rejected AT&T's position on that, right?

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A I don't believe that he accepted our position I think this is a case where we came in with the FCC rules and Qwest had their opinion and he kind of split the baby We don't believe that's correct
Q And one of Mr. Antonuk's concerns about ratcheting was the impact it might have on universal service; right?
A He may have mentioned that, but I have never seen Qwest make a real showing that it would, in fact, have any implication there
Q Isn't it true Mr Antonuk said it would have an implication?
A I don't think he said it would. I think he expressed some concerns about it because Qwest was using that as an argument But, like I said, I've never seen any showing that it would impact it one way or the other
Q Okay We talked a little bit about -- or you talked a little bit about the building of UNEs. Let me ask you this How many times has AT&T requested that Qwest build out a facility here in South Dakota and it been turned down?
A I'm not aware I don't know
Q Has it ever happened?
A I don't know
Q You would agree that the eighth circuit said that there is no requirement under Section 251 that an incumbent

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build out beyond its existing network.
A It was talking about transport, and we didn't address transport here I was addressing loops and dark fiber to some extent The order that you're quoting had to do with transport, and we also see that differently. You said in the statement or the quote or whatever, paraphrase, you just made mention of its existing network. And what I said was that routes should be augmented, not building brand new routes but routes should be augmented for UNEs.
Q But the bottom line is you want Qwest to build the route rather than you building it; right?
A Yes It's much easier for Qwest. You already have the facilities there. You can increase the band width, add facilities very easily. You would rarely have to dig up the ground.
Q When you say "rarely," would you indicate any experience in South Dakota one way or the other where that's come up?
A I don't know specifically but I know in many areas like this where people do put on dense wave division multiplex and increase the capacity 10 times. That's what electronics is doing for us
Q Let me talk now a little bit about loops I think you said you wanted to have more access to some of the back

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office information; right?
A Yes The LFACS database
Q All right One of the issues with the LFACS database is it has proprietary customer network information right?
A It has proprietary information
Q And if a CLEC were to get access, direct access to the LFACS, you could look at other customers' information from other CLECs or Qwest that would be confidential right?
A No different than Qwest people can look at the same information about CLECs
Q Well, at some point - let me ask you this When was the last time you asked Qwest for an xDSL loop in South Dakota?
A I'm not aware of what we've been ordering here
Q Have you ever asked them for one?
A I don't know
Q Can you point to any situation in South Dakota where there was an available Qwest tool for provisioning xDSL that AT&T has found inadequate?
A We have found -- Qwest uses the same tools in each state so this is a general requirement I mean what I'm doing is trying to get what we need in order to come into markets

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Q And my question to you is has there been any experience of AT&T in South Dakota where you say we need more than we're getting from Qwest in South Dakota?
A I don't know
Q And one of the things that you wanted was a mechanical loop test; right?
A Yes.
Q And you realize that that is an invasive test with somebody else's customer?
A To do an MLT, you need to get -- you first can test if someone's using the line and you can wait if someone is using the line and then you can run the test when no one's using the line So it's potentially invasive but it need not be invasive
Q You talked a little bit about making splitters available You would agree, Mr Wilson, that no Commission that's ruled on a 271 application has required that splitters be made available if those splitters were integrated into the DSLAM, right?
A If they were truly integrated, yes, but Qwest's are not integrated
Q That's your position; right?
A Well, I looked at it Technically they're not integrated
Q Is there any Commission that's agreed with your

position here in the 14 state region?
A Agreed they're not integrated?
Q That they're not, agreed with your position
A I don't know that any Commission has ruled on that I'm not sure how they would I mean, they're not -- what I mean by "integrated" is they're on the same circuit board And many manufacturers do that Qwest's are not on the same circuit board They're two different boards and they're connected by wires and you can disconnect the wires and make them available
Q Let me put it to you this way, Mr Wilson You've made this exact argument elsewhere, haven't you?
A We have gone through this issue other places, yes
Q Has any Commission agreed with you the language needed to be changed?
A I don't actually know
Q You talked a little bit about NIDs and accessing multitenant environments right?
A Yes
Q When was the last time AT&T requested access to a multitenant environment in South Dakota?
A I don't know My job is to get what we need to get in the market
Q Can you give this Commission any evidence, real-life

evidence, that you don't have what you need to get in the market in South Dakota, you've tried it, it doesn't work?
A Well, these are issues that we have been coming up against in other states so when the marketing and the operation comes here we would have the same issues So, yes, we have the same issues
Q In a hypothetical sense
A Well, as soon as you're here, it's real life Until the day -- I suppose you're right Until the day you're starting to order, it's hypothetical But then it becomes a real impediment once you are ordering
Q But you certainly can't represent to this Commission you've placed orders and it's been an impediment in South Dakota?
A I don't know
Q You talked a little bit about LNP issues. Now just so the Commission understands, when you talk about disconnects, two things have happened; right? Number one, AT&T has not provided the loop in the time it said it was going to provide it when they first notified Qwest; right?
A No I wouldn't characterize the situation that way.
Q AT&T tells Qwest when to disconnect the switch; right?
A Well, we -- yes Let me explain We set up --

Q Mr Wilson, if I could ask the question, you do tell Qwest this is when we're going to disconnect, right? You tell us that?
A Well, we set up a service order with the customer The customer may not be home
Q Right.
A If the customer's not home, you can't install and you've got a delay
Q I appreciate that But the other thing that happens -- which happens, we all agree; right?
A Yep
Q The problem comes up, though, is not only is the customer not home but you haven't bothered to call Qwest by the next day and say don't disconnect because the customer's not home; right? That's the other thing that has to happen before you have what you call a premature disconnect; right?
A Well, Qwest has finally gone to the next day so at least we have 24 hours And that has cut down, way down, on the disconnects What we are now trying to do is get the residual fixed as well because the disconnect is a serious problem for a customer
Q And we agree it's a serious problem The question is two things have happened One is you haven't provided the loop, maybe sometimes through no fault of your own,

by the time you said. You haven't even called us by the next day; right? Those both have happened before you have that problem; right?
A Well, that's one scenario, but Qwest could have failed to act on us properly calling, and that's another scenario.
Q Have you ever had that problem in South Dakota?
A I don't know. We have had it other places
Q I think you asked this Commission to redefine the PID, is that right?
A We have some comments to look at the way that the PID is defined because we think it doesn't quite sync up now with the new process of the 24-hour-later disconnect
Q You would agree that the ROC has been the vehicle by which the PIDS have been defined up until now; right?
A I haven't been involved in that so I really couldn't answer that question
Q Can you tell this Commission whether any other state Commission has ever redefined a ROC PID unilaterally?
A I don't know of any yet, but we're getting into the period where we have set up the initial ones and now we need to move forward with changes So I'm not sure how that's going to happen going forward
Q Switching now, if we could, to rights-of-way, you

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indicated, I guess, some continuing concern about access to agreements?
A Yes
Q All right. Has any Commission in response to the concerns that you've raised changed the SGAT or told Qwest to do anything differently?
A I don't know. Not all the Commissions have ruled on this yet.
Q As far as you know, no one has said that we're doing it wrong as far as they're concerned?
A I'm not sure about that. I would have to recheck Washington and Arizona.
Q Okay. And with regard to the PSALI, this is when you get behind the PBX switch for 911; right?
A Yes.
Q You would agree Qwest has said we're making that available; right?
A You've said that you're working on it, and it will be available.
Q And it's in the product catalog; right?
A It's in the catalog. I'm not sure that it's easily ordered yet.
Q Have you had any experience that would suggest it's not?
A I can't say one way or the other. I had some

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indication that there were problems, but I don't know enough to say yea or nay.
Q Switching to other problems that you've identified now on E911, you would agree that the unlocking issue has been an industry-wide problem, not just unique to Qwest; right?
A There were more problems with Qwest, but it is a problem experienced by other carriers as well.
Q And that the industry has now agreed to adopt as a resolution of this problem precisely the fix that Qwest has put in place; right?
A They're working toward that, yes.
Q All right. And you would agree that since February, the mechanical system or the manual system that Qwest has worked out with Intrado, the third-party vendor, has resulted in 100 percent resolution of any unlocks; right?
A It has helped a great deal. I couldn't say that it's 100 percent.
Q Last area, Mr. Wilson, on emerging services. I'm going to lump these together to begin with. As a general question, you talked about basically three areas, as I recall; dark fiber, packet switching, and subloops. Can you advise this Commission of any problems you've had specifically in South Dakota in any of those areas?

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A I don't know what AT&T has been ordering in South Dakota.
MR. CATTANACH: I have no further questions.
MS. AILTS WIEST: Mr. Gerdes, any questions?
MR. GERDES: No questions.
MS. AILTS WIEST: Black Hills?
MR. EVANS: No questions. Thank you.
MS. AILTS WIEST: Commission staff?
MS. CREMER: No questions.
MS. AILTS WIEST: Commissioners?
CHAIRMAN BURG: I guess I do have one. The last line of questioning was a lot of questions did it happen in South Dakota, did it happen in South Dakota, did it happen in South Dakota. Are we talking about the tests that will go into the QPAP? Is that basically what we're talking about here?
THE WITNESS: No. I think what Mr. Cattanach was trying to find out was whether or not AT&T was actively ordering some of these things yet in South Dakota. And I don't know whether we are or not. I'm not familiar with AT&T's business

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plans. I think he was merely trying to say that what I was pointing out was hypothetical and not actual.
CHAIRMAN BURG: But just because it hasn't happened yet, should it be in the catalog for South Dakota?
THE WITNESS: Oh, absolutely. Absolutely. Because, I mean, these are the things that CLECs need to get into the state and be viable in the state. So certainly it's real if you want competition.
CHAIRMAN BURG: And would it be your testimony that these problems have occurred someplace in Qwest territory?
THE WITNESS: Yes.
CHAIRMAN BURG: Okay. That's all I have.
COMMISSIONER NELSON: I have a question. I'm not sure I got the question even anymore because it was awhile back. It had something to do with the PSALIs and you couldn't get the exact location on the 911.
THE WITNESS: Yes.
COMMISSIONER NELSON: Apparently it's been a problem in some places. Is that the

industry issue that you raised, that it's been a problem all over?

THE WITNESS: No. That's a different issue

COMMISSIONER NELSON: That's the unlocking

THE WITNESS: That's the unlocking

COMMISSIONER NELSON: Okay. So now back to the PSALI where you couldn't get the direct location. How are other companies doing that?

Are you saying that in other states that don't have this problem because there's technology out there that allows them to do it better so we should be acquiring that technology?

THE WITNESS: Well, what happened was we became aware last September that Qwest would not offer this product to CLECs. I was on a phone call, on a product call, and the Qwest representative said we don't offer that to CLECs. And we were kind of stunned.

And this got presented to the Public Commission in Colorado and some other states and Qwest finally realized that that wasn't a very good position to have and so they have been trying to make it -- trying to get up to speed so they can

get it available to CLECs. So it was something that they did for their customers, but they weren't allowing CLECs to order.

COMMISSIONER NELSON: Are you aware of anyplace else in other states where they've actually required -- are you saying they require this other places?

THE WITNESS: Yes. They do now. And Qwest is technically offering it now. They're developing the capability. So they were behind, and now they're developing it. And it is in their product catalog now so it says it's available. We don't have any real experience in trying to order it and provision it yet.

COMMISSIONER NELSON: So you don't know that it's available or not available in South Dakota; right?

THE WITNESS: Right.

COMMISSIONER NELSON: Okay. It had to do with the rights-of-way. Can you explain to me exactly what you're trying to get at?

Are you trying to say that just because Qwest has right-of-way agreements with certain people, that they should automatically be your rights-of-way with certain people?

THE WITNESS: Well, the FCC and the act give the CLECs certain rights and capabilities on rights-of-way. And one of the main issues has been if we don't know what rights Qwest has at a property, we don't know what we should be able to ask for.

In general, we should be able to get access to a right-of-way as Qwest gets that access. But if we don't know what their access is, we don't even know what to ask. So what we're trying to get is a better capability of getting these "confidential agreements" that Qwest has been reticent to give us with property owners so we can just see what can we ask for from the property owner.

COMMISSIONER NELSON: Would this apply only to facilities based?

THE WITNESS: Yes.

COMMISSIONER NELSON: Okay. And so if you're talking about the rights-of-way, you're talking about -- when you speak of it, you're mostly talking about private property rights-of-way?

THE WITNESS: Yes.

COMMISSIONER NELSON: Not public rights-of-way?

THE WITNESS: Public rights-of-way I think are already pretty clear that Qwest gives us, you know, their pull attachments and access to public rights-of-way. Mostly the issues are on private property.

COMMISSIONER NELSON: Couldn't you secure that yourself if you're building facilities anyway?

THE WITNESS: The issue is that it's sometimes difficult to go to a property owner. They may have locked up -- you know, they may have an agreement with Qwest. You go to the property owner and they say, well, we can't do anything because we already have this agreement with Qwest and then we go to Qwest and they say, well, it's a confidential agreement, we can't let you see it.

So you can get in a Catch-22 going around and around. And we're trying to kind of cut through that and, you know, let's see the agreements and go from there.

COMMISSIONER NELSON: Are there other states that have required this of Qwest?

THE WITNESS: This has been a slow process. I mean, when I started this with Qwest four years ago, they weren't basically giving us

anything And slowly we've gotten more ability to get these agreements

What we're trying to do here is kind of get through the last little barrier And I'm not sure what other commissions have ruled on this one

COMMISSIONER NELSON: And it has to do with who was going to pay for this -- well, black fiber would be one example, but other infrastructure facilities that would be available and it would be Qwest and I think in your testimony somewhere you said somewhere you shouldn't have to pay for them because you might lose a customer But then who does pay for those facilities because they obviously cost money and how will the local exchange carriers be compensated for that? Somebody's got to pay for it

THE WITNESS: Well, you have to separate these into two things. I think what I was addressing when this issue came up for you was interconnection trunks These are the pipes that go between our switch and Qwest's switch. And it's very clear there that the FCC said that they need to build those for the CLECs

The issue -- I mean, the hypothetical Qwest always raises is what if the CLEC puts their switch

out in the boondocks and builds a facility out there and then the CLEC goes out of business or the CLEC doesn't have all the customers they thought they would, which is not so unrealistic these days

But the point of the matter is the CLECs put their switches in the same general places where Qwest puts them So we're not talking about building facilities out in -- to the back woods We're talking about facilities that are reusable by Qwest So I don't really see this as an issue that facilities get abandoned and no one can use them

COMMISSIONER NELSON: But who pays, and how do they pay?

THE WITNESS: Well, when the CLEC uses them, the CLEC pays for them through the fees we pay to Qwest for either UNEs or for interconnection trunks So we pay what we should be paying according to the cost cases, et cetera

COMMISSIONER NELSON: Okay. Thank you

MS. AILTS WIEST: Any other questions from the Commission?

MR. RISLOV: I believe you were talking about a DSL when you mentioned that when you request removal the bridge taps and load coils,

if there was poor performance --

THE WITNESS Yes

MR RISLOV -- you wanted a refund is that correct?

THE WITNESS Yes sir

MR RISLOV What would cause a poor performance?

THE WITNESS Could be Qwest unknown to the CLECs Qwest had what's called an interfering circuit on -- in the binder group So they had an old T-1 that puts out so much noise that you can't put DSL on that So we paid to get this conditioned, and yet we can't provide service on it So that's a good example

MR RISLOV Would there be any other reasons for that?

THE WITNESS Yes It could be that maybe the copper is old in the middle and the gauge is thinner than everybody thought Sometimes Qwest's records are very inaccurate So we may go into a situation and have them take off bridge taps and load coils and the copper that's there simply won't take the band width that we thought it would because their records were old

MR RISLOV Would there be a

possibility the customer may be beyond 18 kilo feet from the central office?

THE WITNESS We should have learned that before we -- through the data And that's one of the reasons we want to get access to the LFACS We should have learned that, and if it was too far we would not have ordered or spent the money to devote to it

Now if the information again was incorrect where maybe their data said that it was 12,000 kilo feet and it turned out to be 20,000 that could be another example

MR RISLOV But you would check that before the order came in before you requested the removal of bridge taps and load coils?

THE WITNESS Yes, we would We would check it in the ways that they give us availability to check

MR RISLOV Would you still be asking for a refund if it was beyond that distance?

THE WITNESS If we didn't do our job correctly, then that would not be reasonable If the data was incorrect that we looked at, then I think we should get the refund

MR RISLOV With regard to the

CONTINUATION

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LFACS database is there no other test that will work? Is that the only option for AT&T?

THE WITNESS: Well, Qwest has set up several methods of looking at the data that's in LFACS. They have a number of tools that they have provided to the CLECs, but there have been problems in acquiring tools and in the accuracy of that data and that's why we think we should be able to get to the real stuff.

MR. RISLOV: What problems would that be? Would it be a matter of understanding exactly how those programs worked? I guess I don't understand.

THE WITNESS: No. It was more problems in differences between the data that was in LFACS and what was provided to the CLECs, both in terms of completeness. Not everything from LFACS is in the tools that we get, and sometimes it's not updated. LFACS is updated more regularly than the tools that the CLECs get so those are a couple of examples.

MR. RISLOV: Now you mentioned, speaking again of LFACS, that Qwest personnel access LFACS so I assume, therefore, it would be okay if AT&T accessed LFACS. Was that generally

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what you were getting at?

THE WITNESS: Yes. Although Qwest's retail agents, in other words, their people that deal with the end-user, don't regularly deal with LFACS. Their engineering people can look at LFACS.

MR. RISLOV: Now isn't it true, from what I understood, that the engineering -- Qwest engineering people that could look at LFACS would be segregated and that there would be some protection built in that this proprietary data wouldn't reach Qwest retail people?

THE WITNESS: And I hope that's true, and the same could be done with CLECs.

MR. RISLOV: So the CLECs -- what you're suggesting then is each CLEC could establish that same type of group to access LFACS?

THE WITNESS: Sure. CLECs have engineering groups and they have retail groups.

MR. RISLOV: That wouldn't be an expensive proposition.

THE WITNESS: We have separate groups so no.

MR. RISLOV: For all CLECs, not just for AT&T.

THE WITNESS: I'm aware pretty much

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of Covad's operations and some other carriers, and you know, pretty much everyone has an engineering staff and then agent staff. So I think it would generally be true.

MR. RISLOV: But again, we're talking about the larger CLECs. And I don't want to characterize the size of the CLECs in South Dakota, but we have Midco and Black Hills Fibercom sitting at the table. I guess that would maybe be a question perhaps they could ask when their witnesses come on the stand.

You also talked about digital loop carrier.

THE WITNESS: Yes, I did.

MR. RISLOV: And you want unbundling of loops on digital loop carrier; is that correct?

THE WITNESS: Yes.

MR. RISLOV: If I understand the nature of digital loop carrier, there's a limited amount of loops that can be unbundled and still provide the services that they were designed for; is that correct?

THE WITNESS: Well, I would say no. There are a number of different ways it can be bundled. There are terminals that can be put at the central office to break out loops or full T-1s

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of loops at the central office before they go in the switch. So there are a number of techniques that can be used to break them out.

MR. RISLOV: That's with embedded digital loop systems as they exist now?

THE WITNESS: Yes.

MR. RISLOV: And I believe you talked about carrying data on these digital loop carriers. You're suggesting that breaking out these loops will allow for data transmission on digital loop carrier; is that correct?

THE WITNESS: Well, I don't think I actually got into that. You can carry ASDN on these fairly easily but we have never really talked about carrying DSL on them. That probably would not be appropriate.

MR. RISLOV: What type of cost are we talking about here for what you're suggesting?

THE WITNESS: Well, there are different ways to break them out. Worst case, you have to put in a new terminal or move a terminal or make part of the terminal available in the central office, it can add some cost to the overall loop. I don't know what the cost studies are doing in South Dakota with respect to unbundled loop costs

Some of that would already be built in You'd have to ask the cost witnesses if there is fair compensation

MR RISLOV What distances would you imagine in South Dakota we're talking about with regard to digital loop carrier in other words the customer living from the central office or using the service, the distance from the central office?

THE WITNESS Well, it depends Sometimes integrated digital loop carrier is used with short runs to get pairgain So you've got a situation where you had 100 customers and the area agrees to 300 And instead of putting in more wire they go to digital loop carrier So that's one use Then you have longer runs where you use the digital loop carrier because of the distance And that can be you know 50 kilo feet It can be long

MR RISLOV Thank you

MS AILTS WIEST Any redirect?

MR WEIGLER Excuse me No Thank you

MS AILTS WIEST Thank you Qwest?

MR CATTANACH I do have just a couple of follow up clarifications, if I may

MS AILTS WIEST Go ahead

CROSS-EXAMINATION

BY MR CATTANACH:

Q Just so we're clear, in response to Commissioner Nelson's questions about PSALI, there's no doubt that sitting here today any CLEC can go out and order PSALI in South Dakota?

A I don't know that, I know Qwest has been working to make it available, but I don't know if it's easily -- if it can be ordered, and if it can be easily ordered, I don't know

Q You do know it is in the product catalog

A It's in the product practiced

Q If it's in the product catalog, that would suggest to you you can order it, right?

A Well, no There's a big step between product catalog and actually ordering it I mean, that's like somebody saying something's available in the catalog and it's not there yet

Q Let me ask you this question Are you aware of any situation, South Dakota or anyplace in the 14-state region, where someone has said, Qwest, I want PSALI, it's in your catalog, and Qwest has said, no, we can't do it?

A Well, this has been an issue in the change management meetings, and I haven't been in those for a couple of months so I don't know what the status is as of the last couple of months

Q You know Ms Bumgarner?

A Yes

Q If I represented to you that she testified under oath that it's available and it can be ordered, would you accept that to be a true fact?

A I couldn't question her testimony

Q If I could just ask one other point in response to the LFACS question, you would agree that you don't need LFACS to figure out how long the loop is, right?

A Well, the tools that Qwest currently provides give us loop length The problems have arisen in discrepancies between those and LFACS And so that's one of the issues.

Q Okay Can I ask you, whether it's South Dakota or anyplace else, can you advise this Commission how many circumstances that have come up with AT&T specifically where you wanted to do some loop qualification and the existing tools were not enough?

A It's been an issue, yes

Q How many times, roughly, say in the last six months?

A I don't know I haven't talked to the ordering -- the people that do that ordering about that

Q And you would agree that Qwest has committed that if there is some issue that the existing tools are not enough, they will work with the CLEC to get the additional information that's needed?

A I don't quite know how to answer that

MR. CATTANACH: I have no further questions

MS AILTS WIEST: Any redirect, AT&T?

MR WEIGLER: No

MS AILTS WIEST: Thank you. Mr Wilson Does AT&T have any other witnesses?

MR WEIGLER: No AT&T doesn't have any other witnesses

MS AILTS WIEST: At this point, we'll take a break, 15 minutes

(A short recess is taken)

MS AILTS WIEST: Before we go on to Midcontinent, I believe the Commission had a few questions of Mr Toll

COMMISSIONER NELSON: I guess I ha a couple of questions. And I've seen several e-mails and was reading the Wall Street Journal article on, "States say that Qwest signs secret

deals to ease its long distance expansion.

So I guess my question is, Larry, do you know if Qwest has entered into any agreements relating to 251 with any local exchange carriers that haven't been filed with the Commission?

THE WITNESS: I believe, Commissioner, that we filed -- help me, remind me a couple of weeks ago. The only -- I think there were two carriers that might apply in South Dakota. I believe one was McLeod and the other may have been Covad. I'm not sure.

Those are the only two agreements I know of that agreements that had been filed in Minnesota had spilled over into South Dakota. There are no other South Dakota CLECs that I'm familiar with where we have any other kinds of agreements.

COMMISSIONER NELSON: And the other question I had was we were talking about a little ways back when the AT&T witness was here about whether or not PSALI is available in South Dakota and whether it isn't, and the response was from Qwest's lawyers it's in the catalog so I can assume that it's there.

Can you tell me if it really is available? There's a difference between having something in the catalog and being actually able to provide it.

THE WITNESS: The experts that testified on that know significantly more -- I learned everything I know about PSALI from the witnesses. I can't tell you if it is.

And I think in the catalog we're talking about -- I believe the witnesses are talking about catalogs for CLECs for resale.

COMMISSIONER NELSON: Yeah. And I ordered a blazer from Barrie Pace the other day and it's in the catalog but it's not available. I guess I'm kind of interested whether or not somebody -- if you don't know the answer, can you get the answer?

THE WITNESS: I can. In listening, I believe it was Ms. Bumgarner talking about it, that it is in there. And I don't know that we've had any orders for it within the state of South Dakota. But we will check and supplement the record.

COMMISSIONER NELSON: Yeah. Becau I'm interested in knowing if we can actually get it in South Dakota.

Okay. And with that, I don't have any other questions unless Bob --

COMMISSIONER SAHR: Mr. Toll, with the agreements Qwest filed with the Commission I think it was March 12 -- March 12, received the 14th, is it your position that those were required to be filed under Section 251?

THE WITNESS: It was not our intention to say that they needed to be filed unde 251, but in the -- to ensure if there was any questions raised, these were the ones that -- thes were the agreements that applied in South Dakot We don't believe they needed to be filed under 25 and, in fact, I think have since gone to the FCC and asked them to file on it so we don't have to g through 14 states of interest on it.

COMMISSIONER SAHR: And what is t status of the FCC review?

THE WITNESS: I think it's been filed, but I don't believe that there's been any action on it yet.

COMMISSIONER SAHR: Okay. And w the states be notified of the FCC's opinion --

THE WITNESS: I would guess that yo might not be formally -- we can obviously inform you of their decision when the time comes.

COMMISSIONER SAHR: Would you d that?

THE WITNESS: We can do that.

COMMISSIONER SAHR: Okay. And t along those same lines and just so we have it straight in the record, and I'm not necessarily asking you to make any sort of legal conclusion this -- and maybe the easiest way, what I'm gett at is do you think it would be appropriate to hav your March 12 letter and the attachments be pa this record of this proceeding?

Are you willing to do that?

THE WITNESS: I don't know that it needs to be part of the record or not. I think it's a separate and distinct issue as far as Interconnection Agreements. And whether the Commission decides that it should be part of th record, I'd defer to -- as you say, I can't make a legal judgment since I'm not ordained.

COMMISSIONER SAHR: The only thing -- I don't want us to get into a situation where, depending on what the FCC rules, we fee there's any sort of -- if the FCC ruled these were 251 agreements, then what would be the step t Commission would have to take?

THE WITNESS: I would guess -- not

being a lawyer but I would guess we'd have to come back and file those for your approval since I believe all 251 agreements have to come in front of you.

COMMISSIONER SAHR: So they'd be filed for our approval and would there be any reason why we'd have to reopen this record?

THE WITNESS: I don't see any need from that standpoint not once the agreements are approved.

COMMISSIONER SAHR: We talked about written agreements. Are there any other sort of agreements out there regarding Qwest, maybe some type of verbal agreements concerning provisioning of wholesale services with any CLEC that could be subject to the provisions of 251?

THE WITNESS: Not that I know of.

CHAIRMAN BURG: Just a little bit of follow up. You said these are Interconnection Agreements with Covad and McLeod?

THE WITNESS: No. They're agreements that we say are not Interconnection Agreements and that's why they were not filed for approval in the various states. But in order to try to resolve that issue, we've taken it to the

FCC to ask the FCC would you, in fact, take it as an issue.

And I'm not even sure the FCC -- I believe the FCC has agreed to take the issue, but I'm not as current on that.

CHAIRMAN BURG: What do you consider what you made available to us then, just the information, or is that the filing?

THE WITNESS: The agreements that we had out there. We wanted to put them on file so that you knew that we were trying to be up front that these are the issues that are arising in other states and here are. I think the two agreements that apply to South Dakota in the event that you're following that issue.

It was really a courtesy filing.

CHAIRMAN BURG: And just because we have them or because you made them public, does that make them subject to pick and choose?

THE WITNESS: No. I think if they were, in fact, ruled as an Interconnection Agreement, then I believe they become part of pick and choose. But obviously our position is that they are not part of an Interconnection Agreement. They're a business agreement.

CHAIRMAN BURG: Okay.

COMMISSIONER SAHR: Beyond the 2 issue, has Qwest entered into any sort of written or verbal agreement with any CLEC about not participating in these proceedings?

THE WITNESS: Not that I'm aware of.

COMMISSIONER SAHR: Okay. Thank you.

MS. AILTS WIEST: Any other questions?

Did you have anything, Qwest?

MR. CATTANACH: If it would be appropriate for the Commission, I do have a citation on the PSALI that might be instructive.

COMMISSIONER NELSON: Okay.

MR. CATTANACH: If you'd just bear with me, Ms. Bumgarner indicated on page 7 of h rebuttal testimony two things. Number one, that nobody's ordered in South Dakota but that other people have ordered PSALI, and we have provisio it.

And if you read the testimony on page 6 befor that, she says two things, you need -- it's available by contract and we have the systems an processes in place to give it to you.

So I think your question was, yeah, it's in the catalog, but does that really mean you can ge it? I think if you look at her testimony, it indicates on pages 6 and 7 of her rebuttal testimony you can and, in fact, do get it if you order it, if that's helpful.

COMMISSIONER NELSON: Okay. Tha you.

COMMISSIONER SAHR: I'm sorry. I just had one last question. We asked about 251 type agreements and other written or verbal agreements. Just to make sure I've asked everything so I'm at a comfortable level, has Qwes proposed any type of agreement to any companies not entering into this proceeding?

THE WITNESS: Not that I know of.

COMMISSIONER SAHR: Thank you.

MS. AILTS WIEST: Thank you, Mr. Toll.

THE WITNESS: Thank you.

MS. AILTS WIEST: Midcontinent, would you care to call your first and only witness?

MR. GERDES: We have one witness. He'll probably go beyond 5:00. But it's up to you. We can start him. I'm just thinking of continuity

and whether you want to start him and then continue tomorrow

MS AILTS WIEST: Does the Commission want to continue?

CHAIRMAN BURG: I guess I'd like to have a little bit of judgment as to how long it's going to take because I guess if we're going to finish easily on Thursday or Wednesday, I don't see the necessity of starting today If we need -- I want to get done this week, if we can, or actually quicker, if we can

MR GERDES: I'd say our direct testimony is probably 45 minutes, half-hour to 45 minutes But we're anticipating that there will probably be a lot of questions from staff and others concerning Midcontinent and perhaps Fibercom too because they're local CLECs

So I'm anticipating -- I am anticipating that Mr Simmons would take somewhere in the neighborhood of an hour and a half.

COMMISSIONER SAHR: He is your only witness; is that correct?

MR GERDES: That's correct.

MS AILTS WIEST: Black Hills, do you have any estimation on your witnesses?

MR EVANS: We will have one witness and that will be Mr White and I estimate that his testimony will be very similar to Tom Simmons in terms of the amount of time so I would say hour to hour and a half total, would be my best guess.

MS AILTS WIEST: Your other prefiled witnesses will not be testifying?

MR EVANS: That's correct. They will not be testifying

MS AILTS WIEST: And staff?

MS CREMER: We have two witnesses. Their direct, I'm guessing, together an hour.

MS AILTS WIEST: So I think we could probably quit for today?

Unless the Commissioners would like to go forward I have no preference.

CHAIRMAN BURG: I think it would be a good idea I just think the continuity would be better by doing that

COMMISSIONER SAHR: I think that makes sense

CHAIRMAN BURG: Because I think we'll be done it sounds to me like Wednesday.

MR GERDES: Or tomorrow.

MS HOBSON: Let's go for tomorrow.

CHAIRMAN BURG Faster all the w around

MS AILTS WIEST Would you stil like to start at 8:30 tomorrow then everyone? D that work?

MS HOBSON. Yes

MS AILTS WIEST. Okay We will begin at 8:30 in the morning Thank you, every

STATE OF SOUTH DAKOTA)
:SS CERTIFICATE
COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registere Professional Reporter and Notary Public in and fo State of South Dakota:

DO HEREBY CERTIFY that as the duly-appo shorthand reporter, I took in shorthand the proce had in the above-entitled matter on the 29th day o April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd da of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

STATE OF SOUTH DAKOTA)

:SS CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 29th day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(c) OF THE TELECOMMUNICATIONS ACT OF 1996 — TC01-0165

Continued Transcript of Proceedings, Volume VI
April 30, 2002

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION:
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PAM NELSON, VICE CHAIRMAN
ROBERT SAHR, COMMISSIONER

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the names of the Qwest and CLEC representatives w
were involved in any verbal agreements

Number 3, has Qwest entered into any written
or verbal agreements in which Qwest agreed to do
something for a CLEC in exchange for that CLEC's
promise to not oppose Qwest's entry into the
intraLATA long distance market? If so, provide
copies of any written agreements, a written
description of any verbal agreements, the date or
dates of any agreements, the name of the CLEC, and
the names of the Qwest and CLEC representatives w
are involved in any verbal agreements

Number 4, has Qwest proposed any such
agreement referenced in Question 3 to any CLEC? I
so, provide a written description of any such
proposals, the date or dates when the proposals
were made, the name of the CLEC, and the names o
the Qwest and CLEC representatives who were
involved in the proposed agreements

And you can just follow -- give us those
answers in a couple of weeks is fine

MS HOBSON: Thank you. We'll do
that

MS AILTS WIEST: Then I believe
we're ready to begin with Midcontinent's witness,

(Midco Exhibits 1 through 38
are marked for identification)

MS AILTS WIEST: Before we begin
with Midcontinent's first witness, the Commission
does have some additional questions of Qwest that
it would like answers to. These are on the same
lines that we asked Mr. Toll and we would like to
ask these generally of Qwest. And you can provide
the answers following the hearing in writing. And
just I'll read them into the record and if you'd
like, I can give you a written copy also.

The Commission requests Qwest answers the
following questions and submits the answers to the
Commission by sworn affidavit. Number 1, has Qwest
entered into any written agreements with any CLEC
concerning the provisioning of wholesale services
pursuant to its obligations under Section 251 that
have not been filed with the Commission? If so,
provide a copy of all the written agreements.

Number 2, has Qwest made any verbal agreements
with any CLEC concerning the provisioning of
wholesale services pursuant to its obligations
under Section 251? If so, provide a written
description of any verbal agreements, the date or
dates of any agreements, the name of the CLEC, and

Mr. Gerdes.

MR. GERDES: Thank you.
Midcontinent will call Tom Simmons.

TOM SIMMONS,

called as a witness, being first duly sworn in the
above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MR. GERDES:

Q. Would you state your name, please.
A. Tom Simmons.
Q. And where you reside.
A. I reside at -- my office is at 5001 West 41st Street,
Sioux Falls, South Dakota.
Q. What is your occupation?
A. I'm a vice president with Midcontinent.
Q. And in what capacity -- or how are you connected with
Midcontinent Communications, in what capacity?
A. Well, for our purposes here, I am a vice president, as
I stated, involved in the telephone services area, as
well as regulatory affairs, as well as sales and
marketing and development.
Q. And did you file prefiled testimony in this matter?
A. I did.
Q. And is that Exhibit 38?
A. Yes.

Q Do you have it in front of you?
A I do
Q And do you have any changes or corrections to that prefiled testimony?
A No
Q And if you were sworn and testified at length as to the contents of Exhibit 38, would it be the same as that which is in front of you?
A Yes

MR GERDES: We offer Exhibit 38
MS AILTS WIEST: Any objection to Exhibit 38?
MS HOBSON: No

Q Did you also prepare supplemental prefiled testimony?
A Yes
Q Is that Exhibit 37?
A Yes
Q And do you have that in front of you?
A I do
Q And do you have any corrections to that -- corrections or additions to that prefiled testimony?
A Yes, I do A correction On page 6, line 7, the sentence begins, "A copy of one of these mailings was given to Larry Toll, Qwest South Dakota manager, at a luncheon with me "

That should be corrected to read, "A copy of one of these mailings was informally discussed with Larry Toll, Qwest South Dakota manager, at a luncheon with me "
Q Do you have any other corrections?
A No
Q And if you were sworn and testified at length as to the contents of Exhibit 37, would it be the same as that which is in front of you?
A Yes
Q And do you affirm that testimony?
A I do

MR GERDES: We'll offer Exhibit 37.
MS AILTS WIEST: Any objection to Exhibit 37?
MS HOBSON: No objection.
MS AILTS WIEST: 37 and 38 have been admitted
MR GERDES: Then, Your Honor, we would also offer Exhibits 1 through 36, including 12A, the foundation for which appears in Exhibit 37
MS AILTS WIEST: Okay I don't have any of those
MR GERDES: Oh, I didn't pass them out

(Discussion off the record)

MR GERDES: Madam Hearing Examin I am passing out the public exhibits And now there's some confidential exhibits which are in an envelope up on the witness stand I can pass out the confidential exhibits to those that are receiving these public exhibits now if you wish I don't think we've been passing out the confidential exhibits But you tell me what you want me to do

MS AILTS WIEST: Do you have copies of --

MR GERDES: I do have copies available, yes

MS AILTS WIEST: Yeah Why don't you just pass those out Are you going to refer to them in the testimony?

MR GERDES: No, not really

MS AILTS WIEST: Okay That's fine then If we need them, we can get them

MR GERDES: Yeah I'll pass them out if we need them I don't think we do

MS HOBSON: Excuse me, Mr Gerdes are these different than the exhibits you previously provided last week or the week before?

MR GERDES: No They're the same exhibits

MS AILTS WIEST: The Commission h just never received these exhibits

MR GERDES: Yeah I had intended to pass them out here to the Commission when th were introduced and then forgot

MS HOBSON: I was just trying to save luggage space and not have to take two sets back

MR GERDES: There you go

MS AILTS WIEST: These are all premarked?

MR GERDES: Yes And --

MS AILTS WIEST: Mine begins with 7

MR GERDES: Right They're numbered sequentially so the ones that you don't have are confidential

MS AILTS WIEST: 1 through 6?

MR GERDES: Yes

MS AILTS WIEST: Are confidential exhibits?

MR GERDES: Well, it's actually --

I'll just recite the confidential exhibits
MS AILTS WIEST: Okay
MR GERDES: The confidential exhibits would be 1 through 6, 8, 11, 12A, 14, 17, 18, 19, 20, 21, 22, and 32 of 36 exhibits
MS AILTS WIEST: Okay Have you offered those? Does anyone have any objection to any of those exhibits?
MS HOBSON: No objection
MS AILTS WIEST: And that would be 1 through 36
MR GERDES: That's correct
MS AILTS WIEST: If not, they are received

Q Mr Simmons, would you summarize your testimony, please And for the Commission's benefit, we do have a handout to illustrate Mr Simmons' testimony
(Discussion off the record)
Q Please proceed
A Thank you As I stated in my prefiled testimony, Midcontinent Communications entered this proceeding to provide testimony based on our experiences as a CLEC participant To participate as a CLEC, we needed and continue to need the cooperation of Qwest Communications, at least as provided in the

Telecommunications Act of 1996. Midcontinent perhaps is one of the few companies in South Dakota to provide services to customers by using nearly all of Qwest's voice network services Page 2 of my handout lists the specific networks we use and the specific application.

When we first entered the local telephony business, we began by providing services as a reseller of local exchange services to both businesses and residential customers When our physical collocation was complete in Sioux Falls, we were able to combine unbundled local loops with our own switch features to provide services to mostly business customers.

When the UNE-P became an option, we migrated a number of formerly resold customers as well as new customers to this option, again primarily for business customers As we completed our last mile plant, we began provisioning services fully on Midcontinent's facilities, primarily for residential customers. We began reselling local services in early 1998, began offering services on UNE loops in early 2000, on our own fiber optic transport in mid 2000, on our hybrid fiber coax or HFC network about a year ago, and we added the UNE-P product just this past general.

Our goal has always been to use the highest quality and most cost-effective method to provide local exchange services for our commercial and residential customers that is at least as good if not better than services than they were able to receive previously

My prefiled written testimony was offered to give the Commission a sense of our experience over the past four years using specific examples which we believe point to the issues pertinent in this review

In our early relationship with Qwest, then US West, we spent a considerable amount of time argui the specific details of our agreements and whether US West was obligated and ultimately able to provide a certain element, certain feature, or a certain piece of information

On several occasions, we requested information that US West personnel deemed beyond the scope of their requirements In fact, on several occasions, I was told quite directly that US West was not required to teach me the phone business

US West personnel were very guarded with their information so we decided to work the relationship more from a personal angle, which worked, of course, until a staff change took place, which was often Since we first began offering services, we've had four sales representatives and two service representatives, and we understand we're about to get a new service representative We remain concerned abou personnel churn and if Qwest Corporation truly values the importance of the relationship between service and sales representatives and a customer like us, a CLEC

We clearly understand why the early relationship may have been difficult This entire process was new for us, and it was new for US West W encountered a number of delays, and frankly some of which were imposed by us We were and are still reluctant to risk the quality of a customer's service unless we are certain we can provide the service as promised. We raised the issue of Qwest's ability and willingness to port numbers, the issue of possible misuse of competitive information, and the issue of internal controls relating to both service and billing problems as a result of our direct experience They're described on page 3 of the handout

I would, however, be remiss if I did not add that Qwest has responded to most of these problems t we've experienced in the past, the majority of which have been resolved or hopefully are well on their way to resolution The larger issue, however, may not be Qwest's solution of the problem but a greater question of whether there are adequate systems and structures place to prevent problems of this type from recurring

Most recently we believe our relationship with Qwest has progressed We have found Qwest personnel to more helpful They are more likely to tell us what they can do rather than what they won't do But there are continuing issues, which is why we offered testimony on the items listed on the next page in the handout including testimony on directory listings, testimony on inside wiring ownership questions, and carrier access billing issues

These issues we are jointly work on today While I'm not necessarily satisfied with the progress, I am, frankly, satisfied with the attention We have had more contact with our sales representatives perhaps in the past six months than we have in the previous couple of years We've scheduled regularly monthly meetings with our service representative to work out specific problems and issues We continue to maintain a strong relationship with local Qwest personnel, who we believe have gone to extraordinary lengths to assist us when our paths seemed blocked by personnel or systems elsewhere I can cite several examples and would be willing to do so upon request of that level of operation

I believe the Qwest South Dakota team clearly understands the importance of the vendor/customer

relationship Our concerns, however, have again more to do with the systems and structure Qwest is or will provide to support their people and frankly support us in our development as intended by the act.

We also offered direct testimony on the UNE pricing issue In fact, we joined AT&T in their concerns about UNE pricing Based on our experience, we have found unbundled network elements and UNE-P in particular an unacceptable network choice for residential customers A table of our customer sample is included in the handout on page 5

As I stated earlier, we believe the level of cooperation between Midcontinent and Qwest has improved There is concern, however, that once the checklist has been deemed complete, the level of cooperation may diminish That's why we raised the issues of facility availability, comparability of terms for new products, service quality responsibility, and numerous QPAP issues that determine what happens in the future if a normal business relationship fails and we have nowhere else to go Those are listed on the next page in the handout

Our concern, of course, is that without our ability to interconnect and utilize network offerings from Qwest, we can't go to the other RBOC in the

market There is none and won't be until such time that adequate competition exists in the markets that we serve

We sincerely hope our relationship will continue to develop and grow toward a more natural vendor/customer relationship where the vendor, Qwest, actually wants to sell the customer, Midcontinent, more services The best way to sell a customer more services is to demonstrate the applications of individual services and price them attractively And that's what we hope will happen going forward from this exercise

Q Does that conclude your summary?

A It does

Q Would you go to this UNE, UNE-P pricing part of your handout and discuss it in more detail? I think there's a correction on it that you want to make And there was a lot of testimony here last week about how -- well, let me ask it this way. Did you have an opportunity to review Qwest Exhibit 6, which was a handout that discussed this same pricing issue?

A I did review it I don't have it before me, but I did review it.

Q I wonder if we can find it for you

A We now have it. Thank you, Mary

Q Thank you. There was quite a bit of discussion about Exhibit 6 and the UNE pricing and how it might be apples and oranges And is your -- the page of your exhibit with the UNE pricing matrix on it, is that intended to explore that issue?

A Perhaps explore it but also explain it from our experiences.

Q And would you go ahead and explain it and also make the correction that we talked about

A Okay. The correction is actually on the line that says, Carrier access revenue If you read the lines across from left to right, under the column that says res. UNE, it shows $2, $2, $0, and under the business UNE it's $8, $8 and that third $8 should be $0

That's a typo that doesn't affect the math So again, on the carrier access revenue, the far right column, that should say $0

And what this is really, it was not designed, I guess, to necessarily counter the previous exhibit, although I had a lot of problems understanding the previous exhibit. And when Dave made the comment that there's a question of apples to oranges comparison, the column that I see, as I understand it in the previous exhibit under UNE-P, shows costs and under the Qwest residential revenue it shows revenue

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Tough to balance the two, which really doesn't have a lot of impact on us As a CLEC when we look at the columns and the comparisons, we're really looking at our cost of those particular services. And that's what we intended to do with this particular exhibit or this explanation

This information actually came from numbers that was prepared not too long ago, perhaps two months ago, as part of an internal comparison of our services and networks And what this shows is purely costs and from our experience the revenue amounts yielding a margin or what we term net revenue, which is nothing more than gross revenue minus expenses.

If you look at the first line, below the cost per line, there is a listing there of a local loop, and what this tells us really is what a local loop would cost us from Qwest in those various network types

For a residential customer, a local loop for a UNE costs $18. For a residential UNE-P, it costs us $22 For residential resold in our Sioux Falls market, it costs us $15.42 On the business side, you'll note that a UNE costs $18 for business, the same as a residential customer because there is no differentiation in the UNE pricing model between residential and business customers. The same is true

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for the UNE-P, both residential and business customer lines are charged $22.

There is a difference, however, on the resold element because actually it's avoided cost So our cost for a commercial line is $32.45 under the resold model.

The next line that we show is long distance And this is purely an average of all of our customers, of our residential and our business customers. We show that an average line for residential line will cost us $4.50 for the long distance service. And it's $4.50. Again, since it's an average of all of our residential customers, it's the same for any network choice The average long distance cost to us for a business customer is $24 per line and it's the same for all of the network choices.

In the next line, carrier access as a cost, there is no carrier access as a cost for outbound telephone -- there isn't any carrier access cost at all, frankly, under the UNE model because they're facilities based That's why there's 0s showing there But on the resold model, there's a $2 cost that's associated with that because carrier access billing does not flow to us, it flows to Qwest And the same is true on the business side Again, on the UNE models

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no carrier access cost but it's an average $10 per line for a business customer

So when we total those together, the cost that we see for a residential UNE would be $22.50 the cost for a residential UNE-P is $26.50, and the cost for residential resold customer is $21.92 For a business UNE $42, for a business UNE P $46 and for a business resold customer the cost is $56.45 So when we add our component of billing, this is the average amount that we'll be charging to customers, our residential average is $21.95, our business average is $69.96 There's a carrier access revenue component that we receive on the UNE side because, again, it's facilities The average for our residential customer is $2 The average for our business customer is $8 So when you add that back into the billing, and we'll get a total revenue amount that's shown on the second-to-the-last line $23.95 for our for our residential customers and $77.96 for our business UNEs And the end result is on our net revenue side what remains

So when we compare these network types, we find that a residential UNE yields us 1.45 a month residential resold yields us about 3 cents a month and the residential UNE P goes upside down On the

2

business side, however the numbers are substantially better

That's why I think you'll find most CLECs have used unbundled network elements or the embedded network element platform for business customers and you'll probably see very little utilization of those elements for residential customers. There just isn't enough of a margin

So we made the business decision to leave our residential customers in the resold environment until such time that we can provide our own facilities And that's what we've been doing in Sioux Falls We're providing the majority of our residential services now as we've improved our plants and converting those customers over to hybrid fiber coax cable telephony network

Q Mr Simmons, I think I found another typo on this page If you look at the residential resale column, billing is 21.95, carrier access revenue is 0, so I think the total revenue figure should be 21.95 It doesn't affect the math again but at least that's the way I read it

A You're correct

Q Did that conclude your discussion of that portion of the handout?

A Yes
Q And, again, this would relate back to your prefiled testimony and your discussion about how UNE and UNE-P pricing was really too high for a CLEC to get involved in on the residential side; correct?
A Yes
Q There's another point I want to make simply for the record and that is does Midcontinent have separate engineering and sales departments?
A Yes
Q Separate --
A Separate buildings
Q Okay

MR. GERDES: Tender Mr. Simmons for cross-examination

MS. AILTS WIEST: Qwest, do you have any questions?

MS. HOBSON: Thank you

CROSS-EXAMINATION

BY MS. HOBSON:

Q Good morning, Mr. Simmons
A Good morning

MS. HOBSON: Before I proceed with my cross-examination, I wonder if we could have Mr. Simmons' handout marked as an exhibit because

I'm going to inquire.

MS. AILTS WIEST: Any objection?

Can we mark it as Exhibit 39. That will be marked as Exhibit 39 and admitted.

(Exhibit 39 is marked for identification)

Q Mr. Simmons, if you would look at what has been marked and admitted as Exhibit Number 39 and if you could also have -- I guess that's Midco 39. If you could also have Qwest Exhibit 6, which was Mr. Teitzel's summary, there handy with you, I think that might be helpful.
A I have them
Q Okay. Now directing your attention to Qwest Exhibit 6 for just a minute, did you tell me that it was your understanding that the column labeled UNE-P with features represents a cost column and Qwest residential revenue represents a revenue column?
A Yes.
Q Okay. Thank you. Now looking at your Exhibit 39, Midco 39, let's go through this. And I want to focus on, if we can, just on the residential side
A Uh-huh.
Q If we look at the residential UNE-P column, we see a $22 local loop rate there
A Yes.
Q Is that correct? Do you understand that that $22

charge also incorporates all of the switching features and all of the rest of the items that you would need for an entire UNE platform?
A For the most part, yes. There are some very small incremental costs within it but again they're very small. So I do understand that that is all encompassing the features and the local loop charge
Q Okay. And if you compare your Exhibit 39 with Qwest Exhibit 6, you see that Mr. Teitzel has indicated that there's a $22.16 charge cost to the CLEC who purchases UNE-P?
A Yes
Q Is that just a difference in rounding?
A The 16 cents might, in fact, even be more accurate to cover the additional features
Q Okay. Thank you. So then as we move down the next item that you have, as I understand it, a cost to Midco in your column is 4.50 for long distance?
A Yes
Q Now explain to me how Midco incurs a long distance cost associated with providing UNE-P
A When I consider this a cost, that column is not just costs from Qwest. These are costs that long distance component is inclusive of intraLATA toll, interLATA toll. So when we put it all together, the

cost for the long distance services that we provide to our customer from whatever source is 4.50
Q So that 4.50 represents intra and interLATA access charges that you pay to other carriers? Is that what you're saying?
A Yes. That's our total cost. That's our average cost for a residential customer per our records to give them long distance services
Q And do you provide inter and intraLATA long distance services to your customers?
A Yes
Q When you have UNE-P services, do your records indicate to you that you don't receive any carrier access revenues of your own?
A UNE-P?
Q UNE-P
A Yes, we do. The carrier access revenue that we receive is actually on the line below billing that says, Carrier access revenue. That's what that $2 amount is. The average carrier access revenue that we're receiving from other IXEs is averaging $2. And I know that goes against the numbers reported in Exhibit 6, I believe. And we have an argument with that as well. One of the open issues that we have frankly with Qwest currently is that we are not seeing carrier access

information coming from Qwest
Q Okay Can we focus, though, for the moment -- my questions are focusing on Exhibit 39 I understand that you have another issue with whether or not you have the billing data that you want for carrier access.
So what I think you've told me is the line that you have labeled long distance at 4 50 is really carrier access expense, not long distance expense; is that correct?
A No That's long distance expense The one labeled -- did you say long distance?
Q Yes
A The long distance amount is long distance expense The line carrier access is carrier access expense
Q So you have no carrier access expense, according to your chart? You have 0 in that column?
A Under UNEs and UNE-P, that's correct, we have no carrier access expense.
Q Then explain to me again what is included in your 4 50 long distance expense for UNE-P customers.
A When you would receive a bill from us, there would be an area that said long distance charges
Q Right
A It would break them out on a call-by-call basis You made a short telephone call to New York City, you made

a telephone call to Pierre, you made a telephone call to Viborg. Actually three different carriers may have participated in all of that, an independent telephone company delivering interLATA toll, Qwest delivering that call in to Pierre, and it could have been our underlying long distance carrier that carried that transport to New York City. When you total that together the costs involved with that, it would show the amount of $4.50. It includes all of the components relating to delivering those calls. The carrier access component of that is built into that amount.
Q Okay. Is the 4.50 a cost to Midco or a cost to Midco's customer?
A That is the cost to Midco.
Q Okay And I thought that you just told me that you have no carrier access expense associated with a UNE-P customer?
A What I did with that, I guess, is when we talk about the carrier access expense, I was trying to demonstrate the value of the facilities-based network versus a resold network where the carrier access component for call origination will carry a cost where call origination, long distance calling, does not on a facilities-based network on the UNE and UNE-P
Q So for UNE-P, you don't pay any originating access:

correct?
A That's correct
Q But for resold, presumably you do?
A We do
Q And so why is your long distance expense equivalent for both of those kinds of customers then?
A I'm not sure I'm not sure why they are
Q But nonetheless -- and I really don't understand this That's why I'm pressing you on this In your long distance expense line you are including -- it must be terminating access then only, correct?
A On which line?
Q On your UNE P long distance line
A Yes
Q Terminating access expense and what else?
A Terminating access -- the components of the actually, it's terminating access That's the amount
Q Okay And where in your UNE P column do you reflect the revenue that you receive for providing intra and interLATA long distance to Midco customers?
A That's the $2 amount in the line under billing Because that's revenue to us
Q I thought that that was the access revenue you received
A The access -- the carrier access revenue is the carrier

access billing amount for termination of calls from other IXEs
Q Right That's
A Okay
Q That would be my understanding My question is if it's costing you 4 50 to provide long distance service to a Midco customer, where in this column do you show the revenue that you receive from your long distance customer for providing that service?
A We show that in the as a component of the billing amount That billing line is the total amount that we charge or the average amount that we charge those customers
Q Okay
A And it's inclusive of all of these revenue amounts
Q Okay So let's break that down then
A I should add one other thing that might help clarify that That's the average of all of our customers A column that's not here is the column that would show the number of customers and the amounts of the amount for our hybrid fiber coax as well our HFC customers
And frankly the dollar amounts or the net revenue amount in that column is substantially higher than you would see here The demonstrative that it should have probably been placed because it would have

demonstrated that our most profitable network, frankly, is our own especially for residential customers

Q Okay So you were telling me that the numbers that you were providing on Exhibit 39 in the UNE-P column are not the actual expense and revenue numbers you received from UNE P customers because they're blended with all of these other sorts of customers that Midco has provided service to?

A No They are representative because we do not charge our customers differently based on their network choice

Q All right Well let's go back to your 21 95 now for a residence customer, and tell me if a residence customer pays you 21 95, what do they get for that amount?

A They're getting a local loop, likely very limited features They're getting in-state and out-of-state long distance

Q All for 21 95?

A All for 21 95 I wish it was higher

Q And is there any limit -- I can understand that you might Is there any limit on how much long distance, intra or interLATA long distance you provide for 21 95?

A Now the long distance charges are not flat rated Again, this is the average amount Some customers will buy much more long distance Some of our customers won't be buying long distance from us at all

Q How much do you charge per minute for interLATA long distance service?

A 7 9 cents a minute

Q Okay And how much do you charge for intraLATA?

A 7 9 cents a minute

Q And how much do you charge the customer that simply wants local dial tone?

A $15 95

Q Is that less than Qwest retails its local dial tone for? Do you know?

A Yes

Q Do you charge a subscriber line charge?

A Yes

Q And how much is that?

A I'm not sure

Q Is it the same as Qwest's subscriber line charge?

A Yes

Q So assuming that Mr. Teitzel has that number correct on Qwest Exhibit 6, that amount would be 5.48; is that correct?

A Yes

Q And if we do the math, doesn't that bring us up to -- where does that bring us up to? 20 47; is that right?

No. Colleen's doing that. I'm sorry. 15.95 and 5.48 means that you were charging just for dial tone, does it not, something in the area of 21 43?

A Yes

Q So am I to understand that on average your customers, despite the fact that they're costing you 4 50 on average to provide long distance services, are only paying you on average roughly 50 cents for long distance services?

A No I'm lost in your math of paying us They're netting us only 50 cents Is that your question?

Q No. If I understood what you've told me, your billing column with a 21.95 indicates the average revenue that you receive from a customer, residential customer

A Yes

Q Okay I also understood you to say that you charge 15.95 plus 5 48 for dial tone before they incur any long distance charges whatsoever

A Yes.

Q So that means that if that number adds up to 21 43, there's really something in the neighborhood of 50 cents left over in revenue that you would receive for all the toll you're providing, any features you're providing, and it's costing you 4 50 to provide the toll?

A Well that's -- it isn't necessarily that it's costing us 4 50 to provide the toll, per se We've not broken it out so that the remaining conditioning with this is just toll. A greater sense in all of this is we likely are going upside down in providing the entire service to a residential customer

We've not broken it out incrementally and tagged toll as the villain component of the entire package

Q Well, you would agree with me, would you not, that if we eliminated the long distance expense line, 4 50, and focused strictly on a dial tone customer that if you were to provide that customer services through UNE-P, you would pay Qwest $22, correct?

A Yes

Q And that customer could have all of the local services features he wanted or you wanted to provide for $22, isn't that correct? All of the switching features, custom calling features?

A Close, yes.

Q Okay And you have chosen to charge this customer, as I understand it, 21 43 for that service?

A Yes.

Q For dial tone Do you charge for vertical features, for custom calling features?

A The vertical features in our package allows the

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customer we do but the customer gets a choice of packages The package that we offer may be four choice features for an additional 4 95

Q Okay And do these figures that you provided us on Exhibit 39 show any revenues for vertical features?

A It does not

Q Okay If you would look at exhibit -- Qwest Exhibit 6 again, please Do you have any experience different than Mr Teitzel and Qwest on how much intraLATA long distance revenue you receive on average from your customers? Mr Teitzel indicates that amount is on average for Qwest customers 2 43

A No That may be accurate

Q And, likewise, you say you provide a package of features at 4 95 Mr Teitzel indicates that Qwest on average provides features to customers at 4 65 Would those be comparable numbers, in your estimation?

A Yes

Q And the average interstate switched access, I guess this is an area where you indicated we have some records issues But Qwest indicates that it receives $4 44 in switched access revenues, and I believe you've indicated that you receive $2 in switched access revenues?

A Yes

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Q And does that $2 include both your intra and interstate access revenues?

A Yes

Q Do you see that Qwest on the other hand indicates that it receives $3 19 interstate access revenues?

A I see that

Q Do you have any understanding as to why on the interstate access side you would have a different average experience than Qwest does?

A No

Q Okay So with a possible exception of access revenues, do you have any quibble with the fact that if you pay Qwest $22 for UNE-P, that you have the possibility to receive the rest of the revenues that appear on Exhibit 6 in that right-hand column? That gives Midco the opportunity to earn those revenues from its customers

A Possibly

Q Possibly, depending on the customer's buying habits?

A Again, I looked at this and tried to apply it to our own experiences and the numbers that we have put together from our customers I'm not saying that that's a representation of all of the customers in South Dakota It is a representation of our customers. So possibly It would be an interesting

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exercise to go back and compare

Q And one more question back on Exhibit 39 on the long distance line, the $4 50 Am I correct that the payments represented by $4 50 don't all go to Qwest?

A That's correct

Q Some of those go to the interexchange carriers, other local carriers, all kinds of folks; is that correct?

A Yes

Q And to the extent that those expenses make your provision of service profitable or not, that's not anything Qwest could affect, is it?

A No And, of course, that is the greatest variable that we have on the sheet

Q Excuse me One last question on the 21 95 billing amount

A Yes

Q Does that include the $5 48 subscriber line revenues we were discussing?

A No

Q So if we were to add $5 48 to this column, for example, it would come out positive in your exhibit just simply on the basis of --

A On the UNE-P column?

Q Yes.

A Yes, it would.

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Q Okay By the way, when we're talking about -- I think you've already said this, but when we're talking about how Midco has structured its business plan, it is the case, is it not, that for residence customers your primary vehicle for serving them is through resale and not through -- and not through UNE-P?

A Our current method has been resale Going forward in our business plan, we're hoping to convert as many of those frankly to our own network and are doing so wherever we have facilities present But you're correct, we have not used UNE elements and UNE-P for residential customers.

Q Can I direct your attention very quickly to Midco Exhibits 1 and 2? And those are confidential exhibits but I'm not going to ask you anything that would disclose confidentiality, I don't believe

MR GERDES: Unless it slips out.

Q My question is simply this. For Midco Exhibit 1, what period of time do those experiences cover? Do you hav Midco 1?

A The period of time for Exhibit 1 has been between January and February of 2002.

Q Okay. And Exhibit 2?

A Exhibit 2 is for the same period.

Q Okay Thank you. Can I direct your attention to Midco

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[Exhibit 4 for just a moment?
A. Yes.
Q. Do you have that?
A. I do.
Q. Can you look at the second page of that exhibit in the lower half there?
A. Yes.
Q. There's a description there of Midco's understanding of what occurred with that?
A. Yes.
Q. Do you see that? Do you personally have any disagreement with the contents of that exhibit?
A. I do not.
Q. On your Exhibit 39 and in your summary, you indicated that there was the possibility of misuse of competitive information. And I wonder if you could be shown Qwest Exhibit 58. And if you can give me just a moment, I could maybe find that same document in your exhibits but I don't have it marked.
MS. HOBSON: Can we go off the record just a second?
MS. AILTS WIEST: Yes.
(Off the record briefly)
Q. Mr. Simmons, as I understand it, this is the envelope -- or this is a photocopy of the envelope that

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a. The basis of your concern that there may have been a misuse of competitive information is that correct?
A. Correct.
Q. And this envelope was directed to Midco Comm, is that correct?
A. Correct.
Q. And that's your best recollection?
A. Yes.
Q. So where is the envelope we received of all of this and that you might have been misled?
A. We -- we actually received more than one. One was the one that arrived immediately
Q. And is this the one that you produced in the record in that case?
A. Yeah, correct. What caused the concern -- they a -- we had received the same offer but -- that the earlier one -- caused
Q. Okay.
A. Because of -- I don't know -- I'm -- I'm being -- misinterpreting it, but it's -- it's -- the -- the fact that it was addressed to Midco.
Q. So the -- it's a concern that [illegible] with Midco's customers. Is that the basis -- corresponded with -- your concern that there may have occurred?

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A. Some of the other ones that we received were, in fact, received by Midco customers at that particular time. This was quite some time ago. Those Midco customers were our own staff members. And that's what triggered the concern.
Q. And did they have -- were they addressed to Midco Comm, Reseller MO-7?
A. No. It was addressed to their name, Reseller MO-7, the same number appearing, which caused us some concern. And it didn't cause me a great amount of concern. It just struck me as odd, which is why I only mentioned it to Larry Toll informally, did not give him a copy.
In fact, we passed the copies internally to our marketing department. Not because of the address label but because of the particular offer. The offer that was included was not a telephony offer. It, in fact, was a DSL offer. And we took those at that particular time very seriously because we are also in the high-speed Internet business.
Q. The Qwest Exhibit 58 has a letter attached to it, does it not, that indicates it's directed to, Dear Telecommunications Manager?
A. Yes.
Q. That's a letter discussing dedicated Internet access?
A. Yes.

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Q. So this is an offer from Qwest to a telecommunications manager discussing the possibility of purchasing dedicated Internet access from Qwest; is that true?
A. That's true.
Q. The fact that you also provide dedicated Internet access might mean you're not a hot prospect but there's nothing wrong with offering that to you, is there?
A. No. Not at all.
Q. Finally on your Exhibit 39, in your past experiences page, which I guess is page 3 of this exhibit, you've got an item labeled, Internal Controls Section 272. And under that you list specific service issues and billing problems that took nearly a year to resolve. Do you see that?
A. Yes.
Q. Guess not. You do?
A. Yes.
Q. Okay. The service issues and the billing problems that you refer to are service issues and billing problems that are described elsewhere in your testimony as occurring between Qwest and Midco; is that right?
A. Yes.
Q. You don't have an independent recollection of service issues or billing problems between Qwest the BOC and Qwest -- communications company -- CLEC, Midco; is that

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right?
A. That's correct.
Q. So in that sense, to the extent that 272 is concerned about Qwest's interactions with its own affiliate, this isn't under the right topic, is that correct?
A. That's correct.
MS. HOBSON: Thank you. That's all I have.
MS. ALTS WEST: Black Hills, do you have any questions?
MR. EVANS: Just one question. Thank you.

CROSS-EXAMINATION

By Mr. Evans:
Q. Mr. Sherwood, referring you back to Qwest Exhibit 58 and a letter that's attached thereto.
A. Yes.
Q. It's addressed to Dean Telecommunications Manager?
A. Yes.
Q. Would it be your opinion that that letter could be addressed to a person within any firm that has responsibilities for telecommunications activity?
A. I would imagine so.
MR. EVANS: Thank you.
MS. ALTS WEST: Commission staff, do you have any questions?

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MS. BREMER: We have no questions.
MS. ALTS WEST: Commissioners, do you have any questions?
CHAIRMAN BURG: I had one. The UNE-P costs according to your exhibit show that it costs $4 more for a UNE-P than it does a UNE alone. Would that be correct?
THE WITNESS: Yes.
CHAIRMAN BURG: Is there this kind of cost advantage to Mpower in using UNE-Ps?
THE WITNESS: Is there any cost advantage?
CHAIRMAN BURG: Well, I mean, what are you getting for that $4 that you don't get in a UNE and is that a value to you?
THE WITNESS: It is -- in order to take advantage of a UNE or, as we term it, an unbundled network loop, you need to have a collocation, you need to have a facilities operation.
That loop is actually running from the Qwest wire center to a customer premise and has to connect with us somewhere. And that's why we have chosen that for primarily business customers in Sioux Falls where we have facilities.

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A UNE-P doesn't require that. A UNE-P is -- with Qwest's permission to describe it from my standpoint, a resold product is a retail price minus the avoided costs. A UNE-P is built exactly backwards. It starts with all the elements from cost factors up totalling up the total amount but it behaves an awful lot like a resold product. So it has an application for us in some markets where we do not yet have a physical presence.
CHAIRMAN BURG: But you've said for resident -- reasons the margins are not there to justify using it?
THE WITNESS: The margins haven't been there for us to use this particular product or certainly convert any of the resold customers that we now have. Frankly, when you take a look at all of the options, residential services using Qwest facilities are not as advantageous obviously as it is for using them for business customers. That's why we've had to look for our solutions for our residential customers being our own network and our plant.
CHAIRMAN BURG: Would you say that your experience with residential customers is

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similar to what the experience would be with other CLECs, is it pretty typical?
THE WITNESS: I would think so. I would think.
CHAIRMAN BURG: Can I conclude then there would be very little competition for residential customers with this pricing scheme?
THE WITNESS: I think it would be very difficult to provide any level of competition in the residential market with this pricing scheme, which is why I think you find the majority of providers utilizing the residential elements, whether it be resold or network elements or whatever, in combination with other services that they might provide to residential customers. Not too many are left certainly in South Dakota who are surviving on resold products.
CHAIRMAN BURG: Okay. Thank you.
COMMISSIONER SAHR: Mr. Simmons, on the chart with the UNE and UNE-P prices and the resold product prices, I think you answered this question but I just want to make sure that I understand it. On cost per line, we have the long distance charge of $4.50 on the residential side?
THE WITNESS: Yes.

COMMISSIONER SAHR: Then if we go down a few lines down to the billing price, you testified that the $4 50 would be part of that 21 95 billing cost; is that correct?

THE WITNESS: Yes.

COMMISSIONER SAHR: All right. Thank you

MS. AILTS WIEST: Mr. Simmons, I just wanted to clarify You said letters went to employees. Were they sent to their residential addresses, or did they receive them at Midco's headquarters?

THE WITNESS: You know, I don't recall I don't recall where they may have received them

MS AILTS WIEST: And then going to page 13 on your prefiled testimony, you did have an instance where one of your customers actually received something that said, Midco resold customer? Is that your understanding?

THE WITNESS: Yes.

MS. AILTS WIEST: So you still are concerned that customer records could be reviewed by Qwest sales personnel?

THE WITNESS: I'm not necessarily

concerned about it Again, my reasons for bringing these forward were to give the Commission the benefit of experiences that we received. Since this particular episode, I know of no cases where data has been mined, where we've seen any evidence of data mining or any type of crosses of information But this was one example that we had and I wanted to offer our experience for your benefit of review

MS AILTS WIEST Thank you Do you have any redirect Mr Gerdes?

MR GERDES No I don't believe so Thank you

MS AILTS WIEST Thank you Do you have any further witnesses Mr Gerdes?

MR GERDES No further witnesses

MS AILTS WIEST We'll take a short break 10 15 minutes

(A short recess is taken)

(Black Hills Fibercom Exhibit 1 is marked for identification)

MS AILTS WIEST Black Hills you may call your witness

MR EVANS Black Hills Fibercom calls Kyle White

KYLE WHITE

called as a witness, being first duly sworn in the above cause, testified under oath as follows

DIRECT EXAMINATION

BY MR EVANS:

Q Good morning Will you please state your name

A Yes My name is Kyle D White

Q And with what company are you employed, Mr White?

A I am the vice-president of corporate affairs for Black Hills Corporation, which is the parent company of Black Hills Fibercom, LLC I am also an officer of that company and will be testifying on behalf of Black Hills Fibercom this morning

Q Mr White, have you prepared and filed testimony in this proceeding?

A Yes, I have

Q Is your testimony dated March 18, 2002 and marked as Blacks Hills Fibercom Exhibit 1?

A Yes, it is

Q Do you now affirm your testimony that's been marked as Black Hills Fibercom Exhibit 1?

A Yes, I do

MR EVANS: And, your Honor, I would move that for admission, please

MS AILTS WIEST Any objection? If

not, it's admitted

Q Mr White, for what purpose will you testify this morning?

A The purpose of my testimony this morning is to share with the Commission the perspective of Black Hills Fibercom with regard to the public interest with regard to Qwest's application and in particular the provisions of the Qwest performance assurance plan which they have filed

Q Mr White, do you support Qwest's proposal to implement a QPAP for its business transactions in South Dakota for CLECs and, if so, why?

A Yes In principle I do However we believe that there needs to be some significant modifications to the performance assurance plan prior to it being in the public interest for the citizens of the state of South Dakota and in particular the CLECs that choose to do business within our state

We have longed for performance measures with some teeth in them for a long time And we're a company that has done business with Qwest and has found that at times it can be difficult to do business with Qwest So we think this is a very important tool to move forward with

Q Would you please provide the Commission with brief

background information as to Black Hills Fibercom

A Black Hills Fibercom was started with great community support. In fact, the announcement for Black Hills Fibercom's creation was on September 17, 1998. That announcement was held in the Sturgis auditorium between -- or with 3 or 400 of our friends. And, in fact, Governor Janklow was there to join Dan Landguth, our Chairman, in announcing this very important project for the northern Black Hills for economic development and competition in the telecommunications business.

Shortly thereafter on a cold December day, we had a ground breaking ceremony in Rapid City where over 100 of our friends, including mayors from each of the northern Black Hills communities, joined us to break ground on our headquarters telecommunications and cable TV's headsite. It was a very fun ceremony and a very crowded reception afterwards in a small office that we had rented to start our enterprise.

I had the opportunity to be the third employee to join Black Hills Fibercom and did participate for a period of two years on the start-up team, primarily involved in the marketing, public affairs, and regulatory activities, as well as filling in where we may have had shortages of expertise or manpower.

To date, Black Hills Fibercom has invested over $125 million in a hybrid fiber coaxial network that is designed to provide services, including local and long distance telephone, cable television, and high speed Internet access.

We currently have about 20,000 residential and business customers and about 40,000 lines and -- phone lines in service. Before the end of the year, to indicate a bit of the success that we've enjoyed, we expect that about 60 percent of the homes passed will purchase one of those three services from Black Hills Fibercom, and those homes passed being homes passed by our facilities that we have constructed.

It's been interesting for me to note the contrast that Qwest's witnesses have provided for you of Black Hills Fibercom. On one hand, we've heard from Qwest witnesses like Mr. Teitzel that Black Hills Fibercom and other CLECs that have been facilities-based providers have been very successful in competing for customers in the state of South Dakota and they've found this market, in fact, has a greater loss of market share, something apparently in excess of 20 percent. Yet we've heard other Qwest witnesses contrast that successful organization with an organization that is incompetent when it basically

comes to working through Qwest processes.

And I've found that to be quite a stark contrast that we can be successful on one hand yet when it comes to being able to work Qwest processes with Qwest's assistance, we can't get it. So it's been interesting to me to note that.

Q What is your experience with Qwest activities in South Dakota?

A Well, I have six items that I'd like to share with the Commission this morning. The first is my awareness of the desire in the northern hills for a northern hills area calling plan.

This Commission has conducted hearings in the northern hills in the past to review requests by customers of Qwest to provide toll-free calling or calling plans to allow there to be better exchange of information and better commerce throughout that area that we call the I-90 corridor from Rapid City on up to Spearfish and Belle Fourche. We had attended those hearings, seen the demand, and in fact that was part of the platform that Black Hills Fibercom utilized in attracting customers to its organization.

We also watched with interest the move by Qwest before the 1998 session of the South Dakota legislature which changed the way they were regulated

by this Commission and in effect put into a price cap scenario where the regulation of prices, as I understand it, would be primarily done by the legislature.

And at the time I thought -- not knowing what Qwest's actual motivation was but I thought, well, evidently Qwest has had difficulty in conducting its business with the Commission so they're choosing an alternate route.

After having listened to the testimony provided by Qwest witnesses and others, I honestly wonder whether there wasn't a different motivation for that. We have heard from Qwest witnesses, from Midcontinent witnesses, and AT&T witnesses that the unbundled network element pricing that is available for CLECs in the state of South Dakota is higher than the retail prices for residential service for Qwest.

And we also heard from Qwest witnesses that that $18.50 that is the retail price probably on a cost basis is something in the neighborhood of 25 or $26. Well, could it be that the motivation of Qwest in changing regulation was to put price caps on the residential services at levels below what competitors would have access to their facilities?

And the reason why I even wonder that more

already at the time they would have been before the legislature the primary competition in this state was resale. It was McLeod, it was Midcontinent, it was others. We did not see much for facilities based competition. And we heard from Mr. Simmons that that resale hasn't been the greatest business for them and as soon as they can, they want to take it to their own facilities where they can achieve some reasonable profit levels.

We also have had experience with our Interconnection Agreement in the state of South Dakota with Qwest. And as I understand it, we had two options as a facilities based provider of services. The first was to opt into a single agreement that was available. It was a Corvallis agreement, or we could enter into nine to 12 months of negotiations for our own Interconnection Agreement with an uncertain outcome.

In fact, what we chose to do because we were on a fast track and the telecommunications business was on a hot track we couldn't afford to wait that long so we opted into the Interconnection Agreement, which Qwest describes as an arms length negotiated agreement that allowed us to change our business name, our business address, and even though the effective date of the agreement was June 15, 1998 and we signed it

October 31, 1998, we were unable to change even the effective date of that agreement. It is an agreement that we have worked to try and understand and implement.

Note that we signed that agreement in October of '98. Already by the legislative session in 1999, Black Hills Fibercom was so frustrated with its activities in trying to work the collocation agreements and the Interconnection Agreements that we were before the legislature attempting to get protections for our business because it was young and trying to develop so that we would get an opportunity to get to the marketplace before Qwest countered.

And so legislation was negotiated between Qwest and Black Hills and Governor Janklow was involved and that legislation was designed to provide protections for broadband service providers that were facilities based, which was basically Black Hills Fibercom. That legislation was passed and it is 49-31-86.1 and 49-31-86.2.

When it came time to work that legislation, we too were surprised that our employees and customers were receiving promotional mailings under a win-back program from Qwest to try and turn customers back to Qwest after they had already joined Black Hills

Fibercom even though we felt we had legislation in place.

Unfortunately, that legislation was not well drafted, probably by us, and as it turned out Qwest was able to find a loophole and we had a dispute before this Commission that we actually finally withdrew.

We also have had a switched access services tariff dispute which was before this Commission, which was a situation where even though we have a short Interconnection Agreement, we missed a key component in that we needed to have a switched access services tariff in South Dakota.

When it came time that we first issued our bill to Qwest, their strong knowledge of that Interconnection Agreement issued a letter almost immediately saying request denied, we don't have any copy of your tariff. And so then we went to the process of bringing a tariff before this Commission.

We felt we were entitled to the independent phone company rates. We ultimately were able to negotiate a settlement with Qwest that, in fact, mirrors those rates. But once again, we've needed to be very careful in how we understood our language in how we transact business with Qwest and unfortunately at the time we were very focused on winning customers

and not necessarily on contractual language.

One last dispute that we have with Qwest and it continues to be ongoing, however we are hopeful that we can avoid arbitration and get a settlement, is that we have a difference of interpretation of the Interconnection Agreement with how it treats reciprocal compensation for ISP-related traffic. And we've heard a few witnesses talk about this type of traffic.

The basic dispute is that we believe that the traffic that is carried from a Qwest customer to an Internet service provider that is collocated in our telecommunications head-in is local traffic subject to reciprocal compensation.

Qwest believes that because the contract is silent with regard to reciprocal compensation, they owe us nothing on that service. And so there goes the dispute. However, I'm here to tell you that within several instances within our agreement when Qwest wanted to specifically address situations of how traffic would be handled, there are provisions for that, including a provision that says any high volume traffic, which we can't imagine what that would be other than Internet service providers, would be on separate trunks.

And, in fact, we did not have our facilities

designed to have separate trunks even though when we asked for a single pipe to carry our traffic we were told by Qwest that under our agreement rather than achieve these efficiencies we would have a trunk group for Sturgis, a trunk group for Belle Fourche, one for Spearfish, one for Rapid City, and one for Deadwood, which obviously we've heard from testimony in the last week and a half their switch has the capability to sort out that traffic and allow for those inefficiencies

What that did for us is put us in a position where we had higher cost because we bought more trunk groups and then secondly what happened to us, much to our surprise, was that because they had multiple trunk groups to work and implement, they implemented the ones for the communities that we weren't ready to serve and the ones we were begging for came later in the process, in particular Rapid City, causing us to delay our ability to serve customers, which we found to be very frustrating

So why do I share this with you? I want you to recognize that just like any other business, Qwest is going to look out for its interest first So we need to be very careful that we understand what the proposals are and what the offers are that are before us

Q Mr White, how do you view the impact of the SGAT that's been proposed by Qwest in this proceeding?

A Well, that's a good question because at this point, I'm puzzled really as to what it is we are to review We have heard from Qwest's witnesses that we have a document in the SGAT before us that is good enough to meet the FCC requirements on the 14-point checklist Yet, this document that's before us, we've heard Qwest witnesses say has multiple clerical errors, multiple typos, and even through their testimony I wonder whether, in fact, it is a matching document with what they have said it is, that it matches the multistate proceedings or other recommendations of other commissions And we heard significant cross-examination by staff that really put a question in my head as to whether or not even on May 7 when they finally file the corrected document it will represent what they've said it represents.

We have heard Qwest speak from a monopoly position And why I say that is we heard their witnesses say Qwest will agree to, Qwest will agree to. They often stand from a unilateral position. And it's been puzzling to me to see kind of an open negotiation in a Commission proceeding, which in effect is what it seemed to have been, that we didn't have a firm

document, we had a fluid document And we don't even know what that document will be until May 7

We provided cross-examination of Mr Brotherson on dispute resolution And dispute resolution, because of our history, is one that we are very concerned about And we want to make sure that the language provides for what we think it does And to be honest with you, we weren't satisfied with the cross-examination of Mr Brotherson because it's not clear to us which language controls Is it the language that gives us the opportunity to come before this Commission for dispute resolution, or is there once again a unilaterally monopolistic position on the part of Qwest that they can dispute arbitration, which for many things arbitration is too expensive of a resolution of the problem

To date, Black Hills Fibercom is really focused on trying to make its Interconnection Agreement work We have not spent a lot of time with the SGAT We believe that probably our future does depend on that SGAT because our Interconnection Agreement does have a limited term and it's something that we will want to focus on more clearly in the future

I am concerned that the other CLECs are not here We only see AT&T, which is aggressive apparently

in other states, Midcontinent and ourselves We've heard testimony that this is a very strong state for CLECs, but I believe the primary reason why they aren't here isn't that they haven't experienced the same types of situations that we have, but the cost of participating in this proceeding is prohibitive and that the sophistication of the issues and the complexity and the volumes of documents that were presented are probably greater than anyone in their organization had the capability or the time to come and work Not to mention that the financial status of the telecommunications industry today probably doesn't give you a lot of leeway to work on the nice to haves but to really focus on the more important day-to-day activities

Q Similarly, how do you view the QPAP that's been proposed by Qwest in this proceeding?

A Well, as I mentioned, we believe there's some modifications that are necessary for the QPAP But from Black Hills Fibercom's perspective, we needed something like this yesterday In fact, we needed it three years ago It would have been very helpful for our business to have that at the time

This QPAP, as it is presented to the Commission, this voluntary QPAP is essentially Qwest's

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were that they want to make with you to allow them to get at the transition cost of interstate long distance, something that they know very well is a lucrative business because Qwest's foundation was in the long distance business.

The QPAP as proposed by Qwest provides us with some pretty significant concerns with regard to its wording and how it will work. The first thing that we take exception to is Qwest's witness descriptions of the QPAP payments to CLECs as liquidated damages.

These payments are a long ways from what I believe are liquidated damages. If you look at what they have designed for their QPAP, they have a forgiveness bandwidth. Let's use as an example that the threshold for performance is 95 percent. That first 5 percent of errors has no payments. Payments only start to CLECs once you get to the 6th percentile.

But what that does is put you in a position as a CLEC, if you agree to this QPAP, of saying I'll accept liquidated damages but I recognize that if my orders are processed early in the month, I'm going to get paid dollars. If my orders are processed potentially later in the month and they miss their performance standard, then I might get paid. The

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errors have the same impact whether it's the first error of the month or the thousandth error of the month from the perspective of the CLEC.

They have also said that the impact of the payments were designed to be near the revenues achieved by Qwest from the CLEC taking those services. There are impacts to CLECs that would fall outside of the liquidated damages. And, in fact, today we have no liquidated damages in effect because you aren't going to get into arbitration with Qwest over a $50 transaction or a $500 transaction. It has to be a pretty material goal for us to look at going to those expenses because it's not a good business decision.

But let me describe for you one of the things that happened to us early on. And fortunately, we got a handle on it early before we were very far into the marketplace. And that was our experience in taking LNP, or local number portability, service from Qwest.

Customers, of course, like to keep their phone number. It's part of their identity. And many of our customers have had their phone number, and our population is 342, for maybe as much as 18, 19 years like I had had my phone number. So change is hard. So our original business plan was one where we would accept local number portability and we would work

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through Qwest processes because we knew they were available and allow for that.

What we found was that when we got to working their processes, which I know they're better today, but when it mattered to us this is what we faced, they had a process that would require us up to two hours of transaction input to get the records right through their system. What that meant was we could only process maybe five or six LNP orders a day per employee unless we were working them overtime and, in fact, we were.

It did two things to us. First, we had a high cost of transaction. You know, we're basically providing service at 16.95 a month but our cost of porting a number maybe is 35 to $50 just for a one-time charge. You've heard how thin the margins can be in the telecommunications business. So we had a high cost of acquisition.

We also then were experiencing difficulty in scheduling customers as rapidly as we were acquiring them. Because there were times when we were acquiring 25 to 60 customers a day through our sales activities. So with that problem in hand, we were faced with forcing customers to change their phone numbers.

We resisted that from a marketing standpoint

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and what we did instead was I conducted a focus group of our customers and through that focus group and explaining the situation, we came up with essentially a carrot and a stick approach to the change of phone numbers where customers, if they would take a 721 prefix or any of our other exchange prefixes in the northern Black Hills, we would offer them a 16.95 value, which was one month of free phone service. If they wouldn't change their phone number, we hit them with the stick and we said we're going to charge you then $2 a month to keep your phone number. We didn't feel we could charge 30, 40, $50 for a customer to keep their phone number so we did that. And it was very successful. And, in fact, we heard yesterday through cross-examination of an AT&T witness that LNP has been very successful in the state of South Dakota.

Well, if it had worked efficiently, I would tell you that there would have been 10,000 more numbers ported in the state of South Dakota or more. If you look at that cost to our company, we paid customers in effect about 170,000 to get around a process that was available in a catalog that was working but in all practicality didn't allow us to conduct our business.

Another concern we have with the QPAP is the payment cap that Qwest has proposed. And initially I

[illegible] with the payment cap but my concern [illegible] is the testimony of Qwest is highly [illegible] part.

[illegible] strongly I assume that [illegible] business would be included [illegible] that's one is we wanted a floating cap [illegible] boundaries. We heard about QC and [illegible] to remind the Commission that when you've [illegible] Black Hills Power which I'm [illegible] have ignored the fact that [illegible] separate companies and you have taken an [illegible] look into the books or to bundle some of [illegible] of the others.

[illegible] this Commission could take Qwest and [illegible] the opportunity of the forbidden fruit of [illegible] we don't that to be part of your payment [illegible] part of your 75 percent. And I think that would [illegible] effective deterrent.

Because what you've heard from Qwest [illegible] is that they believe that the ARMIS actually [illegible] because the CLECs are so darn good in [illegible] They've heard that they maybe will be [illegible] 250,000 customers, which would mean they [illegible] 250,000.

We believe that the cap should either

[illegible] with the long distance or if the cap were met [illegible] the year let's say at the ninth month they [illegible] than $15 million they now have no [illegible] to perform for the remainder of the year. [illegible] needs to be an additional amount brought [illegible] Qwest available for CLECs.

We also believe any of those annual caps if [illegible] should continue to exist should be prorated between CLECs so the idea that the poor performance in the beginning of the year do not have an advantage over the CLECs that received poor performance towards the end of the year.

We've also heard from Qwest very strong [illegible] about continuing beyond the six month [illegible] of payments. And what they've said is that [illegible] would be a major problem or we would have fixed it [illegible] have not had the opportunity to see Qwest's exhibit [illegible] they calculated the payments that they would make [illegible] Tier 1 and Tier 2 provisions of the QPAP, but I suspect it's a very low percentage of the total [illegible] that they are putting at risk. And that [illegible] performance during a transition year.

The other thing that they're telling you as Commissioners is we've met all the checklist items, we can provide adequate levels of service, and we can do

it extremely well, we like our wholesale customers. Why then did we have multiple witnesses focus concern on payment caps, the annual cap of $15 million, or the six-month escalation? If they can do it today, what are they fearful of tomorrow?

We also are concerned in the QPAP about the opportunities for gaming the system. And one example within that is the fact that under Tier 2 payments that they would make to you as the Public Utilities Commission, they will only make payments once there have been three months of continuing poor performance.

What in effect that allows, whether they would use it or not, it is allowed, they could have two months of poor performance, fix it in the third, have two months of poor performance, fix it in the next. In effect, they could have poor performance in eight out of 12 months and this Commission, which is there to protect the public interest and Tier 2 payments are to respect that public interest, would receive nothing. That does not seem appropriate to us.

We also are concerned, particularly after hearing the testimony through their Qwest witnesses on the blue charts and the cross-examination of AT&T yesterday that demonstrated very little of the outlying services that are being requested by CLECs in

South Dakota, that the use of regional measures for Tier 2 payments will be statistically invalid.

When you look at a 14-state region with over 25 million customers, the amount of transactions that CLECs will have in the state of South Dakota will be very small in relation to the total in the denominator. So maybe we could have very poor performance for CLECs in our state and yet not receive any Tier 2 payments because Qwest does a pretty good job in the big metropolitan areas. That's troubling to us.

I also want to remind this Commission that Qwest is not SBC or Verizon. And they have said on several occasions that the FCC has approved this for SBC, this is all it took for them, this is what they've done for Verizon. Well, the FCC is just like this Commission. They have different standards, particularly for each company, because each company brings to them a different and unique circumstance. And Qwest is definitely a different and unique circumstance, particularly with all the rural states they provide service in. So you need to look to that and it's your decision, it's not the FCC's decision, as to how we handle the QPAP in our state.

It's also been interesting for me to note that of the states that have been most aggressive in

reaching the voluntary QPAP as offered by Qwest, it's been the rural states. Why is that? Is it because of the experiences of those Commissions with Qwest, or is it because the situation and uniqueness of a rural state demands a different type of QPAP to protect the public interest?

We've talked about the dispute resolution previously. We need to know how that works. We need to know that we can come before this Commission for our dispute resolution. The QPAP is designed to protect the public interest. That shouldn't be hidden in an arbitration. The public interest should be out in front of you. And we believe that needs to be changed.

Are the PIDS really good enough? Well, we kind of wonder. We've seen the blue charts where we've shown that Qwest is able to meet most of their obligations. We had a witness that through their Qwest witnesses we've talked about a problem that we had experienced with our EELS where we were unable to process an order for EELS until we had a billing account number. And under Qwest's standards at that time, which was just early this year, a billing account number took 35 to 40 days to get, even though we were a customer of Qwest since 1998 and had bought multiple services from Qwest since 1998.

We then learned from, I believe it was Mr. Bumgarner, that Qwest has responded to our concern and on a period that's shorter than the time that we would have required to get a billing account number. They completely reworked their process so now it only takes two to three weeks to get a billing account number. Does Qwest have other areas where they could provide significant improvement? Hard to say.

Another area where we have extreme concerns is that Qwest will use payments under the QPAP as a loss leader to get after the interstate long distance business, which in my testimony assuming a 10 percent long distance rate, an average residential use could be as much as $28 million worth of business in the entire state of South Dakota, assuming 200,000 customers. If Qwest were to get 20 percent of that, which they've said is very probable based upon some experts that have looked at New York and other states, it's maybe as much as $6 million for them. They could make payments under the QPAP and potentially do something like that.

In fact, to give you a comparison, Black Hills Fibercom looked at the local area calling in the northern Black Hills and said that is a good way for us to access this market. We were uncertain as to what it would cost us, but it is currently costing us to

provide toll-free calling for our customers in the northern Black Hills payments to Qwest of over $1 million a year. And there isn't a person in our organization that would say that's a bad business decision. But it was an expensive one. But it gave us great opportunity.

The voluntary QPAP as it is proposed is a take it or leave it QPAP. We do not yet know what else we will have to take in provisions within the SGAT to get that. We believe from their testimony that possibly we can do it on a piecemeal basis and the only thing we'll need to take is the QPAP.

But I want to remind you that there are some limitations in that in that Qwest believes it's liquidated damages which may restrict our ability when customer problems are extremely serious to really get the compensation that's due us.

I stated in my testimony that Qwest could in effect buy its access by making the complete $15 million payment by paying $40,000 per day. Qwest can effectively help competition for less than 20 cents per Qwest customer. This could be a great bargain for Qwest if the long distance business is very lucrative in our state and if they are the monopoly provider, it well could be.

We also expressed concerns about the audit provisions. We believe that the QPAP is there for the benefit of Qwest. If they truly wanted it to be there for the benefit of CLECs, they would have allowed it to be negotiated into their Interconnection Agreements and they would have put in performance measurements. That's there for their benefit. The audit should be conducted by someone independently selected by someone other than Qwest, yet it should be paid for by Qwest because it in effect is Qwest's tool to get at the interstate long distance business.

Qwest admitted in Mr. Reynolds' testimony the Liberty Consulting report that was filed with the New Mexico Public Service Commission. We have probably agreement with 80 percent of what Mr. Antonuk stated as needed improvements in the QPAP within that agreement. In fact, even though we would be under the impression that we have seen multiple collaborative processes that reached significant agreements, that report has 29 significant areas of disputes resulting from the ROC process. That is not significant agreement.

We also are concerned about unilateral changes by Qwest. This is an experiment. This first QPAP is an experiment. South Dakota needs to protect

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its public interest and its public interest isn't protected by a review process that allows Qwest to pick and choose or have veto power over what could be very appropriate changes to protect the citizens of this state.

What we believe from listening to the proceeding is that we do not have for the state of South Dakota Qwest's best offer either in the SGAT or the QPAP. In fact, after listening to their witnesses and their statements about willing to change this or willing to agree to that, we may in fact have their worst offer.

They very likely aren't willing to do anything that you're not willing to force them to do. And we hope that you will take the initiative to look this over very carefully.

I want to remind you that as a result of participating in this proceeding we do, in fact, have better service from Qwest. But what about the future? Qwest's focus on payment caps and limited escalation provisions certainly give us concern that they may not be as serious about performing in the future. They know better than any of us how bad they have been in the past and what business decisions they might be willing to make in the future.

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A couple of other things that I want to share with you is that through Qwest testimony, we talked about branding. And you heard yesterday a statement by I believe a Qwest attorney that if it's in the catalog, it's available.

Well, an example where it was in the catalog and it wasn't available was our branding for the customized branding for our -- I believe it was directory assistance. And it was not available because the switch in Sioux Falls was not technically capable. It only became available after an upgrade of that switch. So just because it's in the catalog doesn't necessarily mean it's available or practically available as we found with our LNP early on in our process.

I want to then kind of move on.

Q. What does Black Hills Fibercom wish for the Commission to do in this proceeding, Mr. White?

A. You received from Black Hills Fibercom on March 4, I believe, a Motion to deny Qwest's petition to proceed under a Track A proceeding. You have not acted on that Motion as of yet, I believe, but I think that the Motion is even more appropriate today after having heard the testimony in the last week and a half.

What we have before us is not an SGAT for

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consideration but a very fluid SGAT, an SGAT that changed witness to witness as Qwest provided its testimony. We also have an SGAT that if it's going to be available isn't yet available --

MS. HOBSON: Excuse me. I'm going to object to this. This appears to be argument of a Motion that has not been noticed for these proceedings rather than a summary of this witness's testimony.

We have allowed this witness to go very, very far beyond his prefiled testimony in a number of areas, but if he is now going to argue a Motion of which we had no notice, we have to object.

MS. AILTS WIEST: Response.

MR. EVANS: Our response is we're simply adding some flesh to the facts that have already been presented in this case. When we submitted our list of issues, it was expressly understood that those issues would not be binding upon the parties and we would be allowed to expand upon those issues. And Mr. White is simply recapping, if you will, in his testimony the testimony of that of which we have heard in his response to the SGAT and the QPAP and how they apply to Fibercom.

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MS. AILTS WIEST: I will overrule the objection. I believe Mr. White is going to make a recommendation at this time.

THE WITNESS: Yes.

MS. AILTS WIEST: Go ahead.

A. To move on with the discussion, and this is background to support the recommendation, we have heard that the KMC agreement, which is based upon the SGAT, is an agreement that at this point no services are provided under and Qwest's witnesses have said they do not know when services will be provided under the agreement.

We also believe that Qwest is not probably entitled to Track A because as we had cross examination of the AT&T witnesses, they demonstrated that a lot of these services aren't being implemented in South Dakota. The record that Qwest has provided has been based primarily on the SGAT, a SGAT that we won't know what it looks like until May 7. They have not provided a record that supports that the Interconnection Agreements upon which the compatibility that we see in South Dakota is based in fact covers the 14-point checklist.

So it is our belief that it is in the public interest that Qwest has not provided an adequate record to move forward that they have met the 14 point

checklist and that you should deny their petition or at a minimum continue the proceeding to move forward to more fully review the SGATs and the QPAPs and potentially once again invite the CLECs in our state to a more narrow proceeding that maybe they could get their arms around and might be cost justified for their businesses.

This Commission has taken a common-sense approach in the past. We've seen it in areas like LEC deregulation. You have been cautious. You have looked out for the interest of the citizens of the state. You took a lot of heat when you were a Commission that said deregulation in the electric utility industry doesn't make sense for South Dakota. You took heat on your implementation of PURPA in the 1980s but you knew there were different standards for our state and different reasons why our customers needed different levels of service.

I want you to be careful that you don't allow Qwest to take us as a state to be the first in experimenting with implementation of 271 in the Qwest states. Maybe a more prudent course of action would be to wait and see how it works out in other states.

That concludes my testimony.

Q I do have one more question, Mr. White. We did hear

some questions yesterday afternoon in regards to the LFACS database.

Does Black Hills Fibercom have separate engineering and sales staff so access to the LFACS might be appropriate?

A I don't know at this point whether we would need access to the LFACS, but we do have a separate engineering and sales staff and like Midcontinent, they are housed in separate buildings so I believe it would be reasonable that our company could honor the provisions of any confidentiality agreement that would be required for us to get access to the LFACS.

MR. EVANS: Thank you. Your Honor, I would now turn Mr. White over for cross-examination.

MS. AILTS WIEST: Qwest.

MS. HOBSON: Qwest was prepared to cross-examine this witness on his prefiled testimony. Since he has gone well beyond that, we would ask that the Commission indulge Qwest's attorneys in this alternative and that is to permit one of us to cross on non-QPAP issues and then another to cross on the QPAP.

MS. AILTS WIEST: Is there any objection?

MR. EVANS: I would have no objection.

MS. AILTS WIEST: Are you prepared to go forward at this time?

MS. HOBSON: Prepared would probably be an overstatement, but I will attempt to do so.

MS. AILTS WIEST: We'll want a couple more minutes. Let's just take a five minute break.

(A short recess is taken)

MS. AILTS WIEST: Qwest.

MS. HOBSON: Thank you.

CROSS-EXAMINATION

BY MS. HOBSON:

Q Good morning.

A Morning.

Q Mr. White, you've put together a successful CLEC in the Black Hills, haven't you?

A In most ways, we are successful. Last year we lost $12 million, however.

Q But as you testified earlier this morning, I believe you were on the one hand suggesting that you had been highly successful; isn't that correct?

A What I suggested was that Qwest witnesses had described us that way.

Q And you don't describe yourselves that way?

A As soon as we turn that income profitable, I might.

Q Do you also describe yourself as the number one provider in the Black Hills?

A Number one carrier of local and long distance phone service.

Q Don't you describe yourself in a TV commercial as the number one provider in the Black Hills?

A In fact, those are my words, yes.

Q It's you on the TV, isn't it? Wouldn't you also say in all fairness that you're really the dominant local exchange carrier in the Black Hills?

A In certain communities, yes.

Q As you -- get this mic at the right place. You've been present throughout these hearings, isn't that the case?

A Yes, I have.

Q The recitation of the history going back to the previous legislation and your early experiences with the Interconnection Agreements and so on and so forth, that's your view of all of those events, is it not?

A Absolutely.

Q There hasn't been any Qwest testimony about any.

A No, there has not.

Q So to the extent that Qwest were offering its own witnesses on some of those subjects, it wouldn't

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[illegible] you they would see some of these events a little differently than you do?

A I suppose it would.

Q Nonetheless, I believe your testimony comes to this, does it not: That the trend of your experience over the last few years with Qwest is that Qwest is getting better to deal with and your problems are gradually being resolved; isn't that the case?

A That is most definitely the case and, in fact, we saw a dramatic change we believe when the Qwest merger was approved.

Q I believe that you indicated that one of the things that you needed three years ago was something like the QPAP.

A Correct.

Q But you -- when you had these experiences in the past that you believe the QPAP might address, did you bring damage claims to this Commission or to a court in South Dakota seeking damage claims?

A No, we have not.

Q And your reasons for not doing that were what?

A Our focus has been on making our business successful and providing service to our customers and we have attempted not to get into a litigation track because that is not how we will be successful. We will be

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successful at providing high levels of customer service and great value.

Q And it is also part of your thinking that it would be expensive to bring damage claims to the court or to the Commission?

A Absolutely.

Q And you would have to put on evidence and provide proof of your damages, of course, to be successful; isn't that the case?

A In effect, the cost of litigation really does deter currently any CLEC from litigating minor instances which most of these services are relatively low cost and low impact.

Q And so to the extent that the QPAP, once it becomes effective, provides damages to Fibercom without the expense and disadvantage of litigation, that would be something that you don't have today; isn't that true?

A I don't have it nor have I really asked for it. What I want is a high quality of service from Qwest. I do not want liquidated damages because that does not advance our mission in serving customers.

Q Okay. You indicated, I believe, that if Qwest were to capture 20 percent of the interstate long distance market, that you estimated that amount to be $6 million; is that right?

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A Nearly.

Q Okay. And, of course, that would be revenues. That's not profit?

A That was revenues for the residential market based upon assumptions.

Q Okay. Would you agree with me that the margin in the long distance business is pretty narrow these days?

A No.

Q You would not agree with that?

A Currently for our company, it's better than 50 percent.

Q You get a 50 percent margin in long distance?

A (Witness nods head)

Q Okay. Let's assume for the moment that we have --

MR. EVANS: Excuse me. You need to answer on the record yes or no, if you would, Mr. White, please, instead of nodding your head.

THE WITNESS: I'm sorry.

Q Let's assume for the moment that Qwest should have a 50 percent margin on $6 million of revenue. Just a hypothetical assumption. That would mean that there would be $3 million in actual profit?

A Sure.

Q Correct. Simple math question.

A And that would result rather quickly, if Qwest witnesses are to be believed, because that happened in

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a matter of months in other states.

Q So how much of a $14 million cap would you suggest as a businessman Qwest could afford as a loss leader to capture $3 million in profit?

A Qwest may make a decision that 3 to $5 million would be appropriate, but that is not the standard. There are other opportunities for Qwest in having the value of a single bill and a single company to contact, which we heard from Qwest witnesses. Therefore, I don't believe it's fair to assess it only on the long distance. You will be more successful in the local provision of service as well.

Q So we'll win back customers from Black Hills?

A Probably.

Q There's a finite number of customers that we could --

A Sure.

Q -- potentially attract in South Dakota. If you assume for me for the moment, also hypothetical, that the margin on long distance that Qwest might experience is more like 10 percent, you'll agree with me, will you not, that that profit margin compared to the $14 million cap gets to be a smaller and smaller amount. Isn't that true?

A I'm not familiar with Qwest's profit margins. However, I would be surprised if it's that low, having some

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knowledge of what wholesale long distance rates are
Q But I ask you hypothetically if you can assume that it's a 10 percent margin just for a moment, that would mean there would only be $600,000 of profit to be obtained in South Dakota, correct --
A Assuming your facts, I can't disagree with the math
Q And likewise under that assumption, a 14 or 15 -- I think maybe it's a $15 million cap in South Dakota, that would be more than adequate to account for any at least up increase in profits that Qwest could experience from the interstate long distance market; isn't that true?
A Well, I guess I don't like the way you're characterizing the cap in that the cap has an opportunity for Qwest, but it also is to protect the public interest And so there's two-fold And if you'd like to ask the question again, I'd attempt to answer it better
Q My point is simply this If there is $600,000 for Qwest to gain and $15 million for Qwest to lose, then it wouldn't be a very good business decision for Qwest to be pushing up against that cap simply to gain that piece of the market, would it?
A It would not, but we've witnessed Qwest spending tremendous amounts of money to get an opportunity and

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so I would doubt that that is the result that you're going to see in South Dakota You may have spent that already on this proceeding
Q So you doubt your own -- you doubt your own calculation of the $6 million opportunity or simply --
A What I demonstrated was for the residential market, if we assume 10 cents a minute an average -- national average minutes of long distance, the total market for 200,000 customers would be $27 million And Qwest serves all of those 200,000 customers. In fact, we heard they serve 231,000 customers. What I tried to do was illustrate that there was a pretty fast and quick opportunity for Qwest, given what the expert witnesses had demonstrated through the studies in New York and other states
Q To get 20 percent of the market?
A Yes
Q Okay Not 27 million but 20 percent or roughly 6 million?
A Yes And I would expect it would happen very quickly
Q Likewise on your $40,000-a-day analysis, there's 30 days in a month, roughly; right?
A Yes
Q So that's going to be a $1 2 million potential payout under your theory to capture, under my hypothetical,

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$600,000; isn't that correct?
A Uh-huh I wouldn't make that business decision
(Discussion off the record)
Q You indicated that you have some problems with the Qwest SGAT; is that right?
A The primary problem I indicated was that it's a fluid document and we don't have a final document to review
Q Would you prefer that Qwest not make accommodations to CLECs as they ask for changes in the SGAT?
A No I think that the process of looking to find the best available SGAT is an appropriate one and CLECs' inputs should be considered
Q If Qwest were to at some point stop taking new suggestions, that would be a bad thing, wouldn't it?
A At some point we need to know what we have to work with and at this point we don't And these proceedings generally have something that you can work on in the record to assess its value and its problems I don't feel we have that currently And yes, you are correct, it would be nice to continue to have those changes but in these proceedings they happen very periodically and only with Commission approval
Q I'm sorry In these proceedings?
A Proceedings like this Because the SGAT is a filed tariff of the South Dakota -- with the South Dakota

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Public Utilities Commission And it will only be updated when Qwest chooses to update it unless the Commission would order otherwise You know, what I'm hopeful for is that we can get a document that our people may spend the time with to decide whether it's preferential to the Interconnection Agreement because we now understand that we can take it piecemeal
Q Okay But the - Qwest did file an SGAT in October?
A Yes, they did
Q And you've had the opportunity to review that since October; is that correct?
A Yes, we have
Q But you did not come here, as I understand it, and make any specific suggestions as to how the SGAT should be changed?
A That has not been our focus, no
Q Okay And you've told me just a moment ago that, of course, as we've all observed, you've been sitting here throughout these proceedings Did you hear any Qwest witness state on the record any change that they were willing to make to the SGAT that you perceive to be disadvantageous to CLECs?
A I did not, but I am not probably the one to assess that
Q Okay So the fact that certain suggestions for changes

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have been made here by Qwest witnesses, the content of those changes is not your concern; is that true?
A Not at this point. It could be in the future
Q There's no reason, is there, that your company could not have opted in to the SGAT that was filed last October? I mean, that would have been your choice to do that or not, isn't that true?
A We would have had to enter into a negotiation with Qwest that Qwest would have offered that SGAT to us. Our other alternative would have been to take the SGAT that is a tariff before this Commission was filed probably a year and a half ago
Q And in addition to that, you now understand, as you just stated, that you have taken pieces of that SGAT and put them into your own agreement; correct?
A Yes. Sorry
Q When you advised this Commission or recommended to this Commission that they not allow Qwest to move forward on Track A at this point, I think you said that -- and correct me if I'm wrong but I think that your basis for saying that was a concern that Qwest has not proved that every item in the checklist and every variation of those items is being provided in South Dakota today under some Interconnection Agreement. Is that a fair characterization of what you said?

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A No. I don't think that that's the point that I was hoping to make. The point that I was hoping to make is that through Qwest witnesses, through the cross-examination of AT&T we have seen, and also through the blue charts, that there are a lot of those services that aren't being taken today and that Qwest has not put into the records through its Interconnection Agreements with the CLECs that are taking services in this state evidence that says that it has met the 14-point checklist
Q But to the extent that no one in South Dakota is purchasing some of those items, is that a barrier to Qwest being permitted 271 relief, in your opinion?
A No
Q I believe you also recommended that this Commission somehow adjourn to another proceeding on down the road sometime with more CLECs involved that would be smaller and easier for them to get their arms around?
A Yes, I did
Q You said something like that. What is it that you would suggest that we leave out of such a future proceeding to make this something that is smaller and easier as opposed to more complex as we've reviewed not only the SGAT but individual agreements?
A What I suggested to the Commission was that separate

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proceedings where the other CLECs would be again invited to participate may be appropriate for the SGAT and for the QPAP. I don't believe that the other 14-point checklist items would be appropriate for that. But those two documents are going to be the foundation for Interconnection Agreements in the future in South Dakota. And all of us have Interconnection Agreements that have termination dates on them. And I suspect that we will be moved towards the SGAT and the QPAP in the future.
And if you could understand as a small CLEC that you could participate in a very focused proceeding on something that is relevant to your business, you might find that it is cost-justified to participate, even though you don't fear that Qwest is going to be able to take your customers away because they get in the long distance business
Q Well, if I understood what you just said, you indicated that we would have, what, two proceedings, one on SGAT and one on QPAP?
A That's what I suggested
Q And that would really be the only simplification you could offer, wouldn't it, because otherwise you can't really break those documents further apart
A I wouldn't choose to, no

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Q Isn't it the case that any company that wants to opt in to the SGAT or wants to have terms and conditions that are not offered in the SGAT, isn't it the case that such companies have the opportunity to bring their negotiation issues to the Commission in an arbitration?
A I do not have any experience with that, but I believe it has been done in the past
Q So that provides a forum for an individual business to come before the Commission and air its particular problems and get the Commission's assistance in resolving those problems; isn't that true?
A So long as you're in a negotiation of a new agreement. If you're within your current agreement, you're going to arbitration has been my experience outside of this Commission
Q But we're talking about the formation of agreements
A Yes.
Q And as far as you know, that is available to any South Dakota CLEC to come before this Commission and get their negotiation issues settled by the Commission in an arbitration?
A If they would find that it was important enough to their business to go to the expense and effort, yes, that vehicle is available
Q Well, you'll agree with me, will you not, that there

are going to be some for whom no incentive is going to bring them to a Commission proceeding like this?

A Sure. They have small businesses

Q You talked just a little bit about the LFACS issue that AT&T brought up yesterday. Did you have any problems yourself with the loop qualification tools that are available to your company?

A I have no knowledge to that and, as I mentioned, I do not understand the LFACS.

Q And, finally, you were recalling the cross-examination yesterday regarding the PSALI issue. Do you remember that, when you talked about that?

A I don't believe I talked about the PSALI.

Q Well, you referred, I believe, yesterday to testimony -- to cross-examination and a statement made on the record by Qwest's attorney that a product was available and in the catalog. Do you recall that testimony?

A Oh, yes. Indirectly, I did refer to the PSALI.

Q And did you understand that testimony or that comment by the Qwest attorney where he read the sworn testimony of one of the witnesses that that pertained to PSALI?

A Yes.

Q Okay. And just to clarify, you don't dispute, do you, that PSALI as discussed in that testimony of

Ms. Burngarner is in the catalog and is available, do you?

A I have no knowledge of that.

MS. HOBSON: Thank you.

CROSS-EXAMINATION

BY MR. RICHARDSON:

Q Mr. White, I wanted to ask you a few questions about your testimony specifically, about the QPAP. First, I wanted to ask you a little bit about the purpose of the QPAP. You, I think, characterized it as a tool used by Qwest to get into the forbidden fruit of long distance.

Are you aware of what the purpose of the performance assurance plans has been in previous cases that the FCC has resolved?

A Only from what I've heard from Qwest witnesses.

Q You're aware, are you not, that in order to get long distance authority under 271, Step 1 is a demonstration that local markets have been open to competition pursuant to the checklist; correct?

A I believe that to be true.

Q So the QPAP is not the only tool or the only requirement for 271 relief; correct?

A Ask me again, please.

Q Sure. In order to get 271 relief, you need more than the QPAP, do you not? You need to make a demonstration

to this Commission and ultimately to the FCC that you've met the 14-point checklist?

A Right. The QPAP, I think, is the last step after you've demonstrated you've met the 14 points.

Q And the purpose of the QPAP is simply to demonstrate that once you get the forbidden fruit, you're still on track with respect to keeping your market open to competition, correct?

A Yes. I believe it's an exchange that you will continue to function in the public interest and not act as a monopoly, keep the wholesale markets open, and in exchange for that you get the opportunity to compete in your 14-state region or in the state of South Dakota for this proceeding for interstate long distance.

Q Well, would you disagree with the proposition that the FCC has said that the sole purpose of the QPAP is to demonstrate no backsliding from the checklist compliance requirements, that you already have to have met. Would you disagree with that?

A I would not disagree with that.

Q Now from the point of view of Congress that passed the '96 act and the FCC and this Commission, if Qwest demonstrates compliance with the 14-point checklist and provides adequate insurance against backsliding, is this forbidden fruit of long distance a good thing for

consumers or a bad thing?

A So long as they have demonstrated in the state compliance with the 14-point checklist and they have demonstrated to this Commission and the FCC that it's in the public interest that they would get the 14-point -- or enter the interstate long distance business, I would assume that's a good thing for the consumers. But only after it's been demonstrated to the two commissions that it's in the public interest would I agree with you.

Q But, in fact, isn't it the case that it's better for consumers to have competition in the long distance business assuming those conditions are met?

A I agree. And with that, I'm puzzled that the law was passed in 1996 and here we are in the year 2002 still working on that.

Q Well, I'm sure a lot of us are too. In specific regard to Black Hills Fibercom, I believe you testified earlier this morning that your margin on long distance was 50 percent; is that correct?

A I said in excess of

Q In excess of 50 percent. So that would be a prime area, would it not, where consumers might benefit from some competition in the long distance business?

A I hope Qwest does offer rates at 7 9 cents a minute in

state
Q Now you also testified earlier this morning, Mr White, that you believe that unless this Commission forced Qwest to improve its offer, that what we have on the table here is Qwest's worst offer --
A I said it may be
Q May be Now you're aware, are you not, that Qwest has committed to offer a QPAP consistent with what Mr Antonuk proposed, are you not?
A I heard your attorney, Mr Richardson, state that yesterday, but I tried to pay attention as best I could last week I didn't hear any of your witnesses say that that would be what Qwest would comply with I heard piecemeal compliance So that was a surprise to me when he said that happened last week Maybe it's in the record
Q Now you've testified in your direct, in your written testimony and your oral testimony today, that you agree with about 80 percent of what Mr Antonuk's conclusions were, is that correct?
A That's correct
Q In fact, didn't Mr Antonuk's conclusions address most, if not all, of the issues that you've been flagging, with the possible exception of the cap?
A In various ways but with different results

Q But do you agree with his proposals with respect to that? I'm putting the cap to one side
A It's been awhile since I read the Antonuk report Does he agree with what I've suggested for audit?
Q Well, are you familiar with his proposals?
A Yes, I am, but it's been awhile
Q Do you agree with his proposals?
A As I stated, I agreed with about 80 percent and I did not outline what those were What I wanted the Commission to do is to assess that report for the public interest in South Dakota
Q I believe in your written testimony you listed a number of subject matters that he described
A Yes In my demonstration of that, and I excluded none of the headings, was that this was not necessarily a collaborative that ended in consensus but a collaborative that ended in some pretty significant dispute, 29 items and 88 pages of report And what I attempted not to do because I am not a strong expert in telecommunications areas was to get into subject matter that was dealt with over a two- or three-year period But what I wanted to highlight for this Commission was this was very different from the filing that was made by Qwest last October and they needed to consider it
Q Well, let's just assume hypothetically that Qwest

adopted every single one of Mr Antonuk's conclusions Putting aside the cap, would you have any criticism of the Qwest proposal?
A I would have some, but I would have to spend some time working on the document again to identify them because some of the solutions were quite favorable to Qwest Others provided more balance And it is a very long document on a complex proceeding But that would be a great improvement over what we've got
Q Did Black Hills Fibercom have an opportunity to participate in the ROC PEPP collaborative?
A Yes, we could have
Q Now I believe that one of your criticisms of the QPAP this morning was that certain of the measures only receive a payout if compliance is at a 95 percent level as opposed to a 100 percent level

Are you aware of the principle of statistical significance?
A I've had courses in statistics We'll have to see where this goes, I guess
Q Well, you're well beyond me But my only question on this is wouldn't it be reasonable to build in a factor that statisticians would agree to to reflect the possibility of random chance in terms of whether performance in a given month, vis-a-vis a CLEC, was or

wasn't inferior to the BOC's own retail service?
A I do not propose that Qwest should be held to a 100 percent standard or a standard of perfect These businesses can't be conducted that way

What I stated in my testimony, and maybe I should clarify, is that because there's a bandwidth of forgiveness, a 5 percent bandwidth, which may be reasonable, depending on the measure, those CLECs that have their errors within that bandwidth receive no liquidated damages Only CLECs that had errors that fell outside that bandwidth of forgiveness would receive damages

What I would propose is that should the Qwest performance fall below that standard, then everybody receive payments But if Qwest could maintain either parity with Qwest retail service, if that's the standard, or the percentage standards and maintain it in that level of service, then no payments should be made to CLECs at all I accept that

What I don't accept is a description of this as liquidated damages where two parties have maybe identical results or maybe one party has worse results with regard to its customers and gets nothing and the other party because it maybe has an order late in the month gets paid.

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Q Okay What provision of the QPAP would operate to deprive a CLEC who has the problem late in the month of an opportunity for payment?
A Maybe I said it backwards The way that I understand the QPAP to work is that if your order was part of the failure within the bandwidth of forgiveness, you're not entitled to a payment
You're only entitled to a payment once your order has been accepted outside of that bandwidth. let's say 5 percent The first 5 percent of errors receive no payment Only after the 5 percent, then payments are entitled
Q But isn't it true that the QPAP makes Tier 1 payments to CLECs on an individual basis and applies that standard to each and every CLEC?
A Could be
Q Now you also referred to the potential problem of CLECs who experience missed performance late in the year That's a concern that Mr Antonuk had and that he addressed in his recommendations; isn't that correct?
A Yes, he did
Q And are you aware that Qwest has agreed to his so-called equalization mechanism designed to address that problem?
A I heard that yesterday

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Q Another criticism I think you had this morning was that caps don't seem to be necessary because Qwest seems confident that it can meet the targets in the plan so why does it need to worry about caps.
Isn't it true that there are some measurements, EELS for one, that have not yet been established for the purposes of the QPAP?
A I don't have knowledge of that
Q And aren't there opportunities in the QPAP for new measurements to come in that we don't currently measure?
A If I understand the QPAP right, if Qwest agrees, they could become standards within the QPAP
Q Well, put aside the question of what the standard is because we may have a disagreement about that But do you acknowledge there is an opportunity for new standards to come in that we don't currently have standards for?
A Yes And there should be
Q And would you agree that our current experience with the application of these standards in a QPAP context is one that as Mr Antonuk said we don't have substantial experience with yet?
A Qwest, I believe, has run performance results for a period of something like a year In fact, one of the

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Qwest witnesses came in and testified that it was his belief that the QPAP was not relevant any longer because the performance indicator measures just measuring performance would result in good performance by Qwest and that if Qwest fell out of performance in many of those areas, the FCC would drag them into a proceeding
So that's where I got puzzled is you had Qwest witnesses said the QPAP's not necessary, and you had other Qwest witnesses that were talking about escalation and price caps with great concern, very inconsistent to me It caused me concern
Q Well, you're a businessman, aren't you, Mr White?
A I hope to be
Q And one of your goals would be to minimize risks of exposure for your company; correct?
A Work on that every day
Q So if you felt that you were successful, as you do, you'd nevertheless want to watch out for the possibility of unforeseen circumstances that might cause you to be less than successful; correct?
A Yes I would work on those
Q So wouldn't it be consistent to say that I think I'm going to meet those targets but, as Mr Antonuk said I don't have enough experience with them yet to give me

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the comfort that I might not need a little bit of insurance about unforeseen circumstances? Would that be a reasonable position to take?
A Well, Qwest has testified that because the FCC has approved similar performance assurance plans in other states that this one will work fine And so you would work to limit your exposure, but I am surprised at the zeal with which they worked to limit their exposure
Q Well, would it be surprising if Qwest were to take a plan that approved in five other states that had such caps and proposed it for use in this proceeding?
A It would be a legitimate business approach But this Commission still is charged with the public interest in the state of South Dakota and what the FCC has decided for those other states doesn't necessarily apply here
Q And I believe you said that it's this Commission and not the FCC that makes the judgment on that question Was that your testimony?
A The performance assurance plan, as I've heard from the other witnesses, is happening state by state
Q To whom does the BOC, in this case Qwest, submit its application?
A Right here, before this Commission
Q Are you aware that the FCC is the one that must grant ultimate authorization for Qwest to engage in long

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distance in South Dakota?
A Yes, I am
Q So they'll have the ultimate decision on that, won't they?
A With the advice of this Commission
Q Correct. And is the public interest standard that's applicable to the QPAP a federal or a state public interest standard?
A I do not know the legal conclusion, but my impression is that it must be a state conclusion because we've seen exhibits and orders for multiple states that come up with different results
Q I just have one other question, Mr. White. One of your proposals this morning, if I understood it right, was that the cap ought to include a long distance component in it
A Yes
Q Now if, as we've discussed earlier, the FCC concludes that Qwest has met the 14-point checklist, it's opened its markets to competition and it has sufficient assurance that it will keep those markets open, then Qwest's participation in the long distance market would be fruit that was no longer forbidden; correct?
A I believe that would be the result, yes
Q And are you aware that the FCC has established the cap,

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the 36 percent cap, based on the view that it's the local exchange revenues that the BOC is feared to be protecting that ought to be the revenue source that we ought to apply the cap to? Are you aware of that?
A I am aware that for other BOCs, the Commission has put a 36 percent cap in place.
Q And were those FCC orders involving states with urban and rural populations?
A The earlier states upon which this practice was established probably had communities that had populations greater than the state of South Dakota. With Vermont, it may be that that trend is continuing. But the principals probably occurred in very large states.

MR. RICHARDSON: I have no further questions. Thank you.

MS. AILTS WIEST: Mr. Gerdes, any questions?

MR. GERDES: No questions.

MS. AILTS WIEST: Commission staff?

MS. CREMER: We have no questions. Thank you.

MS. AILTS WIEST: Commissioners?

COMMISSIONER NELSON: I have one. There's been a lot of talk about the caps and

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whether they're appropriate. Would you agree that the FCC agreed to accept the 36 percent caps in some states and that what might be appropriate for Verizon or SBC might not be the same number that would be appropriate for Qwest in South Dakota?

THE WITNESS: That's the essence of my testimony, yes.

COMMISSIONER NELSON: Thank you.

COMMISSIONER SAHR: Upon listening to the testimony over the last few days, has your opinion on how the cap should be structured changed at all from your prefiled testimony?

THE WITNESS: No. I think that my prefiled testimony would be an appropriate result. However, I have greater concerns now that that result would be necessary to protect the public interest in South Dakota.

COMMISSIONER SAHR: If I'm recalling your prefiled testimony correctly, I think you talked about having the cap be based on future earnings under some circumstances?

THE WITNESS: Yes.

COMMISSIONER SAHR: Would you also -- which, obviously, future earnings could go up or could go down. Would you also impose some

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type of floor on that to deal with the fact that the earnings could go down or would you have a floor or ceiling or how would you deal with those issues or would you strictly tie it to the percentage of future earnings?

THE WITNESS: I would tie it to percentage of future earnings. As I mentioned, I made an incorrect assumption in assuming that the long distance business would be part of that. But Qwest should only be held to a standard that is in proportion to its business opportunity in South Dakota. And if they're losing customers, we're winning customers. We probably have less need for their so-called liquidated damages.

COMMISSIONER SAHR: Then I had asked the question of -- I can't remember which day it was but about audits and the issue had come up about how many audits should the CLECs be able to request in a particular year, if it should be unlimited, if it should be a cap, so on and so forth.

Do you have any opinion about the number of audits?

THE WITNESS: My focus has been on the more global audits to ensure that Qwest's

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processes and procedures are working effectively

With regard to how I would hope our business would be conducted with Qwest is that if we have a problem with data or we have a problem with an issue, we will be able to work on that And that has been my experience in working on some of these disputes

So I don't feel strongly that Black Hills Fibercom needs to have the opportunity to audit 100 issues in a year I believe we're given the opportunity to audit two and losers pay But if we are going to have an ongoing business relationship with Qwest, which we will, we'll be able to work those things through, I hope

So the CLEC number of audits is not a big concern to me Maybe it could be a few more But it's the global audits that I'm concerned about Because that really is testing whether the public interest is being protected

COMMISSIONER SAHR: We have had som discussion about who should pay for particular audits

THE WITNESS: Uh-huh

COMMISSIONER SAHR: Do you have anything that you want to add to the discussion

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about who should pay for the audits, whether it should be Qwest or the CLECs or how that should be structured?

THE WITNESS: It's typical in business that if you initiate a proceeding, you're going to pay for it if you're not correct in your assumption as to why you initiated that proceeding That is probably fair

I can tell you, though, that there aren't very many issues between Black Hills Fibercom and Qwest that would be cost-justified to hire a consultant to audit the record We would hope the parties could audit it themselves And that's been our practice to date

COMMISSIONER SAHR: Thank you. And then you brought up the issue of arbitration section and actually I think it's the dispute resolution Section 5 18 in the SGAT, which I believe is incorporated with the PAP through 18.0. And I had asked some questions about that over the previous few days

Would you have concern about Qwest being able to unilaterally take -- and excuse my characterization, but unilaterally take or require that a CLEC go to arbitration as opposed to coming

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before the Commission?

THE WITNESS: Yes we would And those concerns are two We may have made a determination that we believe that the best forum to air our complaint would be before this Commission. We made that decision once before and had Qwest enforce the language of our Interconnection Agreement that's taking us on a path towards arbitration

That language is confusing to me However, I am not an attorney But to the extent that there's confusion in the language, it leaves room for various interpretations We would like to have our options open

COMMISSIONER SAHR: Well if it makes you feel any better, I'm an attorney and I think it's a little bit confusing too or could be written more clearly

Looking through that provision, you highlighted the part about unilaterally being brought to arbitration, and we also had the issue about location come up And I think if the parties -- and I'm going to paraphrase, but I think if the parties are unable to agree, the arbitration proceedings shall occur in Denver or a mutually

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agreed-upon agreeable location

Do you have any concerns about unilaterally -- I guess here would be my question is is obviously if the choice is Denver or a mutually-agreeable location, if Qwest decided not to agree to another location, then you would be going to Denver And you wouldn't have a say in that

Is that a concern for Black Hills Fibercom?

THE WITNESS: Well, it's just another example where Qwest has retained unilatera control of the agreement If the issues are important enough, we will go where it needs to go, but once again, you've increased our cost of arbitration because we're going to be traveling to Denver

COMMISSIONER SAHR: And this may g into legal issues that you don't feel comfortable answering But we've talked a lot about the liquidated damage clause And it goes to a certain extent to the amount of damages and so on and so forth which I think goes to caps and different level of payments, on and on and on

Do you have any concerns about -- with going with the concept of liquidated damages and then having to waive contractual rights that you might

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otherwise have? I think I posed the question a couple of days ago of well, in some cases, you may receive more than expected --

THE WITNESS: Right

COMMISSIONER SAHR: -- under the standard and some cases you may receive less than expected, and certainly there are some advantages to not having to bring litigation for the CLECs in some cases

As a whole, do you feel comfortable -- and, again, if this is something that you don't feel like you have the expertise to answer, please say that, but do you feel comfortable with the situation of waiving your right to go to court for contract claims in return for some type of liquidated damages? I guess that would be my question

THE WITNESS: Well, I have not had the opportunity to see what payments Black Hills Fibercom would have received during last year's transitional period There was a confidential exhibit, I guess, that provided Tier 1 and Tier 2 We would have to have some knowledge as to what we might expect would be our regular payments on an annual basis

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We would also have to spend some time looking at our business relationship with Qwest and the transactions that we have that are covered by the QPAP and assess whether or not the likely payments on those transactions, which aren't a lot because we're a facilities-based provider, would result in payments that over the long run would cover the risk of having a major blowup that we couldn't sue under

So I can't answer that, but it would take some pretty critical thinking to assess the balance between taking the QPAP payments or retaining the right to a more full protection through litigation

COMMISSIONER SAHR: And this is going to require some speculation on your part but just so I understand what the CLECs might be missing out on, what sort of problems would be major that could occur where you would not have -- or I shouldn't say would not have, where --

Let's put it this way What sort of problems could occur where you might otherwise be in a lawsuit involving, you know, several hundred thousands or more, what type of problems might you have with Qwest in theory that would require -- or where you would feel like you would need to go to

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court or try to resolve it through a normal contract type litigation?

THE WITNESS: Well, I will have to talk in theory, but some examples that potentially come to mind would be that for some reason throug a Qwest problem we lost service to a very large customer And in the Black Hills, we do have telemarketing firms And if we got into some sort of litigation for loss of business opportunity, that could be substantial I'm not aware of any circumstances like that

Another area that gave us a lot of concern early on was in provisioning of 911 services and making sure those work Because if we were to have a failure of 911 and someone was harmed because that didn't work, that could be a company ruiner So we're very careful in those areas If there was some 911 proceeding, it could blow up into significant dollars.

Those are a couple of areas where, you know, just thinking possibly we could have some challenges But I don't understand the technicalities of the services probably well enough to say where Qwest could be at fault in those processes

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COMMISSIONER SAHR: But those are ones you could see that could potentially be high-dollar losses for Black Hills Fibercom?

THE WITNESS: Yes

COMMISSIONER SAHR: I don't have any other questions at this time

COMMISSIONER NELSON: I thought of a couple Would you agree, Mr White, that the impact of the cap on Qwest could -- if we just go -- let's assume that we agreed to the 36 percent The impact could also be zero? Or it could be 36 percent or somewhere in between?

THE WITNESS: I think that the impact of the cap is controlled by Qwest

COMMISSIONER NELSON: Exactly Because if they provide good quality of service and their performance is 100 percent, there may be no impact; right?

THE WITNESS: Yes There's going to be some impact None of us are perfect

COMMISSIONER NELSON: Basically, they control the impact?

THE WITNESS: They control whether it's at the high end or low end

COMMISSIONER NELSON: Right

Exactly Have you had the same experience with the churn in Qwest employees that Midco said that they had?

THE WITNESS: I did relate to Mr Simmons' testimony That is not my particular area But we have had churn and you do end up building relationships and start over, and that's difficult Because we don't process a lot of orders, we are at times pretty dependent upon the instructions that we get and those instructions have varied from very good to very poor And it has an impact on our business

COMMISSIONER NELSON: Okay That was my next question, whether or not you felt it had an impact And then when you raised the issue about having a large customer who at some point might down the line have a problem where they were out of service and they could bring a suit against you for damages, would you be protected by the same tariff that protects Qwest from those kinds of damages and that is only actually the cost of the service that they could seek?

THE WITNESS: We have talked about that internally, is that one of the exposures we may have And we've even talked about the

possibility that legislation may need to be provided to give us the similar protections that the incumbent BOC has But we do not -- I don't think we probably have the protection that we have through our tariffs for Black Hills Power, for example And that is a concern and it keeps us on our toes

COMMISSIONER NELSON: Why do you -- maybe this isn't a good question for you Do you know why do you feel you don't fall into the same language and get the same protection that Qwest would get?

THE WITNESS: Mr Evans may be able to answer that but I don't believe I can

COMMISSIONER NELSON: That's okay I was just curious if you felt it was an issue Thank you

CHAIRMAN BURG: I had just one You made quite a point of saying that if Qwest is going to meet the standards that they've set that there shouldn't be any needs for caps Am I paraphrasing you adequately?

THE WITNESS: Right Basically the caps are to protect Qwest from what evidently would be very poor business results because they've indicated in their transitional year that it's probably pretty low results And like I said I haven't seen that testimony, but I don't know that it's probably at the $15 million level that they pay in Tier 1 and Tier 2

And so they have said to this Commission we meet all the checklist items and the 14 points, we're providing adequate service to the CLECs That's what they have alleged Yet they are very concerned about escalation of payments and the price cap, which gives me concern about their real commitment to continuing to provide that level of service

CHAIRMAN BURG: And you laid out a scenario where it may be beneficial to actually accept the payments and not provide the service, especially if it could draw more people to their -- you know, it could have people move from your service to theirs

THE WITNESS: Sure

CHAIRMAN BURG: Is that accurate again?

THE WITNESS: I believe that's accurate And it could be that Qwest doesn't have enough transactions in this state to even get them

anywhere close to the $15 million, but they could accept some dollar amount in there and they will have some business opportunity from the interstate long distance

Plus their witnesses have said a bundled service in one provider sells in the marketplace And that has been our experience as well in the Black Hills as we've bundled cable TV, phone and Internet So I would expect maybe they'll do better in the marketplace and CLECs will lose customers, particularly if they're effective in their pricing of long distance

CHAIRMAN BURG: Excuse me

THE WITNESS: Sorry

CHAIRMAN BURG: In cross-examinatio from Ms Hobson, she was making -- she was countering your argument it wouldn't be beneficial to accept the penalties of the caps in exchange for trying to draw more customers

Is that, again, the way you saw what her argument was?

THE WITNESS: Yes That was the point that she was trying to make is that because Qwest only makes 10 percent on their long distance that that would probably be a bad business decisio

for them to make high payments under the QPAP However, as I understand it, Qwest has a sunk cost in its long distance infrastructure in the western 14 states So any new revenue ought to be supportive of that infrastructure So I question the 10 percent margin just on practicality, although I'm sure she would know what it is

CHAIRMAN BURG: Then to go the next step further, if her arguments that that would not be a good business decision would be to accept the losses, you know, would that not even bolster more so than the lack of a need for cap and escalation?

THE WITNESS: Yes It's been my experience that businesses work on their problem areas first And if they've got a problem where their long distance revenues aren't supportive of their QPAP, they've got something to fix and work on to bring more money to their bottom line

CHAIRMAN BURG: That's all I have

MS AILTS WIEST: Any more questions from the Commission? If not, any redirect?

MR EVANS: No, ma'am Thank you

MR RICHARDSON: Could I just ask a couple of questions?

CROSS-EXAMINATION

BY MR RICHARDSON:

Q Mr White, there is another incentive for Qwest not to get anywhere near the $15 million cap, is there not?

A I'm lost as to what that is but there could be

Q Well, isn't there a risk that the regulators might take their long distance authority away? Don't they have the right to do that under the act?

A Yes, they do, but if that in effect is happening, Qwest has destroyed the local competition market on the way there

Q Would it be an unmitigated disaster for Qwest to have obtained long distance customers, have its authorization revoked, and then have to turn those customers away?

A Yes, it would

Q And I'd just like to ask a couple of questions about the liquidated damages provision that -- just to follow up

One of the concerns that you raised, as I understand it, was that there might be exposure to Black Hills Fibercom from some 911 problem Would that be a lawsuit against Black Hills Fibercom for the consequences of lost 911 service?

A That would be one scenario A worse scenario would be that the 911 service was out for a period of two or three days and it was in all of the news media therefore discrediting our organization and causing people concern as to buying services from us

Q Okay With respect to the first, though, the QPAP doesn't extinguish that kind of claim, does it? It doesn't bar you from seeking recovery from Qwest for damage from third parties

A I'm not that familiar with how that language would wor legally but if that's the way you describe it, that would be a great result

MR RICHARDSON: Thank you

MS AILTS WIEST: Any redirect?

MR EVANS: No ma'am Thank you

MS AILTS WIEST: Any further witnesses from Black Hills Fibercom?

MR EVANS: No That concludes our case Thank you

MS AILTS WIEST: We will break for lunch How about if we reconvene at 1 30

(Staff Exhibits 1 through 4 are marked for identification)

MS AILTS WIEST: Staff you may call your first witness

MS CREMER: Thank you Staff would call Dr Griffing

MARLON GRIFFING,

called as a witness, being first duly sworn on the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MS CREMER

Q Would you state your name and address for the record please

A I'm Marlon Griffing I'm frequently known as Buster I live and work at 1735 Crestline Drive in Lincoln Nebraska

Q And in front of you, I'll show you what has been marke for identification purposes as Exhibit 1 Could you identify that for me, please

A That's my direct testimony filed in this Docket

Q And there is also another exhibit marked as Exhibit 4

A And that's a summary I'll be using as I testify today

Q Okay Do you have any changes, corrections, additions or deletions to your testimony?

A No I don't

MS CREMER: I would move to admit Exhibits 1 and 4 of staff's Number 1 and 4

MS AILTS WIEST: Any objection?

MS HOBSON: No objection

MS AILTS WIEST: Exhibits 1 and 4

have been admitted

MR GERDES: I have no objection to staff Exhibits 1 and 4

Q Would you please summarize your education and work background for us, please?

A I'm an economist I have three degrees from the University of Nebraska-Lincoln I received my Ph.D. in May of 2000 I'll do a little detail because it may have a bearing on how you treat what I say in a few minutes

One of my areas of concentration was industrial organization, which is about regulated industries And then in the area of econometrics generally I've had principles of economics, micro and macro, intermediate micro and macro economics, and masters in Ph D level courses in micro and macro economics

I've had undergraduate statistics and typical two-semester sequence at the graduate-level in enonometrics, masters, and Ph D

My experience is I began working at the Nebraska Public Service Commission in July of 1998 as an economic analyst I worked there approximately two years participating in all the 27 -- pardon me. It was OSS testing on behalf of the PSC in Nebraska. When I

moved to QSI Consulting in August of 2000, the other of the three 271 processes, the multistate process, which is considered the SGAT, and then the PEPP, post entry performance plan, collaborative also started and that has produced the QPAP that is being considered. I did that on behalf of the New Mexico Public Regulation Commission advocacy staff. I've also continued to work with the Nebraska staff on both the SGAT and the OSS test. That's all.

Q Okay And by whom are you employed?

A I'm employed by QSI Consulting.

Q And exactly what is QSI Consulting?

A A telecommunications policy analysis firm.

Q Is that just you or there's a number --

A No. There's eight full-time employees and one other part-time employee.

Q Okay. Are you familiar with Docket TC01-165?

A I have become familiar

Q And how did you become involved with this Docket?

A The Public Utilities Commission here in South Dakota contracted with QSI Consulting to provide assistance in this Docket, and I am one of the two consultants assigned to fulfill that contract I've reviewed testimony, including the multistate reports that's been filed in this Docket

Q You also listened over the Internet last week then too didn't you?

A Yes, I did I did

Q Okay Have you testified about 271 matters in other states?

A I have testified on behalf of the New Mexico PRC in th multistate docket on public interest and QPAP matte

Q Okay And what issues are you going to discuss toda

A I'm going to discuss the checklist compliance and a little bit of public interests

Q And based upon your education and experience, do y have an opinion as to the resolution of the various issues raised by the parties including the 14 point checklist items and public interest that Qwest needs meet in order to obtain 271 approval?

A I do

Q And would you walk us through a summary of your recommendation?

A Yes, I will That would be this, and turn to the first page. As the first heading indicates, I will address issues I raised in prefiled testimony that as I listened on the Internet last week I have some responses to from the testimony of Qwest's witnesse

From the Group 1 report, it's check with Checklist Item 3, which has to do with poles, ducts

and something else -- issue 3 access to landowner agreements, and then the reference is to the pages i my direct testimony where I wrote about this issue

This is perhaps a little bit picky I just want to make sure the Commissioners understand o issue I support what Qwest has proposed, which is changes to the SGAT that prohibit access by CLEC marketing and sales personnel to certain information the landowner agreements

What I want to make clear is that this was not a recommendation of the Antonuk reports exc me, of Antonuk report Group 1 What happened with issue is much later in the Group 5 report on general terms and conditions. CLECs were objecting to Qwes marketing and sales personnel and legal personnel having access to CLEC forecasts Qwest proposed t there be a restriction written in that the - exclude me, CLECs proposed that Qwest personnel not be a see it And that was agreed to

Then Qwest went back and altered the sect of the SGAT that goes with landowner agreements putting in the same language but reverse situation that the CLEC people couldn't see their agreements And fair is fair I just want you to know that John Antonuk didn't make this agreement which I believ

you listened to Mr. Freeberg, you could have gotten that impression.

The second issue from the Group 1 report is large order request response times. And as I did there, I recommend that you accept the Antonuk recommended resolution. It will perhaps make you work some, but it's a good balance of interests. By having to work, if an unusual order comes in, you may have to listen to some arguments about whether there will be a waiver or not of the 45-day rule.

Moving on to the Group 2 report, Checklist Item 1 has to do with interconnection in some aspects, and Issue 6 has to do with who has the obligation to build direct trunk transport in excess of 50 miles in length.

Qwest brought in last week revised language from what they had submitted in their earlier testimony. What the revised language does is again maybe create some work for you down the line when there's a dispute about who has this obligation, but Qwest is saying that they'd like to see -- when agreement can't be reached and the trunk transport in question is more than 50 miles, it will come to you for resolution on an individual case basis.

John Antonuk had recommended that it come to you similarly and that you would have the freedom to set the costs for a particular project. Because of the time Qwest was objecting saying that we may have a project that's a casino, well removed from everything, 200 miles, we'll have to build all of this line and for all we know, next year the CLEC we built it for will lose the business and then we'll be stuck with the line.

Antonuk's response was well, that's a higher risk situation than the normal UNE prices, which are sort of an average price reflect. So you would perhaps set the rate of return at 25 percent or something if it was exceptionally risky. And that's how he said he would deal with this situation on the theory a CLEC would all of a sudden have to make payments to Qwest for the building with the rate of 25 percent might not view the project as nearly as favorably if the rate of return was 10 or 12 percent or something like that.

But Qwest's proposal is acceptable, and so I'd recommend you adopt their language.

The same is true of interconnection at Qwest access tandem switches. Qwest revised its proposal from what it had submitted in its direct testimony. It has adopted John Antonuk's recommendation, and I recommend that you adopt that now.

Also in the Group 2 report and the same with Checklist Item 1 but now moving to the collocation aspect of it, that issue was the provisioning intervals for collocation on behalf of CLECs if the CLECs failed to submit a forecast about their collocation needs to Qwest by the appropriate time.

Qwest was arguing it should not -- that if a forecast was not submitted, that an interval of 120 days would be adopted. CLECs and John Antonuk argued that, no, once you did a check on what Qwest available for heating, other facilities that it affected, whether the proposal could be provisioned all of those were available even without a forecast then the 90-day interval would be in effect, only if some reason to extend the interval existed after the inventory of Qwest's facilities should you adopt the longer interval. Qwest hasn't done that work for wor but they've proposed a resolution that was developed Arizona and it's very similar to the facilitator's recommended resolutions so I say take Qwest's offer take their revised language.

Next the Group 3 report, which was about emerging services. And one of the emerging services line sharing. And the dispute here was whether Qwe could tie the provision of voice service to a customer to its data service or its DSL service. At first Qwest refused to do that and, in fact, at the time of the workshops in the multistate proceeding, they we disconnecting customers who had been a voice and customer for Qwest and the voice portion of the business was captured by a CLEC. The customer n CLEC, would receive a notice from Qwest that it was going to disconnect that service.

This issue has undergone some evolution ov time. Qwest has generally offered to provide more a more. Their latest offer last week -- or it was made clear to me that their latest offer last week was that of they'll do it on a resale basis and a UNE-P basis i the CLEC is providing the voice service to a custom by either of those means. They will continue or they will sign up customers who say, more over to the C as a voice customer and then decide to add DSL. T will not do it as a stand-alone product which would have to do with whether the CLEC had its own facilities. So as long as you're using Qwest facilities, they'll agree to continue the DSL or else initiate it.

That position is acceptable. Motivating thinking here is always what will open this market t competition when you've got a monopoly that owns

only network or nearly the only network Does Qwest's refusal to do it stand-alone consist of a barrier? Well, yes, sometimes but it's not a significant enough barrier The CLECs do have alternatives in this case

Cable television sometimes provides high-speed connections There's independent providers The CLECs can provide it themselves So although it's a barrier, given all the other issues, the cost to Qwest, this is a good compromise, and I'd recommend doing it.

I note here that it was approved in New Mexico on April 2 And that's because it was brought out last week that Qwest's proposed SGAT and what it's bringing to this state for its SGAT is not identical to that done in other states In all cases they don't necessarily bring all compromises forward Well, in this case they did so South Dakota is getting the latest thinking on this issue

Turning the page to the Group 3 report still on line sharing, there are provisioning intervals for line sharing. And as you heard last week, Qwest had reduced its interval to three days from five days At issue isn't the particular interval but whether the SGAT as recommended by the facilitator spells out regular conditions for reviewing and perhaps revising

that interval as Qwest revises the interval for itself

Qwest is committed to include those conditions cited by the facilitator so I recommend to you that you accept Qwest's revision

The Group 4 report, which was about unbundled network elements. Item 4 is, in part, loops This has to do with CLEC access to the loop facilities and assignment control system, or LFACS You heard that acronym last week.

CLECs said they needed to have access to LFACS because it gave them information they needed about copper loop availability John Antonuk, in questioning in the workshop, determined that LFACS really wasn't the appropriate tool, that a tool called facility check that was being developed when he issued the report last summer was the appropriate tool

In its testimony, Qwest indicated last week that IMA, which is interconnected mediated access, one way CLECs can have access to Qwest business systems released 9.0, contains -- or became available in late February, contains the version of facility check that addresses the identified need.

So we had a proposed solution that was awaiting the availability of the appropriate tool. It's confirmed that tool has been made available So I

recommend you find Qwest in compliance

Continuing with Checklist Item 4 from Group 4 line splitting The issue is limiting line sharing to UNE platform The facilitator said that Qwest had to develop an adequate inventory of methods and conditions in the SGAT for loop splitting this particular issue has become called

I checked Qwest represented that it has revised it and inserted these Sections 9.21 and 9.24 And they've done that and so they've complied and I recommend you find them in compliance

Moving to the last of the five group reports Group 5 general terms and conditions was one of the subjects and the change management process that you heard about last week was in this report You heard a good deal about Qwest saying that its redesign effort of its OMP is quite far along It's not done They seem to be complying with the criteria for compliance So I say find them in compliance but continue to monitor the redesign effort to make sure it completes satisfactorily And they said it started to dip low sometime this summer it should be over

The last issue among checklist items that I'll talk about is the Section 272 requirement that the Section 272 affiliate the long distance provider or

the interLATA provider have separate operations, in the case I'm going to talk about from the BOC, the Bell operating company within the Qwest family of companies

What I covered in my testimony is that the interLATA unit known as QCC, Qwest Communications Corporation, has directors who are also directors of Qwest Communications International, the parent operating within the Qwest group of companies Meanwhile, the BOC has directors Qwest Communications has declared that there's no overlap between that set of directors and the 272 unit

However, these directors at the top of the Qwest family would have indirect control at least over the directors who work with the BOC, and that raises a question whether that's in keeping with what the FCC has intended

Qwest stated last week that the FCC does not prohibit this arrangement and further recorded sections of the FCC statement that Qwest or BOCs are not required to outline their reporting procedure which to me they would seem to fall under

The only reservation I have is that an Administrative Law Judge in Minnesota a couple of days after we filed our testimony here, or at least it came to my attention a couple of days after I learned to know

maybe this was a problem and may be grounds for further action However, that finding in Minnesota is not final and the FCC does not comment on this so I personally have no reason to do any more than I did in my testimony, which was to raise the issue.

I'm sure that if the Minnesota case turns out to be found by some final authority to have merit, that in 13 other Qwest states Qwest will be moving to comply with the directive So I think you're okay to go ahead and let this go

Before I move to the public interest concerns I want to talk about, I just wanted to talk about the SGAT and revisions to it We've heard that we don't know what the final SGAT is and Qwest has said that, well, it's a fluid document, they didn't want to submit something they knew would be changed in a day or two or restrict the ability of CLECs to make recommended improvements from the CLEC's point of view, so the CLEC we've been looking at is an October CLEC -- or, excuse me, an October SGAT The SGAT we've been looking at is an October SGAT.

What I found troubling about that position is that there were consensus issues from the multistate reports, the five reports I've just gone through in hitting the highlights, that in September Qwest knew

were unlikely to change They were consensus issues and as that implies, there's agreement

By my account, going through the table of contents, there were 329 of those consensus issues where I believe certainly by February when staff asked Qwest to identify that it had made those changes, could have been made by then As we prepared for this proceeding today staff and myself and my colleague, Mark Stacy, reviewed the SGAT we had in hand and the first several sections that related to these consensus issues we found the changes had not been made

Rather than go through and check all 329, we sort of spot checked and found that our initial finding was correct So those changes aren't there They need to be. Qwest has said it will put them in

On the other hand, there's 131 disputed issues addressed in these five reports Perhaps ironically, a good number of those changes are in the SGAT that we saw in February, Qwest responding to what it thought might be controversial here. The May 7 SGAT has to be verified.

I hope you'll consider something like I suggested here as an aid to staff as it verifies that all of these 329 consensus issues and 131 disputed issues are there, that you to what's within your power

to suggest that Qwest submit with that revised SGAT a table or chart like this And this is just for illustrative purposes The issues and numbers and SGAT sections I've cited here are fictional and won't match necessarily with anything you've seen But I'd like to see something like this which would allow staff to have sort of a checklist to follow as it goes through these 400-plus issues

Now I'll turn to the public interest concerns that I

MS HOBSON Excuse me Dr Griffing, before you do so, Qwest is going to at this point interpose an objection to Exhibit 4 When I indicated on the record just a few minutes ago we had no objection to this exhibit it was presented to us as a summary of Mr Griffing's testimony I mistakenly assumed that that testimony referred to in that sentence was the testimony that had been prefiled by Dr Griffing

Dr Griffing has not filed testimony on these areas And indeed, he is an expert familiar with the Hausman study from other jurisdictions Certainly there was no reason had he chosen to put opinions in this record as to the Hausman study that he could not have done so in his direct

testimony filed several weeks ago, thereby giving Qwest an opportunity to evaluate this analysis

We're seeing in this exhibit, as I briefly skim it, an economic analysis that has not been presented to Qwest until this very moment And I think given Dr Griffing's background, the fact that the Hausman study was mentioned both in the Teitzel direct and in the Toll direct filed several weeks ago now, and also given the fact that Dr Griffing has participated in public interest issues in other jurisdictions and in the 271 process in other jurisdictions, there's absolutely no reason why Dr Griffing could not have made his analysis available to us before today

MS CREMER Do you want my response?

MS AILTS WIEST Go ahead

MS CREMER One she had a chance to look at that at the time That's her problem if she chose not to look at it and voiced no objection

Two, I can put on my case in chief as I see fit If we choose to put on in direct testimony what we want then we will As long as it's relevant I don't have to There is no law in

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South Dakota requiring prefiled testimony So we will put on the case that we choose to in our direct case

And, three, most lawyers have the ability and can respond to testimony they have not seen prefiled and do not get to take a half-hour break every time to prepare cross

MS HOBSON: May I respond to that?

MS AILTS WIEST: Go ahead

MS HOBSON: As I indicated, this document as for everyone else was handed out a few short moments before Dr. Griffing took the stand. Counsel represented it was a summary of his testimony Heretofore, I have never seen an administrative process in which people are permitted to go completely astray from the prefiled testimony and ambush -- and litigate issues by ambush and surprise

This apparently is an economic analysis which Dr Griffing could have easily prepared and put into the record for response This is an attempt to simply create confusion on this record and to take advantage of people not being prepared to cross when, in fact, they very well could have been if counsel had a simply followed the procedures

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outlined by this Commission and filed prefiled testimony

MS AILTS WIEST: Objection is overruled As I stated, this is -- we do not consider this to be a 126 and this is an evolving process and Qwest's rebuttal testimony I know did make concessions and I think it is proper that they can bring up items that have been discussed in the hearing So the objection is overruled.

THE WITNESS: I'd just like to add that the -- I had been hearing about this study but I had never seen it And the first time I ever saw a direct reference to the study was in David Teitzel's rebuttal testimony filed on April 18 That's why I didn't -- that's not -- but in April. That's why I didn't respond to it in my direct testimony, which if he'd only footnoted it in his direct testimony I would have gone to it and done what I've done here

The Hausman study, you didn't know what it was It was a rumor floating around in the workshops and people would talk about it, have you seen it, have you seen it Nobody had actually seen it So that's my reason for not addressing it earlier

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MS AILTS WIEST You may proceed with your --

A As it turns out, the Hausman study actually has three authors But I'll continue to call it the Hausman study because that's how it is referred to in this proceeding generally

I mentioned earlier my credentials as an econometrician Econometrics is the marriage between economic theory and statistics for the purposes of conducting research and economics about hypotheses

You have in statistics generally dependent variables and independent variables The dependent variable is the one that depends on changes in the independent variables And I say that perhaps a dependent variable might be the size of benefit to consumers of telecommunications from something done with an independent variable and an independent variable it might effect those benefits is BOC entry into the long distance market, which is basically what Professor Hausman did in his study

I've thrown a couple of other hypotheses here for you to consider You could put these in equation form Word form is fine And the point I'm illustrating here with Hypothesis 1 and Hypothesis 2 on page 7 is that you can do more than one investigation

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of the same subject

In both instances the dependent variable, the one subject to influence by the independent variable, is bushels per acre of corn produced in a particular field. In Hypothesis 1, we have one independent variable, the amount of fertilizer applied You could get a number of fields that had corn as their output and measure the output per acre, collect data on the amount of fertilizer applied and come up with an equation that would give you a relationship between fertilizer applied and corn output

But if you know anything about corn growing, you know that fertilizer is not the only factor that affects output And Hypothesis 2 is my attempt as a resident of an agricultural state but certainly not an agriculturalist myself, to illustrate that you could do a more comprehensive investigation and see what actually affects bushels per acre -- or output per acre

Again, we have fertilizer applied but we add in how long did it go between planting and the application of the fertilizer, what was the date of the planting, what was the precipitation that year, soil quality in each field, how did you take care of the field once you've applied this fertilizer and so on

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If you do the second investigation provided you can get the data, and that's always a limit for social scientists, you can come up with probably a better explanation than the first one of what the relationship between all the variables and in particular the variable of fertilizer applied and output is. I mean, these other things affect it as well and fertilizer is just one of the factors.

Returning to the Hausman study. I think similarly variables that were not considered in it are the openness of the local service market. Specifically, the 14-point checklist which BOCs have to comply with before they're let into the market.

Checklist compliance and BOC long distance entry are linked. You don't have one without the other. So to say that BOC long distance entry affects benefits to consumers doesn't tell the whole story. I can tell you a story that it's checklist compliance that affects benefits to consumers.

You as Commissioners have to consider that and I want you to consider both factors.

Unbundled network element prices are also a possible factor that would affect benefits flowing to consumers from BOC entry into long distance. The ability of the CLECs to get into the open -- into the

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newly-open markets once they've established through checklist compliance there's access to OSS, loops, switching, so forth, once we've done that what does it cost the CLEC to get those items. Level of prices nor how recently a UNE cost docket have been done in either New York or Texas. The states covered in the Hausman study were not variables, and they could have been included.

Okay. I've given you my academic representation as best I can and so we say so what, what does it mean to you? The Hausman study is a good study. It's technically sophisticated. It just has the shortcoming it didn't include everything possible. And not everything possible but some very important variables, not just sort of side things. I didn't dig extensively to come up with a long, long list. I identified things that were important.

So we've got Hypothesis 1, which is basically the Hausman study, the size of benefits to consumers depends on BOC entry into long distance. And then I give you some alternates, the one where I substitute compliance with the 14-point checklist for BOC entry into long distance.

I don't think either one of those is the best study. I think a better one would be that the size of

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benefits depends on BOC compliance with the checklist, BOC entry into long distance, the level of UNE prices and the time spent since UNE prices were updated. I think that would be a better study.

Qwest presented to you that there would be a lot of benefits to consumers from letting it into long distance. And I agree. As an economist, I am looking forward to this experiment in trying to shift from a regulated monopoly environment to a competitive market in both long distance and the local market. You don't get chances like this very often. But I think both things have to happen.

Now Commissioner Sahr for one asked were there alternate studies. Not to my knowledge. I've just given you one we could do. Or I got to thinking about it. There's two states, Oklahoma, where a 271 application was denied once and since then SBC has brought Oklahoma back a second time and it was approved.

So now we've got three periods for Oklahoma. The period up to where the first application was rejected, clearly they're not in compliance. The middle period where they've been getting in compliance, maybe we can make some judgement about how much they were complying or have some average. And then the

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period after they've -- the BOC has been let in. That middle period the BOC wasn't let in but we assume that checklist compliance is higher than that first period. So now maybe we've got a mechanism for having three periods to study and we can maybe separate the effects of BOC entry and checklist compliance, which I think both cause benefits to consumers.

I mentioned Louisiana. It's also been rejected. It's moving toward approval. It was submitted by Bell South along with Georgia and then the application was withdrawn a couple of days before the 90 day period before a ruling would have to be issued by the FCC had concluded.

So just as Dr. Hausman has used Pennsylvania as a counterpart for New York and California as a counterpart for Texas with New York and Texas being the states where BOC entry took place and Pennsylvania and California being the states where otherwise they're similar to the first two states, entry did not, maybe we could pair Louisiana and Oklahoma. That's one way to go about it.

Or to conclude with a ridiculous proposal, maybe Qwest would volunteer once it gets approval in South Dakota not to enter the long distance market. Then we'd have a state that they complied with and yet

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there was no BOC entry so you could advance the cause of local service by volunteering to do that

MS HOBSON: I seem to be pretty slow but I don't think we can stipulate to that right now

A I've got one more thing This is just a factual matter There seemed to be some question about what the subscriber line charge was in relationship to the public interest of a price squeeze Subscriber line charges, SLCs, came about in 1985 as the FCC started the long process of moving away and it's still going on with moving away from lots of internal subsidiaries within a monopoly provided service Long distance service was priced above cost and it subsidized local service

What happened in '85 was the first SLCs came into being I think they started at $2 and since then it went up to 3 50 in prescribed steps At the same time access charges were being lowered so that the price of long distance service was going down and was getting closer to cost

The SLCs aren't sort of passed along to somebody to a state fund or anything They're revenue for LECs, all LECs, ILECs, BOCs, CLECs So to say that somebody had an option to charge one they might not

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charge it, but I don't think that would be the case

The calls order 2000 revised how SLCs were applied and it did away with some other charges and folded them into the SLC but the principle remains the same we're trying to reduce overpriced long distance, bring it closer to cost and at the same time bring the local service closer to its cost which the revenues were below

And that does conclude my summary

Q The revised language that you talk about -- you know, throughout your summary you would say I agree now with their revised testimony

Is that what's found in their rebuttal testimony, Qwest's rebuttal testimony, or did sometimes they say it when we were testifying?

A Sometimes in testifying last week, and I think an instance or two in their rebuttal I found it It was the first time I had seen that position, and I agreed with the revised position in the rebuttal testimony I can't go through it issue by issue and tell which is which but it came from both sources

Q Okay I just wanted to make that clear

MS CREMER That's all the direct we would have

MS AULTS WIEST: Any questions,

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Qwest?

MS HOBSON: Thank you

CROSS-EXAMINATION

BY MS HOBSON:

Q Do you have your staff Exhibit 1 in front of you?

A Yes, I do

Q There at line 12 -- line 12 you state --

MS CREMER: On what page?

MS HOBSON: Page 7 of Exhibit 1

Q You state there that you have reviewed the information filed by Qwest including the affidavits of the Qwest witnesses, the five reports from Liberty Consulting, and the post report comments and exceptions that were filed by the parties in the multistate proceeding

Do you see that testimony?

A Yes Yes

Q That work is the basis of your prefiled testimony and your recommendations contained in your prefiled testimony; is that right?

A Yes, it is.

Q Did you do any independent analysis of whether -- of Qwest's compliance with the 271 checklist?

A To the extent that I looked at these issues and Qwest had disagreed with John Antonuk, I guess you'd call that independent analysis because I brought my

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experience and education to bear on the issues and I hope gave an explanation of why his recommendation when Qwest disagreed with it was a relation that should be followed instead of Qwest's position

Q But of course today, and under further analysis in some of those cases, you've actually decided that the Qwest position was okay; isn't that correct?

A Actually, Qwest responded to every issue I have raised with either revised rebuttal testimony or revised testimony last week in such a way to remove every objection I have

Q Okay You did not, for example, compare Qwest's SGAT with the template Interconnection Agreements that were produced by companies that have already received 271 approval, such as Verizon or SBC?

A No

Q Okay Now am I correct that you did an analysis similar to the one that you've done for this Commission for the state of Nebraska?

A Similar

Q Okay And in so far as your work here consisted of reviewing and analyzing the Antonuk reports, you had previously performed that work for Nebraska, had you not?

A Given the differences in testimony and other filings in

[illegible] was the answer I was looking for with that [illegible]

Q [illegible] you're looking at the original order that was [illegible] the process by between the two states and [illegible] SGAT's?

MS. DIGRE: Do you know what [illegible] that was? I don't recall. I either I'm not trying to

Q Did you take any testimony about that?

A I don't recall. There was four days worth and I don't recall specifically what you're referring to

Q Did you review the Nebraska SGAT for that proceeding?

A I reviewed the portions of it that were in dispute and [illegible] the Commissioner much as I have tried to do here with these portions

Q Did you review that Nebraska SGAT for compliance with the Antonuk reports?

A Not the way we did here. I might point out that Nebraska's schedule was well advanced and, I mean, it was going to bed halfway and through last fall, and technically reviews of each report followed much more closely on the heels of the issuance of the report than this review has. So it didn't make the same sense to go through item by item as I did here with the [illegible] item.

Q -- And does it an SGAT or an interconnection Agreement [illegible] were consistent with all of Mr. Antonuk's reports, would that SGAT or Interconnection Agreement in your opinion be consistent with 271 and its checklist requirements?

A I wouldn't say because I think there was a couple of issues that the lying court was one where Mr. Antonuk's recommendation was less than Qwest has agreed to in the Statute. So to say -- and I've raised that issue here pending but that he dealt with only the [illegible] case not the case where a CLEC acquired a customer. The customer then decides it wants DSL. Qwest is doing -- is the CLEC is providing by resale or UNE-P and it is technically feasible. And Qwest has agreed under the Antonuk reports to provide such a service to a customer.

So I would agree with you, but there's a couple of points like that where I think he don't go far enough. And since then Qwest has done enough that I can agree that an SGAT that has all the changes you've agreed to make, the contentious changes, the other disputed changes, that would be 271 compliant.

Q Okay. But I guess what I'm asking you is a hypothetical question. Assume that we had become [illegible] to have followed the Antonuk reports. Qwest

this is a hypothetical now. Qwest filed a SGAT completely compliant with all of those reports.

Would your opinion be that Qwest was not in compliance -- or its SGAT would not be in compliance with the checklist?

A You've said all the changes in his reports consensus and disputed --

Q But nothing since then.

A But nothing since then. I think so.

Q Some of the issues that Mr. Antonuk decided or provided recommendations on were not really issues that affected 271 compliance, were they? I mean, there were some that were minor issues as to how the BOCs and the CLECs would do business that really don't affect a yes/no, pass/fail 271 decision; isn't that correct?

A I'd have to disagree because part of checklist compliance is to show that you're offering items associated with the checklist items. Qwest has chosen to use its SGAT to fulfill that portion, that you've got a concrete obligation and that the standard is sometimes at parity, sometimes it's giving the CLECs a reasonable opportunity to compete and so forth. You've got to have the paper obligation and then you've got to have performance on it.

The OSS test, the commercial performance that

Mike Williams presented last week, that would be the second half. But I think you've got to have the SGAT and it's got to comply with those standards before you're compliant.

Q Well, I think we could all probably find examples where the SGAT certainly had provisions that must be included in any compliant checklist document, but aren't there also provisions in there that could have been left out or decided another way that the SGAT could still be found by the FCC to be acceptable?

A I don't know what the FCC would say.

Q What would Dr. Griffing say?

A I would say that there are decisions that could have been decided another way. By and large, I found John Antonuk's recommendations good ones that were compliant. When I thought in one or two instances, something like that, that -- I thought it needed tweaking for compliance I spoke and you see the product.

Q Well, for example, referring your attention to your Exhibit No. 4, page 2, the recommended decision on the 50-mile-length build issue, that really could have gone either way, couldn't it, and still been 271 compliant?

A Actually, I've heard that go about four ways that I can think of, different states and here. And I don't think

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Q. ... Antonuk has a lot of experience in telecom ... has discussed the issue and considered the arguments ... and came up with a good recommendation.

... we're not bound to follow that, none of the parties are, but in this case I found no reason in ... recommendation to depart from his recommendation. Qwest has since offered something that I do find ... So I guess there's some wiggle room ...

Q. ... And that's all I'm getting at.

A. Okay.

Q. ... is that there is no precise verbatim magic formula for ... with 271 checklist items in the SGAT, is ... there?

A. ... is public policy. There is no rarely precision, I ... It kind of lacks ...

Q. If there were ...

A. We would ...

Q. ... we would simply know what we had to comply with and ... that would be that. And I believe you told me that you ... reviewed the Verizon or the SBC agreements?

A. No.

Q. ... nevertheless, you wouldn't be surprised to learn, ... you, that those don't look exactly like Qwest's ... either with or without Antonuk?

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A. ... I wouldn't be surprised by that.

Q. ... you are aware, aren't you, that following the ... which Mr. Antonuk presided that Qwest ... various other SGATs continued to work on the ... of the SGAT in other state forms?

A. Yes. If you say so. I would have to take your word ... sequence. I was generally aware that other ... were going on. I don't know the exact ... dates these took place. But if you say ... or Oregon or Arizona or Colorado had a ... after the last multistate workshop, fine. I ... reason to contradict you.

Q. ... and you did hear witnesses from Qwest testify ... under oath that after Mr. Antonuk decided ... issues, that those issues continued to be a ... of discussion between the CLECs and Qwest ... decisions?

A. Yes.

Q. ... you don't have to take my word for it, you can take ... word for it?

A. Yeah, I see.

Q. Okay. And you also heard witnesses testify last week ... Qwest that they believe that they made a further ... to CLECs after some of those Antonuk ... were finalized?

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A. I heard testimony to that effect by Qwest witnesses.

Q. And do you have any reason to contradict that testimony?

A. No.

Q. Once Qwest makes an accommodation to a CLEC or a group of CLECs in one state, wouldn't you expect that Qwest would want to bring those changes forward into other states that are still working on their SGATs?

A. That's just an opinion, but I would -- if I were running a phone company and had 14 jurisdictions to deal with, uniformity would be a goal. Qwest may have its own reasons for not bringing particular compromises forward, however. I don't know Qwest's mind-set on everything.

Q. If Qwest failed to bring such accommodations forward into new states, would you expect that CLECs might protest that decision and complain that the change that was good enough for State A should be brought to State B?

A. They might, yeah.

Q. On page 6 of your Exhibit 4, you've made a sort of an unscheduled Motion, procedural Motion to the Commission that Qwest be required to provide -- present a table that identifies the action it has taken on consensus items in the multistate reports, disputed items in the

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multistate reports, and even provide us a format.

With that thought in the background, you did hear Qwest witnesses testify that some of those sections have been changed over and over again since the SGAT was -- or I'm sorry, since the Antonuk reports were prepared, didn't you?

A. Yes. And I may know that better than you because I spent part of Saturday and Sunday throwing away old SGATs. So I'm sympathetic to your quandary. I just think that the consensus issues in particular should have been changed by February. And I'd like some assistance now that verifying that those consensus changes have been made.

Q. And I guess the problem I pose to you is that Qwest provided its expert witnesses here who provided testimony under oath that in some cases what they have included in the SGAT reflect consensus that took place following the time of the Antonuk reports. And I think you've agreed with me that that wasn't an unreasonable thing to do in light of CLEC expectations and Qwest's willingness to accommodate CLEC concerns. So how can we then show something that is neither the case nor desirable?

A. It's my opinion you had 300-plus consensus items. I don't think all 300 plus were -- I think a small, small

majority I'm not even sure any of the consensus items were in dispute in other states after the reports I don't know I mean, there might be five out of those 320 some that some change has been made I think it would have made things easier for everyone to have made those consensus changes and then worried about the five exceptions rather than not making any of the consensus changes in what we saw in this state

Q Well, if I understood your testimony, and correct me if I misunderstood it, you looked at the "first several sections" and decided that since you were not seeing the changes you expected to see there, you didn't make the analysis of whether the other 329 were there or not, isn't that correct?

A No We did a sampling We started out what would be issue order and we did the first five or six and said, hey, they aren't here and then moved deeper into the reports to instead of the first report, the second report, fourth report, fifth report, picking at random saying, well, is this one here and it wasn't So, again, rather than spending hours checking through, this nearly scientific sampling technique I think warranted not spending that time

Q How many hours did you spend doing that?

A Probably a couple three, four And that was me I don't know how much time staff spent on it

Q Okay Well, I realize you can only testify for yourself You spent two to three hours doing that?

A Yeah And, you know, I got through 10, 12 issues

Q And do we have a list of all of the issues that you found that you believe the consensus language has not been in the SGAT?

A You have two examples that are in my testimony

Q And can you direct me to where those are?

A It would be Exhibit 1 Okay The footnote at the bottom of page 8

Q I'm sorry I'm not understanding what language it is you think from that footnote should have been included in the SGAT that was not included

A Well, as I say in the body, a sampling of the issues indicated it had not made all the changes in its SGAT as it would have part of the issue resolution And then you can go to Issue 2 on pages 40, 41 of the Group 1 report, Issue 2, page 54 of the Group 2 report, see John Antonuk's language, his recommendation, go to the SGAT section cited in his report and the changes aren't in the SGAT

Q So if they're not in the section that he cited in the SGAT, does that mean they're not there?

A I couldn't say If Qwest without some identification where alternative changes were made made changes elsewhere, that presents a new problem How do we know what changes Qwest made if we don't know where to look

Q Well, but the point is not that they're in 9 2 or 13 5, is it? The point is whether or not the terms and conditions under which Qwest is offering service are compliant with 271 Isn't that the overall objective?

A If you're going to accept the Antonuk reports and the Antonuk recommendations as a condition of finding the SGAT compliant, you have to make sure the Antonuk recommendations are there John Antonuk typically identified where and he made it hard sometimes Sometimes he didn't identify where it should go and you had to search and use the comments to find where it should be But there were -- there was a map to look for most of these at least when he did it And the map didn't seem to have been followed

Q Well, I guess what I'm struggling with is the notion that -- well, let me ask it this way Did you do an analysis of the content of, for example, these two items that you list on Number 8, to be sure that the essence -- the content of that language isn't included

for those two items, or did you look strictly for the verbatim language?

MS CREMER Do you have a place where he should look for this? Do you have a cite?

MS HOBSON I asked him for his list, and he directed me to these two items

MS CREMER Right But my question is do you have a question where these things show up that aren't where they should be in the SGAT or are you fishing?

Q I believe the question is did Dr Griffing make a study of the content of the SGAT sections that he feels do not comply with the Antonuk reports to determine whether or not the content was there even if the verbatim language was not?

A Yes, I did I mean, in the case of these consensus items that we didn't find, either a deletion or a specific language or in some cases where John Antonuk didn't -- he would say a change should be made, something like this, sometimes he invited the parties in the comments to submit proposals When I knew where to look I read it, I didn't look for verbatim language I was looking for that the intent was followed In the case of the recommended changes that I did find had been -- excuse me the disputed issues

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where recommended resolutions had been adopted in the SGAT, again. I often didn't find word for word his change, but in my judgment the change was with the spirit of his suggestion.

So, yes, I did analyze it, and I didn't look for every capital letter and every period and every word being identical.

Q. So where the change was consistent with the spirit of what he had ordered, then you didn't consider that to be failure to comply with his report?

A. No, I did not.

Q. So are you then able to give me the list of those sections that you found did not comply, apart from the two that you've listed here in your footnote? Do you have any other specific sections?

A. No. I didn't read the whole SGAT. There were 300-some that I didn't have easy means of checking on. So, no, I didn't go any farther than that.

Q. So you didn't go any farther than these two?

A. No. As I have said, there were, I estimate personally, 10 to 12. I know staff looked at others. I don't know between us now many we looked at. 10 or 12 and whatever they did. I'm not even sure how many staff did it. I know -- I'm pretty sure it was more than one person.

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The indication was the changes weren't there. You do a sample of that size and you don't find what you're looking for anywhere where you're supposed to find it -- and by that, I mean, when I looked if there had been renumbering, I tried to take that into account and say, okay, maybe it's not the exact number that John Antonuk identified. Is it one before one after, two before two after, whatever. I think I made a good faith attempt to find the changes and did not.

Q. Okay. And my question is simply this. Do you have a list of those sections that you, Dr. Griffing, checked so that we can have that information for our response?

A. No. But I could tell you it was the first several, half dozen issues in the Group 1 report and then spot-checked throughout.

Q. You don't have any notes that reflect that work that you did?

A. No.

Q. Did you provide instances to staff counsel for her cross-examination questions?

A. About those issues?

Q. Those kinds of issues, language being left out, in your opinion.

A. Not specifics. The same general point I've made that after what seemed like a sufficient check we didn't find the changes and that we suggests that this be brought to the attention of the Commission in this hearing.

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Q. So apart from the two items that you have provided on the bottom of page 8, there isn't any point -- there isn't any way at this point that Qwest can understand exactly which items you are concerned about?

A. Oh, but there is. But there is. You have the table of contents of the John Antonuk reports. He identifies them as consensus issues, issues resolved in his workshop, then he's got issues not resolved in his workshop still in dispute.

My note count of 300 plus comes from going through those table of contents and saying I'm pretty sure I didn't check every one but I checked enough to satisfy myself these changes weren't made. And you can use those same items.

Q. But you also indicated that you found some that were changed.

A. Disputed issues.

Q. You found none of the undisputed issues changed. I mean none of the -- let me rephrase that. None of the undisputed issues reflected in the SGAT?

MS. CREMER: I think he keeps saying consensus issues, so I don't know.

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Q. All right. You found none of the consensus issues in the SGAT, is that correct?

A. Of the 10 to 12 I personally checked I didn't find and in conversations with staff when this happened, they didn't find the ones they checked either, so we stopped.

Q. Okay. And so just so the record is perfectly clear, the 10 to 12 that you personally checked, apart from these two, you can't tell me which ones those were?

A. Not exactly.

Q. Okay. Directing your attention now to your work on the Hausman study. Wasn't one of his conclusions that there was benefits to increased competition in the long distance business?

A. Yes.

Q. And whether or not there was checklist compliance in the local market, that would have no impact on the long distance business, per se, is that true?

A. Actually, he concluded -- I would agree with him that if you introduce another competitor into the long distance market, there would be benefits to consumers.

Q. Okay.

A. He seemed to be reargueing the debate during the '96 Telecom Act about what the BOCs should have to do to comply. And he introduced this notion of less than

full compliance being okay

Q Okay. Well, let me just try to shorten up the afternoon here. Everyone agrees at this point, do they not, with the possible exception of Dr. Hausman, that full checklist compliance is necessary before Qwest gets into the long distance market?

A I think most parties would agree with that, yes. That's the reality. That's what the law says.

Q So in every case when any BOC gets into the market, into the long distance market, there's going to be checklist compliance prior to that, isn't that true?

A Yes. I mean, once it's happened, by definition, there must have been compliance, whether you thought before it was or not.

Q Exactly. And so one reading of the Hausman study is simply that consumer benefits flow when there is increased competition, correct?

A Yes.

Q And you don't disagree with that -

A No.

Q - conclusion of the Hausman study?

A No.

Q Okay.

MS. HOBSON: Thank you. That's all I have.

MS. AILTS WIEST: Any questions, Midcontinent?

MR. GERDES: No questions.

MS. AILTS WIEST: Mr. Evans?

MR. EVANS: No questions. Thank you.

MS. AILTS WIEST: Commissioners?

COMMISSIONER NELSON: I have one. Mr. Griffing, did you feel today that Qwest is kind of trying to shift the burden here on the SGAT to the staff and to you as a consultant? I've heard a lot all week about this fluid document called the SGAT and which SGAT we're talking about.

Do you feel that - I felt in their questioning of you that the burden was now shifting to you to prove where you couldn't find these things in a SGAT versus them trying to show us that they had them in the SGAT.

THE WITNESS: I agree with you, Commissioner.

COMMISSIONER NELSON: I just wanted to be sure I wasn't thoroughly confused.

Another question I have, would it be within the realm of reasonableness for Qwest to have to supply you and our staff and these Commissioners

with the list of the 301 consensus items that they had and the 131 disputed items and put it in a document - a chart that would show us prior - let's take their supposed May 7 version of the SGAT. Because I think that's the one we're interested in because the other one seems not to be relevant anymore.

THE WITNESS: I would agree.

COMMISSIONER NELSON: Is that we could go down that list and check or not - Qwest could show us, not we show them, where they're not in compliance, but they could show us how they've addressed those issues in the May 7 SGAT. Would that be a reasonable expectation?

THE WITNESS: I think that's reasonable and that's what I was recommending and asking for, some assistance in verification.

COMMISSIONER NELSON: Okay. I think that would be fine too.

THE WITNESS: I've tried to work from a footnoted SGAT to the reports and that's harder than working from the changes in the reports to the SGAT, which is why I suggested this format.

COMMISSIONER SAHR: Mr. Griffing, Qwest has stated that it would file an updated SGAT

May 7.

THE WITNESS: Right.

COMMISSIONER SAHR: Presuming that that happens, how long would it take you to review that updated SGAT?

THE WITNESS: A long time. But if I had a table, it would take much less time.

COMMISSIONER SAHR: Without the table, do you have any idea how long it would take? You say a long time.

THE WITNESS: I'm sure you're talking at least a week, maybe longer. You'd have to get into it and see how it goes. And there is the renumbering issue to accommodate some changes. So it's not going to be easy for them to do this but I think they know better than anybody what's been done and what they have done. That's why I think they should do it and provide us the revised numbers as well so you know where to look.

COMMISSIONER SAHR: And you would say then having that sort of blueprint would be able to cut your time significantly on review?

THE WITNESS: Yeah. Let me think here a moment. Because we did check the disputed issues to see whether they had done - followed

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Antonuk's recommendation and, you know, that's the 100 and some, and those were there so you didn't have to start and sort of say where is it, look around. Generally it was right there or else it had maybe moved a paragraph and you found it right away. I think even that took two, three days to do. So you take that times the 300 and some and I think you're well into a second week to do it all.

COMMISSIONER SAHR: Thank you.

CHAIRMAN BURG: Just a couple things. How many of the 14-point checklist and sub issues are available in practice today, do you feel? Any idea? I mean that's probably a pretty broad group.

THE WITNESS: Well, my testimony is is that if Qwest makes all of these changes, all 14 are in compliance.

CHAIRMAN BURG: Then is there any reason that these checklist-compliant issues should not be implemented immediately and available to CLECs now rather than waiting until 271's completed?

THE WITNESS: See, there's a -- you can put a -- they can submit an SGAT and it can go into effect but you don't need to approve it. So

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if it's been 60 days, I think it is, there would be no reason that -- well, that October SGAT ought to be available to everyone. Again, what is that.

CHAIRMAN BURG: The problem that I've had overall is a lot of complaints about the ability to compete, but a lot of answers, but we've changed all of that, but that's all available, but the 14-point checklist takes care of all of that.

And I'm wondering in some of those states where it's already occurred whether -- and you may not have this answer, but whether the CLECs are now able to get those and not just have to wait until there's been 271 approval to get them. Because I'd like to see a little bit of proof in the pudding.

And the other question I have, and I think this goes to the same thing the other two Commissioners have asked. Several witnesses have mentioned the May 7 SGAT filing. Do we need to examine that filing before any decisions are made on the 271 policy?

THE WITNESS: Yes. Because my testimony and the agreements on the consensus issues are contingent on those Antonuk consensus language and whatever you agree to here -- my testimony is contingent on those changes actually

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being made. So yes, it does need to be checked.

CHAIRMAN BURG: Do they need to be in a SGAT itself in a final version, I'd call it, of the SGAT or just the fact that they've said we agree to those compliances and actually be dependent upon somebody else to make sure they get into the SGAT or should we expect a finalized SGAT? I understand -- I'm going to make a caveat. And we all agree, I think everybody here has agreed that should be a fluid document, but we have to look at a specific date to see if that document complies with a 14-point checklist or not. Would you agree?

THE WITNESS: Yeah. Yeah. The term "frozen SGAT" sometimes is used in the multistate workshops, and everybody understood what it meant. It meant for this particular set of issues on this report, we've agreed to turn in this SGAT and review it.

I think my preferred answer to your question is Qwest said they would once -- they said we'll make these changes and we found that 300 some of them weren't made.

CHAIRMAN BURG: And I think -- let me ask it this way. Is there another witness that's actually going to talk about the QPAP?

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THE WITNESS: Yes, there is.

CHAIRMAN BURG: Okay. So I won't ask that question. Thank you.

MS. AILTS WIEST: I just had a couple of questions. On page 1, Exhibit 4, when you're referring to Group 1, Issue 6, the 45-day rule.

THE WITNESS: Right.

MS. AILTS WIEST: And you said accept the proposed resolution. I believe it was AT&T's point that there were no exceptions to the FCC's 45-day rule.

Do you have any opinion on that?

THE WITNESS: I think Qwest, what they've agreed to is sufficient. I'm not an attorney. I have no opinion on the matter of exceptions.

MS. AILTS WIEST: And then page 2, under Group 3, Issue 2, was it your position in your testimony that Qwest should provide DSL as a stand-alone, and have you changed that position by saying that you would -- that Qwest's position is acceptable?

THE WITNESS: Yes.

MS. AILTS WIEST: And on what basis

did you change your recommendation?

THE WITNESS: Understanding that exactly the circumstances they would provide DSL. There was some question about whether new customers would could get DSL. They clearly agreed to what John Antonuk said about not disconnecting people.

In the testimony they submitted, and I forget which witness it was, actually may have been two, Jean Liston and Karen Stewart, both may have indicated, yes, we'll do for existing customers, we'll add customers as long as it's UNE-P or resale.

And to me they're opening the market if that circumstance exists. Given all the alternatives CLECs have for that product, that's opening the market enough.

MS. AILTS WIEST: Thank you. Did you have any redirect?

MS. CREMER: No, I did not.

MS. AILTS WIEST: Go ahead.

COMMISSIONER NELSON: I don't think you were here earlier this morning when Mr. White testified about his view of 271 approval for Qwest. He thought there should be a special proceeding to

deal with the SGAT and one other item that I can't think of right now, but the SGAT for sure was one that he thought. Do you think that's --

THE WITNESS: I was here and he said the SGAT and the QPAP.

COMMISSIONER NELSON: Okay. Do you think that's something that needs to be?

THE WITNESS: That's up to you. I have no opinion.

COMMISSIONER NELSON: Okay. If you look at the SGAT for in the future, I'm not sure and I probably should know this, does the SGAT stay on file until they file a new one or does it expire after a certain length of time or --

THE WITNESS: I think there's a term built into it, and it should be on file here just like any other Interconnection Agreement.

COMMISSIONER NELSON: I wondered, though. I guess I should know but I don't know whether or not it stays until it expires and they have to file a new one or if until they file the new one, this is the rules of the road they've got to live with.

THE WITNESS: Well, yeah, as long as it's not expired. It's an offering to all CLECs as

sort of a basic master Interconnection Agreement saying we'll give you at least this much and if you want to come and negotiate about details we can do that, but you can have this and you can get started in business. I've heard that said. It's a way to facilitate CLEC entry into particular facets that you can get started and maybe you want to change something else. We can talk about that. No guarantees, but we can talk about that. Meanwhile, there you go.

COMMISSIONER NELSON: I don't know a lot about the Hausman study, but it sounds a lot to me like a FERC RTO cost benefits study that was done. And, you know, in a perfect world, maybe that could save people money and maybe it might not.

But tell me why I should give any credibility at all to the Hausman study, given there are a whole lot of other variables out there that it didn't consider? Why should it influence my opinion one way or the other?

THE WITNESS: He used good methods. It really can't be criticized on those grounds. It makes sense intuitively that if you add a competitor, there will be benefits to consumers.

So he's sort of verifying what theory tells us.

My concern is he was arguing for this in the second half of his report, this weakening of the checklist compliance standards, and that has to do with how long the benefits might last.

If BOCs get into long distance and they're able to by whatever means maintain or even perhaps strengthen their monopoly or near monopoly in the local service market, competition may not last in the long distance market and then those benefits go away after a couple three years. So that's why I think you have to pay attention to both parts of the entry. Sure we want the BOCs in, but we also want the CLECs in to the local service market.

COMMISSIONER NELSON: I guess that that's -- since it left out so many possible scenarios that I never really examined, I have a problem with deciding whether or not it's a real -- of real value.

I mean, possibly if everything happens the way it ought to or that it should, then we wouldn't be here today because everything would be competitive and it would all be resolved. But that's not the way it's unfolded.

So I think the Hausman study did look at and

come up with some variables that it considered but it didn't consider the other variables and the other possible scenarios. And if you were really going to decide whether or not a customer's going to benefit from this, you would have to look at all of those scenarios, not just the one you choose to look at.

THE WITNESS: I think so.

COMMISSIONER NELSON: Otherwise, we have theory about -- it's like quality of education or anything else out there. You know, we all think it's there and we all have a different version of what it is. And it's nice to believe that we'll all benefit. Thank you.

MS. AILTS WIEST: Any redirect, Ms. Cremer?

MS. CREMER: No. I have none.

MS. AILTS WIEST: Thank you.

COMMISSIONER SAHR: Just a follow-up question on the Hausman study. Now that study went primarily to the public interest question; is that correct?

THE WITNESS: Yes.

COMMISSIONER SAHR: Without the Hausman study, do you believe that the public

interest test has been met?

THE WITNESS: I think having a good QPAP in place is a big factor in whether the public interest requirement is met. The language there is BOCs have to demonstrate the market is irreversibly open, and the "irreversibly" is important.

And, I mean, there's nothing in the '96 act about QPAPs or, let's see, SEEM plans. Bell South calls it the SEEM plans, self-effectuating enforcement mechanism. You won't find any details like that.

But you've got this phrase "irreversibly open." Well, how do we ensure the market is irreversibly open? The development has been post entry plans.

MS. AILTS WIEST: Any more questions for this witness?

If not, we'll take a break.

(A short recess is taken)

MS. AILTS WIEST: Ms. Cremer, you may call your next witness.

MS. CREMER: Thank you. We would call Mark Stacy.

MARK STACY

called as a witness, being first duly sworn in the above cause, testified under oath as follows:

DIRECT EXAMINATION

BY MS. CREMER:

Q Would you please state your name and address for the record.

A My name is Mark Stacy. I live and work at 5300 Meadowbrook Drive, Cheyenne, Wyoming.

Q In front of you, I'll show you what's been marked for identification as Exhibits 2 and 3. Do you see those? Exhibit 2 is the summary, 3 is the testimony?

A Yes.

Q Could you identify those for us, please.

A Exhibit 3 is my prefiled direct testimony. Exhibit No. 2 is the summary of my direct testimony that I'll be shortly presenting to the Commission.

Q Do you have any changes, corrections, additions, or deletions to those exhibits?

A No, I don't.

MS. CREMER: I would move to admit 2 and 3, staff's 2 and 3.

MR. GERDES: I have no objection to staff Exhibits 2 and 3.

MS. AILTS WIEST: Any other

comments? They've been admitted.

Q Would you summarize for us your educational and work background.

A My educational background is I have a Bachelor of Science degree in geology from the University of Wyoming. I have a Master of Science degree also from the University of Wyoming in economics where I specialized in regulatory and public utility economics and microeconomics.

I began my career after leaving graduate school at the United States Department of Interior, Bureau of Mines, where I was an industry economist. I then took a job with the Wyoming Public Service Commission. I was at the commission for nearly five years. By the time that I left the commission, I was the chief economist at the commission. I subsequently went to work for Kenetech Wind Power, a San Francisco based firm. I was the manager of wind energy development for the Rocky Mountain region.

I then started my own consulting firm, Stacy and Stacy Consulting, and offered consulting services to energy and telecommunications clients. Since then I joined QSI Consulting and I am a senior consultant with QSI and offer the same sorts of services to telecommunications and energy clients.

CONTINUATION

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Q Does QSI work just on the state side or do you have clients that are both commissions and industry?

A We have clients that range from commission staffs, such as our case here, to commissions themselves. For instance, QSI has been hired by the Wyoming Public Service Commission to assist them in addressing 271 issues in Wyoming and also to audit the universal service fund manager in Wyoming. And we've also been hired by other commission staffs, the New Mexico staff, the Washington staff, the Maryland staff. By and large, though, our clients are industry clients.

Q Okay. Are you familiar with Docket TC01-165?

A Yes, I am.

Q And how did you come to be involved with this Docket?

A QSI was hired by the South Dakota Commission staff to assist them in this Docket.

Q Could you tell us what you reviewed in order to perform an analysis of this Docket?

A I reviewed the multistate reports and the testimony filed in this case. I was paying particular attention to those documents that related to the QPAP.

Q Did you also listen over the Internet last week?

A I did, yes.

Q Okay. Have you testified about 271 matters in other states?

A I wrote testimony on behalf of AT&T in a 271 case. I don't -- it was three years ago or so. But that testimony was never filed because Qwest pulled out of the -- or US West pulled out of the proceeding at that time. I have been involved in 271 proceedings more recently acting as an advisor to the Wyoming Public Service Commission.

Q And on any particular issues with the 271, or has it always been QPAP or --

A I was involved from the -- well, not from the beginning of the multistate proceedings. Beginning with I think it's Group 2, it was the group following the paper workshop, and I advised the Commission through the QPAP. So I was involved throughout.

Q Okay. What issues are you going to discuss today?

A I'm going to discuss the QPAP issues and also briefly touch on public interest issues.

Q Based upon your education and experience, do you have an opinion as to the appropriate language that the QPAP should contain in order to promote the public interest and assure the local exchange market remains open to competition subsequent to Qwest receiving 271 relief?

A Yes, I do.

Q Would you walk us through a summary of your recommendation, please.

A Certainly. I did prepare a summary -- a handout summary for the Commission to follow along with. The summary is Exhibit No. 2.

Just to begin with, in overview, I wanted to emphasize and call your attention to the purpose of the QPAP. And the purpose of the QPAP is really nothing more than to provide an enforcement mechanism that will make sure that Qwest will continue to maintain the market opening performance after receiving Section 271 authorization.

And I'll discuss in a moment or two the differences that Qwest has pre 271 authorization and post 271 authorization and how the QPAP sits into that. But for now, just to give my opinion of what the QPAP should do and what its purpose should be, I think that the purpose is just to ensure that Qwest will do what they've promised to do.

And they've indicated to us over the past week or so through live testimony and through some of their direct testimony as well that they are in compliance with the SGAT and that they are performing in such a way that local competition can flourish and what they just need to be able to show this Commission now, in my opinion, is that they fully intend to do that and that if they don't do it, that they'll have

some problems that will make them more likely to want to do it.

And those enforcement mechanisms are the things that are in place to ensure Qwest has the incentive to continue to apply. The details of these mechanisms, and I'll discuss this a bit more in a few moments, also that are developed at the state level can vary widely from state to state and from plan to plan.

And we've heard Qwest say on numerous occasions how certain things with the plan that they propose in this case are -- should be accepted by this Commission because they're similar to something that's been done before. Well, that really doesn't carry much weight. Because it's up to the South Dakota Commission to determine what's best for South Dakota. And if that varies from what's been done in other states, that's perfectly fine. The TRC has even given states guidance with respect to their freedom in that area.

Just to touch real briefly on Qwest's incentives, today before Qwest has 271 authorization, 271 relief, they have the incentive to at least appear to be acting in such a way that would convince the Commission that the market is open and that it will remain open.

The incentive that Qwest has at this point is

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to receive the 271 incentive. Once they do that, they will be able to enter the interLATA long distance market and gain access to long distance revenues. Now we don't know exactly how much revenues those are, but we do know that they are significant and we do know that Qwest has a big incentive to go after those revenues. And we also know that Qwest has expended a large sum of money and devoted a lot of resources and effort and energy and dollars to the effort of getting the 271 approval. So obviously it's something that is important to them. And since Qwest is a business that's out to earn a profit, I think that we can safely assume that there's a lot of money to be made by them getting the 271 relief. So that's a big incentive.

Another incentive that Qwest has to gain 271 relief is to protect its existing local market. We heard Mr. Teitzel, I think, last week talk about one stop shopping. That one-stop shopping to Qwest would give them the ability to offer long distance and local service and that's been shown -- and although I've never seen a report, I've heard Qwest say on several occasions that this one-stop shopping is something that they think will give them a competitive advantage in the local market.

After 271 relief is granted and the

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Commission has given Qwest access to these revenues and to this market-protecting mechanisms, those incentives will be gone and the remaining incentive will be to protect its existing local market. We know that Qwest's cooperation is critical as CLECs seek to enter the market and to develop a competitive market in South Dakota, absent the access to the revenues that was present pre 271, there needs to be something that comes in and takes the place of that incentive on a going-forward basis. The QPAP is what fulfills that role and keeps Qwest -- and provides Qwest with the continued incentive to continue to cooperate with CLECs and to allow for competition to continue to develop in South Dakota.

So given those incentives both post and pre 271, let's look at the guidelines that the FCC has laid out. The FCC has laid out some criteria that are intended, I think, for states to look at as guidance as they develop QPAP plans for their particular states. I have listed two here on page 3 of my handout. In order to emphasize those, there are other criteria that the FCC noted as well, but I listed these two because I wanted to emphasize these and these are most germane to the issues that I'll be talking about.

The first one is payment liability should

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provide meaningful and significant incentive to comply with the designated performance standards. The second one is that the structure of the performance plan should detect and sanction poor performance when it occurs. The FCC has recognized that state commissions are free to adopt plans that vary significantly from plans developed in other states and approved by the FCC.

And that's the main point. The standards that the FCC laid out are somewhat broad. I mean, when you look at words like "meaningful" and "significant," you know, put a definition on that. That's kind of hard. It's something for each body that takes a look at the evidence to determine based on the facts that are present in their own state.

And so I just want to emphasize that the FCC has recognized that state commissions are free to make those sorts of judgments and to do what is best for their own state. And they're not bound to any previous QPAP or any previous performance plan that's been adopted from New York or Texas or wherever. They're free to do what they need to do in order to best protect their citizens and their consumers.

Beginning with the first issue that I specifically addressed in my testimony, total payment

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liability, I believe that Qwest's proposal to limit total payment liability may place South Dakota's current and future competitive market in jeopardy. The facilitator in the multistate process found that a cap would be an adequate incentive for Qwest to perform.

And just to say a word or two about Mr. Antonuk, like I said earlier in responding to Ms. Cremer, I have been involved in this process with the Wyoming Commission from Group 2 through Group 5A and I have read every single report that John Antonuk has put out for those groups. And in general, I would say that he has just done a fabulous job. And I found him to be well reasoned and to have come up with recommendations that are just overall appropriate.

However, in the Group 5A report or the QPAP report, I found Mr. Antonuk's reasoning to be somewhat illogical and maybe I found that it didn't seem that he had a very solid grasp on some sort of economic concepts that have to do with incentives and what would drive Qwest to continue to perform the way that they've promised. And that's my only criticism of him really. And I mean no disrespect by it. I just don't think that he made very good decisions on some of the issues in this group.

In any event, I think that the facilitator's

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rationale was flawed on some of what he used as support for the decisions that he made in this group. He indicated that, again, past FCC filings should be given more weight than I think they should, given the FCC's clear language that the FCC doesn't have any set standards for the QPAP, and that the state commissions should look at the standards that the FCC laid out, but there's no set type of plan that needs to be adhered to. Mr. Antonuk, I guess, disagreed with that premise and thought that the FCC said it and so that that's good enough for him, basically.

I think you should go beyond that, look at the evidence in this proceeding and make your own decision based on this record.

Mr. Antonuk also alluded to the fact that the Colorado report, which he doesn't have anything to do with, was similar to what Qwest had proposed with respect to the payment liability issue. That's just absolutely not true.

The Colorado report proposes a cap that has -- proposes an annual cap of $100 million for the state of Colorado. Now that cap is different in a huge respect to what Qwest has proposed for a cap here in South Dakota. The cap in Colorado is only that Qwest would not be liable for more than the cap during any

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given year. However, they would be liable for every single payment that should be made.

So, in other words, if Qwest bumped up to the cap during one year -- well, it's actually on a month-to-month basis. They don't pay more than a 12th of $100 million per month. But the balance of what they would have owed without the cap is paid in subsequent months and could be continued to be paid in subsequent years. So there's no limit to the financial liability that Qwest has as a result of the Colorado plan.

That's not the case in what Qwest has proposed in South Dakota where there is a set limit of $15 million. If Qwest exceeds that liability within the first nine months of the year, they don't have to pay any more for that year. The next month or the next year or ever.

There was some discussion last week on the Internet, and I didn't know who was talking, it was one or more of the Commissioners that said well, once they reach the cap they won't have any incentive left to conform until the end of the year. And that's true because they're not liable for any more penalties once the cap is reached. That's a big difference between the Colorado plan and what Qwest has filed in

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South Dakota.

And for the facilitator to draw your attention to the Colorado plan as if see, this is what they did in Colorado. It's not what they did in Colorado. They did something different in Colorado.

The facilitator also was under the impression that Qwest had made a showing that a 36 percent cap is a meaningful incentive. And Qwest also argues that they say that they've done an analysis that shows that 36 percent is a meaningful incentive. I don't think that they have and I wish they would have. And I'll get to that a little bit later.

But the comparison that should have been made was of the payment that Qwest would be liable for under the QPAP compared to Qwest's opportunities for profit. We could then tell exactly what sort of financial pain Qwest would have to suffer for noncompliance.

We hear things like $600 million is a lot of money or 36 percent is a lot of money. First of all, it's 36 percent of net revenues that we're talking about. We're not talking about 36 percent of Qwest's overall revenues. It's Qwest's net revenues. So we're talking about essentially 36 percent of Qwest's profit. We're not talking about 36 percent of the money that Qwest brings in. It's 36 percent of Qwest's profit.

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Now I haven't seen Qwest's internal rate of return or their internal business plans or any of those kinds of documents that could help me understand exactly what Qwest is trying to achieve over the next three years, five years with respect to entering the long distance market and controlling the local market, so I don't know what kind of risks they're willing to take. And I can't evaluate on my own behalf what kind of risk it would be to take based on running some certain scenarios because we don't have the information that would allow us to make that sort of a comparison.

So it's my opinion and I disagree with the facilitator again, that Qwest has made that showing. And I'll talk about that a bit more in a few minutes.

What Qwest has offered in support of the argument for the 36 percent cap is first of all they said, well, other parties haven't come in and shown that 36 percent is not adequate. And like I just said, that information for other parties for us, for AT&T, for Black Hills or MidContinent to make that sort of analysis, we would need some access to some information that Qwest just hasn't provided, their profit numbers, and it's just not something that we have access to.

Qwest has said it's impossible to make these kinds of calculations, you just can't get your hands on

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that kind of information. Well, if they can't get their hands on the information, well, we certainly can't get our hands on the information. Because it would be more readily available to Qwest than it would be to anybody else.

So that argument that the CLECs haven't come up or that staff hasn't come in and shown why 36 isn't appropriate, I just don't understand why that argument is even made, given the fact that they acknowledge it's too hard for even them to do. How could they expect a CLEC to do that.

Another argument that Qwest adds in support of their 36 percent is we don't have to worry if 36 percent isn't the right number anyway because the FCC will step in and take care of things if there's a problem. And I know that there was some discussion of that on the record last week with Mr. Reynolds. And one of the Commissioners, and I can't remember which one again because I didn't know who was speaking, but one of the Commissioners said, well, you have a lot more faith in the FCC than he did. And I think that was a great observation. I mean, I guess Qwest is suggesting, well, we can't support 36 percent but don't worry about that because, South Dakota Commission, the FCC will take care of South Dakota and you don't have

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to worry about it. And I don't think that's appropriate.

Adding to what they said in support of the FCC stepping in and coming to the rescue was that Mr. Reynolds said the first "whiff" of noncompliance the FCC came in to New York and took care of a problem that Verizon had. And he characterized it as a whiff of noncompliance. Actually, it was a lot greater than a whiff of noncompliance.

In the Verizon case, there were 80,000 lost orders, lost CLEC orders, that Verizon had lost. They weren't late orders or poorly-handled orders or orders that just weren't getting done quite properly. They were lost orders.

And 80,000 of them, that's more than a whiff to me. But if that's a whiff to the FCC, then I think that South Dakota may be in a little bit of trouble because I don't think there's 80,000 CLEC lines in South Dakota today. So if it takes 80,000 lost orders to get the FCC's attention, a small state like South Dakota may be waiting for the FCC to come and they might not ever come.

You know, let's face it, and I can say this because I'm from Wyoming, there are bigger fish to fry for the FCC than South Dakota or Wyoming and their

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attention is probably not usually focused on 4 or 500 lost orders in South Dakota. 80,000 lost orders in New York and they come running, you know. If it's less and it's in South Dakota, we may or may not see any reaction out of them at all.

Another argument that Qwest has used in support of the 36 percent cap is that other ILECs have received it in other states and if Qwest doesn't receive that same kind of treatment, that Qwest's stock prices could be adversely impacted. Well, I won't say much about this other than to say that the QPAP is not intended to bolster Qwest's stock price. It's not the South Dakota Commission's job to design the QPAP so that Qwest's stock price will not be impacted. That's Qwest's management job to comply with the SGAT and to comply with the terms of the QPAP. That's what will promote investor confidence.

Another argument that I've heard Qwest use is that some of Qwest's attorneys have indicated in the past that it would be difficult for Qwest regulatory attorneys to go back to their management and explain to their management why one state didn't allow a 36 percent cap while other states had. Again, it's not the purpose of the Commission, in my opinion, to design a QPAP so that Qwest's regulatory attorneys will have

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easy meetings and memorandums with their supervisors.

And just to reemphasize with respect to other states that have adopted a 36 percent cap, what's okay for Verizon in New York and SBC in Texas may be okay for Verizon in New York and SBC in Texas, but the FCC's approval of that I don't think has any bearing on Qwest in South Dakota. And, in fact, the FCC has specifically recognized that variances should be expected as this process develops.

In addition, there are other states that exist that have not adopted a 36 percent cap and have elected to eliminate the cap entirely.

Eliminating the cap would accomplish several objectives that would make things run more smoothly and accomplish a very, very important objective, which I'll get to here in a second. First of all, it would eliminate the issue related to what the magic number is. We've heard Qwest say that 36 percent is significant. It represents a lot of money.

You know, what's a lot of money to Qwest and what's a lot of money to me, when I was 6 years old 5 cents was a lot of money. That's how I defined a lot of money then. I don't know how they define a lot of money. A lot of money in my definition with respect to this is a enough money that would cause them to respond

to the incentive to comply And they just haven't shown that that is sufficient that 36 percent is sufficient It eliminates issues related to CLEC compensation if the cap is reached

So like I was discussing earlier if the cap is hit They hit the cap in August and there's continued noncompliance in September, October, November December those CLECs would be left out in the cold and would receive no compensation under their plan So this is with no cap obviously everyone's compensated for the damage that has been done

Another thing I do want to emphasize is eliminating the cap does not penalize Qwest They seem to treat this as a penalty to Qwest That's just not true Mr Reynolds last week admitted on the record that Qwest has control over what their costs are under the QPAP Raising the cap limit or eliminating the cap entirely doesn't necessarily mean Qwest is going to pay more Qwest is obligated to comply with certain things If they comply they don't pay It doesn't matter if the cap is 36 percent or 56 percent or 356 percent Their payments are entirely under their control

What it does do though, eliminating the cap, is provide incentive for Qwest to live up to its

promises because we will know without a doubt in the absence of a cap that at some point Qwest would find it to be in its best interest to comply with its promises

I know it was Commissioner Nelson last week who mentioned this because she's the only female Commissioner and I could figure this out She noted in her experience or at least I think so In her experience that caps usually don't work in the benefit of the public interest And that's true

The cap is intended purely as a benefit and a protection to Qwest It doesn't do anything to help competition in South Dakota or help end use consumers It was only provided well, we can talk about it It's to help their stock price, to give them equal footing with other ILECs You know, all of the support that they give, none of it shows that it's good for competition or good for the consumers in South Dakota It's good for Qwest

So just to conclude this issue on total payment liability, staff recommends that the hard cap be eliminated If Qwest was able to provide solid evidence that showed us using profit numbers that 36 percent is sufficient, then we may be willing to rethink our position on that But in the absence of that sort of proof and evidence, we think it's too

risky for competition in South Dakota to allow Qwest to move into the long distance market when we don't have assurance that they have the proper incentives to comply with their obligations

And these last slides will go a lot quicker because most of the concept I've discussed in these previous slides apply to the last slides as well The Tier 2 trigger payments, the only purpose of the Tier 2 payments is to complete Qwest's incentive to perform along with the Tier 1 payments

Some measures that Qwest has told the Commission that they will comply with don't have corresponding Tier 1 measures So we need to make sure that the Tier 1 triggers are -- or the Tier 2 triggers are the same as the Tier 1 triggers, otherwise some measures will be treated differently and that's just not appropriate

Essentially, giving Qwest the lag time or delay to comply is just a watered down version of an incentive that's an immediate trigger I think that the facilitator's solution in this particular area would provide less incentive for Qwest to avoid noncompliant behavior than an immediate trigger, and without the incentive to avoid noncompliant behavior there's a chance that they won't avoid noncompliant

behavior and that will just end up causing problems for CLECs

Just to look at an example, if -- well, I'll get to that later, I guess

With respect to the Tier 2 payment triggers and just to finish this up, the FCC clearly states that the payment structures of the enforcement mechanism should be designed to detect and sanction poor performance when it occurs The facilitator's proposal would sanction poor performance sometime after it occurred

During that time lag between when it occurs and sometime after it occurs, that's the time that CLEC end-use customers are becoming unhappy with the CLEC They're deciding they're not going to switch to the CLEC They're going to their neighbors and telling them not to switch to the CLEC Every day that goes by is damaging to the CLEC and therefore damaging to competition in South Dakota So the payments should be immediate. The noncompliant behavior should be addressed as soon as possible And that would be the proper thing for competition in South Dakota

With respect to the next issue, payment escalation, again the facilitator agreed with Qwest's proposal to limit Qwest's potential exposure I won't

go into this whole thing again, but limiting Qwest's exposure just puts a doubt in our minds as to whether or not the exposure is sufficient to cause Qwest to comply with its performances.

One of the rationale that has been thrown around is that some of these performance measures -- some of these things that Qwest has agreed to do Qwest and the facilitator have said we don't know how that's going to work, we don't even know if they can do that. Well, if Qwest couldn't do that or had a doubt that they couldn't do that, you know, why did they agree to do it, for one thing? Were they thinking in the back of their minds, well, if we can't do it then hopefully our payments under the QPAP won't be so bad that it won't kill us anyway.

I mean, what good does that do? That serves Qwest okay, but the CLEC customers who are the recipients of the poor performance and the end-user customers in South Dakota who are the end-user recipients of the poor performance, that doesn't do them any good. So limiting escalation would be a benefit to Qwest. I don't see how it helps anybody else, though. In fact, like a cap, it's something that we're just not sure whether that would provide the proper incentive or not.

Six-month plan review, I'm not going to spend very much time on this at all because I think to suggest that Qwest should be handed over the responsibility of the Commission to fulfill its public interest duties is just crazy. And I don't think that the Commission should do that, nor do I think the Commission would do it. So I'm just going to leave it at that for now.

But the Qwest modification -- or the QPAP modification should be done via a proceeding before this Commission, which preserves the due process and other rights of all the parties and retains the Commission's ability to act in the public interest regarding this critical document.

The last QPAP issue is sticky duration and that's essentially, as you know that once a payment has escalated at a level which Qwest complies, that that particular payment stays at that level. And the reasoning behind that is because at that level of payment, we've got Qwest's attention, they've started to comply, so we know what the incentive is for them at that point.

Qwest complains and the facilitator agreed with them that that doesn't give Qwest any opportunity to be rewarded for good behavior. Qwest's reward

through compliance, through good behavior or what they call good behavior, what I call compliance is that they're subject to no payment and they have access to the millions of dollars in the long distance market. That's sufficient reward, in my opinion, for Qwest for complying. They shouldn't have -- once we've determined a sufficient incentive, we shouldn't back off of that incentive because Qwest has complied. Their good behavior is rewarded through other ways.

And in addition, the QPAP wasn't intended to reward compliant behavior but to sanction noncompliant behavior.

And I just had one small issue with respect to the public interest. Clearly an imbalance between Qwest's retail service price and wholesale UNE prices may eliminate the CLECs' ability to compete via UNEs. And I've heard the CLECs testify regarding this issue this morning and I'm in agreement with them that that does represent a problem. In fact, it could constitute a price squeeze where CLECs literally would have to lose money by winning customers, and that's obviously not a good business prospect for those companies.

I understand that the Commission will be starting a TELRIC UNE price proceeding in the near future. I recommend that the Commission withhold a

recommendation on this point pending the conclusion on that TELRIC proceeding and an analysis and retail rates to the UNE rates.

And finally, just to conclude, each of staff's recommendations with respect to the QPAP are intended to promote the public interest by ensuring that the local exchange market would remain open to competition subsequent to Qwest receiving 271 relief. And staff recommends that Qwest provide the Commission and the parties with an updated SGAT and QPAP that incorporates staff's recommendations. That concludes my summary.

Q In the Colorado order that came out and you were talking about there's a $100 million cap but it rolls over, is that also with interest?

A Yes. I believe it is.

Q Okay. And then what states have eliminated the cap?

A Wyoming has, I know, for one.

Q Okay. And then at the end of your discussion you talked about a TELRIC proceeding. Do you just want to briefly summarize what TELRIC -- what that is, what that stands for?

A TELRIC, it stands for total element long run incremental costs. It's a proceeding in which the unbundled network elements would be given TELRIC prices

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for pricing wholesale elements

MS CREMER: Okay. That's all the direct I would have

MS AILTS WIEST: Qwest, do you have any questions?

MR RICHARDSON: Yeah

CROSS-EXAMINATION

BY MR RICHARDSON:

Q Mr Stacy, you began by talking a little bit about your client base and I'd like to explore that a little bit. You said that by and large, I think was your term, your client base is industry clients.

By that do you mean that most of your revenue is derived from industry as opposed to Commission or Commission staffs?

A No. That's not what I meant.

Q What did you mean by "by and large"?

A I meant that over history, we've had a larger number of industry clients than state agency clients.

Q But over the years, you're saying that most of the revenues of your firm have been derived from Commission or Commission staffs opposed to industry?

A No. I didn't say that. Are you asking me whether we get more revenue from CLEC clients or from state clients?

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Q Well, let's just talk first of all about industry clients generally versus state and state staffs.

A I didn't get a question. Sorry.

Q Do you derive more of your revenue from industry clients as a whole or from state Commission and state staffs as a whole?

A I'd say over the past 12 months, that it's probably -- and I'm not sure, but it's probably 50/50, possibly even more revenue coming from state clients.

Q And since the inception of your firm, has that also been true?

A Well, probably not. I've only been a partner in the firm for about 12 months and so I don't know exactly what our financials looked like previous to that, but I would guess probably not.

Q Probably more from industry based or --

A Probably more from industry based.

Q And just to follow up to your suggestion, the industry based includes CLECs?

A Yes, it does.

Q IXEs?

A Possibly.

Q Well, you mentioned AT&T.

A They're a CLEC --

Q Okay.

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A also.

Q And does your firm hope to obtain additional business in the future from CLECs or IXEs?

A Sure. We hope to obtain business from Qwest too so I'll give you a card.

Q And you mention that you are currently retained by the state of Wyoming. That's the Commission as an advisory -- in an advisory capacity, correct, not as an advocate?

A Actually, I think that that -- I think that contract is done. I don't think there's any more work to be done on that contract, but we were, yes.

Q And you recommended that the Wyoming Commission adopt a no cap regime, correct?

A Oh, I don't know if I made that recommendation. I wasn't really in a position of recommending. My job at the Commission -- I wasn't hired to provide the Commission with a recommendation. I would appear at oral arguments of the Commission and I would cross examine the Qwest attorneys and their experts if they were available and elicit a response from them to concerns that had been previously raised by other parties during whatever group we were looking at.

For example, with respect to the QPAP, that was different in that in my work for the Commission I

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would come to these oral arguments with a list of concerns from the other parties, whether they were other state Commission staffs or from CLEC participants in the multistate, and I would ask the Qwest attorneys to respond to these concerns that were raised by the other parties.

And invariably in nearly 100 percent of the cases prior to the QPAP, the Qwest attorney was able to say well, here's what's wrong with that and I would say okay. And then when it came around to deliberations, the Commission and I were nearly always satisfied with Qwest's response.

When it came to the QPAP, it was different. And I questioned Ms. Stacy and Mr. Reynolds for I can't remember how long it was, but I was thinking that this will turn out -- when I came into the proceeding, I thought this will turn out just like the rest have, which is I'll ask them questions, they'll respond and we'll get this thing straightened out. It didn't turn out that way in the QPAP.

Q Okay. Let me see if I can ask the question again. Did you file a report with the Wyoming Commission identifying your recommendations?

A No, I didn't.

Q Did you file a report discussing the QPAP -- I can't

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the Wyoming Commission?
A I didn't file anything.
Q Did you provide such a report?
A I did.
Q Okay. And you provided that to the Commission?
A Yes, I did. That report was the result of work that I and another Commission staff member had done
Q And did that discuss the 36 percent cap?
A Yes, it did.
Q And what was your conclusion on that particular issue?
A I can't remember what I concluded in the report. I might have concluded that the cap should be eliminated
Q Now if that was your conclusion, then you're here today really in support of the precedent that you just indicated; correct?
A No.
Q You're not here advocating that the 36 percent cap be eliminated as it was in Wyoming?
A I'm not relying on precedent from Wyoming. As my summary just indicated, I think I did mention that another state hadn't adopted the cap but my support for eliminating the 36 percent cap was made up of several different areas
Q You participated, did you not, in the formulation of the 36 percent cap elimination by Wyoming, did you not?

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A I don't know if I would go so far as to say I participated. I was included in the group. I was not a decision-maker. Commissioners make the decision
Q I didn't ask you that. Did you participate in their process of decision with respect to the 36 percent cap?
A No. I didn't -- I didn't say here's the decision I think you should make. I mean, it was very well understood what my role was, and that was to provide information to the Commission, not to make a decision for the Commission. That's the Commission's job.
Q Mr. Stacy, have you taken positions in other states with respect to the 36 percent cap?
A States other than South Dakota?
Q Yes.
A Advocated positions?
Q Yes.
A No.
Q Has QSI?
A I think so.
Q And where was that?
A I think Dr. Griffing has been involved in the proceedings in New Mexico where I think he did take a position on the 36 percent cap. And he's been involved in Nebraska, and I'm not exactly sure what sort of work he's done in Nebraska

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Q Have you provided any basis for concluding that the Commission's decision with respect to whether to have a cap or not turns on state specific factors?
A Could you ask me that again?
Q You've gone through in your analysis this afternoon some of the reasons that a 36 percent cap is problematic; correct?
A Yes.
Q And are those issues specific to the state of South Dakota?
A Well, to a certain extent. And I described that. I think that they are in that South Dakota, being a smaller state, less prominent on the FCC's radar screen, making sure the decision was appropriate is something that is maybe more important in South Dakota than it might be in, say, New York or Texas
Q Or Arkansas?
A Or I suppose Arkansas.
Q Or Kansas?
A I think South Dakota would be -- it would be more important for South Dakota than probably 98 percent of the other states
Q Or Vermont?
A Not necessarily Vermont. Vermont's an interior, landboard state

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Q So I'm trying to understand what's different about South Dakota that makes a cap particularly appropriate here. Is it just that it's a smaller state than the FCC has looked at before?
A Well, there's a lot of things that are different between South Dakota and New York. The thing is that if Qwest is going to rely on decisions that were made for different companies in different states, they should come in and say what's the same. I mean, that sounds reasonable to me.
Q Well, we can argue about what Qwest's burden is, but I'm asking you the question in your judgment what is it about a smaller state that makes a cap less appropriate?
A I don't think there's anything specific about a smaller state that makes a cap less appropriate. I'm saying that I don't think and I haven't really looked at the things in the record in these other states so I can't really say, but if it's similar to what it is in South Dakota, I would probably come to the same recommendation in New York as I did in South Dakota. I haven't reviewed the record in New York so I can't tell you what's different between New York and South Dakota other than the obvious differences
Q Well, have you read the FCC's decision in the New York

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case?
A I've read some of it
Q Didn't they say that they rejected CLEC claims that 36 percent cap did not satisfy the significant and meaningful incentive criteria that you've discussed here?
A Well, they might have for that specific New York case Then they went on to say more broadly, referring to overall issues and going-forward issues, that they anticipated that states would differ from that
Q Okay. If we could turn to that part of your testimony I think that's on page 13 Now I think you're relying on the Verizon Pennsylvania case, are you not?
A Yes. Yes
Q And in page 14 of your testimony, there's a Footnote 5 And just for the record just to clarify, that's not your footnote, that's a quotation of a footnote from the case
A That's right.
Q So in that footnote, the Commission said that it had previously predicted that the enforcement mechanisms developed in different plans developed by New York and Texas would be effective in practice; correct? That's what the FCC said?
A I'm just trying to verify what you said Are you on

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14, page 14?
Q Yes I'm assuming that you quoted Verizon Pennsylvania correctly in the Footnote 5
A Oh, you're in the footnote. Yes I see that
Q So the FCC said that they had predicted that the New York and Texas plans would be effective in practice
A I see that.
Q But then the Verizon Pennsylvania plan was a different kind of plan; correct?
A Yes, it was
Q And the Commission approved that one too, didn't it?
A Yes. I think that strengthens my point that plans don't have to be exactly the same.
Q Now is that a different proposal -- strike that. Was the FCC saying that if a plan came in and looked like the Texas plan, it should be rejected, not withstanding what the FCC said?
A No. Like I said, I think the FCC, in giving guidance to state commissions, has said that state commissions are free to develop plans that will operate best in their states.
Q Well, the FCC begins by talking about a zone of reasonableness, does it not, with respect to performance assurance plans?

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A Yes
Q It says that they can come in many shapes and sizes as long as they fit within the zone of reasonableness, correct?
A Right And I interpret zone of reasonableness to be something different than a point of reasonableness
Q Right
A I consider a zone to be a range I consider a single number to be a point
Q Right And they found that the Texas plan fit within that range, didn't they?
A Yes, they did That particular point would be within that range
Q And so was the Verizon Pennsylvania proposal, correct?
A Evidently, that point was also within that range
Q So there are many ways to skin the cat, correct?
A If that means we don't know what the range is, I agree with you
Q But the FCC has never imposed a plan on a BOC over its objection that was identical to the plan that it approved in Texas, correct?
A Not that I know of
Q Now you have referred to some of the reasons that Qwest might want a 36 percent cap And I'm going to focus on the reasons for Qwest But one of them you said might

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have to do with Qwest's stock price Is that a reason that Mr Reynolds proposed in his testimony?
A Yes Live testimony last week
Q Well, I listened in too and I didn't hear it that way
A Well, if the transcript doesn't reflect it, then I'll retract my previous answer But I've heard him say it before and I have evidence of him saying it on the record in other instances
Q Well, let me ask you this question Let's pause at two BOCs, SBC and Qwest, and let's assume that all other factors are equal and let's say that one of them has a 36 percent cap, the other has an unlimited potential liability every year under its plan In your judgment, would the capital markets treat the one with no cap more harshly than they would the one with the 36 percent cap?
A Are you talking about over time?
Q During the -- yeah During the pendency of the plan
A So over a very short limited time?
Q Over the period of the plan?
A Over the period of the plan
Q The period of exposure and the plan?
A No I don't think the leave of the cap would have anything to do with how the financial markets treated those two ILECs Further, I don't think that, as I

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noted, that it's -- that the QPAP was designed to even consider that
Q Well, I'm not focusing on the QPAP I'm focusing on the cap
A Okay. Well --
Q And my question is you don't believe the costs of obtaining funds would be higher for the entity that had no potential liability limit on its PAP?
A It might be in the very short term The long-term ability to attract capital is the responsibility and function of the management of the ILEC And their performance under the QPAP and their payments under the cap would be what determined how liable they were for payments.
Q The cost of capital is a significant factor in rate regulation, is it not?
A Can be
Q It's relevant to TELRIC?
A Cost to capital?
Q Yes.
A That and about a thousand other variables are relevant to TELRIC.
Q And would you agree that if your cost of capital were higher, there would be pressure on your rates, wholesale and retail, in order to recapture those costs

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of capital?
A In your actual costs of capital or your TELRIC cost of capital?
Q If you needed to pay more money to get a loan or capital investment, wouldn't any normal business seek to recover that in its charges to wholesale and retail customers?
A Seek to recover it? I'm -- they might.
Q They wouldn't want to just pay it without passing it along, would they?
A Well, in a competitive market, you can't decide what you want to pass along and pass along You have to look at what the prices are. And if you can pass it along, pass it along. If you can't, then you have to eat that cost. You can't just set the price
Q No, you can't. But wouldn't any business in a competitive market want to try to recover all of its costs?
A Sure They'd want to try. Any monopolist in a monopolistic market would too
Q Okay. But we're a talking the competitive market now; right?
A I didn't know we were talking about a competitive market.
Q Didn't you say a minute ago in a competitive market --

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A I was trying to clarify what your question was
Q You indicated that one of the benefits of Qwest of 271 approval was one-stop shopping to provide it with a competitive advantage in that regard correct?
A Yes I think I agree with Qwest that that would be a competitive advantage
Q But that's an ability that its competitors already have, is it not?
A I suppose potentially they have the ability to offer one-stop shopping
Q Now?
A Yes
Q Qwest doesn't now, does it?
A No But Qwest has other competitive advantages right now

MS AILTS WIEST: Just a moment if we could just go off the record for a minute

(Discussion off the record)

MS AILTS WIEST: Qwest, you were cross-examining

Q (BY MR RICHARDSON) Mr Stacy, I wanted to talk a little bit about alternative proposals for the cap You have said in your testimony, as I understand it, that you're opposed to a hard cap, correct?
A That's right

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Q Are you familiar with the stipulation that Qwest and the Utah advocacy staff have entered into with respect to the cap?
A No, I'm not
Q Are you aware that that's been submitted to the Wyoming Commission for its consideration?
A No, I'm not
Q You're not familiar with that, not withstanding having provided assistance to Wyoming?
A No, I'm not I didn't know it was submitted in Wyoming Was it recently?
Q April 16
A No I didn't know about that
Q So you're not familiar with the nature of that proposal?
A Not really
Q In your opinion, would it be acceptable for this Commission to have a cap that allowed escalation of the cap upon a determination by the Commission that -- well, let me rephrase that Let me quote you what Qwest has filed here as its Utah stipulation and it's the same one that it's filed in Wyoming

There is an initial procedural cap, so you understand the background of this, of 24 percent and then there's a provision that reads as follows "If

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the initial procedural cap or any subsequent cap established by the Commission pursuant to this section which is under the 44 percent maximum cap is exceeded or projected to be exceeded prior to the end of any plan year, Qwest may file a petition with the Commission seeking relief from making payments in excess of the existing cap

"Upon Qwest's filing, the Commission shall initiate an expedited proceeding to determine whether and to what extent Qwest should be required to make payments in excess of the existing cap but not to exceed the 44 percent annual cap

"The Commission will not be required to make payments in excess of the existing cap pending the outcome of the proceeding before the Commission The Commission shall use a public interest standard in deciding whether to raise the existing cap Qwest will be required to make payments in excess of the existing cap only if the Commission finds after the expedited proceeding that the public interest requires the existing cap to be raised

"In making its determination on whether the public interest requires such action, one of the Commission's primary considerations in raising or maintaining an existing cap shall be whether Qwest

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could have remained below the cap through reasonable and prudent efforts In such a proceeding, Qwest shall have the burden of establishing that it could not have remained below the existing cap through the use of reasonable and prudent effort

"If the Commission determines that Qwest should make payments in excess of the existing cap, Qwest shall be required to make any and all payments that were suspended with interest and continue to make payments pursuant to the new cap established by the Commission "

It does establish, for your information, a cap of 44 percent above which the -- it would be a hard cap

Would that be an acceptable cap provision for you?

MS CREMER: You know, why don't you -- that was long and complicated. Why don't you actually give him a copy of that to read if you're going to ask him questions about it. It seems unfair

MR RICHARDSON: Sure. Maybe we could -- I think you have that --

MS AILTS WIEST: It should be Exhibit 79 if it was part of the alternative QPAP

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proposals Can you find that Keith? That's 79?

THE WITNESS Yeah

MR RICHARDSON Well I think there's an attachment to it

MS AILTS WIEST There's more to it

THE WITNESS Exhibit K?

MR RICHARDSON Could I approach the witness?

MS AILTS WIEST Yes It would be attached after the Utah proposal and it's also I think a K at the top

THE WITNESS Oh a K

MS AILTS WIEST But it's the second one

(Witness examines document)

A Was I supposed to respond to a question about this language? I can't remember if you asked me a question

Q Yes My question is basically this is a proposal to which Qwest and the Utah advocacy staff have agreed and submitted for the Utah Commission's consideration and also more recently for the Wyoming Commission's consideration that essentially has a 24 percent procedural cap which could be escalated up to 44 percent but the Commission -- in that case the Utah

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Commission -- would have the responsibility for determining whether in the public interest it should or should not be escalated to 44 percent So it has features, if you will, of the procedural and the hard cap sliding scale, if you will, from 24 to 44

And my question is would that kind of a commitment constitute significant and meaningful incentive within the requirements of the FCC standards, in your judgment?

A Well, I think this might -- I understand this was filed on Friday night, and yesterday I was traveling all day and so I haven't had a chance to take a look at this and I don't think that the staff has had a chance to study this I certainly wouldn't be opposed to the staff looking at this and responding to that question, but I can't respond right now

Q Now you described Mr Antonuk's decision on this -- I believe you characterized it as illogical, his position, with respect to the cap Wasn't Mr Antonuk's position that he saw no reason to deviate from the Texas 36 percent cap in the absence of state-specific evidence to the contrary?

A Could you repeat that question?

Q Wasn't his determination that he saw no reason to deviate from the established Texas 3 percent cap absent

state-specific evidence to the contrary?

MS CREMER: Do you have a spot you're looking at that he can look at?

MR RICHARDSON: Well, he's testified that he's read the report

MS CREMER: Well, but he appears to not know what you're talking about so do you have something you can cite to him?

Q Do you have a copy of the report? I don't have one with me?

A Yes I have a copy

MS CREMER: Okay

THE WITNESS: That black notebook

MS CREMER: It should be up there marked It's Exhibit 28

THE WITNESS: Well, I have a copy Yeah There should be a black notebook in there

A What page were we on?

Q I don't have it with me. I believe he refers to the 36 percent cap on page 12.

MR. RICHARDSON: The record should reflect that this is Qwest Exhibit 28.

MS. CREMER: Did you give him a page and paragraph?

THE WITNESS: Was I supposed to be

answering a question?

MS CREMER: I have no idea. Did you give him a page so he can answer a question or --

MR RICHARDSON: Yeah I directed him to page 12

MS CREMER: Okay Then what was the question in front of him?

Q The question was was Mr. Antonuk's approach to the -- well, let me start again What was illogical in your mind about Mr. Antonuk's approach?

A I thought that the reasoning that Mr. Antonuk used, and as I've laid out in my testimony and in my summary, was that he seemed to be convinced that because other states had adopted plans and that the Colorado report was, in his opinion, the same as what Qwest had proposed and that Qwest had, in his opinion, made a meaningful -- or had made a showing that there was a meaningful incentive, as I discussed earlier, none of those three things are true

Those are what he used to support the plan.

Q I understood your testimony about how you believe that he mischaracterized the Colorado plan. You also testified in his view because it was okay in Texas it was okay in the multistate. Wasn't that your

testimony?

A My direct testimony?

Q Before we broke for dinner

A Could you ask me again?

Q Wasn't your testimony that one of the things that was illogical about his approach was that he simply took the Texas plan and found that if it was okay for Texas, it should be good enough for the multistate?

A I don't know if I said that that was illogical

Q But he didn't do that did he? Could you turn now to page 5 of the report?

A Okay

Q Now at the beginning of this discussion there he says does he not, "The FCC has repeatedly made clear that payment level caps are appropriate for inclusion in PAPs The very existence of those caps and other limitations in PAPs that exist under FCC-approved 271 applications show that the FCC takes a substantially less restrictive view," correct?

A That's what it says

Q If you skip down to a couple of paragraphs later he says, "It is certainly appropriate to consider unique circumstances that make the case here different from those already examined by the FCC," correct?

A I didn't follow that last sentence that you just read

Q If you look at the sentence that begins the paragraph in the middle of the page, he says --

A Okay

Q "It is certainly appropriate to consider unique circumstances that make the case here different from those already examined by the FCC."

A Right

Q And then he further said, "It is interesting to note that no party, Qwest, CLEC or Commission advocacy staff has argued that the question of payment limitations is materially different here because of unique factual circumstances."

A Right I see that

Q "Given the lack of such intentions, there is all the more reason to start from the premise that preceding FCC decisions on 271 applications provide us with sound overall guidance and to a large degree boundaries." That was what he said; correct?

A That was what he said

Q He also considered the kind of sliding-scale PAP, did he not, that I've described in the Utah proposal?

A Yeah He did

Q So he didn't just go the 36 percent cap, did he?

A Well, no, he didn't But just to illustrate some of the rationale that the facilitator used that I didn't

think was completely logical. He did say that -- like he used the word "here." He says, "It is interesting to note that no party, Qwest, CLEC, or Commission advocacy staff has argued that the question of payment levels/rates is materially different here." The word "here" in that instance. I don't understand what he means by "here" because we're talking about a whole group of states in that case.

Now the relevance of that proceeding then brings -- raises a question in my mind because we're talking about South Dakota right now.

Q. Yes. I think we can stipulate he wasn't talking about South Dakota.

A. I'm not sure I wanted to stipulate he wasn't talking about South Dakota. If we wanted to stipulate to something, we could say that we don't know who he was talking about. That was the point I was making.

Q. Wouldn't a reasonable interpretation of the word "here" mean the seven states that were involved in the multistate?

A. I think that's what he meant, but I have no idea. And there's nothing that he said that -- on the record or was presented by any other states that all of those seven states were identical or should be treated the exact same way. And the FCC recognized that

Q. Mr. Stacy, you talk about the need for a cost-benefit analysis. And as I understand it, what you are looking for from Qwest to justify a hard cap is a comparison of the payments that would be made under a cap, which in this case are 15 million, correct, per year?

A. That's Qwest's proposed liability in South Dakota, yes.

Q. And you would compare that to its opportunities for profit; correct?

A. Yes. That would be a comparison that would have some meaning, I think.

Q. Isn't that exactly the comparison that the FCC made in determining that a 36 percent cap was a meaningful and significant incentive, comparing the dollars of exposure to the dollars of net profit from local revenue?

A. No.

Q. You use the term "marginal costs" in connection with your analysis of this. What do you mean by "marginal" in this case?

A. Marginal costs are the costs that could avoided by complying.

Q. They're not the last additional dollar of cost, are they? You're looking at this as a total cost-benefit analysis; correct? Total costs, 15 million per year, total profits, opportunities for profit.

A. That's total cost.

Q. Not marginal cost?

A. Not marginal cost. It's a comparison of the costs and benefits that could be avoided or gained through complying or not complying. That's the analysis that I would like to see.

Qwest says they can't do that, and so if you're inferring that the FCC did it but Qwest can't do it, then I don't understand that.

Q. Mr. Antonuk found it impossible for Qwest to do anything more than that, didn't he?

A. Mr. Antonuk and Qwest have claimed that they can't provide us with the information, other than saying that this plan has been adopted in other states. They can't provide us with an economic justification for the number 36.

Q. Would you concede it would be difficult to do anything more than that kind of analysis?

A. No, I wouldn't. I think Qwest is a very sophisticated company. I'm aware myself of very sophisticated cost models that could be generated and developed to examin exactly those kinds of costs. As the Commissioners have seen in the past and will see in the very near future, Qwest will come in here with extremely sophisticated cost models in support of its UNE TELRIC

rates

Q. Are you familiar with Dr. Griffing's testimony in the multistate?

A. Not intimately.

Q. I'm going to read you a question and answer from Mr. Antonuk and Dr. Griffing's response from the multistate, and I'm quoting from the August 1991 proceedings, pages 121 to 122.

MS. CREMER: Are those in the record?

MR. RICHARDSON: No, they're not.

MS. CREMER: Are you going to put them in the record?

MR. RICHARDSON: We'd be happy to.

THE WITNESS: Did you say August 1991?

Q. I'm sorry. August 2000. Mr. Antonuk: "Do you think anybody on this record has presented convincing evidence of where the CLEC's break point is and where Qwest's break point is before we start to sort of talk about these sorts of secondary limiters?"

The witness: "No, I don't. And it's hard. I think that's one reason it hasn't happened. That's why I'm not -- I wouldn't advocate spending a lot of time trying to calculate the exact profit margins, the

exact costs when you've got this easy mechanism of no cost on other performance and measures or overall payments that you can just let go and sort of -- this isn't really a market but it works sort of like a market price It will rise to the point it needs to stop Qwest from being noncompliant "

Would you agree and endorse Dr Griffing's testimony in that regard?

MS CREMER: Before you answer, Mr Stacy, you know, we've got Dr Griffing very close and we could probably ask him this and maybe it

MR RICHARDSON: Well, you didn't sponsor him on this --

MS CREMER: I wasn't through speaking So my point is if you want to ask Dr Griffing this question, you can call him as a witness To ask Mr Stacy to interpret what Mr Griffing said seems to be a stretch And I would object

MR RICHARDSON: Well, may I respond?

MS AILTS WIEST: Yes I don't think you're asking him to interpret You're asking if he agrees Go ahead

MR RICHARDSON: That was my point

A Uh

MR RICHARDSON: I have an unclean copy of this document but I'd be happy to put these pages in the record

MS AILTS WIEST: It's up to Qwest

MR RICHARDSON: Well, if there's no objection, we'll submit those pages for the record

MS AILTS WIEST: Fine We can mark those as Exhibit 80, Qwest Exhibit 80, transcript from -- can you give me the date again?

MR RICHARDSON: It would be August 2001 I don't have the date but we'll supply that

MS AILTS WIEST: Okay

MS CREMER: So what pages are you putting in?

MR RICHARDSON: Pages 121 and 122.

MS CREMER: But is that the full conversation? Do we really need all six pages to have the full impact of the explanation or are we just taking it out of context by putting in the two?

MR RICHARDSON: I'd be happy to put in all six

MS CREMER: Or wherever that

conversation ends

MR RICHARDSON: Sure

MS AILTS WIEST: So that would be approximately six pages? Or do you have the page cites for me or not?

MS CREMER: Why don't you just put in all of it

MR RICHARDSON: We'll do that

MS AILTS WIEST: Okay

MR GERDES: What was the exhibit number, please?

MS AILTS WIEST: 80

Q So Mr Stacy, I understand your position on the cap -- correct me if I'm wrong -- is that if there isn't a cap, we don't have to confront the issue of whether or not it's possible for Qwest to come up with such an analysis?

A The Commission doesn't have to confront that, right

Q So it may be it's impossible for them to do anything more than the FCC did but your position is even if it is, let's not have a cap and we won't have to worry about the question?

MS CREMER: I believe that mistakes what Mr Stacy said He distinctly said it could be done And I believe you're misstating what he

has testified to

Q In your direct testimony, Mr Stacy, did you suggest that it might not be possible for Qwest to do that kind of analysis?

A No. Just going from memory, I think I said that I didn't know if it was possible or -- or I said whether it's possible or not is irrelevant because there's no need to, I think is what I said

Yes, on page 19 of my testimony, I was commenting how Qwest and the facilitator had laid the responsibility at the feet of the CLECs to make the calculations, and I said that that was "inappropriate, especially given the facilitator's conclusion that performing such an analysis at all is fret with insurmountable problems. The problems associated with such an analysis, whether insurmountable or not, would be much greater when faced by a CLEC than when faced b Qwest."

And like I said and like Dr Griffing said, there's no question that it's difficult to put these cost studies together. There's people who are employed full time year-around at Qwest that do nothing but put these cost studies together And Dr Griffing and I and my associates at QSI also develop cost studies It's difficult to do, yes.

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Q This isn't the same kind of cost studies as would be in a TELRIC situation or a rate case, is it?
A Of a rate case?
Q We're talking here about costs that might be incurred in the future, correct?
A Yes. And this kind of a cost study would be more of a looking at Qwest's business plan and plans for its internal rate of return going forward. Now if we had that information, we could put something together
Q And it would involve speculation about the future benefits as well, would it not?
A As all business people know, business involves speculation about future benefits.
Q And you agree --
A I think Qwest's involvement in this proceeding involves speculation about future benefits
Q So you conceded on page 19, did you not, that the problems associated with such an analysis might be insurmountable?
A No, I didn't. I questioned whether they were insurmountable or not on my testimony at page 19, lines 12 and 13
Q And at page 20 at the bottom of page 20, you referred to "the lack of proper evidence or even the ability to provide such an analysis," did you not?

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A I was referring to the facilitator's conclusions
Q So is your testimony that you don't know one way or another whether Qwest can perform such an analysis?
A I mean, maybe Qwest can't. I would be surprised if they couldn't. I think if the staff had the information, that the staff could perform that analysis
Q Do you know of any other cost study involving speculation about future revenues?
A Cost study?
Q You indicated a few minutes ago that Qwest does cost studies all the time.
A Yes, they do.
Q Do you know of any such cost study that involves speculation about future revenues?
A I don't know if future revenues is one of the variables that are speculated upon. I know that certain things such as fill factors, labor rates -- I mean, you can make assumptions all you want. And what you could do as a suggestion to Qwest is if you're concerned about speculating and getting the future right, which we know we can't, and in any model that we put together we know it's not right and so what we would do is do several different scenarios that would identify and at least narrow down to a range something that we could hang our

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hat on
It's just like forecasting the weather. You very seldom hear the weatherman say on Monday that on Friday the temperature's going to be a certain degree. He gives a range of degrees. That's what all models that predict the future do and I didn't see that kind of a model on the record here. That would have been very helpful
Q So the answer to my question then I think is no, is that correct? The question is do you know of any other cost study that involves speculation about future revenues?
A The answer is not no. I know that there are models that involve speculation of future revenues
Q And what would those be?
A Typical business models, typical business plans
Q I'm talking about cost studies
A Cost studies are meant to identify costs and cause costs. When I spoke of cost studies before, sometimes I use the phrases "cost studies" and "cost models" interchangeably. To be more accurate, I should have said some kind of model, not a study
Q So the model you have in mind would be one that would involve speculation about future revenues?
A Sure. That's not uncommon. I guess it would involve

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speculation about future revenues based on known revenues and it would involve known costs
Q That would be exactly what the FCC did using the ARMIS data on past revenues, isn't that correct?
A No, it wouldn't.
Q Why not?
A They didn't do a specific analysis for Qwest or for South Dakota and I guess I'm not really familiar with what exactly they did do because I didn't see the model that they produced to support their conclusion.
Q Well, it was laid out in their opinions, wasn't their opinion, was it not, 35 percent of net revenue from the local exchange business measured by ARMIS data?
A If it's within a zone of reasonableness, yes, they did say that.
Q And that would fit within a zone of reasonableness, correct?
A The FCC says so, yes.
Q Do you agree that it would?
A I'm not sure. That's the point I'm trying to get across, that I'm not sure. We can hope so. But I think a better alternative is to not hope so but just to eliminate the cap
Q And then we wouldn't have to speculate about how much market share Qwest would or wouldn't take, correct?

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A Market share?
Q Right. Wouldn't the speculation about future revenues necessarily have to be a speculation about how much of the market Qwest could retain?
A The calculations then would be made by Qwest as will be made by Qwest I'm sure going forward anyway as they continue to develop their business plans
Q Could you answer my question?
A I don't know that I understood your question
MR. RICHARDSON: Could you repeat the question?
(Reporter reads back requested portion of the record)
A That would be a factor
Q Now you had indicated that one of the problems you had with the cap, as I understand it, is that CLECs who cross -- who experience missed PIDS toward the end of the year would be less likely to recover than CLECs that experience missed PIDS at the beginning of the year. Was that one of your concerns?
A If the cap was reached, yes
Q But Mr. Antonuk took care of that problem, did he not, with an equalization mechanism?
A I wouldn't characterize it as taking care of the problem. He made it so that essentially none of the CLECs were fully compensated. I don't think that's

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taking care of the problem. It's protecting Qwest. It's not protecting the CLECs.
Q I'm sorry. He didn't take care of the problem with the 36 percent cap to the extent there wouldn't be enough to go around, but he took care of the equalization problem, did he not, all CLECs would be dealt with equally under his proposal?
A I would characterize it that all CLECs would be undercompensated equally
Q But my point is there's no problem with being at the end of the year that's any greater than being at the beginning of the year; correct?
A Not if you consider undercompensation not a problem.
Q Now you characterize Mr. Reynolds as admitting that Qwest has control over its performance. First of all, Mr. Antonuk disagreed with your conclusion about that, did he not?
A About my conclusion about what Mr. Reynolds said on the record? I mean --
Q No. I'm sorry. He disagreed that Qwest would be in total control of its fate.
A Yes. Mr. Antonuk disagreed with that.
Q And didn't Mr. Reynolds say that one of the reasons that Qwest wasn't the total master of its fate is that these were new standards and standards that were

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evolving over time?
A Mr. Antonuk?
Q Mr. Reynolds.
A Mr. Reynolds? He might have.
Q Mr. Antonuk said that, didn't he?
A I think he did say that.
Q And it's true that there will be new measurements that come into the QPAP over time, isn't it?
A It's true that measurements can be introduced, reviewed, removed. Going forward, Qwest will be a part of that process, that's true.
Q Didn't he, for example, say that although EELS are not currently in the plan, he directed Qwest to integrate them into the plan as soon as possible?
A Mr. Antonuk?
Q Yes.
A I can't recall. He might have.
Q And with respect to the Tier 2 trigger, Mr. Antonuk criticized the Texas plan's Tier 2 trigger at three months, did he not?
A Yes.
Q And he proposed an either one-month or two-month trigger depending on whether the Tier 2 trigger had a Tier 1 analog or not; correct?
A Yes. I think, yes.

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Q And where there was a Tier 1 analog, it was a two-month trigger; correct?
A I believe that's right. It was very complex.
Q And one of your objections to a one- or a two-month trigger or three-month trigger, as I understand it, is that every day CLECs are being damaged. But CLECs are compensated under Tier 1, not Tier 2; correct?
A I don't know that it's full compensation. I think when I gave my summary -- and I'm not sure if I referred to CLECs or if I referred to the competitive market. Every day that the CLEC's reputation is damaged, I think -- well, I can't remember what I said before. If I referred to it as CLECs or the market, but I'll say it now to clarify it. That every day that the CLEC's reputation is damaged through poor performance by Qwest and delays by Qwest is a day that is damaging to the market, competitive market.
Q Just so we have the record straight on how Tier 1 payments work, there is no delay in the payment of Tier 1 payments to CLECs under the QPAP, is there?
A No, there's not.
Q And the QPAP pays them whatever the appropriate payment mechanism is under the QPAP regardless of whether they've been damaged or not; correct?
A Under a plan with no cap, yes. Under the Qwest

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[illegible]
Assuming that Qwest has not met the cap. Then it
performance plans to CLECs without regard to whether
they have been harmed, damaged or the amount of their
damages. Is that correct?
A. That's correct.
Q. Now you stated -- or speculated why would Qwest have
agreed to this plan? I don't think it could make
the targets.
A. Yes.
Q. Isn't it possible that Qwest thought that it could
agree to the plan in reliance on past FCC precedence
allowing exclusion of six months and capping the plan
at 36 percent of annual ARMIS revenue?
MS. CREMER: I'd object as to
speculation on Mr. Stacy's part as to what Qwest
could have possibly been thinking.
MR. ROARDSON: Well, I think we're
just exchanging speculation. I think Mr. Stacy
started this round of speculations off.
MS. ANDREWS: Yes. Overruled.
A. Yes, I was happy to speculate. In fact that's what I
speculated. I think that Qwest was hoping they could
agree to something knowing full well that they may or
may not be able to comply and hoping that the

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South Dakota Commission would cut them a deal on the
back so that Qwest could remain profitable while not
complying. That's what I speculated. Now I don't know
that that's what Qwest was thinking.
Q. Was what to cut us a deal. This would be the
same deal that the FCC has approved time and time
again, is it not?
A. That's the deal you just said and that was the deal I
was referring to. That was probably a poor choice of
words. But getting the same kind of treatment that
would allow Qwest to be profitable while not compliant.
Q. Or stated a different way, agreeing with the FCC's
judgment that 36 percent was a significant and
meaningful incentive to comply.
A. Sure.
Q. They could have reached the judgment that they were
willing to accept the FCC's judgment on that; correct?
A. Well, I thought we were talking about Qwest's ability
to meet the measurements, the agreed to measurements
of --
Q. Is it possible that Qwest could at the same time feel
confident that it could make the measurements but
agreed to them with the assurance that FCC precedence
would be applicable to this case?
A. They could assume that. I think that would be assuming

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away the South Dakota Commission's jurisdiction, but --
Q. Now the FCC solicits the South Dakota Commission's
views on this question, does it not?
A. Yes, it does.
Q. But the South Dakota Commission has no jurisdiction
with respect to the QPAP, does it, under Section 271?
A. Jurisdictionally, I don't think so. I think that the
South Dakota Commission plays a very key role and
properly so.
Q. I would certainly agree with that. My point is that
the QPAP comes under the public interest standard of
Section 271, does it not?
A. Yes.
Q. And that is not part of the statutory consultative role
that the state plays in the 271 process, is it?
A. I'm really not sure about that.
Q. You have referred to the possibility that other
incentives for Qwest to comply with its market-opening
requirements might be inadequate in the absence of an
unlimited cap. One of those you touched on was the
FCC's power under the statute to revoke Qwest's 271
authorization; correct?
A. I don't think I referred to their power to revoke or
anything like that.
Q. That is one of their powers, is it not?

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A. Yes, it is.
Q. And isn't it correct that in reliance on this and other
mechanisms, the FCC has concluded that a performance
assurance plan need not be sufficient standing alone to
provide the sufficient incentive for the BOC to comply
with the market-opening requirements?
A. That's one of the things they said about the
performance plans.
Q. And apart from their own authority under
Section 271(d)(6), what were the other mechanisms that
they referred to that would contribute to the BOC's
incentive to comply?
A. I can't remember. Revocation of the authority.
Q. Tort and antitrust claims?
A. Maybe.
Q. Opportunities for liquidated damages under
Interconnection Agreements?
A. I'm not sure. The point I was making was that we're
not sure what would trigger the FCC's reactions and in
the past it has been just very, very severe, severe
problems of the magnitude that couldn't at this point
even be experienced in South Dakota, and so that's the
risk that I saw of diluting the effectiveness of the
QPAP. I don't see any reason to do that.
Q. I'd like to explore that. I believe that you said that

in the Verizon case. Verizon had this 80,000 lost orders and that caught the FCC's attention. You didn't mean to suggest that less than 80,000 lost orders wouldn't catch the FCC's attention, did you?

A I'm saying that's the only instance that we have, and we don't know what would catch the FCC's attention.

Q But we do know that CLECs brought that to the FCC's attention, do we not?

A Oh, I thought the FCC had -- was diligently watching that. I guess they weren't if the CLECs had to bring that to their attention.

Q Would you -- is it your position that the FCC cares less about South Dakota than it does about New York?

A You know, based on the past, I would -- I don't know if it's my opinion. I would say it's possible.

Q And what's the basis for your belief in that regard?

A I don't know that I have any solid evidence to point to. I'm sure that the FCC wouldn't confirm my suspicions, but I don't have anything solid. It's just my feeling.

Q Wouldn't it be logical that the FCC would focus on a smaller number of orders for a smaller state?

A Like I said, I have no idea what the FCC would do and nobody else does either.

Q How long after Verizon received 271 approval in

New York do these proceedings begin?

A Which proceedings?

Q The ones that you were referring to in your testimony.

A I'm not sure, but I could check on that.

Q Mr. Stacy, with respect to so-called sticky duration, my understanding of sticky duration refers to the question of whether escalated payments de-escalate upon Qwest's complying in a given month with the PIDS. Is that correct?

A That's right.

Q And just so we're clear about how this works, the -- Qwest's proposal is that if payment is escalated beyond six months -- let me strike that. If payment -- whatever payment level we are at, whether it's the first month, second, third, fourth, fifth, sixth, up to six months, one month of compliance brings you down one step, if you will. Is that the way it works?

A Yeah. I think that's the way it works.

Q And how did it work in the Texas plan?

A I'm not sure. I'm really not relying on the Texas plan to support any of my arguments.

Q Now you have spoken about some of your concerns about the existence of a cap and the existence of limits on escalation beyond six months with respect to Tier 1 payments. Are there public interest concerns about the possibility of pegging payments under the plan too high?

A Too high?

Q Yes. Would you be concerned -- or shouldn't the Commission be concerned for public interest reasons that payments not be set too high as well as not being set too low?

A I don't think so. In order to protect Qwest from going out of business, something like that?

Q No. It would be, for example, wouldn't there be a concern about CLECs gaming the system in order to receive revenues rather than investing in the ground?

A I think that that's something that the Commission could easily control and Qwest could assist the Commission in controlling that, if there was abuse of that. And in a regulatory market where there -- or in a regulatory environment where there's no competitive market to control how people react, that's one of the trade offs that you have to use in order to protect the end use customer. Or you have to rely on, not use. I'm sorry.

Q In the multistate transcript which we've just admitted, Dr. Griffing testified, "It's possible CLECs could game the system if payments get too high." That's at page 119. Would you agree with that?

MS. CREMER: Why don't you show him the whole question and the whole answer.

A I think I read the whole question and the whole answer, and I know that's an incomplete representation of what occurred.

(Witness examines document)

A Was I supposed to be answering a question?

Q No.

A Okay.

MR. RICHARDSON: I have no further questions.

MS. AILTS WIEST: Do you have any questions, Mr. Gerdes?

MR. GERDES: No questions.

MS. AILTS WIEST: Mr. Evans?

MR. EVANS: No questions.

MS. AILTS WIEST: Commissioners?

COMMISSIONER NELSON: I have a few. Mr. Stacy, you said that you were listening to the proceedings last week. Did you listen in all the time?

THE WITNESS: Not all the time. I listened to Mr. Teitzel testify and I listened to Mr. Reynolds testify completely. I was kind of in and out on the days in between. And then I had some computer problems in there too. So

fortunately, I was able to get Mr Teitzel's and Mr Reynolds' testimony

COMMISSIONER NELSON: Your memory probably better than mine Did they talk about the 36 percent cap?

THE WITNESS Did Mr --

COMMISSIONER NELSON. Teitzel and Reynolds

THE WITNESS. Reynolds did

COMMISSIONER NELSON: Did you happ to be listening when Qwest's own witness agreed that the 36 percent was an arbitrary figure?

THE WITNESS: I did, yes

COMMISSIONER NELSON: And that it wasn't related to anything specifically?

THE WITNESS: Yes I was listening when that happened

COMMISSIONER NELSON: Okay Thank you Would you also agree that since South Dakota didn't participate, and even if they did, in the seven-state multistate process, that South Dakota is -- none of the recommendations that were made by that multistate group is binding on this Commission?

THE WITNESS: I certainly would.

COMMISSIONER NELSON: Would you als agree that FCC decisions in New York on 271 proceedings have nothing to do or are nonbinding on South Dakota?

THE WITNESS: I agree.

COMMISSIONER NELSON: Would you agree that would be true for Texas, Arizona, Utah, Wyoming?

THE WITNESS: I agree.

COMMISSIONER NELSON: Would you als agree that prior FCC decisions on 271 are not binding and have no bearing on South Dakota's decision and this process?

THE WITNESS: Yes. I agree with that

COMMISSIONER NELSON: I guess I'd preface this question with some comments and basically this Commission has a long record of really not necessarily agreeing with or seeing the wisdom of the FCC's decisions. We certainly didn't agree with their decision on the MAG order, the calls plan, the accounting reform, detariffing, just to name a few of the more recent FCC decisions

And why would I -- can you think of any reason I might find their opinion on the 36 percent being a relevant figure even after Qwest's own witnesses said that it was an arbitrary figure, that I should give it any weight at all?

THE WITNESS: No I could find nothing that supported that number or any ration whatsoever to support that number And I don't s why the -- I don't know if you have seen something I hope not So --

COMMISSIONER NELSON: Were you here -- I don't remember Were you here today wh Mr White testified?

THE WITNESS: Yes, I was

COMMISSIONER NELSON: Were you when Mr Simmons testified?

THE WITNESS: Yes

COMMISSIONER NELSON: Would you agree that Mr Simmons at least indicated he didn think resale was the best and most profitable way for CLECs to get into the business?

THE WITNESS: Yes

COMMISSIONER NELSON So can I assume that means you should be a facilities base provider, that would be the most profitable way to get into that business?

THE WITNESS: Well, yes One of the two alternatives, facilities based or UNE based

COMMISSIONER NELSON: So could t CLECs possible gaming of the system if we got the percentage up there too high be offset by the cost of having to be a facilities-based provider?

THE WITNESS: Could you repeat that

COMMISSIONER NELSON Well I'm n sure Could the CLECs -- the possibility of the CLECs gaming the system may be offset by trying be a facilities-based provider?

THE WITNESS: Could they game the system in order to become a facilities-based provider?

COMMISSIONER NELSON No I'm not -- maybe --

THE WITNESS: I'm sorry

COMMISSIONER NELSON: I'll withdra the question Would you -- and this is just maybe my own perception after being here for a week and so many days It seems to me that Qwest has bas its rationale for 271 approval in South Dakota mostly on prior FCC decisions on 271 issues in other states and not -- and not necessarily on actual South Dakota experience and meeting the

14 point checklist because it would appear to me that the FCC prior decisions and most the experiences that they decide to for their compliance didn't apply to South Dakota?

THE WITNESS: That was my perception also

COMMISSIONER NELSON: Okay. I just wanted to check. I think that covers my questions

MS. AILTS WIEST: Any more questions from the Commission?

CHAIRMAN BURG: No, I don't

MS. AILTS WIEST: Any redirect?

MS. CREMER: No, thank you.

MS. AILTS WIEST: Any further witnesses from staff?

MS. CREMER: No. That's all our witnesses

MS. AILTS WIEST: Does Qwest have any rebuttal witnesses?

MS. HOBSON: We do not

MS. AILTS WIEST: Okay. At this point, I'm going to state a procedural schedule and then parties can decide if they wish to do any type of closing statements or summaries

The Commission will require Qwest to provide a

chart that shows how the consensus in disputed items from the Antonuk reports have been taken care of in the revised SGAT and QPAP.

And I just want to clarify we're not asking for a word-by-word change from each prior version We're only looking for a general reference showing how the Antonuk consensus and disputed items have been incorporated into the most current SGAT or QPAP or if they have not been incorporated, why they have not been incorporated

And then Qwest will also file an updated SGAT and QPAP along with the red-lined version showing changes, I believe, from the October filing

As far as specific dates, more or less it's left up to Qwest, but what the Commission would like to see is Qwest will file its initial brief, the updated SGAT and QPAP with the red-lined version and the chart that I previously mentioned They can file that all at the same time and there is no specific deadline for that

Once that is filed, the interveners and staff then will have 30 days to file any reply briefs, and Qwest may file any rebuttal brief within 15 days after that Also the Commission will decide at a later date how it will handle the OSS final report, exactly how we will proceed with that

And at this time the record will be left open in the event any further proceedings are needed Questions?

MS. HOBSON: I have one point of clarification

MS. AILTS WIEST: Yes

MS. HOBSON: As I understood Dr. Griffing to testify and as he clarified for me off the record afterward, it is my understanding that Dr. Griffing and his staff are convinced that they understand the disposition of all of the disputed issues in the Antonuk report and their only remaining concern is for the consensus issues And so we would ask that the Commission modify instructions to require a chart covering only the consensus issues

MS. AILTS WIEST: Does staff have a response to that?

MS. CREMER: Well, our response would be that, you know, we're satisfied on the disputed issues but, you know, you're the one requesting it so if you want to be satisfied as to the disputed issues, that's up to you

MS. AILTS WIEST: Do the other

parties have anything?

MR. GERDES: I'd just point out we weren't part of any of that and we might like to know

MS. AILTS WIEST: The Commission?

COMMISSIONER NELSON: I'd like to know

CHAIRMAN BURG: I think my desire for it is the ease in which we can go through this and determine if everything that you said you've agreed to and that we've heard testified here today is going to be included in the SGAT and the QPAP I think without it, it's going to be difficult for us to read and say, yeah, all of those were met

Because we've got a lot of things that you've agreed to, and I compliment that, but I'm not sure how we identify that in just a verbal SGAT and QPAP without a point being made that this is where we included this thing that we brought forth in this hearing That's what I think the advantage would be

MS. HOBSON: Well, just so everybody is clear on this, we previously provided this information to staff and to Mr. Gerdes So the disputed issue work has been completed and I can

simply give you another copy, Mr Gerdes

MS AILTS WIEST: After you withdrew it?

MS HOBSON: Well, I withdrew a different version So I'll get the updated version and we'll get that in there

MR GERDES Did you give me a chart?

MS HOBSON: Yes, sir Multiple times Well, yeah I mean This looks like a chart to me

COMMISSIONER NELSON: I expect a different kind of chart than that. I expect a chart that says disputed issues in one column, consensus issues in the other column, and how you resolved all of those so I can take a look at the paper and see it

CHAIRMAN BURG: I also think -- well, I guess what I would desire is that that chart would sort of direct to where it's in the QPAP and the SGAT dockets.

COMMISSIONER SAHR: Yeah. That would be part of my concern too is that we make sure we're referencing -- well, I don't know if it will be filed May 7 now, but the SGAT and the QPAP

would be filed going forward. So that was one of my concerns so if something has been filed in the past and some of these sections have changed or whatever, you know, put in the format so we can track it to the document that will be filed after this hearing

CHAIRMAN BURG: I guess I'd like to make one other thing clear is I don't -- I mean, I hope that anything that's still in dispute or anything that's still -- to get those worked out and that, but at the time that you file that, I think we will make our decision on that document

And even if after the filing and between the decision time, you can continue to work on it, but we can't be running, you know, we can't be chasing an issue constantly, that we will be making our decision based on that and that's why I think we need something that's pretty clear as to what's in there

MS AILTS WIEST: Did any party wish to make any closing statements? Qwest?

MS HOBSON: We won't make a closing statement now We will rely on our briefs for that purpose

MS AILTS WIEST: Any other party

wish to make any closing statement? If not, we will adjourn. Thank you, everyone.

(The hearing concluded at 7:50 p.m.)

STATE OF SOUTH DAKOTA)
:SS CERTIFICATE
COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 30th day of April 2002, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

STATE OF SOUTH DAKOTA)

:SS CERTIFICATE

COUNTY OF HUGHES)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter and Notary Public in and for the State of South Dakota:

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Dated at Pierre, South Dakota this 3rd day of May 2002.

Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter

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