-BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH-

In the Matter of the Application of Qwest Corporation (f/k/a U S WEST Communications, Inc.) for Approval of Compliance with 47 U.S.C. § 271(d)(2)(B)	))))	DOCKET NO. 00-049-08 REPORT AND ORDER

ISSUED: January 28, 2002

By The Commission:

The Public Service Commission of Utah ("Commission") is participating in a multi-state collaborative Section 271 proceeding ("multi-state proceeding") with the state commissions of Idaho, Iowa, Montana, North Dakota, New Mexico and Wyoming to examine whether Qwest Corporation meets the requirements of Section 271 of the Telecommunications Act of 1996, 47 U.S.C. § 271 (the "Act"). The multi-state proceeding is being conducted through a series of workshops with competitive local exchange carriers ("CLECs"). Each workshop addresses a group of checklist items and related issues. The designated Facilitator, John Antonuk, is moderating the multi-state proceeding.

The issue this Order addresses is whether Qwest has complied with the requirements of the Act relating to general terms and conditions of Qwest's Statement of Generally Available Terms and Conditions ("SGAT"). Although originally not a part of the multi-state collaborative proceeding, general terms and conditions were added to the process as it became apparent that the topic was important. As set forth in the Utah Staff's Group 5 Report (the Report), apart from issues resolved prior to the beginning of the multi-state proceeding, the parties began the workshop with at least 37 separate issues relating to general terms and conditions. Of these, over one-half were resolved during the course of the workshop, leaving 18 issues to be resolved by the Commission.

The Utah Staff has considered the issues at impasse in the context of the multi-state proceeding where the parties had opportunity to provide testimony, to question witnesses, and to present their views. In this regard, Qwest filed the direct testimony of Larry B. Brotherson, together with supporting exhibits, on March 30, 2001. On May 4, 2001, AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc. and AT&T's subsidiaries and affiliates operating in these states, (collectively, "AT&T") filed its "Initial Comments." On that same date, David La France filed his response testimony on behalf of XO Utah, Inc. ("XO"). Qwest filed the rebuttal testimony of Mr. Brotherson on May 23, 2001.

Hearings were held on June 4-6 and June 25-28, 2001. At the hearings, the parties were afforded the opportunity to explore the basis for and reasoning of the participants' prefiled testimony through questions and statements made on the record. Qwest, AT&T, and XO submitted briefs on July 27, 2001. On October 5, 2001, Qwest, AT&T, and XO submitted comments and exceptions to the Group 5 Report.

The Commission makes the following specific findings of facts.

FINDINGS OF FACT

I. Introduction

As we have done with previous issues where none of the participants raised concerns regarding SGAT language, the Commission finds and concludes that the SGAT appropriate, reasonable and consistent with the public interest and finds that Qwest satisfies its obligations under the Act associated with the relevant unchallenged SGAT language.

Where participants initially raised concerns regarding SGAT language and a consensus has been reached by all of the

participants, the Commission finds and concludes that the agreements among the participants are appropriate, reasonable and consistent with the public interest and finds that Qwest is in compliance with the requirements of the Act associated with the relevant consensus SGAT language.

Where participants have raised concerns regarding SGAT language and Qwest has responded but the other participants failed to reply to Qwest's response, the Commission finds and concludes that Qwest's responses are appropriate, reasonable and consistent with the public interest and finds that Qwest satisfies its obligations under the Act associated with Qwest's unrebutted SGAT language.

Where participants have raised concerns regarding SGAT language and the participants failed to resolve the issue, the Commission will accept the resolutions recommended by Utah Staff in its Group 5 Report, with the exceptions noted below in this Order.

On October 5, 2001, AT&T and XO filed comments on Staff's Group 5 Report. On October 5, 2001, Qwest filed comments indicating that it would comply with Staff's recommendations and attached SGAT language to comply with those recommendations.

II. CLEC Specific Information

To the extent that there remain some Utah specific issues which have not been resolved in the workshop process, or that there remain Utah specific information that has not been adequately evaluated in the current process, a CLEC may bring that before the Commission as part of the evaluation process. We remind the parties that they must demonstrate a legitimate reason as to why the information was not brought forward earlier as part of the multi-state process.

III. Resolved Items

During workshops on Group 5, Staff found that the following issues, discussed fully in the Group 5 Report under these headings, had been resolved: SGAT Amendment Process, Implementation Schedule, Definitions, Discontinuance of Specific Services, Terms of Agreement, Proof of Authorization, Payments, Taxes, Insurance, Force Majeure, Warranties (Section 5.11), Nondisclosure, Agreement Survival, Dispute Resolution, Controlling Law, Notices, Publicity, Retention of Records, and Network Security.

AT&T indicated in its comments on the Report that there was one issue left unresolved relating to the definitions of the SGAT - the definition of the term "legitimately related." The parties agree that all other definitions have been resolved by consensus.

Qwest has agreed to incorporate into the SGAT the attached list of definitions which sets forth all of the agreed-to definitions including a definition of "legitimately related" that differs slightly from that reviewed by Staff but which reflects language that the parties agreed would stand as impasse language in the course of subsequent workshops.[(1)] If the definition of "legitimately related" is not actually acceptable to the parties as has been represented to us, the parties should so note in a request for reconsideration of this Report and Order.

IV. Issues Remaining in Dispute

A. Comparability of Terms for New Products or Services that Replace Existing Products or Services

AT&T proposed a new Section 1.7.2, which would require that Qwest offer new products and services on substantially the same rates, terms and conditions as existing products and services when the new and existing products and services were comparable.

Qwest opposed the new section and pointed out that SGAT Section 5.1.6 already obligated Qwest to price new products and services in accordance with applicable laws and regulations, and that under the Co-Provider Industry Change Management Process ("CICMP"), Qwest is obligated to allow CLEC input on new products before formally introducing them. In addition, Qwest noted that its rates are already subject to review by the Commission under section 252(f)(2) of the Act, and that the terms "comparable products and services" and "substantially the same" rates, terms, and conditions

are so vague as to inevitably invite dispute.

Staff agreed with Qwest and refused to recommend any changes to the SGAT. For the most part the Commission agrees. The exception being that when a new product is introduced a provision should be included in the SGAT that allows any CLEC with an existing right to purchase the old product to continue to do so under the existing terms. Qwest should amend the SGAT to reflect such a provision.

Thus, while the SGAT is Qwest's standard contract offering for interconnection, unbundled network elements ("UNEs") and resale, when Qwest offers products or services to replace existing products or services the terms and conditions pursuant to which these services are offered must be agreed to by the parties.

B. Limiting Duration on Picked and Chosen Provision

AT&T argued that it was improper, in cases where CLECs sought to opt into provisions from other CLEC agreements, for Qwest to incorporate into those provisions opted into the termination date of the agreement from which the provisions were selected.

Qwest pointed out that AT&T's approach would allow CLECs to indefinitely extend the duration of opted into provisions. We agree. In addition AT&T's position may be inconsistent with the relevant FCC decisions such as *In re Global NAPs, Inc.*, CC Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999), where the FCC discussed the pick and choose provisions of the Act and noted that any language taken from an existing agreement must keep the expiration date of the original agreement. *See id.* at n.25.

In short, we agree with Staff's observation that absent compelling circumstances, the duration of the agreement from which a particular provision is being picked forms an integral part of any substantive provision that a CLEC seeks to use. The Commission could order a provision to be extended if the matter cannot be resolved by the parties and was brought before the Commission for resolution if it was found to be in the public interest to do so. The Commission finds Qwest in compliance with this issue.

C. Applying "Legitimately Related" Terms Under Pick & Choose

AT&T commented that Qwest had abused the "legitimately related" requirement by requiring adherence to other, peripheral SGAT requirements and that it was improper for Qwest to limit CLEC access to provisions selected from other CLEC agreements to the termination date of the agreement from which the provisions were selected.

Qwest responded to AT&T's concerns by adding SGAT provisions relating to this issue (Sections 1.8.2 and 4.0). Qwest also noted that the already existing language of Section 1.8.1 places the burden of demonstrating relatedness on Qwest.

As it did at the workshop, AT&T in its comments on the Report states that actual language of the definition is not at issue. Rather, AT&T argues that Qwest's conduct has been lacking.

Like Staff, we find that when combined with the placing of the burden on Qwest to demonstrate a legitimate relationship, the new Section 1.8.1 and 4.0 provisions adequately limit Qwest's rights to attach other provisions to those that a CLEC might pick and choose. They go as far as can be expected to address what will often have to be case-by-case decisions about what other terms should go along with those that a CLEC chooses. Our concern relates to the timeliness and difficultly involved with the process that appears, from the information before us, to be substantial. We direct Qwest to include language in the SGAT that (1) will specify the time period that Qwest has to identify any provisions it believes to be legitimately related to the provisions chosen by the CLEC, and (2) will define the process whereby a CLEC may challenge the relatedness of Qwest's provisions and the method by which that challenge would be brought before the Commission or an arbitrator.

D. Successive Opting Into Other Agreements

AT&T argued that Qwest improperly refuses to allow CLECs to opt into an agreement that itself is an "opted into" agreement (i.e., an agreement made by virtue of another CLEC opting into one of Qwest's agreements with third

CLEC).

To address AT&T's concerns Staff recommended, and Qwest has added, the following language to the SGAT:

Nothing in this SGAT shall preclude a CLEC from opting into specific provisions of an agreement or of an entire agreement, solely because such provision or agreement itself resulted from an opting in by a CLEC that is a party to it.

The Commission adopts Staff's proposed language and, with Qwest's revision of the SGAT incorporating the language, finds that Qwest is in compliance with this issue.

E. Conflicts Between the SGAT and Other Documents

AT&T argued that tariff filings should not have the effect of automatically amending any interconnection agreement or the SGAT. XO made the related argument that upon a complaint by CLEC, Qwest should be prohibited from imposing the terms of any other document outside the SGAT unless and until Qwest should prevail under the SGAT's dispute resolution procedures.

We find that to the extent the SGAT specifically incorporates a tariff, the version in force when the agreement was signed shall be the governing document unless both parties to the agreement agree to be bound by a more recent version.

Similarly, we find that as to new tariffs the SGAT should prohibit the application of any new tariff provision, unless the Commission orders otherwise, that would conflict with the SGAT directly, or would abridge or expand any party's rights or obligations under the SGAT, even if there were no direct conflicts. As Staff notes, this approach would provide sufficient protection against subsequent changes in tariffs and leaves open only one possibility that, we find, should be left open; i.e., an explicit decision by the Commission that a new or changed tariff provision for some reason should affect the SGAT. We decline to cede this crucial oversight authority to ensure the promotion of the public interest and compliance with the mandates of the Act.

The Commission directs Qwest to submit new language that reflects the decision above with respect to this issue.

F. Implementing Changes in Legal Requirements

AT&T objected to what it termed Qwest's desire to change SGAT provisions to conform to changes in law as soon as the decisions making those changes become effective. AT&T argued that such an approach unduly favors Qwest and is inconsistent with the impairment of contracts provision of Article 1, Section 10 of the United States Constitution.

In response to AT&T's concerns, Qwest revised SGAT Section 2.2 to provide for a 60-day status-quo maintenance period to allow negotiation of disagreements about whether a change in law would require a change in the SGAT. After that period, the SGAT dispute resolution provisions would apply, with allowance for creating an interim operating arrangement pending completion of the dispute resolution. Qwest's language would make the eventual resolution of the dispute effective back to the date of the change in the law. The approach proposed by Qwest is reasonable. We find that the only change needed is to move the effective date (after resolution) to the end of the 60-day status-quo period. This allows parties time to adjust their behavior to react to the new requirements.

Moreover, we note that because the SGAT Section defines "legally binding modification or change" to include *only* those legal rulings that have "not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed," any delay occasioned by the parties' negotiation of an appropriate amendment would be in addition to the delay occasioned by the challenging party's direct challenge to the change at issue. The SGAT language provides that the parties will perform under the status quo during this delay. Significantly, however, the status quo may be in direct conflict with the Commission's order. Experience has demonstrated that the time between the entry of a Commission order and the date on which the order becomes "legally binding" as defined here can be substantial.

We find that Qwest's proposal (as amended above) places a reasonable limit on the ability of a party opposed to implementing a change in law. Under Qwest's proposal, the status quo is to be maintained during any direct challenge to

the change and the sixty-day amendment negotiation period. At the end of those two periods, however, Qwest's proposal allows the independent decision-maker to decide upon and implement an interim operating agreement to govern the parties' performance during the pendancy of the dispute under the dispute resolution provisions. Under Qwest's proposal, the party favoring the maintenance of the status quo in the face of a contrary Commission order is properly allowed to challenge the order but once the challenges are exhausted, it is not allowed to unilaterally thwart the implementation of the Commission's order by drawing out amendment "negotiations" and thereafter dispute resolution. We conclude that the amended Qwest approach strikes the appropriate balance.

For the reasons set forth above, and those set forth in the Report itself, the Commission adopts most of Qwest's suggested SGAT revisions on this issue, requiring only the change in the effective date as noted above.

G. Second Party Liability Limitations

AT&T requested changes in SGAT Section 5.8 dealing with liability that would broaden Qwest's obligations. AT&T specifically requested: (a) liability assessed by a state commission be addressed; (b) changes addressing the SGAT general damages provision and its relationship with the Qwest post-entry assurance plan ("QPAP"); (c) removal of a limit on damages to the amount paid for services; (d) allowing consequential damages for gross negligence and bodily injury, death, or damage to tangible property; and (e) expanding Qwest's liability when CLEC customers act fraudulently.

First, with respect to AT&T's concerns regarding liability arising from service-related assessments ordered by the Commission, we note that the Commission is primarily interested in solving service quality problems, not in collecting fines. Therefore, if any provider can make a showing that the root cause for a given problem or pattern of problems is due to the actions of a party they have no control over, the Commission will turn its attention and efforts to solve the problem towards that third party.

Second, we agree with Staff's recommendation that issues relating to the relationship between damages under the SGAT and the penalties or assessments under the QPAP are best left to the QPAP proceeding. Deferral of this issue is appropriate.

Third, as to consequential damages, this is an issue that the parties would have to take to a court, not to this Commission. The Commission does not have the authority to resolve these types of claims. The matter must be decided elsewhere.

However, in order to alleviate AT&T's concerns regarding consequential damages, we adopt most of the Staff's proposal (as revised) that the following language be included in the SGAT at Section 5.8.4:

Nothing contained in this Section shall limit either Party's liability to the other for (i) willful or intentional misconduct or (ii) damage to tangible real or personal property proximately caused ~~solely~~ primarily by such Party's negligent act or omission or that of their respective agents, subcontractors or employees.

We note that Qwest incorporated the Staff's original language as recommended, and direct them to submit revised language as specified above.

On the issue of liability for service-related fraud, during the course of post-workshop and post-Report discussions with CLECs, Qwest agreed to delete section 5.8.6 in light of consensus changes to section 11.34 (Revenue Protection) that resolve this issue. Accordingly, Staff's proposed changes to Section 5.8.6 are mooted by new consensus language that we adopt here. In its SGAT filing Qwest has deleted 5.8.6 and added the new consensus language to Section 11.34.

H. Third-Party Indemnification

AT&T argued that the SGAT's Section 5.9 indemnity provisions must complement the Section 5.8 liability-limitation provisions and the QPAP to provide sufficient incentives for Qwest to avoid anti-competitive and discriminatory conduct. AT&T thus argued that the SGAT's indemnity provisions should more closely reflect the expected results of what competitive markets might produce. AT&T offered alternative language that it claimed would accomplish this

purpose.

Qwest responded that its indemnity language reflected a market-based approach and said that making a wholesale supplier broadly responsible for claims by the wholesale customer's end users would discourage the wholesale customer from imposing reasonable limits on its liability to its end users, because it could simply transfer those liabilities back to its wholesale service provider.

We agree with the Group 5 Report's finding that AT&T's attempt to transfer to Qwest the costs associated of relatively liberal damage responsibilities, vis-à-vis the CLEC's end users is unwise. In general this is not an area where the Commission has jurisdiction. We encourage the parties to address this issue in their specific interconnection agreements. A court is the proper forum for claims of damages.

Consistent with its recommendations relating to Section 5.8, Staff recommended limited modifications to Section 5.9.1.2 to address some of AT&T's concerns on this issue relating to non-service-related losses such as bodily injury and damage to tangible property. In response, Qwest has included the following additional language at Section 5.9.1.2 of its SGAT:

The obligation to indemnify with respect to claims of the Indemnified Party's end users shall not extend to any claims for physical bodily injury or death of any person or persons, or for loss, damage to, or destruction of tangible property, whether or not owned by others, alleged to have resulted directly from the negligence or intentional conduct of the employees, contractors, agents, or other representatives of the Indemnifying Party.

We find this language to be reasonable, but make no finding or recommendation with respect to the other issues raised in this section. We encourage the parties to address the issue in their interconnection agreements or before the courts.

I. Responsibility for Retail Service Quality Assessments Against CLECs

As stated above, both AT&T and XO raised the issue of whether Qwest should bear responsibility for assessments or fines levied against a CLEC that fails to meet a state commission's retail performance standards because of a failure by Qwest to provide the CLEC with SGAT-compliant service.

The Commission will decide which party is responsible for a given complaint at the time assessments are levied. We direct Qwest to remove all language from the SGAT (if any) that would mandate that CLECs give up rights with respect to being able to make a showing before the Commission that Qwest was the root cause of a given service quality complaint or problem.

J. Intellectual Property

Regarding the subject of intellectual property, Staff pointed out there are only minor differences between language appended to AT&T's briefing and that included in the frozen SGAT on this issue. Staff concluded that this matter is closed unless parties indicate otherwise in their comments. AT&T and Qwest have apparently agreed upon language that has been incorporated into the SGAT and consider this issue closed.

The Commission finds that this issue is resolved and that Qwest is in compliance with respect to this issue.

K. Continuing SGAT Validity After the Sale of Exchanges

AT&T proposed a series of provisions that would apply upon the sale by Qwest of exchanges that include end users CLECs serve through services acquired under the SGAT. AT&T's proposed language for SGAT Section 5.12.2 include: (a) requiring the written agreement of Qwest's transferee to be bound by the SGAT terms and conditions until a new agreement between the transferee and CLEC becomes effective; (b) providing notice of the transfer to CLECs at least 180 days prior to completion (AT&T agreed in its brief to less notice if 180-day notice could not be provided); (c) obligating Qwest to use best efforts to facilitate discussions between the transferee and CLECs with respect to SGAT continuation; (d) serving a copy of the transfer application on CLECs; and (e) denying Qwest the ability to contest CLEC participation in the transfer approval proceedings or to challenge the Commission's authority to consider obliging

the transferee to assume the SGAT obligations.

Qwest agreed to provide notice and to facilitate discussions between the CLECs and the proposed exchange purchaser but objected to the remainder of AT&T's proposal on grounds that the restrictions would unreasonably devalue Qwest's property and limit its ability to manage its business and assets.

The difficultly of Qwest refusing the remaining provisions of AT&T's proposal is that it raises the likelihood that customers in a "competitive area" will find themselves returned to a monopoly provider with no recourse, and that a CLEC may be required to discontinue service in an area that they have made physical investments in. At a minimum Qwest must either accept the proposed revisions, suggest alternative ones that address the same issues, or agree to compensate CLECs for lost investment.

We do not find the proposed Utah Staff language adequate, we direct Qwest to submit new language addressing the issues raised by AT&T and this Order.

L. Alleged Misuse of Competitive Information

AT&T provided evidence that Qwest misused information when it contacted a Minnesota customer seeking to have the customer reconsider switching away from Qwest before the switch actually occurred. AT&T asserted that Qwest should be not be deemed to comply with the requirements of 271 until it is demonstrated that such event can no longer occur.

Staff recognized that abuse of information is a serious matter but felt that a single incident is not sufficient to serve as evidence of a pattern of abuse. To alleviate AT&T's concerns, Staff determined that Qwest should submit a report to the Commission within 30 days detailing its programmatic efforts to detect, discourage, minimize, or punish inappropriate conduct.

Qwest submitted the called for report, but AT&T's reply comments show that the report did not directly address the primary concerns. The Commission puts Qwest on notice that it considers the current report to be insufficient and directs Qwest to respond to AT&T's response to the report on a point-by-point basis. Until such time that Qwest can demonstrate that it has policies and systems in place that prevent information about customers' carrier choices from being made known in advance, or in inappropriate ways, to Qwest's marketing department, the Commission cannot conclude that Qwest is meeting its obligations.

M. Access of Qwest Personnel to Forecast Data

XO commented that Qwest's legal personnel should not have free access to aggregated CLEC forecast information to use in regulatory filings. XO thus argued that the SGAT should preclude use of CLEC confidential information for any purpose other than that for which it was provided.

AT&T expressed concerns about both the sufficiency of the description of those who can see individual CLEC forecast information and about the ability of Qwest to make free use of aggregated CLEC forecast information. AT&T argued that Qwest receives only a limited license to use CLEC information, not a more general right to transform it and use it for other purposes.

Qwest responded that the language of SGAT Sections 5.16.9.1 and 5.16.9.1.1 would prohibit the disclosure of both individual and aggregated CLEC forecast data to its marketing, sales, and strategic planning personnel.

We agree with Staff that Qwest's language addresses most, if not all of the CLECs' concerns in that it generally limits individual forecast information to those with a need to use the information to manage Qwest's contractual relationship with the CLEC who provided it. However, to further address CLECs' concerns, Staff also recommended the following amendment in Section 5.16.9.1:

Qwest's legal personnel in connection with their representation of Qwest in any dispute regarding the quality or timeliness of the forecast as it relates to any reason for which the CLEC provided it to Qwest under this SGAT.

In order to alleviate concerns relating to the filing or use of aggregate forecast information during regulatory filings, Staff also recommended the following replacement language for SGAT Section 5.16.9.1.1:

Upon the specific order of the Commission, Qwest may provide the forecast information that CLECs have made available to Qwest under this SGAT, provided that Qwest shall first initiate any procedures necessary to protect the confidentiality and to prevent the public release of the information pending any applicable Commission procedures and further provided that Qwest provides such notice as the Commission directs to the CLEC involved, in order to allow it to prosecute such procedures to their completion.

Qwest has made Staff's recommended changes.

The Commission agrees that the changes made or suggested to date address many of the CLECs' concerns. We find that the only additional change needed is that Qwest should provide language in the SGAT that fully identifies all types of use for which CLEC-forecast information might be used. Absent a specific approved provision allowing a given use Qwest may not use the data in individual or aggregate form.

N. Change Management Process

The parties are engaged in discussions with respect to the change-management process regarding the process and have agreed to report on the progress of those discussions at later dates.

O. Bona Fide Request Process

AT&T argued that Section 17 relating to the bona fide request ("BFR") process could not be shown to be nondiscriminatory, because: (a) there is no evidence to show that it would apply similarly to the process Qwest uses when its own end users ask for services not already provided for under tariffs; (b) Qwest fails to provide notice of previously approved BFRs with similar circumstances; and (c) Qwest has no objective standards for standardizing products or services that result from repeat BFR requests.

As to AT&T's parity argument, we agree with Staff's rejection of this argument because the retail process is not analogous to the wholesale BFR process. However, in an attempt to alleviate AT&T's concerns relating to the notice of previously granted BFRs, Staff recommended the SGAT contain the following language:

Qwest shall make available a topical list of the BFRs that it has received with CLECs under this SGAT or an interconnection agreement. The description of each item on that list shall be sufficient to allow a CLEC to understand the general nature of the product, service, or combination thereof that has been requested and a summary of the disposition of the request as soon as it is made. Qwest shall also be required upon the request of a CLEC to provide sufficient details about the terms and conditions of any granted requests to allow a CLEC to elect to take the same offering under substantially identical circumstances. Qwest shall not be required to provide information about the request initially made by the CLEC whose BFR was granted, but must make available the same kinds of information about what it offered in response to the BFR as it does for other products or services available under this SGAT. A CLEC shall be entitled to the same offering terms and conditions made under any granted BFR, provided that Qwest may require the use of ICB pricing where it makes a demonstration to the CLEC of the need therefore.

Qwest has included this language at Section 17.15 of the SGAT.

We find that AT&T's third issue, concerning the standardization of products or services first made available through BFRs, is also alleviated by Staff's recommended language set forth above.

No party filed exceptions to this portion of the Report.

The Commission agrees with the resolution of these issues as described in the Staff's Group 5 Report, adopts the recommended language, and finds that Qwest is in compliance with respect to this issue.

P. Scope of Audit Provisions

AT&T argues that Section 18, which addresses audits, should be amended so audits may be done in areas other than billing. The only area of concern cited by AT&T is the need to verify proprietary information being maintained as required by the SGAT.

Qwest responded that if AT&T has concerns in other areas of performance it can use the dispute resolution process to obtain any document necessary to resolve them.

However, Staff recommended that the SGAT section on auditing contain the following section audits of proprietary information use:

Either party may request an audit of the other's compliance with this SGAT's measures and requirements applicable to limitations on the distribution, maintenance, and use of proprietary or other protected information that the requesting party has provided to the other. Those audits shall not take place more frequently than once in every three years, unless cause is shown to support a specifically requested audit that would otherwise violate this frequency restriction. Examinations will not be permitted in connection with investigating or testing such compliance. All those other provisions of this SGAT Section 18 that are not inconsistent herewith shall apply, except that in the case of these audits, the party to be audited may also request the use of an independent auditor.

Qwest has incorporated the recommended language and we note that no party filed exceptions to this portion of the Report.

We adopt Staff's conclusion that since the number of examinations allowed under the SGAT is unlimited, it may not be appropriate to extend that right into other areas. Furthermore, we agree that unlike billing examinations, examinations of proprietary information may be far reaching and could become disruptive. The parties are also addressing this issue under the QPAP auditing provisions. While we will accept the above language, we put the parties on notice that if the QPAP discussions, or Commission decisions relating to the QPAP result in different standards, then this section will need to be revised at that time.

Q. Scope of Special Request Process

AT&T stated that Qwest limited the special request process to unbundled network element ("UNE") combination requests. The special request process ("SRP") is more streamlined than the BFR process because the SRP does not require a consideration of technical feasibility, which must already have been established. AT&T argued that the SRP should be available for all non-standard offerings for which there is no question about technical feasibility.

Staff said that the language of SGAT Exhibit F, which addresses the SRP, does extend beyond UNE combinations, and therefore recommended that the SGAT be deemed as already providing an adequate basis for streamlined consideration of access to UNEs not yet subject to standard terms and conditions.

No party filed exceptions on this point.

We also agree with the resolution of these issues as described in the Staff's Group 5 Report. We believe that the absence of comment by Qwest means that Qwest agrees with the Staff's conclusion that the SRP process is available to CLECs to use for all requests for which technical feasibility can be shown to exist. Subject to this understanding the Commission finds that Qwest is in compliance with respect to this issue.

R. Parity of Individual Case Basis Process with Qwest Retail Operations

AT&T incorporated by reference the parity arguments raised in connection with the BFR process.

Staff held that the resolution proposed under the BFR process is equally applicable here, and that parity with Qwest's retail operations is not an appropriate way to evaluate Qwest's execution of the SRP for CLEC requests.

The Commission agrees with and hereby adopts the resolution of these issues as described by Staff in the Group 5 Report and finds that Qwest is in compliance with respect to this issue.

SUMMARY

Qwest is not yet meeting its obligations under the Act relating to SGAT general terms and conditions. If Qwest files the requested language and reaches mutually acceptable resolutions of the remaining issues, the Commission will judge it to be meeting its SGAT obligations.

DATED at Salt Lake City, Utah this 28th day of January, 2002.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Richard M. Campbell, Commissioner

Attest:

/s/ Julie Orchard,
Commission Secretary

G#28012

[1] However, we note that even as to this language, AT&T has stated that the substance of the language is not at issue, rather, AT&T disputes Qwest's conduct in implementing it.