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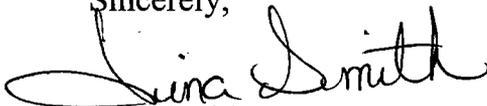
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IDAHO PUBLIC UTILITIES COMMISSION

Re: Case No. QWE-T-02-11
Our File: 1233-160

Dear Jean:

Enclosed for filing, please find the original and eight copies of COMPLAINANTS' POST HEARING BRIEF in the above referenced case. I will also email you a copy for electronic filing.

If you have any questions, please contact me.

Sincerely,

Tina Smith
Assistant to Conley Ward

Enclosure

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO TELEPHONE ASSOCIATION,)
CITIZENS TELECOMMUNICATIONS)
COMPANY OF IDAHO, CENTURYTEL OF)
IDAHO, CENTURYTEL OF THE GEM STATE,)
POTLATCH TELEPHONE COMPANY and)
ILLUMINET, INC.)

CASE NO QWE-T-02-11

Complainants)

QWEST CORPORATION,)

Respondent.)

COMPLAINANTS' POST HEARING BRIEF

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SUMMARY OF COMPLAINANTS' POSITION

As the record demonstrates, Qwest Corporation ("Qwest") has implemented its intrastate Southern Idaho Access Service Catalog ("Catalog") rate structure for the provision of Signaling System No. 7 ("SS7") services in a manner that cannot be reconciled with applicable law, rational public policy and common sense. Qwest relies upon a number of mistaken premises in its effort to convince the Idaho Public Utilities Commission ("Commission") to ignore the unreasonable and unlawful nature of Qwest's application of its SS7 message charges and the perverse results arising from Qwest's actions.

The supplemental proposal offered by Qwest – whereby it would assess, among other charges, SS7 message charges under its Catalog rate structure to the intrastate toll originated by an end user presubscribed to Qwest and to "Meet Point Billing" arrangements (the "Supplemental Proposal") does not cure these ills. The Supplemental Proposal relies upon the same illogical basis as Qwest's ill advised theories-in-chief. The Supplemental Proposal would do nothing more than reduce the level of the injustice on a going forward basis, and it would reward Qwest by not requiring any further relief to the Complainants for improperly assessed past charges.

Unlike Qwest, the Complainants are not asking the Commission to ignore common sense, nor are the Complainants asking the Commission to stretch the regulatory definition of end-user traffic properly subject to the Catalog, nor are the Complainants suggesting that the Commission ignore the anti-competitive consequences of Qwest's actions. Rather, the framework the Complainants are requesting the Commission to adopt, and the relief the Complainants seek, is grounded in common sense and is fully supported by applicable law and policy. The Complainants simply seek Commission confirmation that the terms and conditions governing the

provision of the end user traffic between telecommunications carriers should equally govern the treatment of whether and how SS7 message charges should be assessed by and between those carriers. Accordingly, for the reasons stated herein, the Complainants respectfully request that the Commission grant the full extent of the relief they request.

STATEMENT OF THE CASE

Although SS7 is a relatively recent addition to the Public Switched Telephone Network (“PSTN”), its operation and integration with the voice/data end user traffic is not a “mystery,” as Qwest witness McIntyre contends. *See* Tr. 519, L.20. SS7 enables telecommunications carriers to transmit call setup and teardown instructions out of bandwidth, thus freeing up additional capacity on the voice/data transmission path. *See e.g.*, Tr. 206, L.9-14; Tr. 303, L.14-17. The system is comprised of several discrete technological components.

The first SS7 component is the “Service Switching Point” (“SSP”), which is part of the switch of the Local Exchange Carrier (“LEC”). *See e.g.*, Tr. 27, L.1-7. The SSP generates the SS7 signaling messages which are required to set-up and tear down a call. *See e.g.*, Tr. 308, L.8-11. The second network component is the “Signal Transfer Point” or “STP” which, acting like a “traffic cop,” routes the SS7 message generated by a LEC’s SSP (and routed via redundant, bi-directional facilities called “A-links”) to other STPs, and ultimately to the SSP operated by the carrier providing service to the called end user party (in the case of a local call, for example) or another carrier that serves the called end user (such as in the case of a presubscribed intraLATA toll call for an entity other than that which owns the SSP). *See e.g.*, Exhibits 401, 500, 501; Tr. 307, L.14-22.

The third component of the SS7 network is the bi-directional facilities that connect STPs to other STPs (which are called “B-links”) and their associated physical connection to an STP

(called a “port”). *See e.g.* Tr. 208, L.7-10; Tr. 226, L.13-14. Along with the SSP connections to the STPs (via the A-links), the physical connection established between the STPs through the B-links and ports is that used to transport various SS7 messages exchanged by the carriers providing end user services.¹

A variety of Idaho telecommunications carriers, including competitive LECs (“CLECs”), incumbent LECs (“ILECs”) Commercial Mobile Radio Service (“CMRS”) providers, and Interexchange Carriers (“IXCs”), utilize third party SS7 providers, such as Illuminet, Inc. (“Illuminet”) and Syringa Networks LLC (“Syringa”), to transport their SS7 messages to other telecommunications carriers. *See e.g.*, Tr. 203, L.3-9; 32, L11-13. Although commonly characterized as SS7 “providers,” the fact is that third party SS7 providers, such as Illuminet and Syringa, do not originate any of the SS7 messages at issue in this proceeding. *See e.g.*, Tr. 208, L.17-22. Rather, these third party SS7 providers enable their telecommunications carrier/customers (“carrier/customers”) to transport their SS7 signals on the third party provider’s SS7 systems, thereby allowing the carrier/customers to avoid the cost of deploying their own STPs, B-links and ports to all other SS7 networks, including that of Qwest. *See e.g.* Exhibit 401. The resulting efficiencies and economies of scale benefit Qwest as well as the companies who utilize third party SS7 providers for the transport of their SS7 messages. *See e.g.*, Tr. 209, L.9-Tr. 212, L.2.²

On May 17, 2001, Qwest filed with the Commission a number of revisions to its Catalog. These revisions purported to “mirror” Qwest’s interstate tariff by introducing five new rate

¹ The B-link and port charges are not at issue in this proceeding. Illuminet and Syringa have paid and continue to pay these charges to Qwest. *See*, Tr. 226, L.23-26; Tr. 175, L.3-7.

² Even Qwest acknowledges the value of the economy of scale and scope that a third party SS7 network provider such as Illuminet brings to carriers that elect to limit their direct SS7 network investment and deployment. *See* Tr. 478, L. 1-19; Exhibit 410. Qwest also benefits from such arrangements through minimization of the maintenance,

elements designed to recover the cost of usage of Qwest's SS7 network on a per-call basis rather than as part of the per-minute switched access charges. *See e.g.*, Tr. 396, L.13-18. Qwest has not, however, confined the application of these charges to the intrastate access traffic governed by its Catalog. Instead, Qwest effectively has invoked the Catalog filing as authority to levy SS7 message charges on all intrastate calls exchanged with other telecommunications carriers utilizing third party SS7 providers, even when a Qwest end user customer originates the call on Qwest's network. *See* Exhibit 403; Tr. 429, L.10-15.

Complainants, as evidenced by correspondence provided to Qwest by Illuminet in November, 2000, have consistently maintained that the arrangements in place between the carriers of the "end user" traffic should likewise govern when and how SS7 message charges should be assessed, *see* Tr. 220, L.14-25, just as it was prior to Qwest's purported unbundling. Complainants contend that this position is consistent with traditional "cost causation" principles, Commission-prescribed inter-carrier compensation rules, and other applicable law and policies. Accordingly, Complainants contend that the application by Qwest of the Catalog's SS7 message charges to all intrastate end user traffic types is unreasonable, unlawful, and contrary to long established regulatory policies. Complainants seek the fullest extent of relief possible to redress both past unlawful charges and the potential for any future unlawful charges associated with the manner in which Qwest has elected to implement its Catalog's SS7 message rate structure.

As the Commission is undoubtedly aware, a proceeding similar to this one was pending before the Nebraska Public Service Commission ("Nebraska Commission") while hearings were held in this case. In *Alltel Nebraska, Inc., et al. v. Qwest Corporation*, Formal Complaint Nos. FC-1296 and FC-1297 (Dec. 17, 2002), the Nebraska Commission entered its decision on a

monitoring and actual number of facilities required to interconnect its SS7 network to other carriers via such third party SS7 providers. *See e.g.*, Tr. 333, L.3-9.

complaint against Qwest raising substantially identical issues to those raised by the Complainants in this case. The Nebraska Commission held for the complainants on all counts, and granted the complainants the full measure of the relief requested in that case, which mirrors the relief requested in this case. Rather than salt this brief with numerous excerpts from, and citations to, the Nebraska decision the entire order has been attached as Exhibit A. Complainants submit the Nebraska decision both for its value as precedent, and as a proposed order that should, with appropriate modifications, be entered in this proceeding.

ISSUES PRESENTED

1. Should Qwest be allowed to charge other telecommunications/carriers utilizing third party SS7 providers for Qwest's SS7 message costs for any intrastate SS7 message that touches Qwest's SS7 network?
2. Should Qwest be required to refund sums collected and to credit outstanding charges arising directly from its improper implementation of its Catalog?
3. Should Qwest be required to withdraw its Access Catalog's SS7 message revisions until such time it can prove that it can properly implement such SS7 message rate structure?

COMMISSION JURISDICTION

Although the Idaho legislature has authorized telephone companies such as Qwest to opt out of traditional Commission rate regulation, the legislature was quite careful to preserve the Commission's authority to resolve industry disputes and determine the terms and conditions of traffic exchanged between the companies. Section 62-614, Idaho Code, expressly grants the Commission jurisdiction to hear and resolve the type of controversy presented in this case:

- (1) If a telephone corporation providing basic local exchange service which has exercised the election provided in section 62-604(2), Idaho Code, and any other telephone corporation subject to title 61, Idaho Code, or any mutual, nonprofit or cooperative telephone corporation, are unable to

agree on any matter relating to telecommunication issues between such companies, then either telephone corporation may apply to the commission for determination of the matter.

- (2) Upon receipt of the application, the commission shall have jurisdiction to conduct an investigation, and upon request of either party, to conduct a hearing and, based upon evidence presented to the commission to issue its findings and order determining such dispute in accordance with applicable provisions of law and in a manner which shall best serve the public interest.

Similarly, title 62 also provides the basis for establishing the Commission's jurisdiction over industry practices and policies. For example, Section 62-605(5), Idaho Code, provides as follows:

For any telecommunication service which was subject, on the effective date [July 1, 1988] of this act, to title 61, Idaho Code, and which at the election of the telephone corporation became subject to this chapter, the commission shall have continuing authority to review the quality of such service, its general availability, and terms and conditions under which it is offered. Upon complaint to the commission and after notice to the telephone corporation providing such service and hearing, the commission finds that the quality, general availability or terms and conditions for such service are adverse to the public interest, the commission shall have authority to negotiate or require changes in how such telecommunication services are provided. In addition, if the commission finds that such corrective action is inadequate, it shall have the authority to require that such telecommunication services be subject to the requirements of title 61, Idaho Code, rather than the provisions of this chapter.

These statutes leave no doubt that the Commission has jurisdiction and ample authority to entertain this Complaint and grant the relief requested by the Complainants.

ARGUMENT

- I. **Inter-carrier compensation for intrastate SS7 messages should follow the same rules that govern inter-carrier compensation for the underlying end user traffic such SS7 messages support.**

Qwest's basic position is that it should be allowed to recover its SS7 message costs from

other third party SS7 providers and their carrier/customers for any and all interchanged SS7 messages that utilize Qwest's system, without regard to the type of the intrastate end user call or the manner in which such call is originated. *See* Tr. 429, L.10-15. This proposition simply cannot be reconciled with applicable law, rational public policy or common sense.

The fundamental defect in Qwest's position is that it attempts to separate the inseparable. SS7 messaging has always been deemed an indispensable and integral component of the public switched network.

[T]elephone calls. . . consist of two components: (1) the actual communications, voice and data, and (2) network control signaling, which directs the operation of the public switched network. The signaling indicates that a receiver has been picked up, what digits were dialed, whether the called line is ringing or busy, when the telephone is hung up, and so forth.

Elkhart Telephone Company, Inc. v. Southwestern Bell Telephone Company, Memorandum

Opinion and Order, 11 FCC Rcd. 1051 (para. 3) (1995) (emphasis added) (hereafter "*Elkhart*").

Absent the exchange of such SS7 messaging (where, as in this proceeding, SS7 functionality has been deployed) virtually no calls would be completed. Consequently, as an indispensable component of the end user traffic, simple logic and common sense dictate that existing Commission and other regulatory directives should apply to inter-carrier compensation for SS7 signaling costs.

Prior to Qwest's purported "unbundling" of SS7 charges, this was in fact the case. Under traditional ratemaking principles,

Rates to recover all prudent investment and expenses allocated to the state jurisdiction, including a portion of SS7 facilities and costs, were established by the state regulatory agency. Intrastate cost recovery for any specific item, such as the SS7 network, would have been traditionally spread over any number of services including basic local rates.

Tr. 35, L.14-18. Because SS7 cost recovery was embedded in all LEC rates, LECs could recover

their SS7 costs from other carriers only where there were otherwise applicable rates that authorized inter-carrier charges for the origination or termination of the distinct types of intrastate inter-exchange end user traffic (e.g., local, Extended Area Service (“EAS”), intraMTA, and toll).

Complainants contend that these general principles should continue to govern inter-carrier compensation for all end user traffic types and their related costs, including the costs associated with the indispensable SS7 message components of such traffic. Thus, the terms and conditions governing inter-carrier compensation for end user traffic should equally govern whether and how SS7 message charges should be assessed by and between the end user service providers. These general rules of inter-carrier compensation for the various categories of intrastate end-user traffic are not seriously contested in this proceeding, and are, in fact, very straightforward.

A. Rule 1 – A telecommunications carrier is never allowed to charge other companies for the costs associated with the origination or termination of that carrier’s own intrastate end user traffic.

For decades, the rules in Idaho governing inter-company compensation for intrastate public switched network traffic have followed a few very simple, common sense principles. One of the most important of those principles is that,

prices should be set to recover the costs of a service (or any element of a service) from the actual cost causer. . . . The cost causer for a specific telephone call is the carrier originating the call (and its customer).

Tr.73, L.7-12. Thus, traditional pricing principles dictate that the carrier whose retail end user customer originates a call collects the revenue for that call from the end user customer and then compensates any other carriers involved for their costs of transporting or terminating that end user traffic.

Qwest has ignored this basic tenet of Idaho telephone industry pricing in its implementation of the Catalog's SS7 rate structure. Qwest is invoking its Catalog to charge third party SS7 providers (and their carrier/customers) for Qwest's SS7 costs associated with any and all Qwest-originated inter-carrier end user calls, notwithstanding the fact that Qwest and its end user customer cause the costs associated with the SS7 message. Likewise, Qwest has made clear that a third party SS7 provider would also be assessed for Qwest's SS7 costs related to an IXC's toll traffic (i.e., in a Meet Point Billing scenario where Qwest and the Illuminet carrier/customer are providing "exchange access" to the IXC), again regardless of the fact that the IXC and its end user customer (and not the third party SS7 provider) cause the costs associated with the SS7 message. *See* Tr. 76, L.10-16.

Qwest has provided no rational basis for this perverse disregard of "cost causation" principles. When challenged on cross examination to cite any other instance in which an originating carrier can charge another carrier for any portion of the cost of originating the call, Qwest's witness Mr. McIntyre was unable to cite a single instance. *See* Tr. 465, L.7 through 469, L.4.³ The obvious reason for this failure is that no such practice exists anywhere in the telephone industry. As Mr. Lafferty pointed out in his testimony, where intrastate inter-company charges are authorized, it is always the originating carrier that pays the terminating carrier, and the originating carrier is never allowed to charge other transporters of the call. *See generally* Tr. 39, L.12 through 43, L.5.

Under state law, this rule is so thoroughly understood and established by historical

³ Mr. McIntyre suggested that Meet Point Billing arrangements might constitute such an example. This is clearly incorrect. In the typical Meet Point Billing arrangement, the IXC is the cost causing company because its end user customer initiates the call. The IXC pays both LECs involved in completing the call according to those LECs respective exchange access tariff rates. The LEC that provides originating access does not bill the LEC that provides terminating exchange access.

practice that it is not codified, except in LEC tariffs that clearly restrict inter-carrier compensation to payments by the originating carrier to the terminating carrier. *See* Tr. 41, L.4-10. The Federal Communications Commission (“FCC”), however, has enacted such rule in the context of the exchange of “local” traffic between CLECs that are competing with ILECs, by providing that “A LEC may not assess charges on any other telecommunication carrier for local telecommunications traffic that originates on the LEC’s network.” 47 C.F.R. § 51.703(b) (emphasis added).

B. Rule 2 -- Pursuant to long standing Commission policies, EAS traffic is exchanged between LECs on a “bill and keep” basis.

The Commission is well aware of its history regarding the establishment of EAS calling areas. These decisions uniformly establish “bill and keep” regimes for interchanged EAS traffic, i.e., each LEC bears its own costs associated with its provision of the service (local switching and transport) of the EAS service to an agreed-to meet point. *See* Tr. 41, L.11-13; Tr. 42, L. 4-7. Nowhere in these decisions does the Commission envision one LEC – Qwest – being able to unilaterally alter these compensation arrangements. Qwest’s application of its Catalog SS7 charges to third party SS7 providers such as Illuminet, regardless of the intrastate end user traffic involved, effectively “sabotages the Commission’s efforts” regarding EAS by reintroducing message sensitive pricing for EAS calls. Tr. 74, L.18.

The consequences of Qwest’s action are not just limited to reversing Commission EAS policy, however. Permitting Qwest’s conduct would also enable Qwest to shift its SS7 message costs improperly to other LECs, amounting to a double recovery of Qwest’s SS7 message costs associated with EAS. The Commission permitted Qwest and the other LECs involved in EAS proceedings to design their local exchange service rates to recover all costs associated with EAS

traffic, including the components thereof (e.g., the associated SS7 messages). *See* In the Matter of the Investigation into the Methodology for Determining US West Communications, Inc.'s Cost of Extended Area Service, Case No. USW-T-98-3, Order No. 27789 (July 17, 1998). Therefore, as Commissioner Smith observed, SS7 "costs were already included in the rates that are being paid by customers today for the service that includes EAS calling." Tr. 523, L12-14. To permit Qwest to recover those costs yet again from other carriers is clearly an unreasonable double recovery.

C. Rule 3 -- Inter-carrier compensation for interchanged local traffic is governed by the interconnection agreements required by the 1996 revisions to the Communications Act of 1934, as amended.

Sections 251 and 252 of the 1996 revisions to the Communications Act of 1934, as amended (the "Federal Act") mandate that the Commission-approved interconnection agreements ("ICA"), not Qwest's Catalog, govern inter-carrier compensation for the exchange of "local" end user traffic between carriers such as CLECs and Qwest.⁴ Thus, all affected Illuminet carrier/customers (e.g., CLECs and CMRS providers) have contracts in place with Qwest that address the inter-carrier compensation arrangements for the exchange of such "local" traffic. These ICAs between Illuminet's carrier/customers and Qwest do not permit separate SS7 message charges to be assessed by Qwest. Yet Qwest has implemented its Catalog's SS7 message rate structure to impose them nonetheless.

The ELI-Qwest ICA provides a typical example of the rule governing SS7 signaling for local traffic. The agreement mandates that, where possible, trunks used for transport and termination by both parties will be equipped with SS7. See Section (C) 2.2.8.5 of the ELI-Qwest

⁴ Illuminet's carrier/customers include CMRS providers. For purposes of this discussion, intraMTA CMRS traffic has been deemed by the FCC to be "local" for purposes of applying the terminating compensation requirements. See 47 C.F.R. § 51.701(b)(2).

ICA, Exhibit 205. The ICA further indicates that SS7 will be provided as part of the standard terms of the interconnection arrangement for the transport and termination facilities. Therefore, SS7 is clearly considered an inseparable part of the traffic on the interconnection trunks, Tr. 69, L.9-23, and it is only reasonable to assume that the ICA's reciprocal compensation rate covers each party's cost for SS7 signaling, without which the end-user call could not be completed. Tr. 43, L.11-17.⁵

Further, the ELI-Qwest ICA makes clear that any additional local compensation would require the ICA be renegotiated and approved by the Commission, Tr. 41, L.5-8 and L.14-17, and Qwest has clearly not chosen such path. At no relevant time did Qwest provide ELI with an opportunity to negotiate the new SS7 message charges prior to Qwest filing the changes to the Catalog. ELI first learned about the changes and application of the Catalog to local calls after it had been implemented. Tr. 45, L.4-7.

Not only does Qwest's assessment of SS7 message charges to ELI, through its SS7 signaling transport agent, Illuminet, violate the ICA, but it also violates the FCC's reciprocal compensation rules which do not permit carriers to recover the costs of originating traffic from the terminating carrier. See 47 C.F.R. §51.703(b) ("A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.").

⁵ Contrary to Qwest's assertion that SS7 message signaling is only included as an Unbundled Network Element ("UNE"), common sense dictates that no carrier offers a rate that does not recover all components of the service being provided. In any event, while ELI could have chosen to purchase SS7 message elements as unbundled network elements under the ICA, such UNEs were not required since compensation for the costs associated with the exchange of the necessary SS7 messages was included in the ICA's reciprocal compensation provisions. *See* Tr. 124, 4-18.

Accordingly, just as in the case with EAS, Qwest's chosen method of implementing its new SS7 message signaling charges is, in effect, an attempt to shift its SS7 message signaling costs associated with local traffic originated by a Qwest end user to other companies, including some of its competitors, in violation of current regulations and its ICA. Tr. 44-45. There is no conceivable basis upon which Qwest can justify this result. CLECs, including ELI, have properly relied upon their ICAs, and Qwest should not be allowed to simply abridge them by the unilateral filing of a tariff or its Catalog. Tr. 43, L.11-17.

D. Rule 4 -- Meet Point Billing compensation is determined by inter-company agreements.

Identical concerns are also raised with respect to Meet Point Billing. In their ICA, ELI and Qwest have agreed to a Meet Point Billing arrangement whereby each separately bills the appropriate tariffed switched access rates for its portion of the access service jointly provided to IXCs. *See* Sections (C) 2.1.1, (C) 2.2.3.5, (C) 2.3.7, (C) 3.1, and (C) 3.3 of the ELI-Qwest ICA, Exhibit 205. The ELI-Qwest ICA provisions regarding Meet Point Billing are clear that charges by Qwest to ELI are not permitted for SS7 message signaling associated with the termination of third party IXC calls. Tr. 48, L.14-17 and Tr. 49. Thus, Qwest may not bill ELI (or ELI's agent Illuminet) other than in accordance with the ELI-Qwest ICA.

These ICA provisions follow the industry standard Meet Point Billing guidelines for all charges associated with toll calls originated and terminated by third-party IXCs. *See generally Elkhart*. These Meet Point Billing arrangements are applicable to, and used by, all LECs such as the Complainant ITA members. *See* Tr. 216, L.3-16; Tr. 47, L.6 through 48, L.10. Therefore, any SS7 message charge assessed by Qwest to a Complainant ITA member or any other LEC that is an Illuminet carrier/customer (and thus has Qwest's SS7 message charges passed through

to it by Illuminet without mark-up) is also unlawful and contrary to industry Meet Point Billing practices. Tr. 78, L.7-19.

II. Qwest has not presented any logical or persuasive reason why the general rules governing intrastate inter-carrier compensation should not apply to SS7 message signaling.

Qwest does not seriously dispute Complainants' contention that its recovery of SS7 message costs is incompatible with the general rules regarding inter-carrier compensation for the types of intrastate end-user traffic noted above. Qwest argues instead that SS7 message costs are somehow unique, and it should therefore be allowed to recover these costs in a manner that is patently at odds with the laws and regulations governing the recovery of all other end user traffic-related costs. None of Qwest's contentions on this score can withstand even a cursory examination, let alone critical analysis. Without exception, Qwest's arguments are ill founded, mutually contradictory, and illogical.

A. Qwest's Implementation of the Catalog's SS7 message charges demonstrates that an improper unbundling of SS7 message charges has occurred, and it does not mirror Qwest's interstate tariff.

Qwest claims that its implementation of its intrastate SS7 message structure is proper because it is consistent with the FCC orders permitting unbundling of Qwest's interstate access tariff. *See e.g.*, Tr. 392, L.10-11. Qwest's position is inconsistent with the facts and refuted by the very FCC order on which it relies.

At the outset, the Complainants note that the FCC's decisions regarding interstate exchange access are not binding precedents for the Commission's oversight of the proper implementation of an intrastate tariff structure. Interstate telecommunications end user traffic is unique in that it consists almost entirely of toll traffic carried by IXCs. *See* Tr. 224, L.5-8; Tr. 30, L.1-5. Consequently, the FCC administers only one significant inter-carrier compensation

system, in which IXCs pay LECs access charges as compensation for costs incurred in originating and terminating the IXCs' end user traffic. Intrastate end-user traffic, on the other hand, contains several subdivisions (local, EAS, Meet Point Billed, etc), each of which has different inter-carrier compensation arrangements as indicated above. *Id.* These jurisdictional differences are crucial in the present case because they explain why Qwest's argument that it is simply "unbundling" its intrastate SS7 message charges is patently false.

In the interstate jurisdiction, Qwest's FCC SS7 tariff revisions actually broke down charges that had previously been billed in a single per-minute switched access charge into per-minute and per-message billing components. On the intrastate side, Qwest has allegedly attempted to break a pre-existing charge into new components, but the record makes clear that Qwest is in fact using its Access Catalog to levy new SS7 message charges on intrastate traffic, such as local and EAS, that were previously not subject to access charges or any other intercarrier charges.⁶

Although the FCC's decision is not binding, the FCC's decision regarding proper "unbundling" is instructive. To this end, Qwest's mislabeled "unbundling" of intrastate SS7 charges is precisely the type of unreasonable overreaching the FCC sought to prevent with the conditions attached to its order. The FCC decision allowing carriers to elect to implement an unbundled SS7 signaling message structure requires those carriers to "acquire the appropriate measuring equipment as needed to implement such a plan" in order to insure that the unbundled

⁶ Q. [Mr. Ward] I appreciate all that, Mr. McIntyre, but can we shorten that up a little bit? Would you agree with me that, basically "unbundling" means rates are disaggregated for whatever reason, an existing rate has been disaggregated into component parts, for efficiency reasons or because the industry desires it?

A. [Mr. McIntyre] Yes.

Q. All right. Now in the case of an EAS call from, again, let's take Qwest to Citizens exchanges, what rate is being unbundled when you impose SS7 charges for that call?

A. Well, there's no rate in the EAS charge that was unbundled. It was the switched access rates which were unbundled.

Tr. 474, L. 9-23.

charges are confined to their appropriate scope. *Access Charge Reform*, First Report and Order, 12 FCC Rcd 15982, 16090 (para. 253) (1997). Moreover, the FCC required LECs that exercised this election to “evaluate how the implementation of these plans will affect their prospective customers.” 12 FCC Rcd. at 16090 (para. 253). Qwest has ignored these crucial aspects of the FCC decision in its purported “mirroring” of its FCC rate structure. Qwest admits that it filed its Idaho SS7 signaling message structure prior to deploying the proper measurement equipment, notwithstanding the fact that such measurement capability exists. *See* Tr. 223, L.1-16. It did so because, in Qwest’s view, installing the appropriate measuring equipment “would be inefficient and lead to additional costs that would require increased rates.” Tr. 436, L.11-13. Thus, Qwest cannot seriously contend that it followed the FCC’s guidance. Rather, Qwest’s improper application of the Idaho SS7 message structure has resulted in Illuminet being incorrectly billed in excess of \$1.0 million through September, 2002. *See* Tr. 206, L.1-6.

In summary, the Complainants respectfully submit that Qwest cannot justify its failure to break down the SS7 message by type of intrastate end user traffic (e.g., local, EAS, jointly provide toll, etc) simply because it would cost too much, when the result is incorrect charges to third party SS7 providers and their carrier/customers. Qwest elected to file the tariff structure and therefore undertook the responsibility to properly implement it (which it has not done). Qwest consciously chose to implement intrastate SS7 message rates which it knew, or should have known, could not be properly billed. Neither of these results can be reconciled with either the FCC’s directives or Qwest’s obligations under Idaho law .

B. The SS7 message is an integral component of the end user traffic and is not in any sense a component of a separate network.

Qwest’s false premise that the SS7 network is separate and apart from the voice or data

components that the SS7 network controls can and should be readily rejected by the Commission. The initial problem with Qwest's argument is that it is specifically in conflict with Idaho law. Section 62-603(13), Idaho Code, states:

“Telecommunication service” means the transmission of two-way interactive switched signs, signals, writing, images, sound, messages, data or other information of any nature by wire, radio, light-waves, or other electromagnetic means....

(Emphasis added). This language clearly memorializes the legislature's sensible view that signaling is an inseparable part of telecommunication service.

Qwest's separate network theory is also incompatible with simple logic. As Complainants' witnesses repeatedly pointed out, SS7 signaling has no independent purpose other than the control over the PSTN components used to carry end users' voice and data traffic. *See e.g.*, Tr. 212, L. 27 through 213 L.2. As Mr. Creason explained,

We can test the truth of this observation by asking another question. If the public switched network did not exist, would anyone construct an SS7 “network”? The answer is of course not because SS7 has no inherent or intrinsic value at all other than its ability to make the switched network more efficient.

Tr. 178, L. 2-6. While the SS7 network does not, by itself, provide exchange service, exchange access, or long distance service, the SS7 messages are nonetheless an indispensable component to each and every one of those services. In those instances where SS7 has been implemented (such as here)⁷ and no in-band MF signaling backup is available, no end user traffic could be completed without SS7 signaling.

Qwest's suggestion that SS7 message signaling is part of some separate network has also been squarely repudiated by the FCC. *See Elkhart*, 11 FCC Rcd at 1051 (para. 3). The FCC has

⁷ While Qwest witness Craig suggested that calls could be completed if back-up MF signaling was used, Qwest presented no facts demonstrating that the Illuminet carrier/customers and Qwest have implemented such back-up and, in fact, the ELI interconnection agreement specifically states that no such back-up will be employed. See ELI/Qwest ICA, Section (c) 2.2.8.5.

made clear that regulated LECs, including Qwest, are to treat SS7 costs as a “general network upgrade.” *Access for 800 Service*, Report and Order, 4 FCC Rcd 2824, 2832 (1989) (emphasis added) (“*800 Access Decision*”) (“CCS7 [the FCC’s term for SS7] represents a general network upgrade, the core costs of which should be borne by all network users.”) The FCC also found that SS7 costs “will be used for a wide variety of both intrastate and interstate services.” *Id.* at 2833. Each of these statements would be rendered meaningless if Qwest were correct that the SS7 network is a “separate” network. Thus if, as Qwest contends, the costs of SS7 were truly incurred as a separate network, there would be no reason for the FCC to require that these be spread across the “wide variety of both intrastate and interstate services” (*id.*) that rely upon the functions that the SS7 network components provide. Accordingly, it is only logical that SS7 signaling message costs should be recovered in the same manner as other costs associated with the underlying end user traffic. Tr. 235, L.10-14.

Qwest’s suggestion that the “jurisdiction” of the SS7 message is irrelevant is also baseless. Such a contention is inconsistent with its own Catalog that relies upon the jurisdiction of the voice traffic to determine the jurisdiction of the SS7 signaling messages vis-à-vis the voice traffic they support. *See* Southern Idaho Access Service Catalog Section 2, Page 19, Release 2, and 2.3.10 B.5 (Jurisdictional Reports Requirements). Qwest’s own FCC filing, which unbundled SS7 signaling message charges from its interstate access rates, necessarily implies that it allocated its SS7 message costs between the intrastate and interstate jurisdictions. Tr. 235, L.17 through 236, L.3. Moreover, Qwest admits that these signaling messages are necessary to establish and tear down every type of end user call. *See* Tr. 412, L.17 through 413, L.4. Finally, if (as Qwest claims) the jurisdiction of the SS7 signaling messages is irrelevant, there would have been no reason for Congress to allow, in Section 271(g)(5) of the Federal Act, Qwest (and

other BOCs) to transport signaling information used in connection with both local services (which the Federal Act refers to as “telephone exchange services”) and access services (which the Federal Act refers to as “exchange access.”) Tr. 236, L.5-12.

C. Illuminet is the transport agent for its carrier/customers and is not Qwest’s customer for SS7 Messages.

Confronted with the obvious problems with its “separate network” theory, Qwest suggests that its assessment to Illuminet of charges for all intrastate SS7 messages is proper because Illuminet is the “customer” and, according to Qwest, Qwest’s compensation arrangements with Illuminet’s carrier/customers are therefore irrelevant. Qwest is wrong on both accounts.

Contrary to Qwest’s suggestion, Illuminet is not Qwest’s “customer” under its Catalog for SS7 message charges. While it is true that Illuminet has made arrangements to access Qwest’s SS7 network through the purchase of “B-links and ports,” it is the SS7 message that requires any “utilization” of the network, and the record is clear that Illuminet does not generate any SS7 signaling messages.⁸ Rather, it is the Illuminet carrier/customers who initiated the SS7 messages at issue in this proceeding and those messages are generated in order to exchange end user traffic with Qwest or to jointly provide exchange access to IXCs. Accordingly, to suggest that Illuminet somehow “utilizes” Qwest’s SS7 network for purposes of SS7 messages and thus is a customer of Qwest for SS7 messages is without merit and has no basis in fact.

Rather, the record reflects that Illuminet is an agent for its carrier/customers for the transport of SS7 messages, and Qwest is fully aware of the nature of this agency relationship. For example, ELI has authorized Illuminet “to conduct all negotiations and issue orders for ISUP

⁸ The fact that Illuminet purchases B-links and ports for its own account, and thus acts as a principal in order to configure its network does not, under agency or any other law, preclude Illuminet from being the agent of its carrier/customers for the transport of SS7 signaling messages. An entity can be both a principal and an agent.

services for the [ELI] point codes” and stated the “letter of Agency will remain in effect until rescinded in writing by” ELI. Exhibit 201. Qwest understands this agency relationship because Qwest requires such Letters of Agency to open the SSP “point codes” necessary for its SSP to exchange SS7 signaling messages with the SSPs of the carrier/customers of the third party providers.⁹ Moreover, Qwest conducts its activities consistent with this agency relationship. Qwest requires the disclosure of the SS7 provider on the Access Service Requests for the necessary voice trunks and, as Qwest witness Craig recognized, when network problems arise, Qwest interacts with both Illuminet and its carrier/customers to resolve the issues. Thus, Qwest’s suggestion it has no SS7 relationship with the Illuminet carrier/customers is baseless.

The record is also clear that when Qwest sends SS7 signaling messages to an Illuminet carrier/customer by way of Illuminet’s network, Qwest does not pay Illuminet for the transport of those signaling messages. If Qwest truly believes Illuminet is the “customer” that is liable for payment for SS7 messages sent to Qwest, it would logically follow that, unless Qwest is seeking a “free” ride, Qwest would have to acknowledge an obligation to pay Illuminet for messages sent to it by Qwest. This is not the case, of course, because Illuminet neither originates nor terminates SS7 signaling messages, it merely transports such messages back and forth between Qwest and the Illuminet carrier/customers. Therefore, the determination of what charges are due for origination or termination of such SS7 messages is properly made only by application of the underlying end user arrangements Qwest has with such carrier/customers.

⁹ Qwest’s witnesses attempted to argue that the LOAs are insufficient to establish a proper agency, but are required only for Qwest’s own internal network security purposes. *See* Tr. 316, L. 19-21 and Tr. 318, L.22-23. That argument is both factually and legally wrong. It is factually wrong because Qwest’s undertaking to recognize Illuminet’s carrier/customer point codes is tantamount to Qwest’s undertaking to exchange SS7 signaling messages with the carrier/customers over Illuminet’s network. It is legally wrong because the scope of the authority of an LOA is established by the grant of the principle to the agent and cannot be limited by a third party who merely requires proof of agency. *See* Landvik by Landvik v. Herbert, 130 Idaho 54, 936 P.2d 697 (Ida. App. 1997).

Accordingly, application of traditional agency concepts to the facts of this proceeding leads to the unremarkable proposition that carriers (such as Illuminet's carrier/customers) lose none of their rights to insist upon application of existing agreements when they choose to interconnect using a third party agent (such as Illuminet) instead of deploying their own complete SS7 network. This general rule is uniformly followed in other third party transport situations. Syringa, for example, provides high-speed fiber optic transport for its member companies. Tr. 170, L. 22 through 171, L.1. But the fact that an ITA company such as Albion Telephone uses Syringa as a third party transporter does not make the underlying traffic any less Albion's, nor does it terminate the inter-carrier compensation relationship between Qwest and Albion. If the rule were otherwise, the existing inter-carrier compensation system would utterly collapse because the use by telephone companies of leased capacity and other third party transport arrangements is quite common.

The general rule that inter-carrier obligations are not affected by the use of agents or intermediaries is followed in the federal jurisdiction as well. In an analogous situation, the FCC has held that such non-carrier has the same right to nondiscriminatory access to directory assistance ("DA") database information as that provided to its principal IXC or CLEC, subject to the terms and conditions established in the underlying interconnection agreement between the principal and a LEC.

[W]hen a CLEC or an IXC (having entered an interconnection agreement with the relevant LEC) designates a DA provider to act as their agent, that competing DA provider is entitled to nondiscriminatory access to the providing LECs' local DA database. Naturally, the DA provider's database access will be consistent with the terms of the relevant interconnection agreement and with the terms of the DA providers' separate agreements with its carrier principal.

Provision of Directory Listing Information under the Telecommunications Act of 1934, As

Amended, First Report and Order, 16 FCC Rcd 2736, 2748 (2001). While Illuminet is not a DA provider, and DA access is not at issue in this case, the policy basis nonetheless applies – the agent (Illuminet) is subject to the interconnection agreement for purposes of asserting the rights of its principals (including its carrier/customers).

The Complainants also submit that there are compelling public policy reasons why the Complainants' choice of an intermediary to transport SS7 message signals between themselves and Qwest should produce no different result than if Qwest and Complainants directly connected their own SS7 networks. The cost saving efficiencies that Illuminet SS7 message transport provides to its carrier/customers, and its associated benefits to Qwest, should not be denied to the rate paying public. Carriers, including Qwest, should encourage network efficiencies, not create roadblocks with no apparent purpose other than to enhance their own revenues and/or disadvantage their competitors. If Qwest's arguments were to prevail, the only way other carriers could ensure that Qwest honored the different compensation arrangements applicable to different categories of end user traffic would be for each of them to construct dedicated facilities to connect with Qwest. Such a result would merely permit Qwest to reap additional improper windfall from the facilities charges – the A-links, the B-links and ports – required for such connectivity solely because Qwest cannot properly implement the intrastate SS7 message rate structure it filed. In any event, as each carrier duplicated Illuminet's SS7 network, the loss of economies of scale provided by Illuminet to its carrier/customers would substantially increase costs to the ratepaying public and Qwest's competitors.

D. Qwest's inability to properly implement its Catalog's SS7 message rates does not justify granting Qwest an unlawful windfall.

The record is clear that Qwest is gaining an unlawful windfall under the SS7 message

charges it currently assesses to Illuminet. The improper charges relate to end-user traffic addressed in other agreements in place between Qwest and the Illuminet carrier/customers, agreements that already include compensation for traffic exchange costs, including SS7 signaling message costs. Further, Qwest's windfall also arises from the double recovery associated with Qwest's rates assessed to its own end users. No rational interpretation of the Catalog supports, let alone justifies, this result. The Commission should, therefore, insure that this unlawful windfall is returned as well as eliminated on a going-forward basis.

The Complainants have already demonstrated above the "double recovery" associated with existing intercarrier compensation arrangements and need not repeat those reasons here.¹⁰ However, that is not the only unlawful windfall Qwest is enjoying.

Consistent with applicable regulatory requirements and the FCC's decision that SS7 costs should be treated as "general network upgrades," 800 Access Decision, 7 FEC Record at 2832, most states, including Idaho, follow traditional rate of return rate making where Qwest (or any other ILEC) files a general rate case to establish its rates for local services, enhanced services (e.g., calling features) and intrastate toll and access rates. Tr. 35, L. 11 through 36, L. 3. In a rate case, rates to recover all prudent investment and expenses allocated to the state jurisdiction, including a portion of SS7 facilities and signaling costs, were established by the Commission. Tr. 68, L. 22-23. Since SS7 messages are a critical component of a local call, the LEC was required, consistent with FCC directives to apportion its SS7 related costs to its provision of each class of intrastate services (such as basic service or intrastate exchange access). *See 800 Access Decision*,

¹⁰ The testimony of Mr. Lafferty reveals that Qwest's billings represent additional annualized revenues substantially greater than the total additional revenue that Qwest claims to result from the unbundling of SS7 signaling. Mr. Lafferty's testimony, which cannot be discussed in the brief because of its proprietary nature, proved that as a consequence of Qwest's application of its amendment to the Catalog to non-access SS7 messages, Complainants have experienced a substantial cost increase and Qwest has experienced a revenue windfall. Qwest's incremental revenue from the new SS7 message elements in its Catalog appears to exceed the allegedly revenue neutral reductions to various traditional switched access elements. *See* Tr. 110-112.

4 FCC Rcd at 2833 (SS7 “will be used for a wide variety of both intrastate and interstate services.”). Thus, as Commissioner Smith pointed out, absent specific rate design decisions to the contrary, Qwest was required to recover its SS7 costs from its own retail end users and its exchange access customers. *See generally*, Tr. 519, L. 1 through 520, L. 12. But now it is clear that Qwest is recovering these costs yet again by charging other LECs for them, either directly or via the LECs’ SS7 provider. This clearly is a double recovery because there was no corresponding local rate decrease by Qwest when the new SS7 rates were implemented. Tr. 38, L. 2-8.

The record, logic and common sense support the conclusion that Qwest is receiving windfall gains. No basis has been provided by Qwest to justify such a result, and no rationale exists to permit this windfall in the first instance. Accordingly, Complainants respectfully submit the public interest demands this windfall be returned and, on a prospective basis, be eliminated. Absent this action, the Commission would be permitting Qwest to engage in conduct that simply defies common sense, let alone running afoul of proper rate design and cost recovery principles.

III. The Supplement Proposal is fundamentally flawed and would allow Qwest to continue to profit from an unreasonable practice.

Qwest’s Supplemental Proposal does not cure the ills arising from its implementation of the Catalog’s SS7 rate structure. Nor does the Supplemental Proposal resolve the issue of the unlawful past and future windfalls Qwest has received and would continue to receive. Rather, through its Supplemental Proposal, Qwest is effectively seeking Commission approval to preserve portions of its ill-gotten gains arising from improper implementation of its intrastate SS7 message rate structure. No reasonable basis has been or can be provided for such a result.

The continuation of Catalog charges for SS7 messages associated with Qwest-originated toll traffic and Meet Point Billing traffic is wrong and should be specifically rejected by the Commission.

Notwithstanding the protestations from Qwest's witness that the Supplemental Proposal is not a concession of its baseless position, it is clearly that. By proposing that the Catalog's SS7 message charges should not apply to the local and EAS traffic, Qwest has, at it should, properly conceded that: (1) the SS7 message is an integral component of the end user traffic; (2) Illuminet is the transport agent of the Illuminet carrier/customer's SS7 messages; and (3) there are categories of SS7 messages associated with intrastate end user traffic that should never have been billed SS7 message charges under the Catalog. These concessions are telling, particularly since there is no basis to conclude (and Qwest had provided none) that the same analytical construct should not also apply to the omitted end user traffic types – Qwest-originated toll and Meet Point Billing traffic – to which the Catalog's SS7 message rates would still apply.

In addition, Qwest fails to acknowledge that continuing to assess Catalog SS7 message charges to both Meet Point Billing and Qwest-originated toll divorces those charges from traditional cost causation principles. If the Supplemental Proposal is approved, Illuminet and its carrier/customers would still be assessed SS7 message charges for Qwest's SS7 costs caused by either a Qwest end user (for Qwest-originated toll) or an IXC's end user. The record is devoid of any rational explanation why this result is justified. Similarly, with regard to the Supplemental Proposal to continue to assess SS7 Catalog rates on Qwest-originated toll, Qwest offers no explanation why it should be permitted to shift its costs to the Illuminet carrier/customer, thereby lowering the level of the access rates Qwest is required to impute to its own toll services. *See* Section 62-609(1), Idaho Code. Nor is there any justification for the Commission permitting

Qwest this inappropriate advantage vis-à-vis other Idaho toll providers, particularly at a time when, as Commission Kjellander noted, Qwest was seeking, and has since received, Section 271 authority to provide interLATA toll services. *See* Tr. 537-540

The omission of Meet Point Billing traffic within the Supplemental Proposal is equally problematic. As indicated above, the FCC has already rejected Qwest's contention that SS7 is not subject to Meet Point Billing principles. *See generally Elkhart*. Since Qwest's cost causation theory has no merit, the record is devoid of any explanation, other than an apparent effort by Qwest to ensure a means of producing an unlawful gain, for continuing to assess Illuminet and its carrier/customers Catalog SS7 message rates on Meet Point Billing traffic.

Finally, the Supplemental Proposal would allow Qwest to receive the past benefits from its improper application of its SS7 message rate structure. Application of the law and policy to this situation makes clear that such a result is unwarranted. Qwest cannot expect to be rewarded for its unreasonable practices. But a reward for its improper actions is, in effect, what Qwest seeks. Thus, adoption of the Supplemental Proposal would not only be unlawful, but would be inconsistent with rational public policy.

In short, therefore, Qwest's Supplemental Proposal would simply continue its unreasonable practice at a reduced level and reward it for prior improper actions. Accordingly, Qwest's Supplemental Proposal should be rejected outright by the Commission and the Complainants' requested relief granted in full.

IV. The relief requested by the complainants is necessary to preserve a rational pricing system for inter-carrier compensation.

As the previous sections of this Brief unequivocally demonstrate, Qwest's application of its SS7 message signaling charges from the inception of its Access Catalog revisions and under

its Supplemental Proposal is intrinsically unjust and unreasonable. But the pernicious effect of applying these charges extends far beyond their direct economic impact on the Complainants. If allowed to stand, Qwest's SS7 message charges will undermine the industry's traditional method of recovering the cost of public switched network end-user traffic handled by two or more telecommunications carriers. The predictable result will be a chaotic and inequitable pricing structure that will spawn years of litigation and an unnecessary and unproductive increase in costs for all industry participants.

Qwest's method of applying its Catalog SS7 message rate structure insures that Qwest will recover and recover again its SS7 message cost from other carriers for any inter-company SS7 message "that touches its system," even when Qwest's retail end user customer initiated the call and Qwest is the only company that receives any revenue from that call. This result contradicts not only common sense but rewrites the concept of "cost causation" to allow Qwest to foist its costs on other carriers.

If the Commission accepts Qwest's position as a new "rule" of inter-company compensation, the result will be utter chaos. Should the Commission permit Qwest to continue to improperly export its SS7 message costs to other companies, it is inevitable that all industry participants will attempt to do the same, either by filing tariffs or by attempting to amend existing interconnection agreements. Qwest's strategy for dealing with these attempts is transparently obvious from its testimony and its vociferous objections to questions about the industry wide impact of its position. *See* Tr. 479-486. Qwest will argue that LECs who use a third party SS7 provider are not entitled to file a tariff or amend their ICAs because the LECs are not the actual provider of the SS7 service. If third party SS7 providers attempt to recover SS7 costs on behalf of their carrier/customers, Qwest will simply refuse to pay, claiming the third

party SS7 provider is not a recognized telecommunications carrier. In either event, the SS7 providers and their carrier/customers will have, at best, a difficult time enforcing payment. Regardless of how the Commission deals with these issues, it will certainly lead to lengthy and expensive litigation, with any and all delays benefiting only Qwest. These potential results are clearly improper and contrary to rational and prudent public policy.

V. The relief requested by the complainants is necessary to remedy the anti-competitive effects of Qwest's actions.

Complainants also submit that it would be imprudent public policy for the Commission to disregard the clear anti-competitive effects arising from Qwest's current behavior. Common sense dictates that the costs of doing business by a carrier are recovered through the rates that carrier charges for its services. Common sense also dictates that the charges that are received by that carrier are a component of that carrier's cost of doing business. To the extent that Qwest is allowed to improperly impose SS7 message charges upon the third party SS7 providers' carrier/customers (which results from the pass-through of such charges to the customers), those charges, wrongly imposed as they are, become a part of the carrier/customer's costs of doing business and the rates they charge.

Thus, where an Illuminet carrier/customer is a direct competitor to Qwest for end user traffic, such as in the case of ELI, such charges decrease the competitive viability of the rates ELI must charge to continue to provide its competitive end user services. Even where such charges are incurred by a non-direct competitor of Qwest, such as an Illuminet carrier/customer which has an EAS arrangement with Qwest, those costs are still borne by the Illuminet carrier/customer. Either that carrier/customer will need to increase its charges to its retail end users, or the carrier/customer may simply have to bear those costs. Such a result is anti-

competitive as it will result in higher rates (inflated by Qwest's SS7 message charges) or will result in artificially suppressed earnings for that carrier/customer. In each of these instances, the business operations of the entity have been negatively and dramatically affected, creating market aberrations due solely to the conduct of Qwest.

Moreover, a decision that allows Qwest to shift its costs to other entities effectively lowers Qwest's cost of doing business and, provides Qwest a "cushion" within which it can adjust rates in response to competition. If that is permitted to occur, Qwest benefits through the abuse of the regulatory process to the detriment of all other entities. That result not only contradicts principles of fundamental fairness, but it also is contrary to prudent public policy.

These pernicious effects are not limited to Illuminet's carrier/customers. Illuminet is equally harmed by such activity. For any third party SS7 provider, the ability to compete for carrier/customers is jeopardized where it is unable to ensure its current and prospective customers that the flow-through charges from other carriers are proper and accurate. Further, Qwest has shown that it can engage in undetected and selective discrimination in the application of its SS7 charges based, as Commissioner Smith's questions point out, on "who you are." Tr. 523, L.22. For example, Qwest provided an "option" to Syringa to avoid Qwest's Catalog charges that was never offered to Illuminet. Similarly, Qwest suggests that ILECs, but not CLECs, could escape Qwest's SS7 charges by executing infrastructure sharing agreements. Tr. 491, L.11 through 493, L.3. These are clear cases of unreasonable and anti-competitive discrimination that is expressly forbidden by Section 62-609(2), Idaho Code.

Finally, while Qwest contends that "options" are available to LECs and other carriers, Tr. 400, L. 4-15, those so-called "options" have the same anti-competitive effect. Each of the "options" requires a LEC to make an unpalatable choice -- rely upon the Qwest SS7 network to

the exclusion of third party SS7 providers at a time of financial strain for Qwest or either (1) pay for functionalities that the carrier does not need since the SS7 functionality required for the carrier's initiation of SS7 messages is already resident in its SSPs with transport provided by, in the instant case, its SS7 message transport agent Illuminet or (2) pay SS7 message charges pursuant to Qwest's Catalog regardless of whether that carrier's end user generated the SS7 message with respect to a service that carrier offers. When placed in context, therefore, Qwest's purported "options" offer no choice at all, other than choosing the method by which Qwest benefits from its inability to properly implement an intrastate SS7 message rate structure.

VI. Refund and credit of all unlawfully assessed SS7 signaling charges to the complainants and withdrawal of the catalog's SS7 message rate structure is required to serve the public interest.

As the record confirms, Qwest has filed an intrastate "unbundled" SS7 message rate structure that Qwest cannot implement properly, and clearly has not implemented properly. The Supplemental Proposal does nothing to cure the unlawfulness of Qwest's misapplication of its intrastate SS7 message structure.

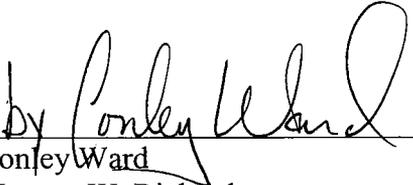
Qwest's implementation of the Catalog's SS7 message rate structure is the very type of unreasonable and anti-competitive practice Idaho law forbids. Accordingly, the Complainants respectfully request that the Commission take specific action to redress these claims. First, the Complainants request that the Commission direct Qwest to refund and credit, as soon as possible, all unlawfully assessed SS7 message charges since the inception of the Catalog revisions at issue. As part of this relief, and to ensure no imposition of unlawful charges in the future, the Commission should also direct Qwest to withdraw the SS7 rate structure in its entirety. Such actions will ensure that Qwest is not unjustly enriched at the expense of Illuminet and all of its carrier/customers. Second, the Complainants also respectfully request that the Commission

direct Qwest not to refile any SS7 rate or rate structure changes until and unless Qwest first coordinates such filing in advance with the affected third party SS7 providers and their carrier/customers. Absent a substantial demonstration that Qwest can properly implement any revised intrastate SS7 message structure, the Complainants would likely be before the Commission again raising the same issues as those currently being addressed. Accordingly, the Complainants respectfully submit that public interest benefits associated with the efficient use of Commission and party resources specifically supports this aspect of the relief they seek.

CONCLUSION

The record demonstrates that Qwest has not implemented, and cannot implement, its Catalog SS7 message rate structure in a manner that comports with applicable law, rational public policy, and common sense. Qwest's action cannot and should not be condoned by the Commission nor should Qwest be rewarded in any manner. Accordingly, the Complainants respectfully request that their Complaint be granted in full.

Respectfully submitted this 31st day January, 2003.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 31st day of January 2003, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Cox Nebraska Telcom, LLC)
and Illuminet) Formal Complaint
Complainants,) No. FC-1296
)
v.)
)
Qwest Communications, Inc.)
Respondent.)
)
ALLTEL Nebraska, Inc., ALLTEL)
Communications of Nebraska,) Formal Complaint
Inc. and Illuminet, Inc.,) No. FC-1297
)
Complainants,)
v.) ORDER GRANTING RELIEF
)
)
Qwest Corporation,)
Respondent.) Entered: December 17, 2002

APPEARANCES:

For the Complainants:

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Case No. QWE-T-02-11
Claimants' Post Hearing Brief
Exhibit A

For: The Nebraska Public Service Commission

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BY THE COMMISSION:

B A C K G R O U N D

Introduction

1. The Nebraska Public Service Commission (Commission) has before it for resolution two formal complaints, combined for record purposes and resolution. As discussed in more detail below, the Complainants are Cox Nebraska Telcom, LLC (Cox); Illuminet, Inc. (Illuminet); ALLTEL Nebraska, Inc.; and ALLTEL Communications of Nebraska, Inc. (together ALLTEL).

2. Generally, the Complainants allege that Qwest Corporation (Qwest) has improperly implemented the restructuring of Qwest's intrastate Signaling System No. 7 (SS7) services pursuant to a revision in Qwest's Nebraska Access Catalog that became effective June 6, 2001 (the Access Catalog). More specifically, the Complainants allege that Qwest, in its effort to establish separate charges for transport of SS7 signaling (which the parties have referred to as efforts to "unbundle" SS7 message charges, i.e., SS7 charges have been unbundled from the local switching and tandem switching rate elements associated with exchange access traffic), has implemented its Access Catalog structure in a manner that assesses SS7 message charges for all end-user traffic regardless of whether that end-user traffic is properly subject to the access charges. Accordingly, the Complainants requested this Commission to order Qwest to refund any improper charges assessed by Qwest under its unbundled SS7 rate structure, and that Qwest be ordered to withdraw this unbundled SS7 message rate structure unless and until Qwest properly implements it. Proper implementation of the unbundled SS7 rate structure at issue, according to the Complainants, would require Qwest to disaggregate billing of the various SS7 messages that it delivers and receives, and thereafter, to implement a billing mechanism (including bill detail) to ensure that the Access Catalog's SS7 message rates

are assessed only upon those SS7 messages associated with the intrastate end-user toll calls for which access charges are properly applied pursuant to the Access Catalog.

3. Qwest denies the allegations raised by the Complainants. In doing so, Qwest also denies that any relief is warranted.

4. For the reasons stated herein, we grant the relief Complainants request. As more fully described below, we direct Qwest to withdraw the Access Catalog terms that are at issue in this proceeding within five business days of the entry of this order, and within 10 days of this order, refund or credit all applicable intrastate SS7 message charges billed to date to the Complainants that are in dispute. Until such time as it can properly implement an intrastate unbundled SS7 message rate structure, Qwest shall not file any other Access Catalog revisions regarding SS7 rate structures or rates. To ensure this specific directive is achieved, and as more fully explained herein, we also direct Qwest to work with the Complainants in order to coordinate Qwest's election between the two options provided herein as to how it elects to implement properly its intrastate SS7 message rate structure within the Access Catalog.

Procedural Summary

5. On March 5, 2002, Cox and Illuminet initiated Formal Complaint No. FC-1296 by the filing of a formal complaint with the Commission. On March 26, 2002, ALLTEL initiated Formal Complaint No. FC-1297 by filing of a formal complaint with the Commission.

6. The Commission held a pre-hearing conference on May 14, 2002, after due notice to the interested parties. On May 22, 2002, the Commission entered a pre-hearing conference order consolidating these complaints for hearing and disposition. In addition, such order established a schedule for this matter, set hearing procedures and established a briefing schedule.

7. On May 24, 2002, ALLTEL and Illuminet filed an Amended Formal Complaint in Formal Complaint No. FC-1297. Qwest filed its Amended Answer in response thereto on June 5, 2002. Previously, Qwest had filed its Answer to the Formal Complaint in Formal Complaint No. FC-1296 on March 20, 2002.

8. On June 14, 2002, the Complainants jointly filed a Motion to Cease and Desist, requesting that the Commission enter an order requiring Qwest to discontinue any and all activity associated with its threats to suspend all service order activity and/or disconnect Complainants' connections to Qwest's SS7 signaling network. On July 12, 2002, and on July 15, 2002, respectively, the Complainants and Qwest filed separate Motions for Protective Order. The Commission held oral arguments relating to the aforementioned motions on July 22, 2002, and on July 23, 2002, the Commission entered Progression Order No. 1 in these dockets granting Complainants' Motion to Cease and Desist, and granting Complainants' Motion for Protective Order with modifications. In addition, the Commission modified the schedule established in the pre-hearing conference order. Subsequently, on September 11, 2002, pursuant to the agreement of the parties, the Commission entered Progression Order No. 2 that further revised the schedule pertaining to these dockets.

9. The public hearing on these dockets was held on October 22 and 23, 2002. At the outset of the public hearing in these dockets, legal counsel for ALLTEL made a motion to exclude evidence that might be offered by Qwest on the issue of the revenue neutrality of Qwest's unbundling of its SS7 services pursuant to the Access Catalog amendments that became effective June 6, 2001 (Exhibit 12). In support of such motion, ALLTEL offered Exhibits 1 through 11 which were received into evidence by the Commission and which described ALLTEL's efforts to obtain complete and timely responses to ALLTEL Discovery Request Nos. 2, 3, 6 and 41, among other discovery requests. Such discovery requests sought demand calculations and rate and revenue reduction data in connection with Qwest's unbundling of its SS7 services.¹ After

¹ The Commission notes that in Qwest's Supplemental Answers and Objections (Exhibit 7), "Response to Interrogatory No. 5" on page 5 thereof, Qwest states: "Confidential attachment A [Exhibit 2] is the documents [sic] Qwest used to reduce its access revenues and contains these demand calculations and the rate and revenue reductions. No other documents were used in this calculation." We further note that in the Surrebuttal Testimony of Scott A. McIntyre filed with the Commission on October 15, 2002, Mr. McIntyre states at page 18 " . . . Qwest disclosed to the Complainants all demand data regarding SS7 in its response to ALLTEL Request No. 41." However, at 4:14 p.m. on October 21, 2002, the afternoon before this hearing began, Qwest transmitted a facsimile to Complainants containing demand and revenue data (Exhibit 10) without any explanation for the untimely submission of this data.

a brief recess of the October 22 hearing, the Commission granted the motion made by ALLTEL, directing that the record be expunged of any evidence that Qwest would propose offering regarding whether the unbundled SS7 rate structure filed in the Access Catalog was revenue neutral to Qwest. We now affirm that ruling and provide our reasoning for it.

10. In granting the relief requested by ALLTEL, the Commission is mindful of the guidance from the Supreme Court of Nebraska that it "will not permit litigants to impede an opponent's legitimate discovery efforts through unfounded recalcitrance," and further that "playing games with the court will not be tolerated." *Stanko v. Chaloupka*, 239 Neb. 101, 103, 474 N.W.2d 470 (1991). Similarly, in *Schindler v. Walker*, 256 Neb. 767, 778, 592 N.W.2d 912 (1999) the Supreme Court stated that "[w]hile there is no applicable rule or statute governing a trial court's exclusion of evidence, a trial court's exclusion of evidence can be sustained as an exercise of a trial court's inherent powers."

11. As the parties to this proceeding are aware, Commission Rule of Procedure 016.11 makes the Nebraska Supreme Court's Rules of Discovery for Civil Cases applicable to proceedings before this Commission. Supreme Court Rule 26(e)(2) requires a party to seasonably amend a prior discovery response in certain circumstances as enumerated therein. Supreme Court Rule 37(b)(2)(C) provides for the imposition of sanctions in certain circumstances. In light of the directives and discretion granted triers of fact by the Supreme Court, we find that, based on the specific circumstances presented to us, Qwest failed to comply with Rule 26(e)(2), and that the parties' resolution of the discovery dispute concerning the ALLTEL Discovery Requests in question pursuant to the letter to the Hearing Officer (Exhibit 4) brings this matter within the ambit of Rule 37(b)(2)(C). The record demonstrates Qwest's failure to fulfill its obligations pursuant to applicable Commission rules. Accordingly, any evidence that might have been offered by Qwest on the issue of the revenue neutrality of Qwest's unbundling of its SS7 should be and hereby is excluded from the record that the Commission considers in deciding the merits of these Complaints.

12. We also had three additional procedural matters left unresolved at the hearing. The first matter concerns whether the Commission should entertain evidence by Qwest with respect

to the proper interpretation of its interconnection agreement (ICA) with ALLTEL. As indicated in the transcript of this matter, ALLTEL objected to this evidence provided by Qwest witness McIntyre on the basis of the lack of foundation.² The Commission overrules the objection. While the Commission acknowledges that such testimony appears to be hearsay and speculative in nature, no party invoked the rules of evidence applicable in district court. Furthermore, the Commission has historically accepted such testimony from individuals with general corporate knowledge and oversight of the circumstances being described in an effort to eliminate the need for a multitude of witnesses. Had ALLTEL, or for that matter any other party, chosen to part from the Commission's normal practice in allowing such testimony, they should have invoked the rules of evidence pursuant to Neb. Rev. Stat. § 84-914. Therefore, while the Commission recognizes ALLTEL's concern regarding the inability for ALLTEL to cross-examine those individuals from Qwest actively involved in the ICA drafting and negotiation process, the Commission will admit the testimony but give it the appropriate weight it deserves.

13. The second matter addresses a dispute regarding Qwest's efforts to submit certain testimony and a cost study, labeled for identification purpose as Exhibits 37 and 38, purportedly demonstrating the costs of Local Interconnection Service ("LIS") trunks. In essence, the issue before the Commission is whether Qwest should be able to introduce this evidence at the hearing. Our Progression Order #1, page 2, made clear that all exhibits except for rebuttal exhibits were required to be exchanged by the parties at the time of filing pre-filed testimony. Thus, Qwest was on notice that it would be required to exchange any exhibits with the Complainants at the time it exchanged its pre-filed testimony. The record indicates it did not. The only additional explanation provided was that the proffer was to rebut ALLTEL witness Fuller's responses to cross-examination questions that purportedly indicated her belief regarding SS7 allocated costs in LIS trunks. As to this Qwest assertion, we have reviewed the transcript of her cross-examination and we can find no specific reference to support Qwest's alternative theory.³ We also note that, if Qwest's proffer of Exhibits 37 and 38 was to rebut Ms. Fuller's responses, there has been no explanation as to why Qwest did not proffer

² Tr. 328:22-329:5.

³ Tr. 162:3-220:14.

Exhibits 37 and 38 at the time of the questioning of Ms. Fuller, or at least to offer some indication at that time that Qwest believed it possessed evidence rebutting Ms. Fuller's response. Accordingly, to ensure the integrity of the Commission's processes and to ensure that parties can properly rely upon the procedural directives of the Commission, we find that Exhibits 37 and 38 will be excluded from the record in this proceeding.

14. The final procedural matter relates to Illuminet's October 31, 2002, request for acceptance of late-filed Exhibit 42. This request was made to correct inadvertent factual inaccuracies regarding Illuminet witness Florack's response to his recollection of a meeting he and others held with Qwest regarding issues similar to those raised in the Complaints. We note that no party has objected to this request, and we find that acceptance of this late-filed exhibit will ensure the integrity and accuracy of the record before us. Accordingly, Illuminet's Late-Filed Exhibit 42 will be accepted and made part of the record.

O P I N I O N A N D F I N D I N G S

Commission Jurisdiction Over these Dockets

15. It is clear that the Commission's jurisdiction to resolve the issues raised in the Complaints is derived from the authority we have been granted by the Legislature.⁴ Based on our governing statutes, we find that the procedures created and the authority specifically granted to the Commission by the Legislature to receive, hear and dispose of complaints by persons, including carriers, pursuant to Sections 75-131, 75-132, 75-132.01, 75-118.01, 75-119 and 86-803(7), confer jurisdiction on the Commission to adjudicate Complainants' property rights described in the Complaints in accordance with due process requirements of such statutes. We also find that this grant of jurisdiction and authority by the Legislature includes our ability to receive, hear and dispose of complaints such as are presented herein.

16. In Neb. Rev. Stat. Sec. 75-131 (Reissue 1996), the Legislature provides that "[a]ny person who complains of

⁴ Neb. Const. Art. IV, Sec. 20 provides: "The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law."

anything done or omitted to be done by any common or contract carrier may request that the commission investigate and impose sanctions on such carrier by filing a petition which briefly states the facts constituting the complaint." *Neb. Rev. Stat. Sec. 75-132* (Reissue 1996) directs that ". . . the commission shall convene a hearing on the matters complained of pursuant to its rules of procedure and shall give the parties written notice of the time and place for such hearing." Section 75-132 further directs that following such hearing, "the commission shall make such order with respect to the complaint as it deems just and reasonable." Rule 005 of the Commission Rules of Procedure sets forth the specific procedures governing the filing and disposition of formal complaints before the Commission.

17. Similar to the foregoing grant of authority, the Legislature, through *Neb. Rev. Stat. Sec. 75-132.01* (2001 Supp.), specified that ". . . the commission shall have exclusive original jurisdiction over any action concerning a violation of any provision of (a) Section 75-109, 75-604, 75-609, 75-609.01, or 86-801 to 86-810 by a telecommunications company. . . ." To this end, we note that Complainants have asserted that Section 75-609(2) is a basis for the Commission's jurisdiction of these matters, and as discussed in further detail below, Section 75-109(2) is also relevant to the resolution of the disputes in these formal complaints.

18. In addition to the foregoing Legislative directives, *Neb. Rev. Stat. Sec. 75-118.01* (Reissue 1996) provides in pertinent part that ". . . the commission shall have original exclusive jurisdiction to determine the . . . scope or meaning of a . . . tariff" and *Neb. Rev. Stat. Sec. 75-119* (Reissue 1996) provides in pertinent part that ". . . [w]hen any common carrier . . . petitions the commission alleging that . . . an existing . . . rate is unreasonably high or low, unjust, or discriminatory, notice shall be given to the common carriers affected in accordance with the commission's rules for notice and hearing." We also note that Section 75-119 requires, that if the matter in question is disputed, that matter shall proceed to hearing and the Commission shall issue an order granting or denying the petition.

19. With respect to Section 75-118.01, we note that upon complaint by any common carrier to determine the validity, scope or meaning of a tariff (we believe that the Access Catalog is a substantive equivalent of a tariff), the Commission shall give notice of such complaint, hear evidence and argument on the

complaint and thereafter render its decision on the matter. Our ability to do so has been confirmed by the Supreme Court. See *Nebco, Inc. v. Burlington Northern, Inc.*, 212 Neb. 804, 808, 326 N.W.2d 167 (1982) (The Nebraska Legislature has provided the Commission with the authority to review tariffs pursuant to Section 75-118.01.); and *Nebraska Public Service Commission v. A-1 Ambassador Limousine, Inc.*, 264 Neb. 298, 308, 646 N.W.2d 650 (2001) (Section 75-118.01 provides the Commission with authority to determine the scope and meaning of a tariff.).

20. Also applicable to the Commission's jurisdiction of these formal complaints is Neb. Rev. Stat. Sec. 75-109(2) (2000 Cum. Supp.) that specifies: "The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996 (the Act), Public Law 104-104, including Section 252 of the Act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies." As alleged by Cox and ALLTEL, the Commission approved the ICAs at issue, and Qwest is attempting to unilaterally alter their terms through Qwest's implementation of the SS7 message charge revisions to the Access Catalog. While we will address the merits of this claim later, we note that our ability to oversee the ICAs at issue is subject to the express grant of authority to the Commission pursuant to Section 75-109(2) and 47 U.S.C. Section 252.

21. We further note that Neb. Rev. Stat. Sec. 86-803(1) (2000 Cum. Supp.) is certainly relevant to this proceeding. This section provides that, subject to certain exceptions, telecommunications companies are not subject to rate regulation, and that telecommunications companies shall file rate lists, which for all telecommunications service except for basic local exchange rates, shall be effective after ten days' notice to the commission. While the constitutionality of this restriction in the Commission's rate regulation authority was sustained in *State, ex rel. Spire v. Northwestern Bell Tel. Co.*, 233 Neb. 262, 445 N.W.2d 284 (1989), the Supreme Court also found that the Commission's jurisdiction continued to extend to quality of service regulation, and Section 86-803(7) provides for a complaint procedure. Moreover, in *Spire*, the Supreme Court held that "a ratepayer's right to a fair and reasonable rate, a right which has emerged from the decisions of this court, is properly classified as a "property" entitlement protected by the due process clauses of the U.S. and Nebraska Constitutions." *Id.* at 283. In order to protect this property entitlement, it is cri-

tical that this Commission exercise its jurisdiction to receive, hear and dispose of complaints such as the Complaints filed herein.

22. Based upon the foregoing constitutional, statutory and case law authorities, the Commission finds that it has jurisdiction over each of the Complaints. Moreover, we find that we possess all necessary and requisite authority to make these findings and conclusions and those required to adjudicate the property rights of the parties raised in the Complaints.

A Primer on SS7 Signaling

23. Due to the importance of the issues raised by Complainants, we also take this opportunity to provide a brief description of the components of the SS7 network relevant to the issues vis-à-vis the traffic that is carried over the voice network.⁵ We note at the outset that there is little disagreement between the parties regarding the configuration of the various SS7 components, or the prerequisite for the SS7 message generated by certain of those components (the charges for which are at issue in this case) to allow the establishment of calls between end users.

24. As the record reflects, the components that comprise the SS7 network allow for the setting up and tearing down of the voice network connections required for end-user traffic to be completed.⁶ Prior to "out-of-band" signaling, the network functions required to establish end-user calls were done through "in-band" signaling such as multi-frequency signaling that actually used the same facilities to set up and transmit the end-user call.⁷ By establishing "out-of-band" signaling through the SS7 network components,⁸ the facilities required to carry the voice traffic are not put into service unless and until it is

⁵ For purposes of our discussion and findings, we make reference at times to the "voice network" and "voice traffic" although we recognize that data is likewise carried such as in the case of Internet connections. Similarly, we use the terms "end-user traffic" and "end-user calls" interchangeably as they both reflect the exchange of communications between customers such as through local or intrastate toll calls.

⁶ See, e.g., O'Neal Testimony, Exhibit 27, 4:2; O'Neal Rebuttal, Exhibit 28, 3:14-18; McIntyre Rebuttal, Exhibit 34, 5:21-6:2; Craig Rebuttal Testimony, Exhibit 40, 7:21-8:5; Tr. 114:2-5.

⁷ See, Lafferty Testimony, Exhibit 24, 6:3-5; Florack Testimony, Exhibit 31, 6:20-22; Tr. 377:13-17.

⁸ See, e.g., O'Neal Testimony, Exhibit 27, 3:7-10; Lafferty Testimony, Exhibit 24, 5:18-20; Florack Testimony, Exhibit 31, 6:20-22.

clear that those facilities are available to carry the call.⁹ Moreover, the record reflects that this set-up and tear down of calls is faster than, and otherwise provides for features and functions that are not available with, "in-band" signaling.¹⁰ Accordingly, all parties seem to agree that the use of the SS7 signaling network is more efficient than in-band signaling, and the Commission likewise agrees with this conclusion.

25. Attached to the testimonies in this proceeding were various diagrams that depict how the typical SS7 components are configured.¹¹ For purposes of our decision, we need only address those elements required to set-up and tear down calls, since those are the functions for which Qwest has established discrete SS7 message charges.

26. The first SS7 component is the "Service Switching Point" (SSP). As described by the various witnesses, the SSP is part of the local switch of a Local Exchange Carrier (LEC).¹² In the SS7 environment, the SSP generates the signaling messages that are transported through the remaining components of the SS7 network.¹³ It is these SS7 messages that establish the end-user call, i.e., the process required to set-up or tear down a call.¹⁴ Each SSP has a unique address in the SS7 network identified through a "point code" assignment. The SS7 network, in turn, ensures that the SS7 messages are properly routed to the SSP that is associated with a given point code.¹⁵ For our purposes, we also note that Illuminet owns no SSPs; its carrier/customers do.¹⁶

27. SSPs are connected to "Signal Transfer Points" (STPs) through redundant, bi-directional facilities called "A-links."¹⁷

⁹ See, e.g., Tr. 381:10-20.

¹⁰ Accord, O'Neal Testimony, Exhibit 27, 3:15-22; Florack Testimony, Exhibit 31, 8:3-9.

¹¹ See O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, Exhibit A; Craig Rebuttal, Exhibit 40, attached Exhibit 1.

¹² See, e.g., O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, 7:15-18; Tr. 114:25 to Tr. 115:6; Tr. 127:14-17; Tr. 132:19-23.

¹³ Tr. 379:21-25.

¹⁴ See, e.g., O'Neal Testimony, Exhibit 27, 4:17-19, 5:9 through 6:10; Florack Testimony, Exhibit 31, 7:20-24; Craig Rebuttal, Exhibit 40, 9:20-10:17.

¹⁵ See, Tr. 141:21-142:6; Tr. 379:6-20; Tr. 381:2-9, See also, Florack Testimony, Exhibit 31, 6:22-26.

¹⁶ Accord, Florack Testimony, Exhibit 31, 7:24-27; Craig Rebuttal, Exhibit 40, 15:13-16.

¹⁷ See, Florack Testimony, Exhibit 31, 7:18-22.

STPs act like "traffic cops," routing (in conjunction with other STPs) the SS7 messages to the SSP operated by the carrier who provides service to the called party (in the case of a local call, for example), or another carrier that serves the end user (such as in the case of a pre-subscribed intra local access and transport area (LATA) toll call for an entity other than that which owns the SSP).¹⁸

28. The third and fourth components of the SS7 network that are relevant to these complaints are the bi-directional facilities that connect STPs, which are called "B-links," and the physical connection of those B-links to an STP called a "port."¹⁹ These specific links and ports and the charges for them are not at issue in this proceeding because Illuminet, the SS7 network provider for Cox and ALLTEL, has paid and continues to pay these charges to Qwest.²⁰ Nonetheless, the discussion of these facilities and connections is important because they provide the physical connection of the Cox and ALLTEL SSPs to the various SSPs of Qwest, over which the various SS7 messages are exchanged between Cox and Qwest and between Qwest and ALLTEL.²¹

29. The record reflects two ways in which carriers deploy an SS7 network. Like Qwest, a carrier can deploy its own SS7 network (the SSPs and STPs as well as the A-links and B-links) necessary to connect directly to other SS7 networks.²² ALLTEL has deployed its own SS7 network that creates call setup signaling and exchanges messages with Qwest.²³ Alternatively, a carrier can utilize a third party SS7 network provider such as Illuminet to provide certain portions of the SS7 network (such as the STPs and B-links and ports) required to connect that carrier's SSPs to other SS7 networks, or to connect its STPs to the STPs of Illuminet.²⁴ Regardless of the method of deployment, however, when examining the SS7 networks for purposes of call set-up and tear down, the SS7 networks have no independent func-

¹⁸ Tr. 114:10-115:15; Tr. 380:18-381:1.

¹⁹ See, e.g., Florack Testimony, Exhibit 31, 7:11-13 and 25:21-22; Tr. 240:2-6.

²⁰ See, e.g., Florack Testimony, Exhibit 31, 25:2-4 and 21-23; Tr. 337:4-9.

²¹ See, e.g., Lafferty Testimony, Exhibit 24, 13:7-12; O'Neal Testimony, Exhibit 27, 5:9 through 6:10; Tr. 379:10-17.

²² See generally, Craig Rebuttal, Exhibit 40, attached Exhibit 1.

²³ See, e.g., Tr. 116:12-20.

²⁴ See generally, O'Neal Testimony, Exhibit 27, Attachment; Florack Testimony, Exhibit 31, attached Ex. A.

tion other than to provide a method to transport the various carrier SSP-initiated SS7 messages required for end-user calls to be completed.²⁵

30. With respect to Illuminet, it purchases SS7 connections with Qwest via the links and ports available in Qwest's Access Catalog.²⁶ These connections, as the record confirms, provide a valuable consolidation of SS7 network capability to smaller carriers.²⁷ Even Qwest acknowledges the value of the economy of scale and scope that a third party SS7 network provider such as Illuminet brings to carriers that elect to limit their direct SS7 network investment and deployment.²⁸ The record is also clear that Qwest benefits from such arrangements through minimization of the maintenance, monitoring and actual number of facilities required to interconnect its SS7 network to other carriers.²⁹ Ultimately, however, it is clear that in those instances where SS7 has been implemented (such as here), no end-user traffic would be completed without the SS7 messages being generated.³⁰ Therefore, all carriers operating SSPs, that either receive or generate the SS7 messages, do benefit since the end users served can complete and receive calls.³¹

Positions of the Parties

31. Mr. Wayne Lafferty submitted pre-filed testimony and testified at the hearing on behalf of Cox. At the outset, we note that Cox is a certificated competitive local exchange carrier (CLEC) and provides as a common carrier, a variety of facilities-based end-user services in areas of Nebraska.³² Mr. Lafferty described six issue areas that Cox believes define its complaint. First, Cox contends that an SS7 message is an inseparable component of a call.³³ Mr. Lafferty pointed out that

²⁵ See, e.g., Lafferty Testimony, Exhibit 24, 18:1-2; O'Neal Rebuttal, Exhibit 28, 3:14-18; Tr. 116:5-11.

²⁶ See, Florack Testimony, Exhibit 31, 25:21-23.

²⁷ See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21.

²⁸ See, McIntyre Rebuttal, Exhibit 34, 11:10-12.

²⁹ See, Tr. 382:8 to 383:17; See also O'Neal Testimony, Exhibit 27, 6:20-7:3; Florack Testimony, Exhibit 31, 10:25-11:7.

³⁰ See, Tr. 116:5-7; Tr. 315:10-17; See also Florack Rebuttal, Exhibit 33, 2:6-8.

³¹ Accord, Tr. 335:19 to Tr. 336:2; Florack Rebuttal, Exhibit 33, 22:20-23:6.

³² See, Cox Complaint, Para. 4, Exhibit 22.

³³ Lafferty Rebuttal, Exhibit 25, 11:16-22; Tr. 48:11-15. Mr. Lafferty also filed Direct Testimony in this matter (Ex. 24) on Aug. 30, 2002.

while SS7 is a unique technology, it is a critical function for set up, delivery and take down of calls. Second, Cox argued that Qwest was misapplying the SS7 message charges so as to violate existing regulatory policies by ignoring existing interconnection agreements between the companies.³⁴ Third, Mr. Lafferty contended on behalf of Cox that Illuminet was clearly authorized to act as the agent for Cox for SS7 network services, and discussed a "letter of agency" (LOA) that verifies that fact.³⁵ Fourth, Cox asserts that there is not and has not been a pricing arbitrage opportunity as contended by Qwest due to the "bill and keep" mechanism that exists in the companies' ICA to account for the transport and termination of local traffic.³⁶ Fifth, Cox contends the misapplied SS7 message charges provide a subsidy to Qwest.³⁷ Finally, Cox disagrees with Qwest's allegation in its Answer to the Cox Complaint that the SS7 message charge revisions in Qwest's Access Catalog are revenue neutral in Nebraska.³⁸

32. We further note that ALLTEL Nebraska, Inc. is an incumbent local exchange carrier (ILEC) certificated to provide facilities-based local exchange, extended area service (EAS), enhanced local calling area service (ELCA), intraLATA and interLATA telecommunications services in this state.³⁹ ALLTEL Communications of Nebraska, Inc. is a provider of wireless telecommunications services in this state.⁴⁰ Mr. George O'Neal, Staff Manager, SS7, for ALLTEL, also submitted pre-filed testimony and testified at the hearing.⁴¹ ALLTEL agrees with Cox that voice and SS7 networks must rely upon each other for the completion of messages for end-user customers.⁴² ALLTEL further pointed out that, in almost all cases, the SS7 network is required to transport the call set up or teardown messages between the called and calling party local switches.⁴³ Mr. O'Neal also described how carrier billing systems and the application of compensation mechanisms, such as bill-and-keep, are dependent on the jurisdiction of a call since the

³⁴ Tr. 48:16-20.

³⁵ Tr. 48:21-23.

³⁶ Tr. 48:24-49:3.

³⁷ Tr. 49:4-7.

³⁸ Tr. 49:8-21.

³⁹ Amended Complaint, Paras. 3 and 4, Exhibit 23.

⁴⁰ *Id.*

⁴¹ O'Neal Testimony, Exhibit 27 and O'Neal Rebuttal, Exhibit 28.

⁴² O'Neal Rebuttal, Exhibit 28, 3:7-22; Tr. 115:8 through 116:16.

⁴³ Tr. 115:5-16.

jurisdiction dictates how much compensation is applied.⁴⁴ In fact, Mr. O'Neal stated that Qwest could measure SS7 messages by jurisdiction and call type if it chose to do so,⁴⁵ or it could utilize a percent interstate usage (PIU) factor, and either a percentage local usage (PLU) factor or a percent non-chargeable usage (PNU) factor⁴⁶ to allocate SS7 message charges in proportion to the category of the underlying end-user traffic. ALLTEL also noted that it, too, had designated Illuminet as its agent to establish connectivity with Qwest's SS7 signaling network.⁴⁷

33. The final witness for ALLTEL was Ms. Pamela S. Fuller, Staff Manager, State Government Affairs. As was done by Messrs. Lafferty and O'Neal, Ms. Fuller also submitted pre-filed testimony and testified at the hearing.⁴⁸ ALLTEL argues that existing ICAs continue to apply to wireless traffic within a Major Trading Area (intraMTA) and ILEC extended area service (EAS) and local traffic.⁴⁹ Ms. Fuller described details of the ICA between ALLTEL and Qwest that demonstrated that Qwest and ALLTEL had agreed to include the exchange of SS7 signaling messages within the reciprocal compensation terms and rates of the ICAs.⁵⁰ Ms. Fuller also expressed ALLTEL's view that Qwest's Access Catalog SS7 message rates do not apply to wireless intraMTA traffic⁵¹ and ILEC EAS/ELCA SS7 messages and calls.⁵² Ms. Fuller indicated that the only way Qwest may unbundle SS7 rates, as contemplated by the Federal Communications Commission (FCC), would be to properly measure and then properly bill pursuant to the applicable agreement covering the end-user traffic associated with the SS7 message, which ALLTEL contends Qwest is unwilling to do.⁵³ Finally, ALLTEL noted that it does not actually purchase intraMTA, local or EAS SS7 message signaling from Illuminet, nor does it purchase any call setup from Illuminet. ALLTEL, through its own SS7 network, creates its own call setup

⁴⁴ O'Neal Rebuttal, Exhibit 28, 6:15-7:12; Tr. 117:4-9.

⁴⁵ O'Neal Rebuttal, Exhibit 28, 7:13-22; Tr. 117:10-19.

⁴⁶ Tr. 118:13-20.

⁴⁷ O'Neal Rebuttal, Exhibit 28, 8:4-9:5.

⁴⁸ Fuller Testimony, Exhibit 29 and Fuller Rebuttal, Exhibit 30.

⁴⁹ Fuller Rebuttal, Exhibit 30, 4:19-6:5; Tr. 155:9-156:6.

⁵⁰ *Id.*

⁵¹ IntraMTA CMRS traffic has been deemed by the FCC to be "local" for purposes of applying terminating compensation requirements. *See*, 47 C.F.R. § 51.701(b)(2).

⁵² Fuller Rebuttal, Exhibit 30, 6:20-7:14.

⁵³ Tr. 159:14-160:6. *See also*, Access Charge Reform, Report and Order, CC Docket No. 96-262, (12 FCC Rcd 15982, 16046(para. 147) 1997).

signaling, and purchases transport of those SS7 messages from Illuminet.⁵⁴

34. Mr. Paul Florack submitted pre-filed testimony and testified on behalf of Illuminet.⁵⁵ Mr. Florack is Vice President for Network Services in Product Management and Development at Illuminet. As indicated by the other Complainant witnesses, Illuminet agrees that without SS7 signaling messages, no end-user traffic would be completed. As such, according to Mr. Florack, the SS7 signaling is an integral and essential part of voice traffic.⁵⁶ Moreover, Illuminet notes that only Illuminet carrier/customers carry end-user traffic and only those customers generate SS7 message signals for which Qwest has been assessing access charges under its Access Catalog.⁵⁷ Illuminet, like Cox and ALLTEL, asserts that Qwest has not properly implemented the Access Catalog because of Qwest's unwillingness to properly measure the type and jurisdiction of SS7 message charges, capabilities that are in fact available, and to provide the detail necessary to verify that billings are correct. Thus, Illuminet requests that the Commission direct Qwest to withdraw its Access Catalog amendment that took effect June 6, 2001 (Exhibit 12).⁵⁸

35. Illuminet also went into significant detail to describe Qwest's recovery of SS7 costs from all services using the SS7 network, in accordance with FCC directives.⁵⁹ Mr. Florack described how the jurisdiction of the SS7 message is relevant because it naturally follows the voice traffic it supports.⁶⁰ Finally, Mr. Florack agreed with Cox and ALLTEL that the LOAs provided by each company to Illuminet authorize Illuminet as their agent for purposes of SS7 message transport. Mr. Florack pointed out that "while Qwest may rely upon that LOA for Qwest's own internal network security purposes, that limited use does not limit the scope of the authority Illuminet has been given as the agent of its carrier/customers."⁶¹

⁵⁴ Fuller Rebuttal, Exhibit 30, 8:16-9:10; Tr. 157:17-158:10.

⁵⁵ Florack Testimony, Exhibits 31 and 32, and Florack Rebuttal, Exhibit

33.

⁵⁶ Florack Rebuttal, Exhibit 34, 2:5-12.

⁵⁷ Id.

⁵⁸ Florack Rebuttal, Exhibit 34, 3:16-4:3.

⁵⁹ Florack Rebuttal, Exhibit 34, 6:5-7:12. See also, *Provision of Access for 800 Service*, Report and Order, CC Docket No. 86-10, 4 FCC Rcd 2824, 2832 (1989) (core costs of SS7 should be borne by all network users).

⁶⁰ Florack Rebuttal, Exhibit 34, 7:18-10:4.

⁶¹ Florack Rebuttal, Exhibit 34, 13:7-14:14.

36. Mr. Scott A. McIntyre, Director of Product and Market Issues for Qwest, also submitted pre-filed testimony and testified at the hearing.⁶² According to Mr. McIntyre, Qwest has merely unbundled the SS7 message price out of the switching cost, lowered the switching rates and created a separate signaling rate.⁶³ Qwest also contends that the Complainants have the choice to purchase signaling through their ICAs, through the Qwest catalog, or through a third-party provider.⁶⁴ In the past, Qwest believes Complainants had a competitive advantage over other carriers who did not use third-party providers.⁶⁵ Now, however, with Qwest's new SS7 message rates in the Access Catalog, Qwest contends costs are more aligned with the cost causer.⁶⁶ Mr. McIntyre asserts that the rate structure is proper because it was modeled after that approved by the FCC and establishes rates for the SS7 network that is separate from the voice network.⁶⁷

37. Qwest also asserts that the ICAs between the companies are irrelevant in this case as Illuminet, not Cox or ALLTEL, is Qwest's customer for SS7 services.⁶⁸ Qwest further asserts that the LOAs discussed by the Complainants were only created to allow Qwest to open point codes in its switches, and that Complainants were attempting to expand the authority granted by the LOAs.⁶⁹

38. The sixth and final witness in the case, Mr. Joseph P. Craig, Director of Technical Regulatory in the Local Network Organization for Qwest, also submitted pre-filed testimony and testified at the hearing.⁷⁰ Through Mr. Craig's testimony, Qwest described how the SS7 network is an out-of-band signaling network, separate from the network that carries voice calls or traffic.⁷¹ Qwest also claimed that the distinction between local and exchange access calls is not applicable to SS7 messages.⁷² Finally, Mr. Craig opined that the Cox and ALLTEL LOAs are only

⁶² McIntyre Rebuttal, Exhibit 34, McIntyre Surrebuttal, Exhibit 36, Erratum Testimony, Exhibit 35.

⁶³ Tr. 301:11-302:1.

⁶⁴ Tr. 303:11-18.

⁶⁵ McIntyre Rebuttal, Exhibit 34, 10:8-12.

⁶⁶ McIntyre Rebuttal, Exhibit 34, 11:14-18.

⁶⁷ McIntyre Rebuttal, Exhibit 34, 6:16-7:5.

⁶⁸ McIntyre Rebuttal, Exhibit 34, 31:5-20.

⁶⁹ McIntyre Rebuttal, Exhibit 34, 32:4-36:7; Tr. 306:1-307:20.

⁷⁰ Craig Rebuttal, Exhibit 40, and Erratum Testimony, Exhibit 41.

⁷¹ Craig Rebuttal, Exhibit 40, 3:3-18; Tr. 366:16-22.

⁷² Craig Rebuttal, Exhibit 40, 9:4-16.

valid to open Qwest point codes, not to allow Illuminet to act as either Cox's agent or ALLTEL's agent for purposes of purchasing SS7 signaling services.⁷³ Mr. Craig agrees with Mr. McIntyre that the SS7 network is separate from the voice network, going so far as to state that the SS7 network is "completely separate" from the voice network.⁷⁴

SS7 is an Integral Component of End-user Traffic

39. At the outset, one of the fundamental policy issues for us to resolve is whether, as Qwest contends, the Commission should treat the SS7 messages and the network that carry them independently of the voice traffic.⁷⁵ If we were to agree with this contention, we would also, by necessity and logic, need to conclude that the regulatory treatment of the voice traffic has no relevance to the application of the SS7 message charges at issue in this proceeding. Complainants, however, offer a far different position. Complainants allege that the SS7 message is an integral component of the end-user traffic it supports and, accordingly, the interconnection agreements in place between the carriers of end-user traffic (such as those between Cox and Qwest and those between Qwest and ALLTEL) determine whether and how SS7 message charges should be assessed. We accept the latter conclusion as not only being supported in the record, but also being consistent with common sense and other regulatory decisions.

40. First, although we recognize the attractive simplicity of the "separate" network theory raised by Qwest,⁷⁶ we find that theory sorely lacking in fact and substance. While it is true that the SS7 network includes components different from those used to carry voice traffic, the record is abundantly clear that, where SS7 has been implemented (as in the case), there would be no voice traffic if the SS7 messages at issue were not exchanged between SSPs or if the SS7 network were not operating.⁷⁷ The record also confirms that the SSP that generates the SS7 message is part of the local switch, and the SSP effectively communicates with that switch to establish and

⁷³ Craig Rebuttal, Exhibit 40, 14:13-16:4; Tr. 371:20-372:12.

⁷⁴ Craig Rebuttal, Exhibit 40, 3:4.

⁷⁵ See, e.g., Craig Rebuttal, Exhibit 40, 16:9-12; Tr. 315:10-17.

⁷⁶ See, Craig Rebuttal, Exhibit 40, 8:21-22, 9:6-9; Tr. 51:16-18; Tr. 381:10-382:7.

⁷⁷ See, e.g., Fuller Rebuttal, Exhibit 30, 12:12-15; O'Neal Rebuttal, Exhibit 28, at 3:14-18, 5:13-15, 6:7-11; Florack Testimony, Exhibit 31, 12:13-16; Florack Rebuttal, Exhibit 33, 2:6-9; Tr. 116:5-11; Tr. 370:10-16.

release the voice path so that the call can be set up and subsequently completed.⁷⁸ Further, the record reflects that, for purposes of the charges at issue in this proceeding, the SS7 network has no independent purpose but to transport the SS7 messages,⁷⁹ and, again, that those messages must be sent and received by the SSPs (which are at least a part of the local switch owned by the LEC or CMRS provider) in order for the end-user call to be completed. Functionally, therefore, we see no basis for suggesting, as Qwest witness Craig did in his written testimony summary, that the SS7 network is separate from the voice network, let alone "completely separate" from the voice network.⁸⁰ Rather, the record is clear that the voice network must rely upon the SS7 network to initiate the SS7 messages required for any end-user traffic to be completed.

41. Second, we find no rational basis to suggest, as Qwest does,⁸¹ that the jurisdiction of the voice traffic associated with SS7 messages is irrelevant to our inquiry. We find this suggestion to be interesting since it is clearly contradicted by the fact that Qwest "jurisdictionalizes" its SS7 message traffic (albeit not to the level Complainants seek),⁸² and it relied upon its interstate message traffic in establishing the interstate SS7 message rates filed with the FCC.⁸³ Qwest's interstate tariff and Qwest's arguments here also establish that Qwest agrees with the principle that, at least for purposes of separating interstate SS7 messages from intrastate SS7 messages, it is appropriate for regulators and customers to look to the underlying voice or data message.⁸⁴ We note that Qwest's SS7 charges are an unbundling of the rate elements associated with voice traffic - the SS7 rate elements have not been divorced from the traffic, they've simply been unbundled from the local

⁷⁸ See, e.g., O'Neal Testimony, Exhibit 27, 4:17-19, 5:9-6:10; Florack Testimony, Exhibit 31, 7:20-24; Craig Rebuttal, Exhibit 40, 9:20-10:17.

⁷⁹ See, e.g., O'Neal Rebuttal, Exhibit 28, 3:18-21; Florack Testimony, Exhibit 31, 12:3-16; Florack Rebuttal, Exhibit 33, 19:2-10.

⁸⁰ See, Craig Rebuttal, Exhibit 40, 3:4.

⁸¹ See, e.g., McIntyre Rebuttal, Exhibit 34, 29:22-30:2; Craig Rebuttal, Exhibit 40, 12:22-23.

⁸² See, McIntyre Surrebuttal, Exhibit 36, 19:8-10.

⁸³ See, McIntyre Rebuttal, Exhibit 34, 6:17-20; See also Lafferty Testimony, Exhibit 24, 27:8-17; O'Neal Rebuttal, Exhibit 28, 6:22-7:2; Florack Rebuttal, Exhibit 33, 9:14-16.

⁸⁴ We agree with the Complainants that the FCC's decision regarding Qwest's interstate tariff structure does not preempt this Commission's authority to decide the matter pursuant to Nebraska law and the record evidence in this proceeding (See, e.g., Lafferty Testimony, Exhibit 24, 11:21-12:9), and we do not read Qwest's testimony to suggest otherwise.

switching and tandem switching rate elements associated with that traffic. Accordingly, we find no plausible reason (and Qwest has provided none) as to why the jurisdiction of the SS7 messages was proper in the context of the federal tariff filing,⁸⁵ but not relevant in the context of the various intrastate end-user traffic types (such as local and EAS/ELCA) to which the Complainants allege that Qwest is improperly applying the Access Catalog rates. While Qwest may be correct that the SS7 network does not differentiate between the jurisdiction of the SS7 messages that are transported across the SS7 network,⁸⁶ Qwest's position would effectively negate the Commission's duty to take into account the distinct categories of intrastate end-user traffic (and its component parts), even though the determination of the proper category is one of our fundamental considerations in establishing the proper rate design and rate structure to be applied.⁸⁷ Finally, Qwest has not contested the fact that, in some situations, it jurisdictionalizes SS7 messages based on the jurisdiction of the associated voice traffic. For example, pursuant to its Statement of Generally Available Terms and Conditions ("SGAT"), Qwest's compensation arrangement for SS7 messages is driven by the compensation arrangement for the messages' associated traffic.⁸⁸

42. Third, we find persuasive Complainants' position that, if the SS7 network were truly separate and apart from the voice network, there would have been no reason for the FCC to find that its costs should be treated as a "general network upgrade" by Qwest for cost recovery purposes.⁸⁹ In an earlier decision, the FCC addressed the regulatory treatment of SS7 capability that was then beginning to be deployed. The FCC determined that:

SS7 represents a new network infrastructure that will not only support a number of new interstate and state services, but will also increase the efficiency with which LECs provide existing services, basic and non-basic. As such, CCS7 represents a general network upgrade, the core costs of which should be borne by

⁸⁵ Tr. 316:16-317:5.

⁸⁶ See, Craig Rebuttal, Exhibit 40, 9:13-14.

⁸⁷ Accord, O'Neal Rebuttal, Exhibit 28, 4:9-18; Fuller Testimony, Exhibit 29, 5:19-6:2; Florack Rebuttal, Exhibit 33, 7:22-8:5.

⁸⁸ See, Lafferty Rebuttal, Exhibit 25, 14:16-18, 13:1-6 and footnote 5.

⁸⁹ Accord, Lafferty Rebuttal, Exhibit 25, 14:22-26 and 21:8-19; Florack Rebuttal, Exhibit 33, 6:14-7:4.

all network users The costs of CCS7 components that will be used to support other services should be apportioned in accordance with existing rules for other network services.⁹⁰

We need not determine whether the FCC's decision regarding the accounting and cost allocation of SS7 costs is binding on this Commission or on Qwest's intrastate services, but we do agree with the FCC's principle that regulated carriers must allocate their SS7 costs among the services supported by SS7. Given that cost allocation, the normal and expected practice would be that cost recovery should follow cost allocation, with the result that SS7 costs should be recovered from the users of the services supported by SS7.⁹¹ Indeed, Qwest attempts (albeit improperly as discussed below) to justify its unbundling of SS7 charges on this "cost causation" principle.⁹²

43. Finally, we note that the Access Catalog itself exposes the infirmities of Qwest's suggestion that the voice traffic and jurisdiction are irrelevant. As indicated in Illuminet's testimony, Qwest has used the voice traffic as a surrogate for applicability of the SS7 charges at issue where actual measurement by Qwest of the SS7 messages is not available.⁹³ Since Qwest has chosen not to implement actual measurement,⁹⁴ the voice traffic (and the necessity of its jurisdiction) becomes relevant based on Qwest's chosen implementation methodology. As such, we find unpersuasive Qwest's suggestion that Illuminet, as the customer, must be charged for all SS7 messages since it purchased the links and ports through the FCC tariff.⁹⁵ The record is clear that Illuminet carries no voice traffic; its carrier/customers do.⁹⁶ And, as found earlier, it is the voice traffic that requires the SS7 messages to be generated, and those messages are generated by the SSPs owned by the Illuminet carrier/customer and not Illuminet. Accordingly, it would not only be proper from a policy perspective but also based on the record before us, that the implementation of the Access Catalog revisions take into account the various and distinct intrastate end-user traffic

⁹⁰ Provision of Access for 800 Service, Report and Order, CC Doc. No. 86-10, 4 FCC Rc'd 2824, 2832 (1989) (internal citations omitted).

⁹¹ Accord, Florack Rebuttal, Exhibit 33, 8:14-19.

⁹² See, McIntyre Rebuttal, Exhibit 34, 6:6-14.

⁹³ See, Florack Rebuttal, Exhibit 33, 9:6-10.

⁹⁴ See, McIntyre Rebuttal, Exhibit 34, 23:16-18.

⁹⁵ See, e.g., Id. at 9:1-4, 22:20-22, 31:7-10, 35:16-17 and 38:10-12.

⁹⁶ See, Florack Testimony, Exhibit 31, 7:24-25, 8:22-27.

types when considering whether the SS7 message charges associated with those traffic types are properly chargeable under the Access Catalog.⁹⁷

Proper Construction of the Access Catalog Should Avoid Windfalls to Qwest

44. Two final matters bear discussion. We are mindful of the facts presented by the Complainants with respect to their position that Qwest is receiving a windfall under the Access Catalog, and we are troubled by the casual approach that Qwest apparently believes the Commission should take with respect to Qwest's implementation of the Access Catalog. We agree with Complainants that Qwest's interpretation of its Access Catalog to apply to all SS7 messages is improper since Qwest cannot apply the Access Catalog unilaterally to non-exchange access traffic for which compensation arrangements are included in preexisting agreements. Absent this approach, Qwest would continue to gain a windfall under the SS7 message charges it currently assesses to Illuminet (which then passes through the charges without mark-up to its carrier/customers⁹⁸) because those charges relate to end-user traffic addressed in other agreements in place between Qwest and the Illuminet carrier/customers which included compensation for the entire exchange of traffic between Qwest and those carrier/customers.⁹⁹

45. Similarly, we also cannot ignore, regardless of Qwest's assertions to the contrary, the anti-competitive effects arising from Qwest's implementation of its intrastate SS7 Access Catalog revisions. The testimony of Mr. Lafferty and Mr. O'Neal reveals that Qwest's billings to Cox and ALLTEL represent additional annualized revenues nearly double the total additional revenue that Qwest claims to result from the unbundling of SS7 signaling. The Cox witness, Mr. Lafferty, testified that as a consequence of Qwest's application of its amendment to the Access Catalog to Cox's non-access SS7 messages, Cox has experienced an increase to Cox's net cost of operations of \$90,000 per month or over \$1 million annually arising from the pass-through of Qwest's SS7 message charges by Illuminet.¹⁰⁰ The ALLTEL witness, Mr. O'Neal, testified that the

⁹⁷ Accord, O'Neal Rebuttal, Exhibit 28, 7:3-12.

⁹⁸ See, Florack Testimony, Exhibit 31, 26:13-18.

⁹⁹ See, e.g., Lafferty Testimony, Exhibit 24, 14:1-16:3, 20:2-21:2, and 22:7-24:25; Fuller Testimony, Exhibit 29, 9:1-5 and Exhibit A.

¹⁰⁰ See, e.g., Tr. 63:13-25 and 104:24-105:1.

data contained in Exhibit 10 confirmed Qwest's discovery response that approximately \$1,081,000 was Qwest's calculated amount of the reduction in local and tandem switching revenues and the increase in SS7 revenues due to unbundling.¹⁰¹ Mr. O'Neal further testified that for the past 12 months, ALLTEL alone had received billings (passed through by Illuminet) of \$939,738 for charges by Qwest under the revised Access Catalog, and that while ALLTEL only handles a small portion of the total SS7 messages that would be subject to charges under Qwest's revised Access Catalog, ALLTEL's billing increase equaled nearly 90 percent of the annual revenue increase that Qwest states will result from its unbundling of SS7 charges in Nebraska.¹⁰² Illuminet's witness, Mr. Florack, testified that Illuminet has been billed approximately \$2.9 million by Qwest since the effective date of Qwest's amendment to the Access Catalog pertaining to SS7 signaling which, as noted above, are passed through to its carrier/customers without charge. Additional billings to other carriers for SS7 message charges are unknown.

46. These charges are, in our view, significant and directly arise from Qwest's improper implementation of its intrastate SS7 message rate structure. That implementation, in turn, has the effect of unilaterally increasing the costs of Cox and ALLTEL (which will be recovered through rates they assess to their ratepayers and other carriers) from those costs that Cox and ALLTEL agreed to pay pursuant to their negotiated agreements with Qwest. When viewed in this light, we must conclude that the effect of Qwest's intrastate SS7 message rate structure is to deter competition by an improper increase of the costs to a competitor or at least a shift of Qwest's costs to other carriers, thus providing Qwest an improper competitive advantage vis-à-vis those carriers with which it does compete. In either instance, we will not allow that result to occur.

47. Further, we reject Qwest's contention that this result is somehow permissible because Qwest has properly implemented its intrastate SS7 structure pursuant to applicable FCC directives.¹⁰³ Even though the FCC's directives are not necessarily controlling on our implementation of the intrastate SS7 message structure at issue, Qwest has failed to comply with them. Specifically, the underlying FCC decision upon which Qwest relies, in part, for justifying its intrastate implementation of

¹⁰¹ Tr. 118:21-120:2.

¹⁰² Tr. 120:3-22.

¹⁰³ See, e.g., McIntyre Surrebuttal, Exhibit 36, 5:5-6:12.

the SS7 message structure required Qwest to "acquire the appropriate measuring equipment as needed to implement such a plan,"¹⁰⁴ but only where a carrier has elected to implement that structure.¹⁰⁵ Since it is clear that Qwest elected to make the revisions at issue, the only remaining question is whether the "measuring equipment" has been put in place to "implement" that election. The record is clear that Qwest has not,¹⁰⁶ as is confirmed by the lack of the billing detail required to properly identify (and thus measure) the SS7 messages associated with various intrastate end-user traffic types.¹⁰⁷ Therefore, Qwest cannot rely upon the FCC's SS7 rate unbundling pronouncements to support its efforts to cause this Commission to ignore the effects of the improper implementation of its intrastate SS7 message rate structure.¹⁰⁸

48. ALLTEL and Cox, as common carriers, have challenged Qwest's application of its unbundling of SS7 message signaling charges as set forth in the amendment to Qwest's Access Catalog as improper and unjust. Pursuant to Section 75-119, it is the duty of the Commission to make a determination of such claims and pursuant to Section 75-118.01, the Commission has the duty to determine the scope or meaning of a tariff. The Commission finds that the lack of revenue neutrality in Qwest's unbundling of SS7 signaling warrants a finding that the revisions to Qwest's Access Catalog (Exhibit 12) are not fair, just and reasonable and that such Catalog provisions should be declared

¹⁰⁴ *Access Charge Reform*, First Report and Order, 12 FCC RC'd 15982, 16090 (para. 253) (1997) ("Access Charge Reform Order").

¹⁰⁵ *See, id.* (Para. 252).

¹⁰⁶ *See, McIntyre Rebuttal*, Exhibit 34, 23:16-19.

¹⁰⁷ *See, Florack Testimony*, Exhibit 31, 13:26-29 citing to Confidential Exhibit B.

¹⁰⁸ We also note that Qwest relies, in part on the FCC's decision that permitted Qwest to unbundle its interstate SS7 costs. *See, e.g., McIntyre Rebuttal*, Exhibit 34, 6:16-7:8; see also, *US West Petition to Establish Part 69 Rate Elements for SS7 Signaling*, Order, CCB/CPD 99-37, DA 99-1474, released December 23, 1999 ("Order"). That decision, however, notes Qwest's ability "to assess rate elements on each switched access originating or terminating call attempt" Order at para. 6 (emphasis added). We agree with the Complainants, however, that in the interstate jurisdiction the "calls" are typically interstate toll carried by IXCs, which is confirmed by the FCC's reference to a "switched access . . . call attempt," and the fact that switched access is exchange access. *See, e.g., Lafferty Testimony*, Exhibit 24, 6:21-7:1 citing to Access Charge Reform Order, 12 FCC Rc'd at 16042 (para. 138); *Florack Rebuttal*, Exhibit 33, 11:7-10. In the intrastate jurisdiction, however, there are more discrete "call types" that must be accounted for in any proper SS7 unbundling efforts. *See, e.g., Florack Testimony*, Exhibit 31, 23:9-21.

null and void. Further, pursuant to the Commission's authority pursuant to Section 75-109(2), the Commission finds that the implementation of Qwest's Access Catalog is inconsistent with the policies of the Telecommunications Act of 1996 because Qwest has implemented its intrastate SS7 message rate structure in a manner that permits Qwest to assess such charges for traffic that is otherwise subject to its ICAs with Cox and with ALLTEL, and does so for end-user traffic that Qwest initiates (a violation of applicable reciprocal compensation rules and policies as noted by Mr. Lafferty).¹⁰⁹

49. Lastly, we are also concerned by Qwest's unilateral efforts to alter the concept of "cost causation."¹¹⁰ As the record reflects, no changes occurred in the exchange of SS7 messages between Cox and Qwest and between ALLTEL and Qwest except for the new rate structure imposed by Qwest's revisions to the Access Catalog.¹¹¹ However, the undeniable fact is that, as a result of these revisions, Qwest is assessing (albeit though Illuminet) charges to Cox and ALLTEL for SS7 messages associated with calls made by another carrier's end-users (such as in the case of originating and terminating pre-subscribed toll calls of an interexchange carrier (IXC) carried by Qwest and Cox or ALLTEL in a 'meet point billed' arrangement) or all calls where Qwest is the initiating carrier. Thus, the "causer" of the SS7 messages in these instances is not ALLTEL or Cox, and therefore, no SS7 message charges should be assessed by Qwest.¹¹² Accordingly, we reject in its entirety Qwest's overly broad construction of cost causation espoused in this proceeding and we specifically reject Qwest's suggestions that the Complainants have taken advantage of some pricing "loophole" or have been subsidized by other carriers.¹¹³ Nothing changed in the cost causation principles in place prior to the unbundling of SS7 message charges by Qwest, and Qwest has shown no rational basis as to why it should be allowed to unilaterally change such principles. This is particularly true where, as here, any

¹⁰⁹ See, Lafferty Rebuttal, Exhibit 25, 6:10-7:18.

¹¹⁰ See, Lafferty Testimony, Exhibit 24, 17:16-19; Lafferty Rebuttal, Exhibit 25, 18:15-19:12.

¹¹¹ Tr. 149:17-21

¹¹² Accord, Lafferty Rebuttal, Exhibit 25, 6:13-16; Florack Rebuttal, Exhibit 33, 4:7-15.

¹¹³ See, e.g., McIntyre Rebuttal, Exhibit 34, iii, 9:9-17. Contrary to Qwest's suggestion, this case is not about "options" regarding the SS7 connectivity (see McIntyre Surrebuttal, Exhibit 36, 8:9-9:4) in that each "option" either requires a carrier to rely upon Qwest for the provision of SS7 network, or requires that carrier to be subject to an intrastate SS7 message rate structure that has not been properly implemented by Qwest.

additional costs shifted to another provider will be reflected in that provider's cost of providing service via its end-user rates. Increasing a competitor's costs of providing service by an improper application of cost causation principles or, as here, an improper construction and application of the Access Catalog is the antithesis of rational public policy.

50. Accordingly, for purposes of our remaining analysis, we agree with the Complainants that our decisions can and should be governed by the simple, common sense principle they have articulated that no carrier should implement a revision in its tariff or pricing catalog such that its inappropriate billing of other carriers results in a revenue windfall to such carrier. This principle is particularly appropriate where the application of such tariff or pricing catalog has the effect of unilaterally altering the compensation arrangements included in negotiated pre-existing agreements. Specifically, we agree with the Complainants that the SS7 message is an integral component of the end-user traffic it supports,¹¹⁴ and the arrangements that govern the compensation of the end-user traffic equally govern the treatment of the SS7 signaling messages associated with that traffic.¹¹⁵ Thus, if SS7 signaling messages are associated with intrastate toll end-user traffic, and intrastate toll is subject to the Access Catalog, the Access Catalog applies. If SS7 signaling messages are associated with intrastate toll end-user traffic and the exchange access associated with such intrastate toll is subject to some arrangement other than the Access Catalog, the terms of that arrangement should apply. Similarly, if SS7 signaling messages are associated with local end-user traffic, CMRS intraMTA traffic, Qwest-originated toll or jointly provided exchange access, and such traffic is subject to an ICA or other contract, the agreement or contract applies to the SS7 signaling messages for such traffic. As applied here, the fact that Cox and ALLTEL have chosen an intermediary to transport SS7 message signals between themselves and Qwest should produce no different result than if Qwest and Cox and/or Qwest and ALLTEL directly connected their own SS7 networks. The cost saving efficiencies that the Illuminet transport provides and its associated benefits to Qwest,¹¹⁶ should not be denied to the rate paying public. This is especially true where, as here, the

¹¹⁴ See, e.g., Lafferty Rebuttal, Exhibit 25, 11:19-22.

¹¹⁵ Accord, Florack Testimony, Exhibit 31, 19:20-20:3.

¹¹⁶ See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21; McIntyre Rebuttal Testimony, Exhibit 34, 11:10-12; Tr. 382:8-383:17

facts demonstrate that the arrangement between Illuminet and its carrier/customers is well known to Qwest,¹¹⁷ and as discussed below, proper agency authorizations have been provided regarding the point codes to which SS7 message signals are transported. We expect Qwest and all carriers subject to our jurisdiction to encourage network efficiencies, not create roadblocks with no apparent purpose other than to enhance their own revenues and/or disadvantage their competitors.

Illuminet is the Agent of Cox and ALLTEL for SS7 Transport Services

51. As indicated above, our analytical construct requires that we examine the arrangements in place between the carriers for the handling of end-user traffic. Although the application of this construct is made somewhat more difficult because Illuminet offers no end-user services,¹¹⁸ the record is clear that Illuminet's carrier/customers do offer such services. Accordingly, we must address whether, in fact, Illuminet "stands in the shoes" of its carrier/customers for purposes of the SS7 messages that are components of its carrier/customers' end-user and exchange access service offerings, i.e., that Illuminet is the agent for its carrier/customers with respect to the SS7 messages Illuminet transports for them.

52. Under Nebraska law, whether agency exists depends on the facts underlying the relationship of the parties irrespective of words or terminology used by the parties to characterize or describe their relationship. See, e.g., *Kime v. Hobbs*, 252 Neb. 298, 562 N.W.2d 705 (1997). Using this as our guidepost, the record reflects that a LOA provided by Cox and dated July 2, 2001, was sent to Qwest indicating that "Cox Communications is authorizing Illuminet to conduct all negotiations and issue orders for (all services) point codes listed below for all US West LATAs; 001-218-140." (Exhibit 15). The very language of the LOA reveals that Cox made a general grant of agency authority to Illuminet relative to SS7 services in Qwest (formerly US West) LATAs, and that the agency relationship would continue until "rescinded in writing by Cox." Furthermore, as Mr. Lafferty testified for Cox, agency is a

¹¹⁷ See, e.g., Florack Testimony, Exhibit 31, attached Ex. E. We specifically find that, at least as of November 2000, Qwest was on notice of the specific relationship that Illuminet had with its carrier/customers, and that Qwest presumably ignored that relationship and the consequences arising there from when it elected to file its intrastate SS7 message rate structure.

¹¹⁸ Tr. 233:10-13; Tr. 239:13-18.

common method of transacting business by telephone companies. For example, Cox hires agents to help with collocation, and Qwest allows those agents, who are not Cox employees, access to Cox's collocation cage.¹¹⁹

53. Similarly, a LOA provided by ALLTEL dated April 5, 2001, was sent to US West stating: "ALLTEL is authorizing Illuminet to conduct all negotiations and issue orders for all services for the point codes listed below, for all US West LATAs." (Exhibit 14). This LOA also provided that it "will remain in effect until rescinded in writing by ALLTEL." Mr. O'Neal testified that the ALLTEL LOA "is authorizing Illuminet to conduct all negotiations and to issue an order for all services for the point codes listed below."¹²⁰ Consistent with the Cox LOA, the language used by ALLTEL demonstrates that Illuminet was designated by ALLTEL to act as their agent with regard to SS7 services in Qwest (formerly US West) LATAs.

54. Accordingly, under the test in *Kime*, we find that the LOAs do, in fact, establish Illuminet as the agent of Cox and ALLTEL generally, and, therefore, Illuminet stands in the shoes of Cox and ALLTEL with regard to the SS7 message charges at issue. In addition to this clear grant of agency, our finding is also independently supported by the record evidence that Qwest has been fully aware of the relationship between Illuminet and its carrier/customers (including the issues associated with the instant dispute),¹²¹ and the fact that the concept of "agency" is not a novel idea. For example, the Cox/Qwest ICA, approved by this Commission in Application No. C-1473, mentions the word "agent" 33 times, testament to the fact that Qwest knew Cox would, like many new entrants, use agents to handle many of its needs. Mr. Lafferty's pre-filed testimony discussed this concept in depth, contending that only through third party vendors could a new entrant manage all the tasks required of it as it grows a business while also quoting from two of the 33 provisions in the Qwest/Cox ICA that discuss agency.¹²² Similarly, the ALLTEL ICAs (Exhibits 16 and 17) contain numerous references to agents and agency. Based on the above-quoted LOAs and the evidence in the record, the Commission finds that Illuminet is the agent of Cox and of ALLTEL for SS7 messages at issues here within the Qwest LATAs.

¹¹⁹ Tr. 56:20-57:2.

¹²⁰ Tr. 145:14-17.

¹²¹ Florack Testimony, Exhibit 31, 9:8-15, 13:18-26, and 26:21-25.

¹²² *Id.*, Lafferty Rebuttal, Exhibit 25, 26:11-28:15.

55. In making this finding, we specifically reject Qwest's contention that its use of the LOA somehow limits the specific agency relationship established between Cox and Illuminet and between ALLTEL and Illuminet.¹²³ The record demonstrates facts that specifically identify the scope of and activities encompassed within the agency relationship established between Cox and Illuminet and between ALLTEL and Illuminet.¹²⁴ Similarly, we reject Qwest's inference that, regardless of the LOA, Illuminet would be a "third party" beneficiary of the ICAs that Qwest has with the Illuminet Co-Complainants.¹²⁵ We recognize that under Nebraska case law, a third party beneficiary's rights depend upon, and are measured by, the terms of the contract between the promisor and promisee, see, *Marten v. Staab*, 249 Neb. 299, 304, 543 N.W.2d 436 (1996), and the ICAs have provisions stating that there shall be no third party beneficiaries to the ICAs. However, just as *Marten* recognizes the distinction between agency and third party beneficiaries in the context of the facts in that case, see *id.*, so also in the instant matters, the LOAs constitute Illuminet as the agent for Cox and ALLTEL, respectively, and Illuminet's rights flow from the agency status and not from third party beneficiary status. Moreover, Qwest has provided no facts that would establish that Illuminet is seeking a benefit under the ICAs in question. Rather, the charges at issue are flowed through to Cox and ALLTEL without mark-up, as the record demonstrates. Accordingly, we specifically reject Qwest's theory that third party beneficiary rights are at issue in this proceeding.

56. We also reject Qwest's suggestion that the concept of "agency" as established between Cox and Illuminet and between ALLTEL and Illuminet is inconsistent with the Communications Act of 1934, as amended. Far from violating such Act, the FCC has embraced the very basis for its application established here. Provided that an agent acts in a manner consistent with the terms and conditions established in the underlying interconnection agreement between its carrier principal and a LEC, the FCC has found that:

[W]hen a CLEC or an IXC (having entered an interconnection agreement with the relevant LEC) designates a DA provider to act as their agent, that competing DA

¹²³ See, e.g., McIntyre Rebuttal, Exhibit 34, 32:19-21.

¹²⁴ See, e.g., Florack Testimony, Exhibit 31, 8:12-10:11.

¹²⁵ See, e.g., McIntyre Surrebuttal, Exhibit 36, 16:9-17:12.

provider is entitled to nondiscriminatory access to the providing LECs' local DA database. Naturally, the DA provider's database access will be consistent with the terms of the relevant interconnection agreement and with the terms of the DA providers' separate agreements with its carrier principal.¹²⁶

57. While the above-quoted decision does not directly address the facts and circumstances presented in the instant complaints (which is acknowledged by Illuminet¹²⁷), the FCC's decision nonetheless recognizes that the Communications Act of 1934 supports the same policies that the record demonstrates are present herein. For example, the FCC made clear that "inter-exchange carriers and competing LECs may not have the economies of scale to construct and maintain directory assistance platforms of their own,"¹²⁸ and that "the presence of such DA providers allows many carriers to offer a competitive directory assistance product without being forced either to go to the substantial expense of maintaining their own database or to purchase the service from the incumbent LECs."¹²⁹ These same FCC-recognized concepts are equally applicable herein.

58. The record reflects that Illuminet provides economies of scale and scope to its Co-Complainants,¹³⁰ which is at least acknowledged by Qwest.¹³¹ Likewise, and as is the case with CLECs and IXCs vis-à-vis the provision of directory assistance, Illuminet's carrier/customers utilize Illuminet because of the expense and effort involved in acquiring and deploying all of the components required to provide connectivity to the SS7 networks. It is likewise clear that Qwest is the dominant provider of local exchange service and the associated SS7 signaling.

59. Finally, we reject Qwest's assertion that it has "no direct relationship" with Cox and with ALLTEL regarding SS7.¹³² The interconnection agreements between Qwest and Cox and between Qwest and ALLTEL require that SS7 connectivity be implemented,

¹²⁶ Provision of Directory Listing Information, 16 FCC Rc'd 2736, 2748 (para. 27) (2001).

¹²⁷ See, Florack Rebuttal, Exhibit 33, 15:13-14.

¹²⁸ 16 FCC Rc'd. at 2748 (para. 26) (footnote omitted).

¹²⁹ Id. (para. 27).

¹³⁰ See, Lafferty Testimony, Exhibit 24, 10:10-13; O'Neal Testimony, Exhibit 27, 5:1-6; Florack Testimony, Exhibit 31, 8:12-10:21.

¹³¹ See, McIntyre Rebuttal, Exhibit 34, 11:10-12.

¹³² Id. at 35:19.

and the LOAs establish that Cox and ALLTEL have each separately designated Illuminet as their agent for this connectivity with Qwest. As confirmed by the fact that call set-up and teardown is being accomplished, there has been no allegation that the actions of Illuminet on behalf of either Cox or ALLTEL are inconsistent with the terms and conditions required for their respective SS7 connectivity with Qwest.

60. Accordingly, based on the entire record before us, we are confident that our decision regarding the existence and application of the agency relationship between Illuminet and Cox and between Illuminet and ALLTEL complies with the proper legal mandates and is otherwise consistent with the underlying policies of the Communications Act of 1934 as interpreted by the FCC.

The ICAs at Issue Do Not Permit Separate SS7 Message Charges to be Assessed By Qwest

61. Having found that Illuminet is acting as the agent for its respective Co-Complainants, we next turn to whether the SS7 message charges being assessed that relate to the various intrastate voice traffic types are proper under the two ICAs before us. Both Cox and ALLTEL provided their understanding of whether SS7 message charges are proper under their respective ICAs for such traffic types.¹³³ We note, however, that each of the Complainants agree that only the SS7 message charges assessed by Qwest for terminating both intraLATA toll originated by an end user pre-subscribed to Cox and that originated by an end user pre-subscribed to ALLTEL are proper.¹³⁴ Therefore, we need not address this type of end-user traffic.

62. Cox and ALLTEL maintain that the terms of their respective ICAs with Qwest include SS7 signaling as a part of the services that the parties agreed to provide reciprocally to one another.¹³⁵ A determination of the validity of this position turns on certain key provisions of the ICAs. In the Cox/Qwest ICA (Exhibit 26), those key provisions are section 6.7.4, which states that where available, all interconnection trunks will be

¹³³ See, Lafferty Rebuttal, Exhibit 25, 4:4-15, 5:13-18, 6:21-7:3; Fuller Testimony, Exhibit 29, 5:1-6:6, 7:4-8:12.

¹³⁴ See, Lafferty Testimony, Exhibit 24, 14:1-5; Fuller Testimony, Exhibit 29, 10:8-10; Florack Testimony, Exhibit 31, 25:4-7.

¹³⁵ See, e.g., Tr. 47:21-25 and 155:9-19.

equipped with SS7 capabilities,¹³⁶ Section 5.13, which discusses Meet Point Billing (MPB)¹³⁷, and Section 5.5.1.2, which mandates a "Bill-and-Keep" arrangement for the termination of local traffic.¹³⁸ Cox has testified that no attempt has been made by Qwest to amend the terms of the Cox/Qwest ICA in order to change the compensation arrangement for SS7 messages.¹³⁹ In the ALLTEL/Qwest Reciprocal Compensation Agreement for Extended Area Service (Exhibit 17), those key provisions are Section 4.2 that provides that the parties will use SS7 signaling in the interconnection of their networks,¹⁴⁰ and Section 3.1 that discusses reciprocal compensation for transport and termination of EAS traffic.¹⁴¹ In the ALLTEL/Qwest Wireless ICA (Exhibit 16), those key provisions are Article V.G.5 that provides that the parties will provide common channel signaling to one another (defined in Article III.L as SS7 signaling protocol),¹⁴² and Article IV.A.1 that discusses reciprocal compensation for local traffic exchanged between the parties.¹⁴³ ALLTEL has established

¹³⁶ Section 6.7.4 states: "The parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI), calling party category, charge number, etc. All privacy indicators will be honored." CCS is another term for SS7 signaling.

¹³⁷ Meet Point Billing (MPB) is a revenue-sharing agreement where Cox and Qwest have agreed to jointly provide access service to IXCs under separate access tariffs.

¹³⁸ Section 5.5.1.2 states: "If the exchange of local/EAS traffic between the Parties is within +/- 5% of the balance, the Parties agree that their respective call terminating charges will offset one another and no compensation will be paid."

¹³⁹ See, Lafferty Rebuttal, Exhibit 25, 4:22-23.

¹⁴⁰ Section 4.2 states: "To the extent available, the parties will interconnect their networks using SS7 signaling where technically feasible and available as defined in FR 905 Bellcore Standards including ISDN user part ("ISUP") for trunk signaling and transaction capabilities application part ("TCAP") for common channel signaling based features in the interconnection of their networks."

¹⁴¹ Exhibit 1 to the ALLTEL/Qwest ICA provides the rates for this reciprocal compensation, and Exhibit 2 to the ALLTEL/Qwest ICA provides the exchanges subject to the reciprocal compensation arrangement.

¹⁴² Article V.G.5 states: "The Parties will provide Common Channel Signaling (CCS) to one another, where available, in conjunction with all Local/EAS Trunk Circuits. All CCS signaling parameters will be provided including calling party number (CPN), originating line information (OLI) calling party category, charge number, etc. All privacy indicators will be honored."

¹⁴³ Article IV.A.1 states in pertinent part: "Reciprocal traffic exchange addresses the exchange of traffic between Carrier subscribers and USWC end users. If such traffic is local, the provisions of this Agreement shall

that neither ALLTEL nor Qwest have amended the terms of the ALLTEL/Qwest ICAs in order to alter the compensation for SS7 messages.¹⁴⁴ It is fundamental that these ICAs are not subject to unilateral amendment by only one party. Thus the compensation terms of each ICA remain in effect.

63. Based on our review of the record and the ICAs at issue, the conclusion must be made that recovery of the costs of the SS7 message charges are included within the reciprocal compensation rates or bill-and-keep arrangements included in the ICAs. Consistent with our finding that the SS7 message is an integral component of the end-user traffic, the ICAs reflect no separate charges for SS7 messages associated with the treatment of the end-user traffic types addressed in the ICAs. Any other conclusion would allow a party to unilaterally alter the terms and conditions of an ICA, which we will not allow a party to do. Since Qwest has purportedly unbundled its SS7 rate in the SGAT, and such separate rates have not been included in the ICAs, we further find that it is more plausible that the compensation arrangements for SS7 messages were included in the reciprocal compensation rates or bill and keep construct. This latter finding is further supported by our expectation that carriers negotiate contracts in an effort to recover their costs and the fact that Qwest has not sought to renegotiate the ICAs. If however, Qwest neglected to account for these SS7 costs when it negotiated the ICAs, it is not free to simply impose these costs by unilateral changes in its Access Catalog, but rather, must follow the existing procedures and schedules to obtain revision of the ICAs.

Grant of Relief to the Complainants

64. Based on the record before this Commission, we find that a grant of the relief requested in the Complaints is necessary to ensure that the Access Catalog is applied in a fair and reasonable manner. We find this action is not only consistent with applicable state law and the underlying policies established therein, but also the Act and prudent public policy. Accordingly, for the specific reasons stated herein and the specific opinions and findings of facts made herein, we grant the Complainants the relief they seek and direct Qwest to take such action necessary to implement the following three directives.

apply. Reciprocal traffic exchange covered by this Agreement is for Wireless interconnection for CMRS carriers only in association with CMRS services.

¹⁴⁴ See Tr. 155:21-156:1; Tr. 208:23- 209:4.

65. Within five business days of the entry of this order, the Commission directs Qwest to withdraw the Access Catalog revisions that are the subject to these Complaints and re-institute the SS7 rates, terms and conditions that had been in effect prior to June 2001 (including, should Qwest so wish, filing revised intrastate switched access rates), and not to re-file any "unbundled" SS7 rate structure within the Access Catalog until it can comply with the third directive below. We make clear that we do not expect Qwest to alter any SS7 facility charges (the links and port charges) since those charges are not the subject of the Complaints. We specifically note that any efforts by Qwest to modify such charges would call into question Qwest's effort to properly implement the directives of this order.

66. We direct that within 10 days of the issuance of this order, Qwest refund or credit all SS7 message charges and associated late charges or penalties, if any, that have been assessed under the June 6, 2001, Access Catalog revisions to Illuminet, both on the disputed non-access traffic of its Co-Complainants, Cox and ALLTEL, and on similar non-access traffic of Illuminet's other Nebraska carrier/customers. Subject to the Complainants' discretion, this refund may take the form of either a direct payment from Qwest or credits to be applied in a manner determined by the Complainants.

67. Finally, we direct Qwest not to file any further Access Catalog SS7 rate structure revisions that attempt to implement separate facilities and SS7 message charges without a substantial demonstration to this Commission that Qwest can properly segregate, identify and properly bill, and refrain from improperly billing, the SS7 message charges associated with the distinct types of intrastate end-user traffic its network currently carries (i.e., local, EAS/ELCA, intraMTA CMRS, Qwest-originated toll and Qwest-terminated toll), and jointly-provided exchange access (that service required for third-party IXCs to originate and terminate their respective end-user intrastate toll traffic via multiple LECs). This demonstration must be made prior to any effort to implement such structure within the Access Catalog, and must include, at a minimum, a demonstration that the implementation of such structure has been coordinated with the Complainants in this proceeding. The Commission finds that Qwest may fulfill this directive either through direct measurement or the adoption of one or more factors within Qwest's Access Catalog, the latter of which would exclude the SS7

messages related to intrastate traffic for which the Access Catalog does not apply (i.e., local, EAS, ELCA, intraMTA CMRS, Qwest-originated toll and jointly-provided exchange access). We also direct that Qwest apply its chosen methodology in a manner that Qwest's billing properly disaggregates and segregates those messages that are not subject to the charges included within the Access Catalog. Should any issues regarding proper implementation of such unbundled SS7 rate structure remain, Qwest shall provide a list of those issues and shall address efforts it has taken to resolve those concerns. With respect to this specific directive, we find that coordination among the parties to these Complaints will assist the Commission in determining good faith compliance by Qwest as well as avoid any unnecessary expenditure of resources by the Commission and the parties.

68. For the reasons stated herein, we find that each of these three directives is not only required to ensure a fair and reasonable application of the Access Catalog by Qwest, but is necessary to ensure that the public interest associated with competitive end-user service provisioning within the state of Nebraska is served.

O R D E R

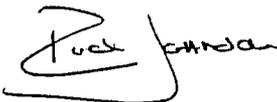
IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the foregoing Opinion and Findings are hereby, adopted.

MADE AND ENTERED in Lincoln, Nebraska on this 17th day of December, 2002.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:





//s//Anne C. Boyle
//s//Frank E. Landis



Chair

ATTEST:



Executive Director