

Date	Exhibit Number	Document Description	Witness	Offered	Admitted	Denied
4-22	1 ✓	Tietzel-Direct	Tietzel	✓	✓	
	1A ✓	Conf. Exhibits	Tietzel	✓	✓	
	2 ✓	Tietzel-Rebuttal	Tietzel	✓	✓	
	3 ✓	Black Hills Fiber Com Data Response	Tietzel	✓	✓	
	4 ✓	Midco (conf.) Data Response	Tietzel	✓	✓	
	5 ✓	reserved for ATT data response (conf.)				
	6 ✓	Tietzel-summary	Tietzel	✓	✓	
	7 ✓	Brohl Affidavit adopting Notarianni	Brohl	✓	✓	
	8 ✓	Notarianni-Direct	Brohl	✓	✓	
	9 ✓	Notarianni-Rebuttal	Brohl	✓	✓	
	10 ✓	Schultz-Direct	Schultz	✓	✓	
	11 ✓	Brohl Affidavit adopting parts of Liston	Brohl	✓	✓	
	12 ✓	Liston-Direct	Brohl	✓	✓	
	13 ✓	Liston-Rebuttal	Brohl	✓	✓	
4-23	14 ✓	Item 1 Freeburg-Direct	Freeburg	✓	✓	
	15 ✓	Item 1 Freeburg-Rebuttal	Freeburg	✓	✓	
	16 ✓	Item 3 Freeburg-Direct	Freeburg	✓	✓	
	17 ✓	Item 3 Freeburg-Rebuttal	Freeburg	✓	✓	
	18 ✓	Item 13 Freeburg-Direct	Freeburg	✓	✓	
	19 ✓	Item 13 Freeburg-Rebuttal	Freeburg	✓	✓	
	20 ✓	Item 13 Graph-Trunks	Freeburg	✓	✓	
	21 ✓	SGAT				
	22 ✓	Liberty Report 3, 7, 8, 9, 10, 12		✓	✓	
	23 ✓	Liberty Report 1, 11, 13, 14		✓	✓	
	24 ✓	Liberty Report - Emerald Services		✓	✓	
	25 ✓	Liberty Report 2, 4, 5, 6		✓	✓	
	26 ✓	Liberty Report General Terms, 272, Track A		✓	✓	

Date	Exhibit Number	Document Description	Witness	Offered	Admitted	Denied
	27✓	Liberty Report Public Interest		✓	✓	
	28✓	Liberty Report QPAP		✓	✓	
	29✓	Quest Petition		✓	✓	
	30✓	Collocation - I Bumgarner-Direct	Bumgarner	✓	✓	
	31✓	Collocation - I Bumgarner-Rebuttal	Bumgarner	✓	✓	
	32✓	Item 7 Bumgarner-Direct	Bumgarner	✓	✓	
	33✓	Item 7 Bumgarner-Rebuttal	Bumgarner	✓	✓	
	34✓	Item 9 Bumgarner-Direct	Bumgarner	✓	✓	
	35✓	Item 9 Bumgarner-Rebuttal	Bumgarner	✓	✓	
	36✓	Item 10 Bumgarner-Direct	Bumgarner	✓	✓	
	37✓	Item 10 Bumgarner-Rebuttal	Bumgarner	✓	✓	
	38✓	Item 11 Bumgarner-Direct	Bumgarner	✓	✓	
	39✓	Item 11 Bumgarner-Rebuttal	Bumgarner	✓	✓	
	40✓	Item 12 Bumgarner-Direct	Bumgarner	✓	✓	
	41✓	Item 12 Bumgarner-Rebuttal	Bumgarner	✓	✓	
	42✓	PS/ALI Description	Bumgarner	✓	✓	
	43✓	Arizona SGAT-911	Bumgarner	✓	✓	
	44✓	Pappas Affidavit adopting Liston	Pappas	✓	✓	
	45✓	SGAT 9.1.14	Pappas	✓	✓	
	46✓	Quest Loop Data		✓	✓	
4-24	47✓	Item 6 Simpson-Direct	Simpson	✓	✓	
	47A✓	Conf-Exhibits	Simpson	✓	✓	
	48✓	Item 6 Simpson-Rebuttal	Simpson	✓	✓	
	49✓	Item 7 Simpson-Direct	Simpson	✓	✓	
	50✓	Item 7 Simpson-Rebuttal	Simpson	✓	✓	
	51✓	Item 8 Simpson-Direct	Simpson	✓	✓	
	52✓	Item 8 Simpson-Rebuttal	Simpson	✓	✓	

EXHIBIT DOCUMENT

TC01-165

Date	Exhibit Number	Document Description	Witness	Offered	Admitted	Denied
	53 ✓	Item 4 - Resale Simpson - Direct	Simpson	✓	✓	
	54 ✓	Item 4 - Resale Simpson - Rebuttal	Simpson	✓	✓	
	55 ✓	Item 2 - UNE-P Simpson - Direct	Simpson	✓	✓	
	56 ✓	General Terms Brotherson - Rebuttal	Brotherson	✓	✓	
	57 ✓	Gen. Terms Brotherson - Supp.	Brotherson	✓	✓	
	58 ✓	Letter to Malco	Brotherson	✓	✓	
	59 ✓	272 Schwartz - Direct	Schwartz	✓	✓	
	59A ✓	Conf. Exh - 272-3c	Schwartz	✓	✓	
	59B ✓	Conf. Exh 272-8c	Schwartz	✓	✓	
	60	272 Schwartz - Rebuttal	Schwartz	✓	✓	
	61	272 Brunsting - Direct	Brunsting	✓	✓	
	61A	conf-exh - 272-5c	Brunsting	✓	✓	
	61B	conf-exh - 272-6c	Brunsting	✓	✓	
	62	Item 2 - UNE-P Stewart - Direct	Stewart	✓	✓	
	63	Item 5 Stewart - Direct	Stewart	✓	✓	
	64	Items 2 & 5 Stewart - Rebuttal	Stewart	✓	✓	
	65	Emerging Services Stewart - Direct	Stewart	✓	✓	
	66	Emerging Services Stewart - Rebuttal	Stewart	✓	✓	
	67	Stewart A.H. draft adopting Lister - MDs - line splitting	Stewart	✓	✓	
4-25	68	Item 5 LaFave - Rebuttal	LaFave	✓	✓	
	69	Stright - Rebuttal	Stright	✓	✓	
	70	Final Liberty Report	Stright	✓	✓	
	71	P103 Williams - Direct	Williams	✓	✓	
	72	P103 Williams - Rebuttal	Williams	✓	✓	
	73	S.D. Results	Williams	✓	✓	
	74	Regional Results	Williams	✓	✓	
	75	Performance Data S.D. - April & March	Williams	✓	✓	

OBSERVATION 1031
Qwest OSS Evaluation

Date: January 3, 2002

OBSERVATION REPORT

An observation has been identified as a result of the data reconciliation activities associated with AT&T in Colorado. This observation relates to performance reporting processes as they existed during the period of data reconciliation.

Exception:

The Service Order Miss Code (SOMC) in the RSOR data for some orders is incorrect, leading to errors in performance measurement reporting.

Background:

Service orders in WFAC can be given various jeopardy codes. Codes beginning with the letter "C" attribute jeopardies to the customer, while codes beginning with other letters do not. As stated in the response to Liberty data request 27-1, which is *Qwest's Jeopardy Coding Job Aid*:

A Jeopardy Code is posted when a critical date function in the provisioning process is determined to be in danger of not being completed on time. Only those critical dates, which will be missed, are to be populated with a jeopardy code.

A Missed Function Code/MFC is posted when a due date is missed. All missed due dates must have a MFC posted. MFC's represent the root cause for the missed due date, it may be the same as a jeopardy posted during the provisioning process. Accurate notes during the provisioning process should tell the story enabling the CCT-I knowledge to post the appropriate MFC. If a DD is missed and if at anytime in the provisioning process a Qwest jeopardy code was posted the company is required to take the miss. If an order was missed for Qwest reasons and when attempt to recommit we find the customer is not ready a Qwest MFC must be posted on the DD.

Qwest stated in a supplemental response to data request 30-4 that:

A WIMFC (Missed Function Code) is placed on the order by a CCT-Implementor tester at the time that the OSSOI is closed out. The MFC is the jeopardy code that best explains why the order was missed (the root cause jeopardy if more than one jeopardy was issued). This is after the order is worked and accepted by the customer. It is not input automatically. It does not vary by state or product.

As noted in the RRS Technical Documentation, Chapter 12, the SOMC field contains the Missed Code (original). The SOMC is determined by personnel in the order completion group. As Qwest stated in its supplemental response to data request 30-4:

In the case of a missed due date, the RSOR SOMC field is also manually input by the SDC in the order completion group. The process is for them to look up the order in WFAC and determine the correct root cause for an order being missed.

Thus, the Service Delivery Coordinator (SDC) reviews the WFAC file, including the MFC, jeopardy codes, and other data, and then determines the appropriate SOMC for the order. If the chosen SOMC contains a jeopardy to the customer (a jeopardy beginning with the letter "C"), Qwest excludes the order from OP-3, OP-4, and OP-6 as an order whose due date was missed for customer reasons.

However, in a subsequent document (its supplemental response to data request 37-4), Qwest revised its explanation of how the SOMC is determined. It stated that:

The process is for the SDC in the order completion group to determine the overall root cause for an order being missed. Since the reason for misses for the vast majority of orders occur after the RID date (release of the order for installation – the start of the WFAC record), the primary source of data for an entry for SOMC is the WFAC WIMFC field. However, this is an example of an order with problems prior to the RID. This led the SDC to use the overall history of the order to assign the SOMC.....

Thus, the reason for the SOMC is usually, but not always, found in the WFAC file.

Issues

Liberty has noted several different types of anomalies regarding the information in WFAC, the SOMC, and how they are used in performance measure reporting. One issue relates to Qwest assigning a customer jeopardy, e.g., C01, to an order after the due date, but still excluding the order from OP-3, OP-4, and OP-6 because of a customer miss of that due date, i.e., an unjustified exclusion. An example of this issue occurs with PON DENP0100530, orders C80615604, 05. According to Qwest, these orders had a due date of 1/16/01 (to confirm this due date, see the SODD in LIB_DR_Set_30-9.csv provided to Liberty in the response to data request 30-9). The WFAC record for these orders (also provided to Liberty in the response to 30-9 and named LIB Set30Req009ConAttA) shows a jeopardy of C01 to AT&T issued on 2/21/01. The RSOR data for these orders have SOMCs of C01. Thus, the orders were excluded from the OP-3, OP-4, and OP-6 measures, apparently because of a jeopardy that Qwest made to AT&T long after the due date. In data request 37-1, Liberty asked Qwest to explain how a C01 jeopardy long after the original due date caused Qwest to exclude the order from the measures, but Qwest's response was inadequate. That response did, however, state that Qwest "could not find" an original due date of 1/16/01, even though the RSOR data supplied to Liberty by Qwest

contained that due date. In a supplemental response received on 1/3/01, Qwest neither answered the original question of why it excluded the order, nor did it explain why RSOR had an original due date that Qwest "could not find." Another example is PON DENP0005804, orders C80034531, 32 which had a due date of 11/22/00. Qwest jeopardized these orders C01 to AT&T on 11/27. The MFC was C01 and Qwest therefore excluded the order from the performance measure because of an alleged customer miss. In data request 37-3, Liberty asked Qwest to explain these issues and justify excluding these orders. Qwest's supplemental response stated that the jeopardy should have been posted on 11/16 (before the due date of 11/22) but human error caused it to be posted on 11/27. Liberty concludes that the Qwest log for this order is unreliable. (This is not the only case of Qwest posting jeopardies late; in a supplemental response to data request 37-3, Qwest agrees that it posted a customer jeopardy late for PON DENP0006673-A, order C80019401.)

A second issue relates to the Service Order Miss Code (SOMC) in the RSOR data set not being supported. This is important because an SOMC to the customer causes the order to be excluded from OP-3, OP-4, and OP-6. PON DENP0100467, orders C40141516, 17 is an example. The RSOR data for these orders (received in file LIB_DR_Set_30-7.csv in response to data request 30-7) have SOMCs of C01, even though the WFAC data (received in file LIBSet30Req.007ConAttA.doc also in response to data request 30-7) does not appear to have any MFC at all, and there does not appear to be a customer jeopardy of any kind in the WFAC file for these orders. Nonetheless, this order was excluded from OP-3, OP-4 and OP-6 by Qwest for a customer-caused miss. Liberty asked Qwest to explain this issue in data request 37-4, but Qwest's response was inadequate. In a supplement to that response, Qwest stated that the order had actually been jeopardized to Qwest, that it had never been jeopardized to AT&T, and that human error caused an incorrect SOMC of C01 rather than an SOMC of K09 (which Qwest now believes would have been proper).

The final issue relates to the MFC being inconsistent with the underlying jeopardies and Qwest's procedures. This is particularly important when an order has more than one jeopardy, e.g., if it has one jeopardy to Qwest and another one to the customer. As described in the quote above (taken from Qwest's *Jeopardy Coding Job Aid*), Qwest's procedure states that Qwest should take the miss whenever a due date is missed and a jeopardy is posted to Qwest any time during the provisioning process. However, Qwest's response to data request 32-6 essentially states that this did not happen during the period being reconciled. During that period, Qwest states that a record would be excluded from OP-3, OP-4, and OP-6 due to a customer-caused miss even if there also was a jeopardy to Qwest. In essence, Qwest is saying that, for the period in question, the MFC was supposed to identify the cause of a missed original due date, independent of any other jeopardies. An example of this issue is PON DENP0006628, order C80056544, which had a due date of 1/3/01. Qwest jeopardized this order E14 to itself on 1/3, the due date. It also jeopardized the order to AT&T on 1/4 with a code of C01. Nevertheless, the MFC on the order was C01 and Qwest excluded the order from the measures. Qwest's supplemental response to data request 30-4 stated that the MFC code should have been

OBSERVATION 1031

Qwest OSS Evaluation

E14; human error on the part of the tester resulted in a MFC of C01. In that same response, Qwest noted that the MFC is always input manually for all states and products, and that the SOMC in RSOR is also manually input, but by the SDC in the order completion group. In this example, the SDC also committed an error by failing to post the SOMC as E14; this resulted in the order being excluded improperly from the measure.

Impact:

During the period being considered for data reconciliation, some orders that should have been included in OP-3, OP-4, and OP-6 were being inappropriately excluded for customer-caused misses that did not really occur.

OBSERVATION 1032
Qwest OSS Evaluation

Date: January 3, 2002

OBSERVATION REPORT

An observation has been identified as a result of the data reconciliation work for Colorado and the OP-4 measure.

Observation:

Qwest included some unbundled loop orders that should have been excluded because the requested provisioning interval was greater than the then current standard installation interval.

Background:

The PID version 3.0, which applies to the data reconciliation, indicates that for OP-4, orders are excluded when the "customer requested due dates greater than the current standard interval."

Issue:

The installation guide interval indicated that the standard was five business days for loop orders with 1 to 8 lines. There were several Covad UBL orders, which had 8 lines or less, for which the requested interval was 6 business days or more, yet Qwest reported the order. This appears to be caused by human error in completing the order information that is then used for performance reporting.

Impact:

Reporting of OP-4 for May through July 2001 did not conform to the PID.

M E M O R A N D U M

DATE: January 14, 2002

TO: ROC TAG

FROM: Bob Stright
The Liberty Consulting Group

RE: Qwest's Response to Observation 1033

Observation 1033 stated that, during the period being covered by Liberty's data reconciliation, there were instances where Qwest personnel determined AT&T's order application date/time incorrectly for OP-4 LIS trunk performance measurement reporting purposes. In some instances, Qwest failed to change the application day to the next day, even though the ASR was received after 3:00 p.m. MT. In other cases, it appears that Qwest used the wrong application date because of uncertainty as to whether or not the application was "complete and accurate" as is required in the definition section of the PID.

In its response to the exception, Qwest stated that the net effect of its errors was minimal, i.e., a one day difference during the period being reconciled. Liberty believes it is pure coincidence, and irrelevant, that Qwest's errors may net out to a small number for the period. The important fact is that Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator. Liberty has submitted data requests to assess Qwest's retraining activities.

In addition, Liberty determined that for several Covad UBL orders in Arizona received after 7 pm were dated the same day, rather than the next day in accordance with the PID.

	UBL AZ Covad PON	Qwest Order #
May	1064663	N50411873
	1046895	N50406160
	1045828	N50426097
	1078413	N50438753
	1040680	N50429353
	1041602	N50409227
	1051520	N50429347
	1051871	N51160193
June	1103340	N51490676
	1121507	N54292590
	1129409	N54588152
	1105912	N52783852

July

1129409

N54588152

1137911

N55456904

1121507

N54292590

1171576

N57067207

MEMORANDUM

DATE: 10 December 2002

TO: ROC TAG

FROM: Bob Stright
The Liberty Consulting Group

RE: Reply to Qwest's Response to Observation 1028

Summary

Qwest acknowledged the problems identified in the Observation report, however it considered the errors in mean-time-to-repair (MTTR) cited in the Observation to be isolated cases. Qwest proposed no new action, and instead stated that it would continue to conduct semi-annual compliance reviews and continue its random review/coaching program for technicians.

Liberty believes that the errors it found during the AT&T trouble ticket analysis in Arizona and Nebraska may be typical, rather than isolated, examples of errors. Liberty found significant indications of two types of errors, the cumulative effect of which may be unreliable historical MR-6 results.

Discussion

Observation 1028 reported that there was a significant error rate in the MTTRs, or repair durations, used by Qwest in calculating its MR-6 measure for AT&T in Nebraska. Liberty specifically discussed three trouble tickets in the report, which translated into an error rate of roughly 15 percent based on the total number of Nebraska tickets examined. Qwest acknowledged in its response that the mistakes were due to human error, but considered these errors to be isolated instances. Qwest added that it conducted semi-annual compliance reviews in all five of its Design Service centers, routinely finding error rates of less than 1 percent. Qwest also noted that its center managers conduct random checks of trouble tickets on a weekly and monthly basis, and provide coaching whenever discrepancies are discovered.

In the course of its review of AT&T trouble tickets for the April through June 2001 period for Arizona and Nebraska, Liberty reviewed with Qwest log information on repair duration for 42 tickets. Qwest found sizeable errors in the MTTR in four of them, an error rate of nearly 10 percent. Also as part of its analysis, Liberty reviewed instances in which AT&T tickets had been assigned multiple Qwest trouble ticket numbers. Liberty reviewed with Qwest 120 AT&T trouble tickets from these two states, specifically focusing on whether individual tickets were or were not included in the MR-6 measure. Qwest found probable human errors in at least four tickets (roughly 3 percent), whereby

the code assigned to the ticket by its technicians precluded it from being included in the measure.¹

Liberty believes that the routine reviews and training are positive steps. At this point, however, Liberty cannot ascertain whether such training and review programs have been effective, nor whether they were designed to capture the types of errors found during the audit. Further investigation is warranted to determine whether Qwest's proclaimed 1 percent error rate is accurate. Similarly, Liberty's analysis may have been based on too small a sample to provide a reliable estimate of error rate. Liberty therefore suggests two areas for further action:

1. Qwest should provide further information to Liberty on its semi-annual compliance reviews and its ad hoc review/coaching programs, including plans, scope, results and follow-up.
2. Liberty will expedite the reconciliation review of AT&T trouble tickets in Oregon, which would provide additional data on the nature and frequency of errors.

Liberty will inform the ROC-TAG when its review of the above two items is complete.

¹ Specifically, if a trouble ticket were closed to, for example, a customer premise equipment (CPE) code, it would correctly not be included in the measure. In these four cases, Qwest reviewed its logs and found that some repair work had been done on each ticket, so the trouble code assigned was in error. In each case, the trouble ticket should have been included in the measure but was not.

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of **AT&T's Brief on Liberty Data Reconciliation Report** in Docket No. T-00000A-97-0238 were sent by overnight delivery on January 18, 2002 to:

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Phoenix, AZ 85007

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Shirley S. Woo

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Second Report on Qwest Performance Measure Data Reconciliation – Colorado

I. Introduction

The Liberty Consulting Group (Liberty) conducted an audit of Qwest's performance measures for the ROC, and issued the final report from that audit on September 25, 2001. As an extension to the audit, and through its Change Request process, the ROC requested that Liberty conduct a "data validation to resolve any debates concerning the accuracy of performance data emanating from particular ROC PIDs." (ROC Change Request #20.) Certain CLECs have expressed concerns about the accuracy of Qwest's reported performance results as they relate to service that they have been receiving. The ROC decided to conduct this data reconciliation work in order to test those concerns. Liberty's performance measures audit applied to all of the ROC states with the exception of Arizona. Nevertheless, Liberty was requested to include Arizona in the scope of its data reconciliation work. The report that used Arizona data was issued on December 3, 2001. This report provides the results of Liberty's review of data from Colorado.

Liberty conducted multiple discussions with state commission personnel, Qwest, and the CLECs, in order to secure their comments on the scope and objectives for this test. Liberty has determined that the objective for the data reconciliation process solicited by the ROC should be to answer the following question:

Does the information provided by Qwest demonstrate accuracy in Qwest's reporting of performance results under the measures defined in the PID and does any of the information provided by the participating CLECs demonstrate inaccuracy in Qwest's reporting of performance results under the measures defined in the PID?

[AT&T Comment – AT&T suggests that the above additional language better reflects how Liberty should conduct this data reconciliation and future audits. As Liberty originally wrote the above question, the issue was essentially, "Is there any evidence to prove that Qwest is wrong?" Under that question, it becomes the CLEC's burden to provide evidence to prove that Qwest is wrong. Under the question as posed by Liberty, Qwest could refuse to provide any information to support data reconciliation or an audit and that refusal would be perfectly acceptable. Under the question as posed, Qwest could refuse to cooperate in future data reconciliation efforts or audits and there could be a finding that there was no information to prove that Qwest was wrong.]

In addition to the issue of whether there is any information to demonstrate that Qwest is wrong, this and future data reconciliation efforts and audits should also answer the question of whether Qwest was able to provide information to demonstrate that its performance results were accurate. As Liberty discovered during the reconciliation process, because of how Qwest collects data, the CLECs may not have the information to demonstrate that Qwest is wrong. However, that situation does not mean that Qwest is right. There should be some requirement for Qwest to demonstrate that its performance results are accurate. Further, Liberty took the position that if the PID was unclear or silent on a particular issue, Qwest's reporting was accurate unless it was clearly inconsistent with the language of the PID, even if the PID was incomplete or unclear. This appeared to be the conclusion even if Qwest's method was not reasonable, and/or was inconsistent with a CLEC's reasonable reading of a less-than-clear PID. Liberty should perform

the job that they were hired to do: giving unsupported presumptions that favor Qwest does not accomplish this.]

The question presented is an important, but narrow one. It allowed the exclusion of activities that would have substantially expanded the scope of this test. For example, Liberty was not required to determine whether CLECs could reproduce Qwest's performance results with their own information, or what changes would be required to allow such recreation. There were also situations in which Liberty found that Qwest and a CLEC interpreted requirements differently or had different understandings of how interactions with Qwest or the information resulting from them should be treated. In those cases, Liberty did not seek to determine who was right and who was wrong, or who reflected the better practice. [AT&T Comment - This seems inconsistent with a professional audit opinion. Why did Liberty believe that the parties would not be interested in who was right, who was wrong or who reflected the better practice?] Instead, Liberty's goal was to determine whether, in consideration of the requirements of the PID, Qwest's methods practices, or processes contained material error. [AT&T Comment - Again, where the PID was silent or unclear such that both parties' differing positions could fit within the PID definition, Liberty had an obligation to conclude more than that Qwest's position was not clearly inconsistent with the PID language.] Therefore, in the case of data discrepancies, Liberty required an affirmative showing of Qwest error or omission before issuing an exception or observation. However, in order to make clear the details of its examination, Liberty has reported the cases where it found the information provided by the parties to be inconclusive. In the course of its data reconciliation work, if Liberty found something wrong with the way Qwest reported performance results, regardless of the information provided by the CLEC, Liberty reported that problem.

In its comments on CR #20, AT&T described what it thought should be the process for what has been referred to as "data reconciliation," as follows:

1. *The CLEC identifies what it believes are discrepancies between performance results it has produced and the performance results that Qwest has produced. The CLEC should identify the particular performance measurement in question and the evidence that lead the CLEC to conclude that a discrepancy exists.*
2. *The auditor takes the CLEC's information and confirms the existence of the discrepancy.*
3. *After confirming the discrepancy, the auditor determines and identifies the source of the discrepancy.*
4. *If the source of the discrepancy is the CLEC, the auditor will share its findings at a high level with the TAG. The specific details of the discrepancy shall be shared by the auditor privately with the specific CLEC.*
5. *If the source of a discrepancy is Qwest and that discrepancy points to some problem with Qwest's raw data, the auditor shall create an Exception/Observation per the Exception and Observation process used by the*

ROC OSS test. In the Exception/Observation, the auditor will make recommendations as to whether the identified deficiency is likely to affect multiple services and/or multiple CLECs. The auditor will also identify what it believes is the period of time that Qwest may have been producing questionable performance results.

6. After the Exception/Observation has been created, it should follow the normal process for closure, as would any other Exception or Observation.

In general, the process described by AT&T reflected how the data reconciliation effort proceeded.

Three CLECs, Covad, WorldCom, and AT&T, chose to participate in data reconciliation. The participating CLECs had identified numerous discrepancies. In connection with this report, Liberty has separately supplied specific information about the CLECs' sources of discrepancies, as well as proprietary information concerning specific records and volumes. Liberty sought to prepare this report to inform the interested participants about the test and its results, without revealing confidential information. For example, the report generally refers to percentages of total orders instead of the actual number of orders. The specific performance measures and products that the participating CLECs wanted included in the data reconciliation, being widely known, were therefore not considered proprietary.

As a result of its data reconciliation work for the state of Colorado, Liberty has or will be issuing several Observation Reports, each of which is discussed below.

Qwest, the CLECs, and Liberty spent significant time and effort resolving the specific scope of the performance measures to be included in data reconciliation. It took considerable added effort to digest and process the information provided by CLECs and match it with data provided by Qwest. Liberty began this data reconciliation test with a significantly greater familiarity with the structure and nature of the Qwest data, with which Liberty worked extensively during earlier audit activities. Gaining a similar kind of familiarity with CLEC data structure and content formed a more significant than expected part of this test. During the course of its data reconciliation test work, Liberty was able to match a significant portion of the apparently contradictory data presented by CLECs and Qwest. This success in data matching was important, but the discrepancies remained very large even after it was completed.

II. Overall Summary of Findings

This report presents more detailed, non-confidential results in later sections that are organized by CLEC. This section provides Liberty's overall conclusions, which have been formed on the basis of the reconciliation of Colorado data.

Several process errors significantly affected Qwest's reported performance results. These problems are documented in Observation reports 1026, 1027, 1029, and 1030. Qwest reported retail line-sharing orders as wholesale orders, orders were repeated in consecutive months because of different completion codes, orders were not reported because the CLEC designation was "unknown," and records were excluded because of no state code. Qwest has indicated that it has either corrected or is investigating these matters.

While the problems discussed in the four Observation reports listed above caused reported results to not reflect actual performance, they are the type of problem that can rather easily be fixed, and at least in some cases, performance results can be re-calculated. Of more concern to Liberty because it may not be so easily corrected is the number of apparent human errors that occurred in the processing of AT&T LIS trunk orders. This matter has been reported in Observation 1031. In addition, human errors were apparently the cause of some Covad UBL orders not being excluded from OP-4 in cases where the requested interval was longer than the standard (Observation 1032), and application dates and times were incorrectly determined by Qwest personnel on AT&T LIS trunk orders (Observation 1033).

As a result of its data reconciliation work for Arizona data, Liberty found that Qwest made some errors that affected performance results. However, those errors were generally either (a) of the kind and at levels to be expected at the front end of the performance measurement process, where people must manually enter vast amounts of information. [AT&T Comment - What does Liberty consider to be "the front end of the performance measurement process?" What was Liberty's expectation as to what error percent should be expected "where people must manually enter vast amounts of information?" How did Liberty arrive at what it considers to be an expectation of an acceptable level of errors? Did Liberty conduct any special studies or research regarding what other companies experience in the way of data entry errors in forming its expectation as to what level of data entry errors should be expected? What was the actual percent of errors that Liberty attributed to being a result of manual process errors? What is Liberty's conclusion as to the extent of manual processing that Qwest employs in the processing of data? Does Qwest rely too much on manual processes that are prone to error?], or (b) appeared to be honest errors in judgment. [AT&T Comment - Whether the errors in judgment were "honest" or something else is irrelevant to this analysis. The issue is whether or not Qwest accurately reports performance data. What Liberty considers to be "honest" errors should be afforded no special treatment in comparison to other types of errors. AT&T expects that Liberty did not mitigate or exclude any of its findings because it considered some to be "honest errors in judgment." Whatever the source of, or reasons for, the errors, Liberty should be reporting on what those are.] The amount of these errors in relation to the total amount of information required for the performance measures did not exceed what Liberty considers to be expected levels, even under a carefully operated set of measurement activities. [AT&T Comment - How did Liberty quantify the amount of Qwest errors that it found? What was the actual amount and percent of Qwest errors that Liberty found?] The Arizona work also noted a programming

problem associated with measure OP-15 (Exception 1046) and a failure to report a group of Firm Order Confirmations in June 2001.

For the Colorado data, there were three primary factors that drove to different conclusions. First, Covad provided support information for the performance measures that were to be reconciled. Second, the scope of the AT&T reconciliation was smaller and so Liberty was able to investigate a higher percentage of orders in more depth than had been accomplished for the Arizona data. Finally, Liberty did not need to spend effort on issues that had been investigated in Arizona and in learning about how data were stored and processed. Qwest has indicated that there should not be differences among the states in its region as to how data are collected and processed for reporting performance measures. Therefore, Liberty views the results of its data reconciliation work to be cumulative and that overall conclusions should be made after its work for the states of Washington and Nebraska is complete. [AT&T Comments: First, the scope of Liberty's effort also includes Oregon, Minnesota and Utah. The cumulative work and overall conclusions should take into account the findings in all seven states.

Second, Liberty should also continually assess whether or not Liberty's findings are consistent with Qwest's statement that there should not be differences among the states in its region. AT&T is currently investigating how UBL-Analog orders for customers in Washington but whose AT&T switch is located in Oregon should be reported and performance measured and how LIS trunks that have an AT&T switch in Oregon and a Qwest switch in Washington should be reported and related provisioning performance measured. This is a known example of a discrepancy that is not found in Arizona or Colorado. In addition, during the AT&T and Qwest reconciliation discussions for Nebraska, AT&T asked if the problem with duplicate orders showing up at the end of the month and then at the first of the next month was region wide and if it applied to all services. The partial response at that time from Qwest was that this issue would be limited to Qwest's old Northwestern Bell states because of the data source. These two examples indicate that there will be both state and region specific differences in Qwest's data collection.]

III. Results of Data Reconciliation – AT&T

A. Issues

The scope of the data reconciliation work for AT&T and Colorado was:

- The denominator of PO-5D for Local Interconnection Service (LIS) trunks.
- The numerator and denominator of OP-3, OP-4, OP-6, and OP-15 for LIS trunks.

The reconciliation period was from January 2001 through June 2001. Qwest stated, however, that it did not report CLEC-specific state results for LIS trunks for OP-15 for January or February; therefore, Liberty could not reconcile data for those months. In addition, Qwest was unable to provide the data necessary to reconcile OP-15 for LIS trunks for May; therefore, data for that month could not be reconciled.

Human Error

Liberty noticed several types of human error that caused inaccuracies in Qwest's performance measure reporting. Liberty discovered instances where the Missed Function Code (*MFC*) applied by Qwest to an order in WFAC was inappropriate, e.g., when Qwest applied a C01 jeopardy in cases when the jeopardy should have been to Qwest. The MFC is entered by Qwest personnel who are supposed to choose the code that represents the reason for a miss. It is used by other Qwest personnel as one factor in determining the Service Order Miss Code (*SOMC*) in RSOR. If the SOMC is to the customer, then the order was excluded from OP-3, OP-4, and OP-6 during the period being reconciled by Liberty. Numerous orders were, in fact, inappropriately excluded from these measures because of this type of human error. This issue is the subject of Liberty's Observation report 1031.

In addition, Liberty noted instances where Qwest's completion date was 01/01/01, which meant that the completion date was blank or invalid and the order was legitimately excluded from the measure. In other cases, the application date to entry date interval was greater than 31 days, and the order was legitimately excluded from the measure. However, the underlying cause of invalid completion dates and excessive intervals is also human error on the part of Qwest personnel.

Application Date/Time

Liberty noticed instances in which Qwest personnel determined AT&T's order application date/time incorrectly. This application date/time is used in OP-4 calculations. [AT&T Comment: The application date/time is also used in PO-5 and possibly other PID calculations.] The PID requires that LIS trunk applications received after 3 p.m. MT are to be counted as received the next day. In some instances, Qwest failed to follow this rule. In other cases, it appears that Qwest used the wrong application date because of uncertainty as to whether the application was "complete and accurate" as is required by the definition section in the PID. This issue is the subject of Liberty's Observation report 1033.

In a 12/28/01 e-mail from Qwest, Liberty learned that Qwest apparently does not always have a record of the application times for LIS trunks. It is the responsibility of the Qwest Wholesale

Service Coordinator (*WSC*) to determine the correct application date by looking at the application time and following the process for writing service orders. This process includes recording the application date as the next day when the application time is after 3 p.m. MT on a LIS trunk order. This is consistent with the definition section at the end of the PID. The only times that are logged by Qwest, however, appear to be the time when the WSC enters the application date into the EXACT system and the time the most recent application/supplement was received from AT&T. [AT&T Comment - AT&T will often send a supplemental order to Qwest to change information that has no effect on the due date. For example, the telephone number of an AT&T contact may change. How is Qwest able to distinguish due date affecting supplemental orders from supplemental orders that have no effect on the due date for the purpose of determining the appropriate application date and time? Does Qwest ever substitute the supplemental order date for the application date and time for the purpose of PID calculation?] These times need not be the same time as the application time. Thus, Qwest cannot always support the application times it used in developing the performance results for OP-4.

Service Order Completion Date

For LIS trunks, Liberty found that Qwest and AT&T have different operational definitions of when an order is considered to be completed. In most instances, AT&T views the order as completed earlier than Qwest does. AT&T believes the order is completed when a first test is done, but Qwest does not consider it completed until an additional test is completed as well. For many orders a due date is established, *i.e.*, the date by which both parties expect to complete the order. When a test is successfully completed on that due date, AT&T considers the order completed. AT&T therefore includes the order in the relevant performance measures as completed on the date of that test. However, Qwest believes another test is necessary, *i.e.*, a test for which AT&T is often not ready on the due date. Accordingly, Qwest classifies the order completion as having been missed for customer reasons, and therefore excludes it from many measure results. This disagreement about the meaning of order completion accounts some of the discrepancies between the parties. For example, it accounts for seven of the discrepancies between the parties for LIS trunks for OP-4 for the months of January to June in Colorado. [AT&T Comment: It should be noted that the seven orders referenced above accounted for 11.1% of the total number of orders reconciled in Colorado for the time period from January to June 2001. AT&T's definition of a completed order is a more inclusive definition while Qwest's definition excludes orders that AT&T includes. In addition, AT&T's definition of order completion favors Qwest. In all of the orders affected by the definition of order completion date AT&T counted the order as Qwest meeting its completion date for purposes of the OP-3 measurement. Qwest excludes the order entirely from the calculations. Liberty's explanation of AT&T's position regarding the right date to use in measuring performance is incomplete and thus inaccurate. For a further explanation please see AT&T Response to the November 9 Qwest Provided Explanation, PID Due Date Explanation. For ease of reference, a copy of that response is attached to these comments.]

Both AT&T and Qwest have reasonable justifications for their definitions of order completion. Their difference is an operational one, which cannot be resolved in either party's favor by referring to the language of the PID. Liberty did not consider this test as including a Liberty determination of which company applied the better or most correct operational interpretation. Rather, Liberty sought to determine whether Qwest's approach was out of conformity with the

PID. Liberty concluded that Qwest's definition and use of a service order completion date could not be judged to be out of conformance with the PID.

Data Processing Error

Liberty's analysis of LIS trunks disclosed that many orders being reported in OP-15 did not appear to be Qwest "misses," even according to Qwest's own data. The cause of the problem was a data transfer error. The Detailed Data Set that Qwest uses for the OP-15 measure incorporates data from the Integrated Data Repository (IDR) Pending data source. One extremely important piece of this data is the miss code, which determines whether the order will be included in OP-15, and whether it will be included in OP-15A or OP-15B. LIS trunks constitute a designed service; therefore, they have three-digit miss codes. Misses for customer reasons begin with the letter "C." For example, C01 is the miss code for the category of "Customer Not Ready." During the data transfer step, the third digit of the miss code was often (although not always) being truncated. The Wholesale Regulatory Reporting program looks up the code in a miss code table in order to determine how the order should be handled. If it fails to find the code, it establishes Qwest as the default cause of the miss. Therefore, all of the LIS trunk orders showing two digit miss codes were being reported as Qwest misses, even though not all of them were. Qwest has stated that it knew about the problem, and has already fixed it, but the performance reports for the months being reconciled, and the data provided by Qwest that generated them, contained this error. Liberty issued an Exception Report 1046 addressing this issue. The problem occurred in four of the LIS trunk service orders. [AT&T Comment: It should be noted that Qwest did not provide data for analysis for 3 of the 6 months in this reconciliation. Consequently, Liberty's OP-15 analysis was limited to 10 orders for March, April and June 2001. Qwest's miss code truncation problem resulted in a 40% error rate in Qwest's OP-15 reporting.]

This problem could exist (for the period being reconciled) for designed services other than LIS Trunks. Accordingly, an investigation would be appropriate to determine exactly the full range of products affected, and the months involved.

Use of Reference Date

Several performance measures use the number of orders completed in the reporting period as the denominator. Qwest's service order database does not contain a real-time picture of service order activity. Liberty's review during the performance measures audit showed that records are updated close to the time of the activity involved, such as completion; however, there is usually a lag of a couple of days. [AT&T Comment - For the January through June 2001 LIS Trunk analysis of AT&T orders, the lag between order completion to reference date averaged 6.2 days. AT&T considers this period more than "a couple of days."] If the performance measures used only the report month, Qwest could miss a substantial amount of activity. [AT&T Comment - There should be no question of "if the performance measures use only the report month." The PID clearly requires the performance measures to use only the report month. For example, the OP-3 PID measurement requires that, "[a]ll inward orders (Change, New, and Transfer order types) assigned a due date by Qwest and which are completed/closed during the reporting period are measured." (PID Version 3.0, May 31, 2001, emphasis added) The reporting period is defined as "one month." (PID Version 3.0, May 31, 2001, OP-3 PID) Completion is defined as "[t]he time in the order process when the service has been provisioned and service is available." (PID Version 3.0, May 31, 2001) Consequently, if the reporting month is September

and the September results include some orders completed in August and do not include some orders that were completed in September. Qwest would be non-compliant with the PID. It appears that Liberty found Qwest to be non-compliant with all of the PIDs that require reporting of orders completed in the reporting month. AT&T requests that Liberty create an Exception to document this finding.

In its below comments, Liberty attempts to explain away Qwest's non-compliant reporting of results by stating that "Qwest solved this potential problem by calculating measures for records in which the database reference date is the reporting month." As an initial matter, the terms "reference date," "database reference date" or any like term cannot be found in the PID. AT&T requests that Liberty define the term "reference date." Qwest's equating of "completion date" with "database reference date" is unsupported by any PID language and should have been cause for an Exception to be created. Liberty further states that it "does not consider this problem to be a material one." AT&T considers Qwest's method of equating the database reference date and the completion date a material problem in that the method is non-compliant with the PID.

In the below paragraph Liberty succinctly and clearly states the problem: "orders that are completed in one month [may] be reported in a later calendar month." As far as AT&T can determine, Liberty's Arizona reconciliation report is the first time this problem has been clearly explained and identified. Although both the PID release for OP-3, OP-4, OP-6 and the Liberty Final Report include the following language,

To begin the process for reporting these provisioning measures, a program called *rsorex.sas* extracts data from PANS for the current month and the past sevens (sic) months. This is done to ensure that all records with a **reference date** in the current month are captured. QWEST reported that a test had been conducted to ensure that it need not go back further to capture relevant records. (Performance Measurement Release Report, OP-3, OP-4 and OP-6, p. 2 and Final Report on the Audit of Qwest's Performance Measures, September 25, 2001, p. 56.)

the conclusion that Qwest's reporting does not comply with the PID requirement to only report data in the reporting month for those orders completed in the reporting month is not found until this audit report.

Rather than blessing Qwest's noncompliant process of reporting results in a month that also contain orders completed in earlier months, AT&T would suggest the more PID-compliant solution would have been for Qwest to wait for what Liberty characterized as "a lag of a couple of days" before running the *rsorex.sas* program. This would be a well-defined and consistently applied process that ensured that every order was accounted for in the month it should be accounted for. AT&T is sure that there are other PID compliant solutions that could have been implemented instead of Qwest's PID non-compliant solution.]

Qwest solved this potential problem by calculating measures for records in which the database reference date is the reporting month. This method helps ensure that all records are reported, but may cause orders that are completed in one month to be reported in a later calendar month. Liberty does not consider this problem to be a material one, because:

- Every order is eventually accounted for
- The process is well-defined and applied consistently
- The overall impact (including an order in a future month's performance report) is minimal.

However, a CLEC would not know the reference date; it would only know the actual date of completion. The reference date matter accounted for about 15 percent of the LIS Trunk discrepancies for OP-3 for the months of January to June 2001. [AT&T Comment - It should also be noted that this problem affected 9.5% of the total number of LIS Trunk orders examined for the months of January to June 2001.] This reference date issue affects all products.

Lengthy Completion Intervals

In response to data request 30-2, Qwest told Liberty that it is unable to include in its performance reporting any service orders that are not completed within eight months. This problem accounted for six percent of the discrepancies in both OP-3 and OP-4 for LIS trunks for the months of January to June in Colorado. [AT&T Comment - AT&T requests that Liberty issue an Exception on this problem. In no place do the OP-3, OP-4 and OP-6 provisioning-related PIDs permit orders to be excluded because the order was not completed within eight months. Qwest's improper exclusion of orders completed in longer than eight months has the effect of reducing Qwest's OP-4 Average Installation Interval results for LIS Trunks and will likely also produce an undeserved improvement of its OP-3 Commitments Met results. Qwest's admission that it excludes any service order not completed within eight months appears to signify a systematic problem.]

In its supplemental response to data request 30-002 Qwest indicated, "the impact of not going back further than 8 months was negligible and statistically insignificant." Other than for self-serving reasons, there is no reasonable explanation as to how Qwest came to that conclusion. Qwest's improper exclusion impacted a significant number of orders. Qwest's improper exclusion accounted for 4.2% of the AT&T LIS Trunk orders that Liberty concluded should have been included for OP-3 calculation purposes. If the AT&T LIS Trunk orders with completion intervals longer than eight months were included in Qwest's OP-4 results, those orders would have added at least 10 days to the OP-4 Average Installation Interval results for the January through June 2001 period. In the month(s) the orders completed, the impact on the monthly average would have been significantly higher. An improper exclusion that impacts 4.2% of the orders and adds at least 10 days to the average installation interval is most certainly material and statistically significant. It should also be noted that in Qwest's supplemental response to data request 30-002 Qwest provided no reference to any PID language that would support this improper exclusion.

Why did Liberty decide that a systematic and improper exclusion of orders that are completed in longer than eight months did not warrant the issuance of an Exception or Observation?]

B. Reconciliation Results

For the measure OP-3, Qwest and AT&T agreed on 47 percent of the orders. For the orders that the companies disagreed on, Liberty found that:

- 21 percent were likely caused by Qwest's errors in assigning jeopardy codes and customer-miss exclusions. In addition, another 9 percent of the orders contained a 01/01/01 completion date, which meant that Qwest's program properly excluded the orders but that there was likely human error in failing to enter a correct completion date. (Observation 1031.) [AT&T Comment – It is true that ROC PIDs do permit Qwest to exclude orders with invalid completion dates from the provisioning measurements. During the PID discussions on the exclusion of orders with invalid completion dates it was understood that invalid completion dates would result when Qwest somehow lost or damaged otherwise good data. It was agreed that a situation where Qwest lost or damaged data was undesirable and could point to a problem of inadequate Qwest data collection processes. However, Qwest asserted that the amount of such exclusions would be de minimus and consequently there was no larger process problem. It was agreed that while the exclusion would be permitted, if the amount of invalid completion date exclusions became excessive, the exclusion might have to be revisited. Qwest excluded 4.8% of AT&T's LIS Trunk orders from January through June 2001 because of sloppy record keeping. For all of the orders with invalid completion dates Liberty noted, "AT&T's ASR shows a clear completion date." Excluding 4.8% of the LIS trunk orders because of sloppy Qwest record keeping is hardly a de minimus level. Setting aside the fact that the PID does permit orders with invalid completion dates to be excluded from the results, what is Liberty's opinion on the amount and percentage of orders for which Qwest applied the invalid completion date exclusion? Does Liberty believe that the amount of LIS Trunk orders with invalid completion dates points to a problem in Qwest's data collection and reporting processes? Did the level of human errors that resulted in invalid completion dates exceed what Liberty expected?]
- 6 percent were not counted by Qwest because the order took more than eight months to complete. [AT&T Comment – As previously discussed, AT&T believes that this finding warrants that an Exception or Observation be created.]
- For 61 percent, Qwest's treatment was correct, or Qwest followed its procedures for not counting orders with a customer miss. In a quarter of these cases, the discrepancy was caused by Qwest using the reference date to report order completion. In 40 percent of these cases, the discrepancy was caused by disagreement as to when a LIS trunk order completes.
- 12 percent of the discrepancies contained conflicting information that Liberty was unable to resolve.

[AT&T Comment – Viewing the OP-3 results from the totality of AT&T LIS Trunk orders reconciled from January through June of 2001, Liberty's conclusions can be categorized as follows:

• Qwest correctly treated the order	79.3%
• Qwest's treatment of the order was incorrect	14.3%
• Liberty reached an inconclusive finding	6.3%

For measure OP-4, the base results are the same as those presented above for OP-3. In addition, however, the companies disagreed on most of the interval numerator values in cases where they agreed that the order should be included. For many of the numerator discrepancies, Liberty was not given information that resolved the conflict. In some cases, Liberty determined that Qwest correctly determined the numerator for OP-4 and AT&T did not. One-third of the numerator discrepancies were caused by errors in Qwest's application date. (Observation 1033.)

For measure OP-6, Liberty found that there was no actual disagreement in 37 percent of the orders, Qwest was incorrect on 27 percent of the orders for the same reasons given in the OP-3 analysis, Qwest was correct in 18 percent of the discrepancies, and 18 percent remained in conflict.

[AT&T Comment - Viewing the OP-6 results from the totality of AT&T LIS Trunk orders reconciled from January through June of 2001, Liberty's conclusions can be categorized as follows:

• Qwest correctly treated the order	55.0%
• Qwest's treatment of the order was incorrect	27.0%
• Liberty reached an inconclusive finding	18.0%

For the few orders that could be analyzed for measure OP-15, Liberty found that there was no actual disagreement in 24 percent of the records, Qwest was incorrect on 29 percent of the records, Qwest was correct on 29 percent of the records, and 18 percent remained in conflict. All but one of the Qwest errors related to the data processing problem that was the subject of Exception 1046. The other case was one in which Qwest's documentation did not support its position that an order was pending for Qwest reasons.

[AT&T Comment - Viewing the OP-15 results from the totality of AT&T LIS Trunk orders reconciled from January through June of 2001, Liberty's conclusions can be categorized as follows:

• Qwest correctly treated the order	53.0%
• Qwest's treatment of the order was incorrect	29.0%
• Liberty reached an inconclusive finding	18.0%

For PO-5, Qwest and AT&T agreed on 86 percent of the orders. Qwest was in error on 25 percent of the discrepancies, Qwest was correct on 25 percent, and 50 percent of the discrepancies could not be resolved with the available information.

[AT&T Comment - Viewing the PO-5 results from the totality of AT&T US Long orders reconciled from January through June of 2001, Liberty's conclusions can be categorized as follows:

- Qwest correctly treated the order 89.5%
- Qwest's treatment of the order was incorrect 3.5%
- Liberty reached an inconclusive finding 7.0%

[AT&T Comment: Comments on the AT&T specific excel spreadsheets prepared by Liberty as part of its reconciliation will be separately provided to both Liberty and QWEST.]

IV. Results of Data Reconciliation - WorldCom

Liberty's scope of work associated with WorldCom (WCom) and Colorado included OP-3, Installation Commitments Met, and OP-4, Installation Interval, for LIS trunks and 2-wire unbundled analog loops. The time period under consideration was January through May 2001. The data provided by WCom did not contain sufficient information to calculate the OP-4 numerator, which is the actual installation interval. The UBL denominator for OP-4 excludes orders with customer-requested due dates that are greater than the standard interval. WCom could only determine these excluded orders on a limited basis. Therefore, Liberty sought to determine whether WCom's information on the total order counts showed any problems with the numbers reported by Qwest for OP-3 and OP-4.

For LIS trunks, Liberty found that Qwest and WCom agreed on the treatment of 7 percent of the orders. After receiving additional information from WCom, the companies agreed on another 9 percent of the orders. In 24 percent of the orders, Qwest excluded the record because of a customer miss. WCom information either confirmed the customer miss or did not provide any information to make Liberty think that Qwest was incorrect in making such an assignment. However, Liberty did not have the information that would have been required to find the same type of human error problems noted above in the AT&T section of this report. Often jobs have more than one service order with one being the actual installation and another being an administrative record. Qwest excluded such records that have no inward activity and WCom often included that order. This situation accounted for 24 percent on the total records. Sometimes Qwest will report an order that was completed in one month in the next month's results because of the database reference date. (Refer to the discussion in the AT&T section above.) This accounted for 7 percent of the total records. Finally, there were orders that could not be reconciled because WCom lacked either a PON or a Qwest service order number, and Qwest was unable to trace the other information that WCom provided to an actual order. Initially, this accounted for 29 percent of the orders. Later, Qwest was able to find that several of these orders had been completed at various dates in the year 2000, not in the 2001 months that were under examination. This brought the total down to 21 percent, and, while still a significant percentage, should not be a major concern given the quality of the CLEC-provided information.

For unbundled loops, the companies initially agreed on 31 percent of the orders. After additional information was obtained from WorldCom, the orders for which the parties agreed increased to 62 percent. Qwest excluded the remaining orders for customer-caused miss reasons or had dates outside the period of the reconciliation. The information available from WCom did not dispute Qwest's information.

On December 19, 2001, Liberty sent detailed and proprietary worksheets to WCom and Qwest on the analysis of OP-3/4.

V. Results of Data Reconciliation – Covad

A. Issues

The agreed upon scope of the data reconciliation for Covad was a 25 percent sample of OP-4 (installation interval) for line-sharing and unbundled loops and of PO-5 (Firm Order Confirmations on time). Liberty chose the sample and received Covad's agreement of the method of drawing the sample. The time period for the review was the months of May, June, and July 2001.

Liberty found several problems with Qwest's performance reporting for Covad. First, Qwest reported some retail orders as wholesale. For line sharing, Qwest may generate two orders, one for the CLEC data side and another to account for Qwest's voice service. At least some of the orders of the second type were incorrectly reported as wholesale orders associated with the CLEC. Liberty documented this problem in Observation 1026. In response to the Observation, Qwest said that it had implemented a code change that looks at orders that contain billing USOCs for line sharing and reviews all line-level USOCs to identify those with retail activity and excludes them from the results. Qwest said that this change would prevent future reporting of the retail orders as line sharing activity and effectively reduce volumes previously shown. For July 2001, Liberty found that this problem affected 5 percent of the sampled number of discrepant records that Liberty reviewed. Qwest indicated that the revised code would be executed on historical data starting from January 2001 and be reported with performance results that include December 2001.

Liberty also found that Qwest reported some of the same items in two consecutive months. This problem was documented in Observation 1027 and for Covad affected both UBL and line-sharing orders. While Liberty has not received Qwest's formal response to the Observation, Qwest has indicated that this problem was known and has been corrected. Qwest indicated that the problem had to do with different completion status codes given to some orders and that the effect was minimal. However, for the UBL records, this problem accounted for 22 percent of the sampled number of discrepant records that Liberty reviewed. [AT&T Comment – Other than the OP-3 and OP-4 PIDs, there are other provisioning related PIDs that rely upon the completion date to perform the required PID calculations. The OP-5, OP-6, OP-7, OP-8, OP-13 and OP-17 PIDs also use completion date. AT&T understands that the OP-5, OP-6, OP-7, OP-8, OP-13 and OP-17 PIDs were not the subject of the Colorado data reconciliation exercise. However, it is conceivable that the double counting problem could also affect those PIDs. Does Liberty have any reason to believe that the double counting problems would not affect the OP-5, OP-6, OP-7, OP-8, OP-13 and OP-17 PIDs? Does Liberty have any opinion on whether or not the OP-5, OP-6, OP-7, OP-8, OP-13 and OP-17 PIDs are also likely affected by the double counting problem?]

Liberty found that some line-sharing orders were not reported by Qwest because the CLEC was designated as unknown. This problem was documented in Observation 1029. [AT&T Comment – It would seem that the problem of not identifying line sharing performance to a specific CLEC would apply to more than the OP-4 PID. Does Liberty have any reason to believe this problem did not also affect the OP-3, and OP-6 results? Does Liberty have any opinion on whether it is likely that the OP-3 and OP-6 results were also affected by this problem? Does Liberty have any

opinion on whether the disassociation of RSID information from the raw performance data would have affected the maintenance and repair measurements?]. Qwest's records confirmed the application and completion dates on these orders with the data provided by Covad. However, Qwest could not report the orders because the CLEC designation was not assigned correctly. This problem affected 70 percent of the orders that Liberty reviewed and that were in the category of included by Covad but not by Qwest in the reporting of July line-sharing results for OP-4.

Covad's information provided to Liberty for data reconciliation included many orders that Qwest did not report for PO-5. Investigation of these orders revealed that Qwest's program had excluded them because of an invalid or missing state code. There was nothing apparently wrong with Covad's orders. This problem accounted for about two-thirds of the items that Liberty reviewed and that were the category of included by Covad but not by Qwest in the reporting of July PO-5 results. This matter was documented in Observation 1030. [AT&T Comment - Qwest CRM data that was the source of the PO-5 problem also supports the production of PO-2, PO-3 and PO-4 results. The PO-2, PO-3A-1, PO-3B-1, PO-3C, PO-4C PIDs all require state specific results reporting. If IMA was failing to auto-log state codes for CRM data, it would seem logical that the PO-2, PO-3 and PO-4 results are also inaccurate for the same reasons as are the PO-5 results. Does Liberty have any reason to believe that the PO-2, PO-3 and PO-4 results should not be affected by Qwest's inability to auto-log the state codes? Does Liberty have an opinion on the likelihood of the PO-2, PO-3 and PO-4 results being inaccurate?]

Qwest included some unbundled loop orders that should have been excluded because the requested provisioning interval was greater than the then current standard installation interval. This problem, which appears to be one involving human error, was documented in Observation 1032. [AT&T Comment - While the Covad data being reconciled in Colorado was limited to loop orders, the failure of Qwest to exclude orders discussion in Observation 1032 appears to apply to any type of product or service. Does Liberty believe that the failure to exclude orders with customer requested due dates longer than the standard installation interval that is the subject of this Observation would apply to other products and services and could occur for other CLECs?]

Version 4.0 of the PIDs contains essentially the same exclusion for orders with requested intervals longer than the standard interval. Is it possible the Qwest's failure to properly exclude longer interval orders could have existed prior to May of 2001 and more importantly could have existed after July of 2001 up to and including current data?]

B. Results

Liberty prepared spreadsheets showing the results of its analysis of the Covad service orders for May, June, and July 2001. These documents contain information that is proprietary to Covad; therefore, Liberty made a limited distribution of them.

For OP-4 and unbundled loops, the companies agreed on only 16 percent of the orders. For another 8 percent of the orders, the companies agreed on inclusion in the denominator of the measure but disagreed on the interval for the numerator. Liberty sampled the 84 percent of the orders for which there was disagreement and found for those discrepancies that:

- Qwest was incorrect on 31 percent of the discrepancies. Most of these (22 percent) were reported incorrectly for the second time by Qwest (Observation 1027). Qwest also included orders (about 6 percent) that should have been excluded because the requested interval was longer than the standard (Observation 1032).
- For 61 percent of the discrepancies, Qwest correctly reported performance and Covad's information supported the way in which Qwest treated the orders. For example, in several cases Covad did not take into account the 4th of July holiday when counting interval days. In other cases, Liberty found nothing wrong with Qwest's reporting and Covad's information did not show otherwise. In some of the records, there turned out to be no real discrepancy other than Covad included the order in the wrong month.
- For 8 percent of the records, the information was either conflicting or Liberty was unable to determine which company was correct.

IAT&T Comment – Viewing the OP-4 results from the totality of Covad unbundled loop orders reconciled from May through July of 2001. Liberty's conclusions can be categorized as follows:

• Qwest correctly treated the order	67.2%
• Qwest's treatment of the order was incorrect	26.0%
• Liberty reached an inconclusive finding	6.8%]

For OP-4 and line-sharing orders in June and July, the companies agreed on only about 14 percent of the orders. For another 30 percent of the orders, the companies agreed on inclusion in the denominator of the measure but disagreed on the interval for the numerator. Liberty sampled the 86 percent of the orders for June and July and for which there was disagreement and found for those discrepancies that:

- Qwest was incorrect in 26 percent of the records. Retail line-sharing orders reported incorrectly by Qwest (Observation 1026). Qwest incorrectly reported orders in two separate months (Observation 1027). Qwest excluded orders because the CLEC designation was "unknown" (Observation 1029).
- In 55 percent of the records, Qwest was correct or Covad did not provide any information to show otherwise.
- In 19 percent of the records there was conflicting information that Liberty was unable to resolve. Many of these were cases in which the parties disagreed by one day on either the application or completion dates.

IAT&T Comment – Viewing the OP-4 results from the totality of Covad line sharing orders reconciled from in June and July of 2001. Liberty's conclusions can be categorized as follows:

• Qwest correctly treated the order	61.3%
• Qwest's treatment of the order was incorrect	22.4%
• Liberty reached an inconclusive finding	16.3%]

For PO-5, the companies agreed on only about 10 percent of the orders. Liberty sampled the 90 percent of the orders for which there was disagreement. For June and July, Liberty found for those discrepancies that:

- Qwest was incorrect in 38 percent of the records. Most all of these were excluded by Qwest because of the problem with the state code (Observation 1030). There were some (PO-5C) fax orders that were not included in the data provided to Liberty, although Qwest claimed that these orders were accounted for.
- Qwest was correct or Covad did not provide any information to show otherwise for 44 percent of the records.
- 18 percent showed conflicting information that Liberty was unable to resolve.

[AT&T Comment - Viewing the PO-5 results from the totality of Covad orders reconciled from in June and July of 2001, Liberty's conclusions can be categorized as follows:

• Qwest correctly treated the order	49.6%
• Qwest's treatment of the order was incorrect	34.2%
• Liberty reached an inconclusive finding	16.2%

[AT&T Comment - In conclusion, Liberty's analysis in this report identified several significant problems with the accuracy of Qwest's data collection and recording processes. The problems identified by Liberty indicate that Qwest's reported performance results cannot be relied upon to depict Qwest's actual performance. AT&T expects that as Liberty completes its analysis of the data for the states of Washington, Nebraska, Oregon, Utah and Minnesota that, in addition to confirming the existence of problems already identified, new problems with Qwest's data collection and reporting processes will be discovered.

As Liberty pointed out in this report, "Liberty views the results of its data reconciliation work to be cumulative and that overall conclusions should be made after its work for the states of Washington and Nebraska is complete." AT&T supports Liberty's view that overall conclusions should wait until after the entire analysis is complete. The differences between Liberty's findings in the Arizona and Colorado Reports point out the wisdom in waiting until the entire analysis is completed before reaching any overall conclusions. Liberty's conclusions on AT&T LIS trunk orders, and Covad unbundled loop and line sharing orders in Arizona were very different than the conclusions for the same services in Colorado. A party drawing conclusions solely on the Arizona Report would come to very different conclusions than a party that reviewed only the Colorado Report.

Liberty built upon the experience it gained in the Arizona audit in the Colorado audit. Because of its Arizona experience, Liberty was able to perform the Colorado analysis more quickly and in more depth than the Arizona analysis. It is reasonable to expect that Liberty's Colorado experience will permit it to perform more expeditious and more in depth audits of other state's results and for other services. Liberty's subsequent analysis of other state's results will include a confirmation of "old findings" and discoveries of "new findings." As Liberty completes the analysis of more and more states, the relative percentages should shift heavily towards confirming "old findings." As shown by the differences between the Arizona and Colorado

reports. Liberty is still discovering new findings of inaccurate reporting of Qwest results. In order to reach a fair and complete understanding of the accuracy of Qwest's performance results data, any conclusions should wait until Liberty completes its analysis.

As to the problems with Qwest's performance data that have already been identified, Qwest needs to fix its processes so that on a going forward basis the problem no longer exists. For historical PID results data that is impacted by any Qwest problem, Qwest should retroactively fix that data. If, for any reason, Qwest is unable to fix historical PID results data, Qwest should be required to eliminate that data from any of its reported performance results. If Qwest is unable to rehabilitate inaccurate PID results data, in order to avoid any decisions being made using inaccurate data, those PID results should be deleted.]

PID DUE DATE DEFINITION

AT&T's DRAFT RESPONSE TO CHUCE STEESE 11/9/01 EXPLANATION

On November 9, 2001 Brent Levy provided to Liberty, AT&T and other CLECS an explanation of the Completion Date for LIS trunks. Chuck Steese prepared this response after discussions with Paul Hlavac (Liberty) and Stephen Kail (AT&T). This is AT&T's response to Mr. Steese's explanation and a further discussion of the PID measurement Due Date definition as related to the Completion Date.

Mr. Steese explanation of the actions of AT&T and Qwest toward completion of a LIS order is consistent with AT&T's understanding except for some very important difference. Like Qwest, AT&T considers the trunk fully provisioned when the final test and turn up is completed. AT&T considers Qwest acceptance testing as the Qwest's completion of Qwest's portion of the trunk (In AT&T terms this is called the LCDD or LEC Completion Due Date). As indicated by Mr. Steese, there is further AT&T own network and circuit testing and then a final testing of the entire trunk (Called by AT&T and Qwest Test and Turn up). The Qwest/AT&T SGAT lays out these tests as legal obligations in section 7.4.8.

The PID measurement Due Date is identified by the Qwest FOC response. As part of the FOC response Qwest provides the date on which they will complete their portion of the LIS trunk. The FOC date is solely dependent upon Qwest's performance and is not dependent on AT&T or anyone else's performance, except for the final testing related to acceptance. The FOC date is the same as the PID Due Date that Qwest performance is measured against. That date is the acceptance test completion date (LCDD). It is not the completion date required by the SGAT. The completion date required by the SGAT is the Test and Turn up date.

Qwest should not be measuring its Due Date performance by using the Test and Turn up date for several reasons. First, Qwest is not in sole control of its performance to meet that date. By measuring Due Date performance based on the Test and Turn up date, Qwest becomes dependent on AT&T (and other CLECs) to perform. Second, the Test and Turn up date is not determined ahead of time. It is determined at the time AT&T calls Qwest to complete Test and Turn up and not by Qwest's FOC date. And third, Qwest has no ability to commit a CLEC to Qwest's completion date and no ability to define the Test and Turn date.

AT&T's and Qwest's process of first testing Qwest's portion of the trunk, then AT&T testing it's portion of the trunk and then jointly completing Test and Turn up requires time. To start and complete these three stages of testing on the same day is quite difficult because the processes are sequentially interdependent and in most instances requires multiple organizations to successfully test multiple aspects of the trunk. Any problem along that sequence of testing requiring a problem isolation and repair and then a retest, which would delay the next step and impact the timing of final test and turn up. To always commit resources to "stand by" for this testing sequence would not be wise. AT&T has recognized this and requires LCDD to be completed before PLDD testing and PLDD to be completed before Test and Turn up. (Qwest has advised AT&T on several occasions to wait until the committed Due Date to test because Qwest had not completed its tasks or was not available to test early. This means there is no assurance LCDD can't be completed prior to the Due Date and no reasonable expectation that Test and Turn up could be completed on Qwest's Due Date).

Qwest's process described to close out the order by "contacting the customer again for order acceptance" is a legal requirement in the SGAT and is independent of the performance being measured. Qwest's performance must be measured against the FOC date, the only date set in advance for which to measure performance. The ROC clearly would not have contemplated designing a performance measurement PID that was doomed to have exclusions of 80% or more. And it is difficult to imagine Qwest agreeing to a performance measure outside of its control. Thus it is clear that the Due Date identified in the PID is Qwest's acceptance date, not the final Test and Turn up date. (During the AT&T/Qwest Nebraska reconciliation discussions AT&T understood Qwest representatives to have agreed that Qwest's acceptance date established by the FOC response is the PID Due Date).

Qwest's documents provided by Mr. Steese confirming their processes to complete a LIS trunk order are relevant to meeting their legal obligations. They also contribute to defining the Due Date for performance measurement by reinforcing Qwest's dependency on CLECS if the Test and Turn up date is used as the performance measurement Due Date. Liberty's review and agreement with the Qwest's process document during the Performance Measurement Audit does not automatically mean that Qwest's use of the Test and Turn up date for the PID Due Date is correct. The Liberty review may not have addressed this specific issue since it is not specifically discussed in its most recent report.

With respect to exclusions for customer reasons (CO1), if AT&T fails to work with Qwest in a timely manner to test and accept Qwest's portion of the LIS trunk, then Qwest should correctly assign a jeopardy to AT&T. That assigned jeopardy should result in exclusion per PID 3.0. Any CO1 assigned by Qwest after LIS trunk acceptance, i.e., between Qwest acceptance and final Test and Turn up, is not applicable to and does not impact measuring Qwest's performance and should not be the basis for exclusion of the order for performance measurement purposes.

Mr. Steese comments in the aside that using the Qwest processes only harm Qwest's performance results. The basis for CLECs, Liberty and hopefully Qwest's participation in the reconciliation process is to assess the accuracy of the input data used to determine performance. The performance results are irrelevant to this effort and should not bias in any way the reconciliation process.

Prepared by Stephen L. Kail

Data Reconciliation Update

On January 3, 2002, Liberty issued its second report on data reconciliation. That report discussed the results of reconciling data from CLECs and Qwest for the state of Colorado. As a result of the work reflected in that report, and on reconciliation efforts that used data from Arizona and Nebraska, Liberty issued one exception and ten observation reports. This report provides a summary and the status of each of the exception and observation reports. It also describes one correction and updates the status of an open issue from the Colorado report.

In summary, Liberty has identified and reported on several problems with Qwest's performance measure reporting. One-half of these issues appear to require programming changes that Qwest has indicated it has already made. The other half of these issues involves human error. Qwest has indicated that it has conducted training or taken other steps to improve human performance. Liberty has closed five of the eleven reports.

Exception 1046

Exception 1046 stated that, during the period being covered by Liberty's data reconciliation, Qwest's systems sometimes truncated the third digit of an order's missed function code while it was being transferred from the Integrated Data Repository pending data source to the Detailed Data Set used by RRS to calculate OP-15 performance measure results. The Wholesale Regulatory Reporting program looks up the code in a miss code table to determine how the order should be handled. If it fails to find the code, it defaults the miss to Qwest. Thus, all of the LIS trunk orders showing two-digit miss codes were being reported as Qwest misses, even though not all of them were.

In its response to the exception, Qwest stated that it had already identified the problem and that the programming code had been corrected in the August 2001 release of performance results. Qwest also stated that the problem affected all results produced for OP-15A and OP-15B on all designed service products for the period of January through July 2001.

Liberty issued data requests for the old and new programming code for OP-15, as well as for Qwest's documentation of how it identified the problem, developed revised business requirements, and solved the problem. Liberty reviewed the revised code for OP-15, conducted a telephone interview, and concluded that the code was no longer truncating the missed function code. Liberty also reviewed the PEND data files for the months of September through December 2001, the period after the fix was reportedly in place. Liberty confirmed that these files contained all three characters of the missed function code, *i.e.*, there was no truncation. Liberty then used the files to determine how many orders should have been included in the OP-15 measure results for these months and confirmed that the published performance reports included the same number of orders. Liberty considers this exception to be closed.

Observation 1026

Observation 1026 identified retail orders that were being included in performance reports as wholesale orders. Qwest indicated that the process of provisioning a line-sharing order involves Qwest issuing a separate retail and wholesale order. The wholesale order was being correctly included in the RRS calculations. However, because there was no retail line sharing, the second

order was being defaulted into the wholesale category, resulting in a double count. Qwest implemented a code change to look for orders that contain billing USOCs with retail activity and then exclude such orders from the measure. Qwest indicated that this action prevents the reporting of retail orders as line-sharing activity. The code changes were implemented effective with the November 2001 release of performance results. Qwest indicated that the December 2001 release corrected the results for all months in 2001.

Qwest provided data files that contained the orders identified by Liberty that were affected by this observation. Liberty has reviewed these files and found that the appropriate changes had been made for orders affecting July measures onward. Also, during its re-audit of the PID 4.0 OP measures, Liberty reviewed the code that is used to identify orders with retail activity. Liberty conducted an interview with Qwest on this matter and received responses to related data requests.

Liberty found that for months before July 2001, Qwest's revised code could not correct the problem. Qwest acknowledged this in a supplemental data request response. Liberty considers this observation to be closed. To ensure that the record is clear, Qwest should supplement its observation response to clarify that only results from July 2001 and forward are free of this problem.

Observation 1027

Observation 1027 identified various orders that were included and counted in more than one month. Qwest acknowledged the problem and indicated that it occurred when an order was completed in one month and then passed through completions again in a second month. If an order was passed through with a completed status (CP) in one month and goes through a second completion as a billing post (PP) in another month then it was double counted. Qwest implemented new code that reviews the record for the previous seven months and, if the record has been previously counted, it is omitted from the current month's calculations.

AT&T filed comments on this observation noting that measures other than OP-3 and OP-4 could be affected. AT&T also questioned why this problem was apparent when earlier, in a response to the problem identified in Arizona. Qwest indicated that prior results would be re-generated with the fix in place. Qwest stated that corrected data could not be made available for the reconciliation because the problem was not yet resolved at the time Liberty was given the reconciliation data. Qwest also stated that the problem affected OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9, and all disaggregated products. Qwest provided documentation showing that the same issue that had been identified in the Arizona test had been closed.

Liberty conducted an interview with Qwest on this matter and received responses to related data requests. Liberty reviewed the data files and the revised code provided by Qwest to confirm that the problem has been resolved. Liberty considers this observation to be closed. LAT&T Comment - Did Qwest recalculate the OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9 results for the months prior to the fix that were affected by the double counting problem? Did Liberty's review verify that the recalculation was accurately performed?

Observation 1028

Observation 1028 reported that there was a significant error rate (about 15 percent) in the mean-time-to-repair (MTTR), or repair duration, used by Qwest in calculating its MR-6 measure for AT&T in Nebraska. In its earlier reconciliation work, Liberty found that Qwest's overall error rate of about 3 percent in Arizona, when viewed alone, was within the range of a reasonable human error rate. However, when Arizona and Nebraska results were combined, the error rate was 6.5 percent, which in Liberty's opinion could be problematic. Liberty has therefore begun an analysis of AT&T trouble tickets in Oregon to obtain additional data on the nature and frequency of errors. Liberty has also requested information on Qwest's compliance review and coaching programs to ascertain whether such programs should be effective. This observation cannot be closed until Qwest provides the required information and Liberty has completed its analysis.

Observation 1029

Observation 1029 noted the exclusion of certain CLEC line-sharing orders because the CLEC was unknown. [AT&T Comment - How does Liberty use the term "certain CLEC?" This observation would appear to fall into what Liberty has categorized as a programming problem. If this is indeed a programming problem, how could it only affect "certain CLECs?" Does the term "certain CLECs" mean all of the CLECs that order line sharing? Does it mean that the problem affected some CLECs that order line sharing but not others? How was it that Qwest made a programming error that did not affect all CLECs that order line sharing?] Qwest acknowledged that it was unable to report the majority of line-sharing orders in the months of July and going forward for certain CLECs. [AT&T Comment - How does Liberty use the term "majority of orders?" Does the "majority of orders" reference mean that for some CLECs all of their orders are affected and for other CLECs none of their orders are affected? Does it mean that for a specific CLEC some line sharing orders will be affected but not others?] Qwest indicated that its order writing process did not capture the data used to identify CLECs, and thus Qwest was not able to report line-sharing results for the majority of the orders at the CLEC-specific level for this time period. Beginning with the December 2001 data and going forward, a new detail field was added to PANS that addressed this problem. Qwest indicated for the period from July through November 2001, a "work around" solution had been implemented.

AT&T filed comments on this observation noting that measures other than OP-4 could be affected. AT&T also requested that Qwest identify the specific performance measures for which CLEC-specific reporting was not available as a result of the problem identified in this observation. Qwest stated that measures OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9 were affected, but for line sharing results only. Qwest also indicated that the problem did not affect the M&R measures because the relevant information was retrieved from other sources.

Liberty has conducted an interview with Qwest on this matter and received responses to its data requests. The data responses included revised computer code, updated July RSOR data files with the "work around" solution in place, identification of other measures affected by this problem, and information on the development of the new data field. Liberty compared the original test July RSOR file sample with the corrected July RSOR data file sample and was able to confirm that the improperly excluded orders were included in the new July RSOR data set. [AT&T Comment - It is unclear why Liberty would identify that the original test July RSOR file sample "improperly excluded orders." Qwest's response to this Observation asserted, "Additionally, the results reported as unknown were always included in the State aggregate results." Did Liberty examine Covad-specific RSOR data file samples or state aggregate data file samples? If the

files that were examined were state aggregate data file samples, it would appear to be a different sort of problem to have "improperly excluded orders." Liberty considers this observation to be closed.

Observation 1030

Observation 1030 noted that Qwest failed to report a number of Covad Firm Order Commitment (FOC) records because the state code was not automatically logged for those transactions. Qwest acknowledged that there was a problem. However, Qwest stated that only a small percentage of the transactions were not recorded. Qwest indicated that the issue was caused by a code break in EDI 6.0 related to unbundled loop processing. Qwest indicated that customers were moved off EDI 6.0 in August and September and EDI 6.0 was retired in December 2001, so the problem for the most part had been addressed with the new technology. [AT&T Comment – What actions did Liberty take to verify that Qwest's assertion of the problem only affecting EDI 6.0 was accurate? Did Liberty perform any analysis to confirm that the problem did not exist for CLECs using versions 7.0 and 8.0 of EDI?] For those records that are not auto-logged with the new technology, Qwest will run an ad hoc report to identify them and will manually populate the state code.

AT&T commented that, since PO-2, PO-3A-1, PO-3B-1, PO-3C, and PO-4C all require state codes, it was highly likely that these results were inaccurate. AT&T also expressed concern with when the "break" occurred and whether, in months prior to July, the CLECs using EDI 6.0 had inaccurate performance results for PO-5 because of this problem. Finally, AT&T requested that Qwest's process ensure that all transactions affected by the omission of the state code were recorded.

Liberty had concerns with Qwest's *de minimus* argument because a significant percentage of Covad orders sampled were affected by having no state code, while Qwest claims that the problem affects less than 1 percent of orders. Qwest also indicated that the problem affects PO-2, PO-3, PO-4, and PO-5, and that it primarily affects unbundled loops, but also affects line sharing. [AT&T Comment – AT&T would expect that if Liberty's analysis determines that Qwest's *de minimus* argument is incorrect, that Qwest would recalculate the performance results affected by the problem.]

Liberty has requested additional information on the number and percentage of other performance measures affected by the code problem and the percentage of EDI 6.0 transactions. Liberty expects to be able to close this observation after reviewing that information.

Observation 1031

Observation 1031 reported that the Service Order Miss Code (SOMC) in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting. Liberty noted several different types of anomalies regarding the information in WFAC, the SOMC, and how they are used in performance measure reporting.

Qwest responded to this observation on January 24, 2002. Qwest stated that it had re-evaluated every AT&T LIS trunk and unbundled loop order for the reconciliation period from the states of Arizona and Nebraska and found that no LIS trunk orders evaluated by Liberty in Arizona were

miscoded as customer caused misses and that only one of many unbundled loop orders evaluated by Liberty in Arizona were miscoded as customer caused misses. Qwest also stated that, in evaluating the data from the three states collectively (Arizona, Colorado and Nebraska), it found that 0.11 percent of the unbundled loop orders, and 6.12 percent of the interconnection trunk orders were miscoded as customer-caused misses. [AT&T Comment - Before Liberty has had the opportunity to complete its review, Qwest has admitted that its analysis showed that 6.12% of its interconnection trunk orders were miscoded as customer-caused misses. What this means is that Qwest's OP-3 Commitments Met results are overstated by at least 6.12%. If Qwest properly coded the orders to Qwest-caused misses, Qwest's commitments met results would be worse by at least 6.12%. An overstatement of Qwest's commitments met results by 6.12% is significant. In its response to Observation 1031, Qwest has provided no explanation of what it will or will not do to rehabilitate the questionable OP-3 interconnection trunk results prior to November 2001. Qwest should indicate whether it will be rehabilitating the suspect data or recommending that any OP-3 data for interconnection trunks prior to November 2001 be discarded.]

In addition, the misapplication of customer miss codes also affects the OP-4 and OP-6 results. As with the OP-3 results Qwest should indicate whether it will be rehabilitating the suspect data or recommending that any OP-4 or OP-6 data for interconnection trunks prior to November 2001 be discarded.

The scope of Qwest's response should cover the entirety of the fourteen states as well as all of the CLECs that order interconnection trunks.] Qwest stated that it had clarified the MFC coding process documentation, conducted a review with the Network Organization to ensure that employees correctly complete the MFC field, and individually reviewed SOMC coding with each ISC representatives responsible for the coding errors identified.

Liberty discovered that it had mis-categorized one order and thus overstated the effect of this problem in the Colorado report. The correction is described in detail at the end of this report.

Liberty has not completed its review of Qwest's response to Observation 1031. Liberty has reviewed the attachments Qwest provided with its observation response and evaluated the manner in which Qwest improved its procedures and retrained its ISC representatives. Liberty will also complete its own evaluation of the LIS trunk orders from Arizona to validate Qwest's statement that none of them had been miscoded. Liberty submitted follow-up data requests on January 29, 2002, and Liberty expects to be able to close this observation after receiving and reviewing that information. [AT&T Comment - It is likely a misstatement that the observation will be closed simply upon receipt and review of Qwest's response to follow-up data requests. It would be more reasonable to state that the closure of this observation is dependent upon receipt of Qwest's responses to Liberty's follow-up data requests, additional Liberty analysis and a conclusion by Liberty that the actions taken by Qwest have appropriately remedied the identified issues.]

Observation 1032

Observation 1032 noted that Qwest included some orders in OP-4 that should have been excluded because the requested provisioning interval was greater than the then-current standard installation interval. Qwest's response indicated that out of a very large number of orders, Liberty found only a few PONS for which this had occurred. In fact, however, Liberty performed

an analysis on only a sample of the orders and found that this improper exclusion affected over 8 percent of the sample. Liberty is now beginning its analysis of data from the state of Washington and continues to observe this problem. [AT&T Comment - Liberty's diligent and appropriate follow-up investigation demonstrates why it is necessary to verify Qwest assertions about the scope of a problem.]

Qwest indicated that it had improved its documentation in an effort to prevent this problem from recurring. [AT&T Comment - Qwest's response to this observation provided no guidance on how it will rehabilitate historical data that were affected by this problem up until the time Qwest took steps to prevent the problem from occurring on a going forward basis (assuming that Liberty verifies that the corrective actions taken by Qwest produce the intended effect. Qwest should indicate what steps it will take to correct the suspect data.)] Liberty requested a copy of the improved documentation. Liberty also requested that Qwest address what measures, products, time frames, and which CLECs, were affected by this type of error. Qwest has not yet replied to Liberty's data requests, which asked for a detailed explanation of Qwest's solution to the problem and support for the error rate Qwest reported as resulting from this problem. This observation cannot be closed until Qwest provides the required information and Liberty has completed its analysis.

Observation 1033

Observation 1033 stated that there were instances where Qwest personnel determined the order application date/time incorrectly for OP-4 LIS trunk performance measurement reporting purposes. In some instances, Qwest failed to change the application day to the next day, even though the ASR was received after 3:00 p.m. MT. In other cases, it appears that Qwest used the wrong application date because of uncertainty as to whether or not the application was "complete and accurate" as is required in the definition section of the PID.

In addition, Liberty determined that several Covad UBL orders in Arizona received after 7 p.m. were dated the same day, rather than the next day in accordance with the PID. This resulted from Liberty's review of the data Covad provided too late for inclusion in the Arizona report.

In its response to the observation, Qwest stated that the net effect of its errors was minimal, *i.e.*, a one day difference during the period being reconciled. Liberty believes it is pure coincidence, and irrelevant, that Qwest's errors may net out to a small number for the period. The important fact is that Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator.

AT&T filed comments on this observation, questioning whether other performance measures and other products could be affected by the problem, whether there could be both systems errors and human errors involved, and whether prior results could be re-stated.

Liberty is waiting for the responses to several data requests to Qwest regarding this issue. This observation cannot be closed until Qwest provides the required information and Liberty has completed its analysis.

Observation 1034

Observation 1034 identified various line sharing orders that were incorrectly excluded as loops with non-standard intervals of 72 hours. Liberty identified the problem in the Covad's Colorado May PO-5 performance report and did not find this problem occurring in the months of June and July. Qwest in its response concurred with Liberty that a number of line sharing orders for May had been excluded from the performance report because the orders had been assigned a non-standard FOC interval of 72 hours. Qwest indicated that the problem was human error and that the exclusions of the line sharing orders were improper. Qwest stated that their processes currently dictate that the 72 hours interval should be manually selected only on specific unbundled loop products where the CLEC has a special non-standard FOC agreement. Qwest contends that this process should and did address the concerns raised in the observation.

Qwest identified for Covad's May performance report 23 line sharing orders in Arizona, 29 line sharing orders in Colorado, and 91 line sharing orders in Washington excluded because of the assignment of a non-standard interval. Qwest provided ad hoc files for each month from May through December 2001. Liberty has reviewed each month and does agree that Qwest has identified the magnitude of the problem in Arizona, Colorado, and Washington. Furthermore, Liberty confirmed that the line sharing non-standard interval assignment did not occur during the months from June through December 2001.

In an interview, Qwest gave a plausible explanation for why this problem only occurred during the month of May 2001. [AT&T Comment - AT&T requests that Liberty identify and explain the "plausible explanation" provided by Qwest as to why the problem only occurred during the month of May 2001.] Since Liberty has confirmed that the problem has not appeared after that month, this observation is considered closed.

Observation 1035

Observation 1035 reported that there were errors in the OP-3 and OP-4 measures prior to June 2001 because Qwest included cancelled orders in the measures. According to Qwest, the problem affected only orders coming through the SOLAR system, which processed service orders for the five eastern states (Iowa, Minnesota, Nebraska, North Dakota, and South Dakota). [AT&T Comment - Qwest's process of automatically assigning any new order a completion date equal to the due date is problematic. As was identified in this Observation, when Qwest fails to properly populate the actual completion date, the order is considered a met commitment. If Qwest fails to populate an essential data element, the result should be some sort of exception where Qwest manually handles the order. Instead, Qwest rewards itself for failing to populate the completion date field with a "met commitment." If Qwest failed to populate the completion date on an order, how would Liberty be able to distinguish that failure from an order that truly was completed on the due date? While the cancelled order issue identified the folly of Qwest's process of pre-populating the actual completion date, it would seem reasonable to expect that the issue could also affect orders with missed commitments where Qwest misses a commitment, fails to populate the actual completion date field and counts the order as a met commitment. The scope of the suspect data could include more than the orders that were cancelled. Does Qwest's programming mean that (completion date = original due date for orders where the completion date was not changed once the order was actually completed)? Was Liberty able to determine if this problem was only limited to cancelled orders? Why wouldn't the problem also include failures to populate the actual completion date? If this was a systemic problem, why was Qwest able to successfully populate some cancelled orders with a 11/11/1111 completion date and

others were left with the original due date as the actual completion date? Was there any pattern as to which cancelled orders did get the 11/11/1111 completion date and which did not? In Qwest's response to Observation 1035, Qwest provided information that purports to show that the cancelled order problem did not affect a high percentage of orders. However, Qwest does not identify what the results it provided represents. Are the results a mix of CLEC and retail orders? Are the results only inward orders as defined in version 4.0 of the PIDs or do the results also include feature change type orders? If the results are a mix of CLEC and retail orders, what are the relative amounts? Does the cancelled order problem affect CLEC orders more often than retail orders? Answers to these questions need to be addressed before any weight is placed on the results that Qwest reported in Observation 1035. Qwest has indicated that the problem was resolved as of May 12, 2001, but all results prior to June 2001 for the five states were affected. Although Liberty saw no evidence of the problem in Arizona or Colorado, Liberty has not yet concluded that the problem was limited to these five states.

Qwest recently provided a response that indicated only about 2 percent of the eastern region orders were affected by this problem and that the problem did not occur after May 12, 2001. Liberty is now reviewing the information provided by Qwest.

Other Issues

Lengthy Completion Intervals

To capture the data required for completed service orders, Qwest extracts information for the current and the prior seven months. Qwest performed a test showing that this method captured 99.9 percent of the completed orders. During the data reconciliation for Colorado, Liberty found two LIS trunk orders that were not reported because they were over eight months old. Liberty was concerned that Qwest's test may not have been valid for orders that are typically more complex than average, such as those for LIS trunks. Liberty requested that Qwest conduct another test limited to LIS trunk orders to determine the percentage captured during the eight-month interval. Qwest has not yet responded to Liberty's request.

AT&T Comment - AT&T requests that Liberty issue an Exception on this problem. In no place do the OP-3, OP-4 and OP-6 provisioning-related PIDs permit orders to be excluded because the order was not completed within eight months. Qwest's improper exclusion of orders completed in longer than eight months has the effect of reducing Qwest's OP-4 Average Installation Interval results for LIS Trunks and will likely also produce an undeserved improvement of its OP-3 Commitments Met results. Qwest's admission that it excludes any service order not completed within eight months appears to be a systematic problem.

In its supplemental response to data request 30-002 Qwest indicated, "the impact of not going back further than 8 months was negligible and statistically insignificant." Other than for self-serving reasons, there is no reasonable explanation as to how Qwest came to that conclusion. Qwest's improper exclusion impacted a significant number of orders. Qwest's improper exclusion accounted for 4.2% of the AT&T LIS Trunk orders that Liberty concluded should have been included for OP-3 calculation purposes. If the AT&T LIS Trunk orders with completion intervals longer than eight months were included in Qwest's OP-4 results, those orders would

have added at least 10 days to the OP-4 Average Installation Interval results for the January through June 2001 period. In the month(s) the orders completed, the impact on the monthly average would have been significantly higher. An improper exclusion that impacts 4.2% of the orders and adds at least 10 days to the average installation interval is most certainly material and statistically significant. It should also be noted that in Qwest's supplemental response to data request 30-002 Qwest provided no reference to any PID language that would support this improper exclusion.

Why did Liberty decide that a systematic and improper exclusion of orders that are completed in longer than eight months did not warrant the issuance of an Exception or Observation?]

Report Correction

Liberty recently discovered that it had mis-categorized one of the LIS trunk orders about which the parties disagreed in Colorado. Liberty had categorized it as a Qwest error in assigning jeopardy codes and customer-miss exclusions, but it should have been categorized as a Qwest error because Qwest did not support the due date it believed to be correct. After issuance of the Colorado report, Qwest did provide support for the due date, and the information about this order should now be considered inconclusive because AT&T provided support for a different due date. Accordingly, the beginning of the reconciliation section of the AT&T part of the Colorado report should read:

B. Reconciliation Results

For the measure OP-3, Qwest and AT&T agreed on 47 percent of the orders. For the orders that the companies disagreed on, Liberty found that:

- 18 percent were likely caused by Qwest's errors in assigning jeopardy codes and customer-miss exclusions. In addition, another 9 percent of the orders contained a 01/01/01 completion date, which meant that Qwest's program properly excluded the orders but that there was likely human error in failing to enter a correct completion date. (Observation 1031.)*
- 6 percent were not counted by Qwest because the order took more than eight months to complete.*
- For 61 percent, Qwest's treatment was correct, or Qwest followed its procedures for not counting orders with a customer miss. In a quarter of these cases, the discrepancy was caused by Qwest using the reference date to report order completion. In 40 percent of these cases, the discrepancy was caused by disagreement as to when a LIS trunk order completes.*
- 15 percent of the discrepancies contained conflicting information that Liberty was unable to resolve.*

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Third Report on Qwest Performance Measure Data Reconciliation - Nebraska

I. Introduction

The Liberty Consulting Group (*Liberty*) conducted an audit of Qwest's performance measures for the ROC, and issued the final report from that audit on September 25, 2001. As an extension to the audit, and through its Change Request process, the ROC requested that Liberty conduct a "data validation to resolve any debates concerning the accuracy of performance data emanating from particular ROC PIDs." (ROC Change Request #20.) Certain CLECs have expressed concerns about the accuracy of Qwest's reported performance results as they relate to service that they have been receiving. The ROC decided to conduct this data reconciliation work in order to test those concerns.

The data reconciliation process was designed to determine whether any of the information provided by CLECs demonstrated inaccuracy in Qwest's reported performance results as these measures were defined in the PID. The detailed process has been discussed in prior reports and has not been repeated here.

Liberty issued its first data reconciliation report, which used data from Arizona, on December 3, 2001. The second report on data from Colorado was issued on January 3, 2002. This report provides the results of Liberty's review of data from Nebraska. In addition, this report provides the status of observations and the exception issued as a result of all of the data reconciliation work.

II. Overall Summary of Findings

In the course of its initial data reconciliation work in Arizona, Liberty found that Qwest did make some errors that affected performance results. However, those errors were generally either: (a) of the kind and at levels to be expected at the front end of the performance measurement process, where people must manually enter vast amounts of information, or (b) appeared to be honest errors in judgment. The amount of these errors in relation to the total amount of information required for the performance measures did not exceed what Liberty considered to be expected levels, even under a carefully controlled set of measurement activities. Moreover, there was no evidence that Qwest purposely took steps to make its performance figures appear better than they actually were. With the exception of a programming problem associated with measure OP-15 (Exception 1046) and a failure to report a group of Firm Order Confirmations in June 2001, the errors were not systemic, nor did they apply to a significant percentage of the performance measure results. [AT&T Comment: Liberty's findings are now considered to be cumulative; that is, all reports affect all states. With this understanding Liberty should add language to the summary of this report and all subsequent reports which reflects that reconciliation reports for an individual state should not stand alone as the sole assessment of the accuracy of performance results for that state.]

Contrary to its conclusions in Arizona, Liberty found that several process errors significantly affected Qwest's reported performance results for Colorado. As documented in Observation reports 1026, 1027, 1029, and 1030, Qwest had: (a) reported retail line-sharing orders as wholesale orders, (2) repeated orders in consecutive months' measures because of different completion codes, (3) not reported orders because the CLEC designation was "unknown," and (4) excluded records because of a missing state code. Liberty also found that performance measures had been affected by human errors. For example, human errors (1) occurred in the processing of AT&T LIS trunk orders (Observation 1031), (2) caused some Covad UBL orders to not being excluded from OP-4 in cases where the requested interval was longer than the standard (Observation 1032), (3) caused line-sharing orders to be classified as UBLs causing an incorrect reporting of PO-5 (Observation 1034), and (4) occurred in determining the application dates and times on certain orders (Observation 1033).

Using data from Nebraska, Liberty found an additional process-type problem. As documented in Observation 1035, Qwest's system allowed cancelled orders to be incorrectly included in the OP-3 and OP-4 measures as completed (and on time) orders. The error occurred only for orders through the SOLAR system serving the eastern states (Iowa, Minnesota, Nebraska, North Dakota and South Dakota). [AT&T Comment: It should be noted that Qwest's inappropriate inclusion of cancelled orders will result in Qwest's OP-3 Commitments Met and OP-4 Installation Interval results looking better than deserved. It isn't clear whether or not Liberty's conclusion that the SOLAR system impact affected the eastern states only is based on Qwest's data request responses or whether additional verification by Liberty independently reached that conclusion. More information is requested. As was identified in Observation 1035, Qwest's process of automatically assigning any new order a completion date equal to the due date is problematic. When Qwest fails to properly populate the actual completion date, the order is considered a met commitment. If Qwest fails to populate an essential data element, the result should be some sort of exception where Qwest manually handles the order. Instead, Qwest rewards itself for failing to populate the completion date field with a "met commitment." If Qwest failed to populate the

completion date on an order, how would Liberty be able to distinguish a properly populated actual completion date from a failure to populate the actual completion date? While the cancelled order issue identified the folly of Qwest's process of pre-populating the actual completion date, it would seem reasonable to expect that the issue could also affect orders with missed commitments where Qwest misses a commitment, fails to populate the actual completion date field and counts the order as a met commitment because the actual completion date was prepopulated. The scope of the suspect data could include more than the orders that were cancelled. Does Qwest's programming mean that (completion date = original due date for orders where the completion date was not changed once the order was actually completed? Was Liberty able to determine if this problem was only limited to cancelled orders? Why wouldn't the problem also include failures to populate the actual completion date?) Qwest has indicated that the problem was resolved as of May 12, 2001, but all results prior to June 2001 for the five states were affected. [AT&T Comment - Qwest's response to this observation implies that there was a systemic failure to populate the completion date field with 11/11/1111. However, Qwest's response also indicated that some cancelled orders had the completion date field with the 11/11/1111 entry. If this was a systemic problem, why was Qwest able to successfully populate some cancelled orders with a 11/11/1111 completion date and others were left with the original due date as the actual completion date? Was there any pattern as to which cancelled orders did get the 11/11/1111 completion date and which did not? In Qwest's response to Observation 1035, Qwest provided information that purports to show that the cancelled order problem did not affect a high percentage of orders. However, Qwest does not identify what the results it provided represents. Are the results a mix of CLEC and retail orders? Are the results only inward orders as defined in version 4.0 of the PIDs or do the results also include feature change type orders? If the results are a mix of CLEC and retail orders, what are the relative amounts? Does the cancelled order problem affect CLEC orders more often than retail orders? Answers to these questions need to be addressed before any weight is placed on the results that Qwest reported in Observation 1035.]

Liberty also found that human errors affected performance measure results using the Nebraska data. Qwest had an error rate in calculating mean-time-to-repair (MTTR) for MR-6 of roughly 15 percent. This was reported in Observation 1028.

As first mentioned in Liberty's report on Arizona, Qwest had a programming anomaly that affected results for PO-5 results the month of June 2001, whereby orders for multiple loops were excluded from the measure. The same programming problem existed for Nebraska, whereby both orders for multiple loops and those orders that had a duplicate entry in Qwest's system were excluded. Qwest corrected the programming problem such that results for July 2001 and forward are no longer affected. Qwest had already reported this problem in its October 5, 2001, summary of notes to the regional results report. [AT&T Comment: Liberty should clearly state whether or not the programming anomaly affected all states, including Colorado.]

III. Results of Data Reconciliation – AT&T

A. Introduction

After some discussion between the parties, it was ultimately determined that the following performance measures were to be reconciled:

- The denominator of PO-5A, B, and C combined for unbundled loops (UBL).
- The denominator of PO-5D for Local Interconnection Service (LIS) trunks.
- The numerator and denominator of OP-3D and E combined for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-4D and E combined for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-6A and OP-6B for unbundled loops and for LIS Trunks.
- The numerator and denominator of OP-13A and OP-13B for unbundled loops.
- The numerator and denominator of OP-15A and OP-15B for unbundled loops and for LIS Trunks.

For unbundled loops, the period to be reconciled is April 2001 through June 2001. The LIS Trunks reconciliation period was from January 2001 through June 2001. Qwest stated, however, that it did not report CLEC-specific state results for LIS Trunks for OP-15 for January or February; therefore, Liberty could not reconcile data for those months. In addition, Qwest was unable to provide the data necessary to reconcile OP-15 for LIS Trunks for May; therefore, data for that month could not be reconciled. [AT&T Comment: Qwest's inability to provide OP-15 data for January, February and May is of little consequence in Nebraska because there were only two LIS Trunks completed in January during the entire six month reconciliation period, which precluded any orders from being part of Qwest's OP-15 performance measurement for AT&T. However, this may not be the case for other Nebraska CLECs. Because of such limited information, LIS reconciliation results from other states (Arizona and Colorado so far) should be very helpful in more broadly understanding the accuracy of Nebraska's LIS performance analysis. Liberty should put the Nebraska LIS order analysis into an appropriate context and then clearly provide guidance to these other Liberty reconciliation reports on the accuracy of LIS performance results.]

Liberty compared the unbundled loop trouble tickets provided by AT&T with the trouble tickets provided by Qwest. Where Liberty had data about a trouble ticket from both parties, Liberty compared the repair intervals reported by the two parties. Liberty also analyzed situations identified by AT&T where AT&T found one trouble ticket, but where more than one Qwest trouble ticket applied.

B. Reconciliation Results

Unbundled Loops

For the measure OP-3, Qwest and AT&T ultimately agreed on 89 percent of the orders. For the 11 percent of total orders that the companies disagreed on, Liberty found that:

- In roughly 3 percent, Qwest incorrectly included cancelled orders in its measure. These errors were the subject of Observation 1035. As noted in the Observation, Qwest made a programming change effective May 12, 2001 that now precludes cancelled orders from being included.
- In 1 percent, Qwest had counted the same order in two months; this double counting error was the subject of Observation 1027.
- In 7 percent, Qwest did not include orders in the measure that AT&T believed should be included. These were cases in which the CLEC supplemented the order and moved the due date past the original due date [AT&T Comment: This applied to supplements issued prior to the original due date.]. This matter was discussed in the Arizona report, wherein Liberty concluded that it was appropriate for Qwest to exclude such orders. It should be noted, however, that there was an instance in which both AT&T and Qwest included such an order in the measure, and thus the parties agreed, but Qwest later clarified that it had mistakenly included the order. [AT&T Comment: AT&T disagrees with Liberty's conclusion that Qwest appropriately excluded orders for which the CLEC moved the due date past the original due date. During the development of the OP-3 PID, Qwest indicated that its plan was to count as a met commitment any order for which the CLEC pushed out the due date. Qwest indicated that it would credit itself with a met commitment even if it turned out that the new commitment was ultimately missed. The CLECs argued that it was unfair to automatically credit every order for which the CLEC changed the due date as a met commitment. The CLECs proposed the more fair method would be to measure Qwest's performance against the new due date.]

At that time (late 1999 and early 2000), Qwest indicated that its data collection and reporting processes would not permit it to measure itself against the changed due date: it could only measure itself against the original due date. Qwest proposed that since it could not measure itself against the changed due date, it would measure itself against the original due date and count as a miss in the OP-3 results calculation any order for which the CLEC or its retail customer pushed out the due date. Qwest indicated that it would count it as a miss even if it actually met the pushed out due date. The CLECs recognized that Qwest's proposal would, in cases where the CLEC or Qwest's retail customer pushed out the due date, cause Qwest to take undeserved hits against the OP-3 results. Qwest indicated that while the absolute OP-3 results would suffer, since Qwest applied the same process for both retail and CLEC orders and parity was the standard, on a relative basis, the practice would not hurt Qwest.

With eyes wide open, both Qwest and the CLEC's agreed to this process of measuring Qwest's OP-3 compliance to the original due date even if the due date was subsequently changed by the CLEC or Qwest's retail customer. It was also agreed that once Qwest developed the capability, OP-3 would be measured against the changed due date if the CLEC or Qwest's retail customer pushed out the due date. Qwest eventually developed, in version 4.0 of the PIDs, the ability to measure its performance against revised due dates rather than the original due date.

The data reconciliation effort was done using version 3.0 of the ROC PIDs. In that version, Qwest was required to measure its OP-3 performance against the original due date. What the data reconciliation found was that Qwest was not counting as a miss any order for which the CLEC or its retail customer pushed out the due date as a miss or measuring itself against the pushed out due date. Instead, the data reconciliation effort identified that Qwest was excluding any CLEC or retail order for which the CLEC or retail customer pushed out the due date.

Qwest has been considering an order for which the CLEC or retail customer pushed out the due date as a customer-caused miss. Specifically, Qwest applies a customer miss code of "customer hold for payment." Qwest's unilateral and unannounced decision to treat orders with due date changes as customer-caused misses is inappropriate. As an initial matter, Qwest may not in fact miss the revised due date. In that situation, Qwest's performance results would miss the benefit of a met commitment. Qwest may also miss the pushed out due date. In those situations, by excluding the missed commitment, Qwest would be overstating its results. Finally, it is inconceivable how Qwest came to the conclusion that a customer changing a due date is the same as a customer hold for payment.

The reality is that Qwest made this self-serving decision to treat orders with revised due dates as a customer hold for payment miss in an effort to inflate its OP-3 Commitments Met results. Liberty's findings in Arizona on this inappropriate exclusion were clear. Liberty found that, "In earlier versions of the PID [earlier than 4.0], Qwest measured against the original due date and it judged as ineligible orders for which the customer requested a later due date. The earlier PID **did not explicitly allow this exclusion**; its language said 'customer requested a later due date when the technician arrived to do the work.' Qwest **interpreted the exclusion more liberally than this phrasing would allow.** While it may seem unrealistic to hold Qwest to an original due date in every case that its customer requested a later one, **Qwest was in violation of the precise language that had been contained in the PID.**" (Report on Qwest Performance Measure Data Reconciliation for Arizona, December 3, 2001, pp. 9 - 10) (emphasis added)

While Liberty caught Qwest red-handed making inappropriate exclusions, Liberty inexplicably tried to mitigate its own findings of Qwest's non-compliance with the version of the PID that was controlling during the reconciliation effort.

Version 3.0. Liberty stated, "This issue [excluding orders with changed due dates] is not applicable under the current Qwest method for calculating performance measures. Version 4.0 of the ROC PID changed the method of accounting for customer-requested changes in the due date. Qwest now reports those orders against an 'Applicable Due Date,' instead of the original due date." (Report on Qwest Performance Measure Data Reconciliation for Arizona, December 3, 2001, p. 9) What Liberty stated about how Qwest is now reporting against Version 4.0 of the PID is correct. However, Version 4.0 is irrelevant to the fact that the data reconciliation was performed using Version 3.0 and that Qwest's inappropriate exclusions were noncompliant with 3.0.

Version 4.0 of the ROC PIDs did not become effective until October 22, 2001. Liberty found that Qwest's exclusion of orders where the CLEC or the customer changed the due date was "in violation of the precise language that had been contained in the PID." The result is the entirety of Qwest's OP-3 results prior to the implementation of Version 4.0 of the PID are non-compliant with the controlling PID. The effect is that Qwest's OP-3 results are inappropriately inflated. Qwest must recalculate all of the OP-3 results prior to the time that Version 4.0 of the ROC PIDs were implemented or Qwest should stop reporting those results. Any Qwest performance results prior to October 2001 are unreliable and should not be trusted.]

For measure OP-4, the same issues arose as those presented above for OP-3. In addition, however, Qwest incorrectly excluded roughly 3 percent of the orders that should have been included in the measure because of human error in coding the order. Specifically, the orders had been coded as being longer than the standard interval, when in fact they were not. This issue concerning miscoding of the order interval was addressed in Observation 1032.

For measure OP-6, the orders the companies disagreed on were limited to those where AT&T supplemented the order and moved it beyond the original due date. These discrepancies accounted for roughly 33 percent of the total orders examined and Liberty found that Qwest handled these orders correctly. [AT&T Comment: Please see AT&T's earlier comments on the appropriate treatment of orders for which the CLEC pushed out the due date.] The parties had no disagreement on the OP-13 and OP-15 measures.

For PO-5, Qwest and AT&T agreed on 90 percent of the orders. All of the discrepancies were due to Qwest errors. Roughly 2 percent of the orders included Qwest's errors due to the fact that it had included orders where no FOC was issued on the initial LSR but one was issued for the cancellation. The remaining 8 percent of the orders had errors because of a programming problem that existed during the month of June. Orders that were either for multiple loops or were duplicated in the Qwest system were left out entirely. Qwest has since corrected this programming error, effective with July 2001 results. According to Qwest, the error was the result of programming changes made to move to PID 4.0. [AT&T Comment: Did this problem affect all of the PO-5 results for all of the states, all of the CLECs and all of the products? How did Liberty confirm that the programming error was isolated only to June 2001? Has Liberty tested Qwest's correction of the programming error such that Liberty is now satisfied that the results are correctly calculated, and that the fix itself did not cause other problems? If Liberty did test the fix, how was the test performed? What did Qwest do to rehabilitate the 8 percent of the data

What was affected by the error? If Qwest did not rehabilitate the erroneous data, is it Liberty's opinion that the results affected by the error are suspect?]

LIS Trunks

Working together, Qwest and AT&T were able to reduce the number of Nebraska LIS trunk orders requiring reconciliation to one. For that order, Qwest stated that it was inappropriately excluded from the measures because of human error (Observation 1031). Because only one LIS trunk order required reconciliation, Liberty is not including any LIS trunk spreadsheets with this report. [AT&T Comment: During the analysis interval, there are two AT&T LIS trunk orders that were completed in January, with no other orders occurring during the rest of the analysis period. Of these two, Qwest improperly handled 50%. However, because of such limited information, LIS reconciliation results from other states (Arizona and Colorado so far) should be very helpful in more broadly understanding the accuracy of Nebraska's LIS performance analysis. Liberty should put the Nebraska LIS order analysis into an appropriate context and then clearly provide guidance to these other Liberty reconciliation reports on the accuracy of LIS performance results.]

C. Trouble Tickets

Liberty's work scope included a review of AT&T's and Qwest's Nebraska trouble ticket data for unbundled loop products for the April to June 2001 period. Liberty conducted this review to determine whether Qwest had correctly reported its performance measures, particularly MR-6 - Mean Time to Repair (MTTR). Liberty received summary information in spreadsheet form from both parties, as well as a hard copy of many of the AT&T and Qwest trouble tickets.¹

Liberty identified several issues in its preliminary analysis:

- There was a large discrepancy in the population of trouble tickets provided by each party.
- In many cases, AT&T had logged more than one Qwest trouble ticket number in connection with a single AT&T repair request.
- In 50 percent of the tickets in common, the MTTR or repair duration recorded by each party did not match.

There was a significant disparity in the population of relevant Qwest trouble ticket numbers that each party provided. All but one of the Qwest trouble tickets appeared in the AT&T data (AT&T could not locate this ticket), but one-third of the tickets in the AT&T data did not appear in the Qwest data. Qwest stated that all these tickets (except for one that it could not find) were

¹ In its spreadsheets, Qwest provided data including, among other things, trouble ticket number, product code, repair duration, and received date; there were no clear dates or start/stop times provided. AT&T provided, for each of its own trouble tickets, the corresponding Qwest trouble ticket number(s), the open and restore date and time of the Qwest tickets, and a short description of the problem and treatment by Qwest.

"retail"² tickets, and were not included in the **measure** [AT&T Comment: AT&T's trouble ticket records do not indicate whether or not the service provided is via a retail or wholesale offering. Did Liberty confirm that Qwest's indication that the tickets were retail was accurate? If so, then Liberty should so indicate in the text of this report. If not, Liberty should confirm Qwest's findings].³ Liberty found that Qwest had treated these tickets consistent with its procedures and consistent with the PID.

Roughly 15 percent of AT&T repair orders had multiple, *i.e.*, two, Qwest ticket numbers associated with them. Qwest had assigned more than one ticket number to an AT&T repair order for two reasons:

- The AT&T repair order included two or more different circuits, and Qwest assigned the circuits separate Qwest trouble ticket numbers.
- There was more than one repair performed on the given circuit, and these repairs were performed on different days or at different times. Qwest typically opened and closed the original tickets and opened new ones for the later repairs.

Liberty developed a summary chart itemizing the reason for multiple Qwest tickets, and submitted it to AT&T for comments. Liberty found that, for each of the trouble tickets in question, Qwest handled its trouble tickets consistently with its stated procedures and with the PID. AT&T accepted Liberty's analysis in all of the cases. All of these tickets were included in the MR-6 measure by both parties.

For 50 percent of the individual Qwest trouble tickets that the two parties had in common, the MTTR reported by each party did not match.⁴ Of these, the durations differed by more than 1 hour for 60 percent and by more than 12 hours for 40 percent. At times, Qwest had recorded a longer MTTR than did AT&T, but in the majority of cases, the time recorded by AT&T was significantly longer than that recorded by Qwest.

Liberty held discussions with AT&T and Qwest to determine the reasons for these differences in duration. During the course of the discussions, both parties revised their data or reinterpreted the information on their ticket logs. Liberty found that:

- There was a 1-hour difference between the system clock used by Qwest and that of AT&T (this difference would not affect net duration, however).
- In 70 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open time for the ticket.

² Qwest indicated that some AT&T customers' products are under the wholesale tariff and some are not; only those under the wholesale tariff are included in the wholesale measures.

³ AT&T provided data on some tickets outside the relevant time period, which Liberty excluded from the analysis. The trouble ticket number that Qwest could not find was likely a typo, since the number was not in the same form as all of the other tickets.

⁴ Liberty considered instances where the parties disagreed by 20 minutes or less to be "matches."

- In 30 percent of the cases, Qwest and AT&T had recorded the same (or roughly the same) open and restore time for the ticket.
- In 20 percent of the cases, there was "no access" time that AT&T did not remove from duration.

The net results of the duration reconciliation were as follows:

- In 60 percent of the cases, the parties ultimately concurred that Qwest had properly handled the ticket duration.
- In 10 percent of the cases, the discrepancies could not be explained.
- In 30 percent of the cases, Qwest had made administrative errors or did not follow its own procedures, which led to durations that were significantly different from those recorded by AT&T.
- The adjustments to MTTR for the Qwest tickets in error ranged from approximately 20 hours shorter to roughly 9 hours longer.

The population of tickets analyzed above constituted half of those used by Qwest to derive its MR-6 measure. Assuming the error rate in the other half is zero (since the parties agreed), then Qwest had significant errors in 15 percent of the total ticket durations used to calculate the measure. Although the sample analyzed by Liberty was small compared to Qwest's entire trouble ticket population, the human error rate was higher than Liberty believes is acceptable for a process of this type. Liberty issued an Observation report (#1028) on this subject. [AT&T Comment - The root cause of the problem appears to be that Qwest was inaccurately recording the trouble ticket close time. The trouble ticket close time is a key piece of information in more than the MR-6 PID. The MR-3 Out of Service Cleared within 24 hours, MR-4 All Troubles Cleared within 48 hours, MR-5 All Trouble Cleared within 4 hours, MR-9 Repair Appointments Met, MR-11 LNP Trouble Reports Cleared within 24 hours and MR-12 LNP Trouble Reports - Mean Time to Restore PIDs all require the trouble ticket close time in their calculations. Would Liberty agree that Qwest problems with recording of trouble ticket close time could also affect the aforementioned maintenance and repair PIDs?]

Qwest's response to Liberty's Observation maintained that the mistakes identified by Liberty were isolated human errors and not typical, and that no corrective action was required. Qwest added that it conducted semi-annual reviews at its service centers, routinely finding error rates of 1 percent or less; Qwest center managers also reportedly conducted random checks and provided coaching to technicians whenever discrepancies were found.

Liberty believes the errors it found during the AT&T trouble ticket analysis in Nebraska may be typical, rather than isolated instances, particularly when coupled with the results of Liberty's Arizona trouble ticket audit. In Arizona, Liberty found: (1) an error rate of roughly 2 percent in Qwest's MTTR, and (2) an error rate of roughly 3 percent in coding, which resulted in orders being excluded from the measure. Liberty found that Qwest's overall error rate of about 3 percent in Arizona, when viewed alone, was within the range of a reasonable human error rate. However, when Arizona and Nebraska results are combined, the MTTR error rate was 6.5 percent, which in Liberty's opinion is problematic.

Additional investigation was warranted to determine whether Qwest's proclaimed 1 percent error rate is accurate. Liberty has therefore begun an analysis of AT&T trouble tickets in Oregon to obtain additional data on the nature and frequency of errors. Liberty has also requested additional information on Qwest's compliance review and coaching programs to ascertain whether such programs have been effective; this information has not yet been provided.

IV. Status of Observations and Exceptions

AT&T Comment At the time of AT&T's drafting of these comments, Liberty has provided an updated status of Observations and Exceptions as a supplement to the Colorado Report. Rather than provide separate comments on the below Observations and Exceptions, AT&T will provide its comments on the Observation and Exception status that was provided as a supplement to the Colorado report.

The preceding discussion covered matters that explained the differences between the performance measure results obtained by AT&T and by Qwest for data from the state of Nebraska. In its prior data reconciliation work using data from Arizona and Colorado, Liberty identified several problems with Qwest's performance measures that were reported in the form of an Exception and several Observations. In addition, Covid provided some order information associated with Arizona that was received too late to incorporate in the Arizona report. The following sections provide the status of those issues.

Exception 1046

Exception 1046 stated that, during the period being covered by Liberty's data reconciliation, Qwest's systems sometimes truncated the third digit of an order's missed function code while it was being transferred from the Integrated Data Repository pending data source to the Detailed Data Set used by RRS to calculate OP-15 performance measure results. The Wholesale Regulatory Reporting program looks up the code in a miss code table to determine how the order should be handled. If it fails to find the code, it defaults the miss to Qwest. Thus, all of the US trunk orders showing two-digit miss codes were being reported as Qwest misses, even though not all of them were.

In its response to the exception, Qwest stated that it had already identified the problem and that the code had been corrected in the August 2001 release of performance results. Qwest also stated that the problem affected all results produced for OP-15A and OP-15B on all designed service products for the period of January through July 2001.

Liberty issued data requests (set 45) for the old and new programming code for OP-15, as well as for Qwest's documentation of how it identified the problem, developed revised business requirements, and solved the problem. Based on Qwest's responses, Liberty issued follow-on data requests (set 59), but has not yet received a response. Liberty has also not yet received a response to one of the earlier data requests (45-1). When those responses are received, Liberty will review them and determine whether the exception can be closed.

Observation 1026

Observation 1026 identified retail orders that were being included in performance reports as wholesale orders. Qwest indicated that the process of provisioning a line-sharing order involves Qwest issuing a separate retail and wholesale order. The wholesale order was being correctly included in the RRS calculations. However, because there was no retail line sharing, the second order was being defaulted into the wholesale category, resulting in a double count. Qwest implemented a code change to look for orders that contain billing USOCs with retail activity and then exclude such orders from the measure. Qwest indicated that this action prevents the

reporting of retail orders as line-sharing activity. The code changes were implemented effective with the November 2001 release of performance results. Qwest indicated that the December 2001 release corrected the results for all months in 2001.

Qwest provided data files that contained the orders identified by Liberty that were affected by this observation. Liberty has reviewed these files and found that the appropriate changes had been made. Liberty conducted an interview with Qwest on this matter and recently received responses to related data requests. Liberty expects to complete its review and close this observation within the next couple of days.

Observation 1027

Observation 1027 identified various orders that were included and counted in more than one month. Qwest acknowledged the problem and indicated that it occurred when an order was completed in one month and passed through completions again in a second month. If an order was passed through with a completed status (CP) in one month and goes through a second completion as a billing post (PP) in another month then it was double counted. Qwest has implemented new code that reviews the record for the previous seven months and if the record has been previously counted then it is omitted from the current month's calculations.

AT&T filed comments on this observation noting that measures other than OP-3 and OP-4 could be affected. AT&T also questioned why this problem was apparent when earlier, in a response to the problem identified in Arizona, Qwest indicated that prior results would be re-generated with the fix in place. Qwest stated that corrected data could not be made available for the reconciliation because the problem was not yet resolved at the time Liberty was given the reconciliation data. Qwest also stated that the problem affected OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9, and all disaggregated products.

Liberty conducted an interview with Qwest on this matter and recently received responses to related data requests. Liberty is now reviewing the RSOR data files provided by Qwest to confirm that the problem has been resolved. Liberty expects to complete its review and close this observation within the next couple of days.

Observation 1028

Observation 1028 reported that there was a significant error rate in the mean-time-to-repair (MTTR), or repair durations, used by Qwest in calculating its MR-6 measure for AT&T in Nebraska. The status of this Observation is discussed above in the Nebraska-specific section of this report.

Observation 1029

Observation 1029 noted the exclusion of certain CLEC line-sharing orders because the CLEC was unknown. Qwest acknowledged that it was unable to report the majority of line-sharing orders in the months of July and going forward for certain CLECs. Qwest indicated that its order writing process did not capture the data used to identify CLECs, and thus Qwest was not able to report line-sharing results for the majority of the orders at the CLEC-specific level for this time period. Beginning with the December 2001 data and going forward, a new detail field was

provided by PANS that addressed this problem. Qwest indicated for the period from July through November 2001, a "work around" solution had been implemented.

AT&T filed comments on this observation noting that measures other than OP-4 could be affected. AT&T also requested that Qwest identify the specific performance measures for which CLEC-specific reporting was not available as a result of the problem identified in this Observation. Qwest stated that the affected measures are OP-3, OP-4, OP-5, OP-6, OP-15, PO-8 and PO-9 for line sharing only.

Liberty believes that Qwest's solutions (interim and permanent) will permit it to properly identify CLECs and related orders for the periods identified and will provide proper reporting. Liberty reviewed the changes to the field details that provide the required information. Liberty is satisfied with the interim solution but has not completed its review of the new data field used in the permanent fix.

Observation 1030

Observation 1030 noted that Qwest failed to report a number of Covad Firm Order Commitment (FOC) records because the state code was not auto-logged for those transactions. Qwest acknowledged that there was a problem. However, Qwest stated only a small percentage of the transactions were not recorded. Qwest indicated that the issue was caused by a code break in EDI 6.0 related to unbundled loop processing. Qwest indicated that customers were moved off EDI 6.0 in August and September and EDI 6.0 was retired in December 2001, so the problem for the most part had been addressed with the new technology. For those records that are not auto-logged with the new technology, Qwest will run an ad hoc report to identify them and will manually populate the state code.

AT&T commented that since PO-2, PO-3A-1, PO-3B-1, PO-3C, and PO-4C all require state codes that it was highly likely that these results were inaccurate. AT&T also expressed concern with when the "break" occurred and whether, in months prior to July, the CLECs using EDI 6.0 had inaccurate performance results for PO-5 because of this problem. Finally, AT&T requested that Qwest's process ensure that all transactions affected by the omission of the state code were recorded.

Liberty agrees with AT&T that the results of other measures may be affected by this problem. However, Liberty had no specific knowledge of such an effect. Moreover, Liberty had concerns with Qwest's *de minimus* argument because a significant percentage of Covad orders sampled were affected by having no state code. Qwest indicated that the problem affects PO-2, PO-3, PO-4, and PO-5. Qwest also said that it primarily affects UBLs, but also impacts line sharing. Qwest claims that the problem affects less than 1 percent of orders during the period from January through May 2001.

Qwest stated that it has implemented a manual process to fix the problem, and that this correction would work for all measures. Liberty needs more information on the percentage of all relevant orders submitted via EDI that had the problem, and expects to be able to close this observation after reviewing that information.

Observation 1031

Observation 1031 reported that the Service Order Miss Code (*SOMC*) in the RSOR data for some orders was incorrect, leading to errors in performance measurement reporting. Liberty noted several different types of anomalies regarding the information in WFAC, the *SOMC*, and how they are used in performance measure reporting.

Qwest responded to this Observation on January 24, 2002. Qwest stated that it had re-evaluated every AT&T LIS trunk and unbundled loop order for the reconciliation period from the states of Arizona and Nebraska and found that zero of the 33 LIS trunk orders evaluated by Liberty in Arizona were miscoded as customer caused misses and that 1 of 827 unbundled loop orders evaluated by Liberty in Arizona were miscoded as customer caused misses. Qwest also stated that, in evaluating the data from the three states collectively (Arizona, Colorado and Nebraska), it found that 1 of 890 (0.11 percent) unbundled loop orders, and 6 of 98 (6.12 percent) interconnection trunk orders were miscoded as customer caused misses. Qwest stated that it had clarified the MFC coding process documentation, conducted a review with the Network Organization to ensure that employees correctly complete the MFC field, and individually reviewed *SOMC* coding with each ISC representatives responsible for the coding errors identified.

Liberty has not completed its review of Qwest's recently received response to Observation 1031. Liberty will review the attachments Qwest provided with its observation response and evaluate the manner in which Qwest improved its procedures and retrained its ISC representatives. Liberty will also complete its own evaluation of the LIS trunk orders from Arizona to validate Qwest's statement that none of them had been miscoded.

Observation 1032

Observation 1032 noted that Qwest included some orders in OP-4 that should have been excluded because the requested provisioning interval was greater than the then current standard installation interval. Qwest's response indicated that out of a very large number of orders, Liberty found a few PONS for which this had occurred. In fact, however, Liberty performed an analysis on only a sample of the orders and found that this improper exclusion affected over 8 percent of the sample.

Liberty is now beginning its analysis of data from the state of Washington. Liberty is finding that this problem occurs in both UBL and Line Share orders. Although Liberty's analyses are preliminary, to date Liberty has found this problem in 7 percent of the UBL orders, and in 11 percent of the line-sharing orders, assessed to date.

Qwest indicated that it had improved its documentation in an effort to prevent this problem from recurring. Liberty requested a copy of the improved documentation. Liberty also requested that Qwest address what measures, products, time frames, and which CLECs, were affected by this type of error. Qwest has not yet replied to data request (set 54), which asks for a detailed explanation of Qwest's solution to the problem and support for the error rate Qwest reported as resulting from this problem.

Observation 1033

Observation 1033 stated that there were instances where Qwest personnel determined the order application date/time incorrectly for OP-4 LIS trunk performance measurement reporting purposes. In some instances, Qwest failed to change the application day to the next day, even though the ASR was received after 3:00 p.m. MT. In other cases, it appears that Qwest used the wrong application date because of uncertainty as to whether or not the application was "complete and accurate" as is required in the definition section of the PID.

In addition, Liberty determined that several Covad UBL orders in Arizona received after 7 p.m. were dated the same day, rather than the next day in accordance with the PID. This resulted from Liberty's review of the data Covad provided too late for inclusion in the Arizona report.

In its response to the observation, Qwest stated that the net effect of its errors was minimal, *i.e.*, a one day difference during the period being reconciled. Liberty believes it is pure coincidence, and irrelevant, that Qwest's errors may net out to a small number for the period. The important fact is that Qwest committed human errors in a third of the LIS trunk orders for which the parties agreed on the denominator but not the numerator.

AT&T filed comments on this observation, questioning whether other performance measures and other products could be affected by the problem, whether there could be both systems errors and human errors involved, and whether prior results could be re-stated.

Liberty is waiting for the responses to several questions (set 53) to Qwest regarding this issue and needs more information on Qwest's ability to rehabilitate historical performance data and on which performance measures have been affected by this problem.

Observation 1034

Observation 1034 reported that Qwest failed to report many Firm Order Confirmations for Covad because it incorrectly identified line-sharing orders as unbundled loops with a non-standard interval of 72 hours. Qwest does not report records in cases where the interval is non-standard. Covad currently has a special contract with Qwest that requires delivery of UBLs within 72 hours, a non-standard interval. Line-sharing orders have a standard interval of 24 hours. Line-sharing orders that are misidentified as UBLs are therefore excluded from the measure.

Liberty has submitted data requests to Qwest regarding the time period involved with this problem and the changed its processes to correct the problem.

Observation 1035

Observation 1035 reported that there were errors in the OP-3 and OP-4 measures for states in the eastern region prior to June 2001 because Qwest included cancelled orders in the measures. This Observation is discussed above in the Nebraska-specific section of this report.

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Product Listing

Local Number Portability (LNP)

Product Description

Local Number Portability (LNP) is defined by the Telecommunications Act of 1996 as: "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers, without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."

LNP is also referred to as Service Provider Portability, because LNP enables end-users to retain the same telephone number(s) when the end-users change from one local service provider to another. The North American Numbering Council (NANC) recommended industry standards to the Federal Communications Commission (FCC) which adopted a further definition of Service Provider Portability allowing end-users to move within a Rate Center and retain their telephone number.

Service Provider Portability differs from Location Portability, which is the ability to keep the same telephone number when moving to a new location outside the rate center. It also differs from Service Portability, which is the ability to keep the same telephone number when subscribing to new services, e.g., from Plain Old Telephone Service (POTS) to Integrated Services Digital Network (ISDN). Neither Location Portability nor Service Portability have been defined or deployed within the industry. However, LNP does sometimes allow end-users to subscribe to new services when they move from one local service provider to another or when their service is moved from one switch to another. LNP also allows geographic portability within a rate center.

LNP fundamentally changes call processing in the public switched network and has been deployed in compliance with FCC and industry guidelines. LNP impacts all telecommunications providers, including interexchange carriers and wireless carriers as well as wireline local service providers.

This LNP Product Catalog primarily addresses the interactions between Qwest and CLECs as end-users choose a new local service provider and also addresses the call processing impacts for other telecommunications providers in an LNP environment.

If terms and conditions for LNP are included in the CLEC's Interconnection Agreement (IA), and those terms differ from those set forth in this Product Catalog, then the terms of the IA will prevail.

This Product Description section provides information about the various aspects of LNP, including the following topics:

- Background
- LNP Network Architecture Overview
- LRN Assignment
- Single LRN per LATA
- Service Restrictions
- LNP Query Services
- NPA/NXX Migration or Reassignment
- LNP Administration
- Managed Cuts

Background

Congress recognized the inability of end-users to retain their telephone numbers when changing local service providers, a circumstance that would hamper the development of local competition. To address this concern, the U. S. Congress added Section 251 (b)(2) to the Telecommunications Act of 1996 that requires all Local Exchange Carriers (LECs) to provide, to the extent technically feasible, Local Number Portability.

The FCC's First Report & Order in the Telephone Number Portability docket (CC-95-116), dated June 27, 1996, required that all LECs complete the deployment of a long-term service provider Local Number Portability method in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998. The Commission established a separate LNP Implementation schedule for Commercial Mobile Radio Service (CMRS) providers. All cellular, broadband Personal Communication Service (PCS) and covered Specialized Mobile Radio (SMR) carriers were required to have the capability of querying the appropriate number portability database systems in order to deliver calls from their network to ported numbers anywhere in the country by December 31, 1998. On February 9, 1999, the FCC granted the Cellular Telephone Industry Association's (CTIA) request for forbearance from CMRS LNP requirements. The new deadline for wireless LNP is November 24, 2002. However, this extension does not relieve the CMRS carriers from the querying responsibilities that became effective on December 31, 1998.

Under the network architecture and the North American Numbering Plan (NANP) which was in effect before the implementation of LNP, a telephone number functioned like a switch address. Each number was associated with an individual switch that was operated by a particular local telephone company in a specific geographical area. The area code, also referred to as the Numbering Plan Area (NPA), identified the general geographical area within which the switch provided service. The next three digits of the telephone number, referred to as Numeric Numbering Plan (NXX), also known as the Central Office Code identified the switch serving the end-user. The last 4 digits identified the specific telephone line serving the end-user's location.

Without number portability, if an end-user changed local telephone companies and received service from a different telephone company providing service from a different switch, the new provider typically assigned the end-user a new seven-digit telephone number. That new telephone number was directly associated with the new switch and the new telephone line. Without LNP technology, end-users were not able to retain their telephone number(s) when they changed local service providers.

[Click here for Information about Acronyms.](#)

LNP Network Architecture Overview

The industry solution for long-term number portability is a Location Routing Number (LRN) architecture. Under the LRN architecture, each switch is assigned a unique 10 digit LRN that identifies the location of that switch. The first 6 digits identify an NPA and NXX code that is assigned to that switch and the last 4 digits are in line number format. It is important to note that the LRN is not a telephone number; it is merely the identifier of the switch to which a telephone number is ported. However, because the NPA and NXX identify a particular switch, the four-(4) digit line number may be an assigned working telephone number in that switch.

Each ported end-user's telephone number is matched in a regional Number Portability Administration Center (NPAC) database with the LRN for the switch that currently serves that telephone number. If the telephone number is not ported, the telephone number does not appear in the Local Service Management System (LSMS) number portability database and the call is routed to the switch that was originally assigned the NPA-NXX.

In an LNP environment, it can no longer be assumed that the NPA-NXX code holder actually serves the end-user. During call setup, an LNP database in the Signaling System 7 (SS7) network is queried to determine which switch actually serves the dialed number. If the number is ported, the Called Party Number (CdPN) field is moved into the Generic

Address Parameter (GAP) field, and the LRN information is overlaid in the CdPN field so the call can be routed to the proper terminating switch. The terminating switch then completes the call to the end-user based on the data contained in the GAP.

LRN Assignment

In order to assign an LRN, you must obtain an NPA-NXX from the North American Numbering Plan Administrator (NANPA) for each LNP capable switch.

The Industry LRN Assignment Practices were developed by the Industry Numbering Committee (INC) and issued by the Alliance for Telecommunications Industry Solutions (ATIS) on July 13, 1998, and Technical Requirements No. 2 prepared April, 1999 by the T1S1.6 Working Group on Number Portability and issued by ATIS.

Specifically, the INC practice states that an NXX will not be assigned to a service provider for the sole purpose of establishing an LRN unless that service provider's switch or Point of Interconnection (POI) does not yet have an LRN for the Local Access Transport Area (LATA) where they intend to provide service". The T1S1.6 technical requirement state: "only one NPA-NXX is needed for the first six digits of an LRN per LATA to identify the switch".

Qwest had previously recommended an LRN be assigned for each rate center that you intend to serve. However, all carriers, including Qwest, have concerns regarding number conservation and in some cases assignment of new NPA-NXXs at a rate center level may not be necessary.

Therefore, to ensure conservation of numbering resources, and to comply with the INC practice, Qwest allows the ability to use one LRN to serve multiple rate center locations.

If you have already established an LRN for a particular rate center, you may continue to use that established LRN. However, if you have no need for NPA-NXX codes that have been assigned at a rate center level, you may notify Qwest of your desire to change from the LRN(s) assigned at a per rate center level to LRN(s) assigned at a per switch, per LATA level or for some lesser geographic area. Qwest will make appropriate network rearrangements to accommodate such change(s) and you may return the unused NPA-NXX codes to the number administrator.

In those instances where you have not requested and have no need for an NPA-NXX for a particular rate center, you may notify Qwest of your desire to establish an LRN per LATA, or for some lesser geographic area. This notification must occur as soon as reasonably possible, but no later than at the time you first arrange for your POI, Local Interconnection Service (LIS) trunking, etc.

Single LRN per Switch, per LATA

Single Location Routing Number (Single LRN) per switch, per LATA is an option that enables Qwest to route traffic to your network with a minimum of one LRN per switch, per LATA. This allows you to deploy one LRN per switch, per LATA or one LRN that serves multiple rate centers within the LATA. Qwest has provisions that support Single LRN per LATA. With these provisions, if the LRN is toll to the end office, the traffic will route over the access tandem to the CLEC. The routing of local traffic via the access tandem and toll trunks occurs even if you have direct LIS trunks in place.

Qwest also offers additional routing configurations that will route your toll LRN traffic to your existing local LIS trunks. In locations where LIS trunks are not available, your toll LRN traffic will be routed over the Qwest network via a tandem using existing interoffice facilities. Local LRN traffic can only be routed to a new or existing local LIS or SPOP trunk group. This solution will incorporate a 10-Digit routing scheme in Qwest switch translations. Your existing IA requirement for establishment of a POI and direct trunking to end offices remains in effect.

Single LRN can be deployed in the same network configuration with Single Point of Presence (SPOP) or LIS Jointly Provided Switched Access arrangements.

Service Restrictions

LNP Triggers are not expected to be placed on Service Codes or Service Access Codes (911, 411, 800, 866, 877, 888, 900, 500) so queries will not be performed on these call types. In addition, queries will not be performed in the originating switch for 0+, 0-, or 1+ calls routed to an InterExchange Carrier (IXC).

The porting of certain telephone numbers will not be provided when circumstances or services exist for the following:

- Across an NPA boundary in Minnesota only, based on Public Utilities Commission (PUC) mandate
- 555, 960 and 976 NXXs
- 500, 700, 800, 866, 877, 888, 900 services
- 911 service
- Other N11 codes, e.g., 411, 511, etc.
- Cellular/mobile numbers
- Qwest Public Coin or Semi-Public Coin
- Numbers used for mass calling events - Refer to North American Numbering Council (NANC). Once displayed, click on "LNPA Working Group", then select "Documents". When this page is displayed, click on "High Volume Call in Networks Report, 5/7/98".
- Reserved Numbers
 - Qwest's policy regarding the porting of reserved telephone numbers is to allow porting if the reserved numbers are identified on the end-user service record. Porting orders will not be taken on unassigned, previously owned, disconnected, disconnected following suspension for non-payment, or vacant telephone numbers.

LNP Query Services

Qwest provides Default Query Services whenever we receive unqueried calls from other telecommunications providers, including CLECs, Incumbent Local Exchange Carriers (ILECs), Interexchange Carriers (IXCs), or Wireless Service Providers (WSPs), which require a query in order to be terminated efficiently. Qwest also offers Direct Query access to the LNP database.

NPA/NXX Migration or Reassignment

When you plan to provide service for all assigned telephone numbers in a particular NPA/NXX, you should request reassignment of that NPA/NXX in the Local Exchange Routing Guide (LERG) in lieu of porting. In this situation NPA/NXX migration supports network efficiency and is the preferred industry method.

LNP Administration

There are seven regional databases that serve specific geographic areas. The Western Region database serves Qwest's 14-state local service area plus Alaska. A neutral third party, called the Local Number Portability Administrator (LNPA) administers these regional databases.

The FCC adopted the NANC recommendation that the administrative functions of the LNPA include all management tasks required to develop and administer the regional databases, called Number Portability Administration Centers (NPACs). NPAC responsibilities include:

- Administrative functions include all management tasks required to run the NPAC
- NPAC will work with the users to update data tables required to route calls for ported local numbers or required for administration
- NPAC is responsible for NPAC SMS log on administration, user access, data security, user notifications, and management and is the primary contact for users who encounter problems with NPAC system features
- The user support function should also provide the users with a central point of contact for reporting and resolution of NPAC problems
- The system support function will provide coordination/resolution of problems associated with system availability, communications and related capabilities

NPAC standard hours of business for LNP are 7:00 AM to 7:00 PM (CST / CDT), Monday through Friday

- NPAC personnel are available outside of the LNP hours of operation on a pager/call-out basis
- NPAC must meet the service level requirements as established by their respective LLCs
- NPAC will provide reports to regulatory bodies as required

[Click here to refer to North American Numbering Council.](#)

Managed Cuts

Managed Cuts are available for LNP in the following arrangements:

- Qwest Initiated Managed Cut
- CLEC Initiated Managed Cut
- LNP Coordinated Cut with Unbundled Loop

When a Qwest Initiated Managed Cut or CLEC Initiated Managed Cut is ordered, Qwest will initiate a telephone call and/or arrange a meeting with you to discuss detailed information regarding the Managed Cut.

Qwest Initiated Managed Cut

Qwest will initiate a Managed Cut when the 10-digit unconditional trigger or Line Side Attribute (LSA) cannot be set or when the port request for an account exceeds 2000 Telephone Numbers (TNs) or 200 trunks. Qwest Initiated Managed Cuts scheduled within the normal business hours are provided at no additional charge. If the CLEC requests a Frame Due Time (FDT) that is outside the normal business hours, the terms, conditions and prices of the LNP Managed Cut offering will apply.

CLEC Initiated Managed Cut

A CLEC Initiated Managed Cut is available under the "LNP Managed Cut offering. If the LNP Managed Cut offering is not included in your IA, contact your Service Manager to request an LNP Managed Cut amendment.

This offering allows you the ability to request coordination of a cut for LNP with a CLEC-provided loop (i.e., standalone LNP). LNP Managed Cuts are offered on a 24x7 basis. You may request any FDT when the mechanized 10-digit unconditional trigger can be set for the TNs being ported. However, if you request a coordinated cut for LNP with a CLEC-provided loop, even though the mechanized 10-digit unconditional trigger can be set, and/or if you request a coordinated cut outside normal business hours, the terms, conditions and prices of Qwest's LNP Managed Cut product offering will apply.

LNP Coordinated Cut with Unbundled Loop

A LNP Coordinated Cut with Unbundled Loop is available if you request to have your LNP cut coordinated with Qwest's Unbundled Loop product. LNP Coordinated Cuts with Unbundled Loop will follow the Unbundled Loop process and charges associated with the Unbundled Loop product will apply.

Technical Publications

Design requirements are specified in Technical Publication 77342.

Other technical publications can be found on NANC.

Availability

The FCC addressed specific requirements for providing number portability on an interim basis, known as Interim Number Portability (INP) as well as development and deployment of the long-term solution known as LNP. Qwest has deployed LNP in nearly every end office.

To determine LNP availability, refer to Network Disclosure.

Qwest has offered INP since 1996 utilizing Remote Call Forwarding, Direct Inward Dialing service and Directory Number Route Indexing. INP is only offered in those few locations where LNP is not deployed. You may continue to request INP in a non-LNP capable switch.

If you want LNP capability in a switch where Qwest has not deployed LNP, you may submit an LNP Bona Fide Request (BFR) letter to Qwest at any time. The LNP BFR process is separate from the BFR process for interconnect services, and no charges apply for the LNP BFR process.

Any certified CLEC with an approved IA may submit an LNP BFR letter to request LNP capability in a switch where LNP has not yet been deployed. The request must include the 11-digit CLLI code of each Qwest switch being requested to become LNP capable.

The following outlines what will take place upon Qwest's receipt of the LNP BFR letter:

- Confirm received letter within 10 business days
- Deployment dates communicated no later than 45 calendar days
- The timeline for conversion is within 180 days
- Qwest switches selected through the LNP BFR process will be posted on the network disclosure web site

When submitting an LNP BFR letter, please provide copies to:

- Lorna Dubose
Qwest LNP Product Manager
1801 California, Room 2360
Denver, Co 80202
Telephone Number 303-896-0227
Fax number 303-896-9022
ldubose@qwest.com
- A copy should also be sent to your Qwest Service Manager.

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Pricing

Rates

Cost Recovery Charge

The FCC-approved charge for LNP cost recovery, contained in FCC Tariff 1, is to be assessed on Qwest end-user services including all resold lines and unbundled switch ports. The charge per line per month is \$.43 with the following exceptions:

- The rate is applied five times per ISDN facility (\$2.15 per month); and
- The rate is applied nine times per Private Branch Exchange (PBX) trunk (\$3.87 per month)
- The rate will not be assessed on Lifeline Assistance Program end-users
- The rate will not be assessed on local loops that you purchase as UNEs under Section 251

Charges for the LNP Managed Cut Offering

LNP Managed Cuts are offered on a contract basis, and the prices are not included in FCC Tariff 1.

The charges you will incur for the LNP Managed Cut are dependent upon the FDT. The rates are based upon whether the request is within or outside Qwest's normal business hours. Qwest's normal business hours are 7:00 AM to 7:00 PM, local time Monday through Friday. The rate for LNP Managed Cuts requested during normal business hours is the standard rate. The rate for LNP Managed Cuts requested outside normal business hours, except for Sundays and Holidays, is the overtime rate, and the rate for Sundays and Holidays is the premium rate.

Charges for LNP Managed Cuts will be based upon the actual hours worked in ½ hour increments multiplied by the number of Qwest personnel actively participating in the cut.

In those situations where Qwest determines a need to manage a cut,

(e.g., the 10-digit unconditional trigger cannot be set) those LNP Managed Cuts would be scheduled during normal business hours and there would be no charge. The following matrix provides examples of when charges apply and when there is no charge.

Managed Cut Activity	Mon-Fri 7 AM to 7 PM (During Normal Business Hours)	Mon-Fri 7 PM. to 7 AM., or Sat. Sun. & Holidays (Outside Normal Business Hours)
CLEC requests an LNP Managed Cut	Charge	Charge
Qwest requires a Managed Cut for DID in the DMS10 and Ericsson switches	No Charge	Charge (CLEC requests the cut outside normal business hours)
Qwest recommends a Managed Cut for more than 2000 Telephone Numbers and/or more than 200 Trunks	No Charge	Charge (CLEC requests the cut outside normal business hours)

Qwest will schedule the appropriate number of employees for the cut, based upon information provided by you during the coordination meeting. If such information changes and requires modifications during the cut, and as a result, non-scheduled employees are required, you will be charged a three-hour minimum callout per each additional non-scheduled employee. If the cut is either cancelled, or a supplemental order is submitted within 24 hours of the negotiated FDT to change the Due Date (DD), you will be charged a three-hour minimum.

NOTE: Charges are rounded up. For example, if an LNP Managed Cut requires 2 hours and 10 minutes, the rates will apply for five 1/2 hour increments, per person.

Charges will be calculated based on actual 1/2 hours required for the cut, times the number of employees required for each 1/2 hour of the cut, multiplied by the appropriate rate based on the day and time of the cut. Managed Cuts during Qwest's normal business hours of 7:00 AM to 7:00 PM, Monday through Friday, will be charged at a Standard rate of \$27.38 per 1/2 hour. If the FDT is outside Qwest's normal business hours on Monday through Saturday (excluding holidays), the charge will be at an Overtime rate of \$35.43 per 1/2 hour. If the FDT is on a Sunday or a Holiday, the charge will be at a Premium rate of \$43.49 per 1/2 hour.

Rates for LNP Managed Cuts

Managed Cut - Standard	\$27.38 per 1/2 hour, per person
Managed Cut - Overtime	\$35.43 per 1/2 hour, per person
Managed Cut - Premium	\$43.49 per 1/2 hour, per person

Example: You and Qwest preplan a 10:00 PM cut on a Monday (outside normal business hours). The cut takes 1 1/2 hours, and three Qwest employees participate. The applicable charges are as follows:

$$\$35.43 \text{ times } 3 \text{ (people) times } 3 \text{ (1/2 hour increments)} = \$318.87$$

Tariffs, Regulations, and Policies

LNP cost recovery is in the federal jurisdiction. The end-user charge for LNP cost recovery and the rates for LNP Query Services were filed and approved under FCC Tariff 5, now FCC Tariff 1. LNP Managed Cuts are offered on an IA basis.

Qwest's LNP deployment and federal tariff filings were completed in compliance with orders resulting from CC Docket No. 95-116 and include,

but not limited to, the following:

- First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, RM 8535, *In the Matter of Telephone Number Portability*, FCC 96-286, released July 2, 1996, ("LNP Order")
- First Memorandum Opinion and Order on Reconsideration, CC Docket 95-116, RM 8535, *In the Matter of Telephone Number Portability*, FCC 97-74, released March 11, 1997 ("First Order")
- Second Report and Order, CC Docket No. 95-116, RM 8535, *In the Matter of Telephone Number Portability*, FCC 97-289, released August 18, 1997, ("Second Order")
- Third Report and Order, CC Docket No. 95-116, RM 8535, *In the Matter of Telephone Number Portability*, FCC 98-82, released May 12, 1998 ("Third Order")
- Common Carrier Bureau's Memorandum Opinion and Order, CC Docket No. 95-116, RM 8535, *In the Matter of Telephone Number Portability Cost Classification Proceeding*, DA 98-2534, released December 14, 1998, ("Cost Classification Order")
- Competitive Pricing Division's Order, CC Docket No. 95-116, RM 8535, *In the Matter of Telephone Number Portability Tariff Filings*, DA 99-128, released January 8, 1999, ("Filing Order")

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Features/Benefits

Features	Benefits
End-users can retain their present telephone number	Easier to attract new end-users when they do not have to change their telephone number
Qwest has widespread deployment of LNP throughout its 14-state local service region	Widespread deployment gives CLECs more efficient market entry capabilities
Qwest's portability platform allows numbers to move from switch to switch within a rate center	Platform portability paves the way for future number conservation through number pooling

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Applications

Please contact your Qwest Sales Executive for information.

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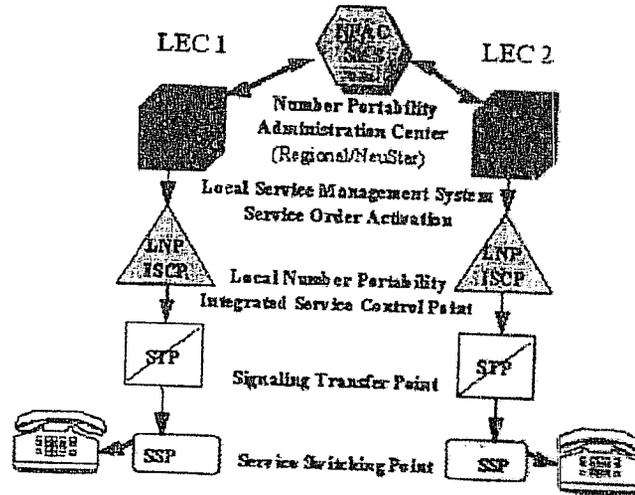
Implementation

Porting Process Overview

When an end-user changes from one LEC to another and wants to retain their telephone number(s), the CLEC who "wins" the end-user will "port" the end-user's number from the former CLEC. Coordinated order activity by the previous and new local service providers removes the end-user's telephone number from one provider's records and establishes it in the records of the other, establishing the new LRN for call routing purposes. This order activity is electronically transmitted (uploaded) communicating the new LRN to the administrator of the relevant regional database. This will pair the end-user's original telephone number with the LRN for the switch of the new CLEC, allowing the end-user to retain the original telephone number. The regional database administrator (NPAC) will then electronically transmit (download) LRN updates to CLEC-operated LSMS. Each CLEC will distribute this information to Service Control Points (SCPs) or Signal Transfer Points (STPs) that CLECs will use to store and process data for routing calls to ported numbers.

Following is a diagram of the basic network elements that are required for all LECs, including CLECs in an LNP environment:

LNP - Basic Network Element Diagram



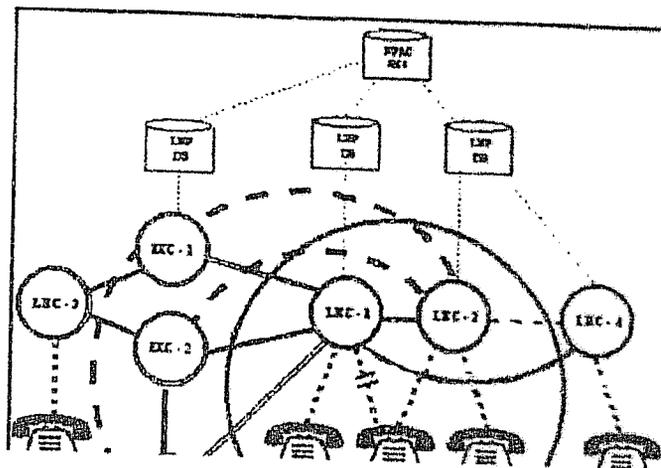
LNP Call Routing Descriptions

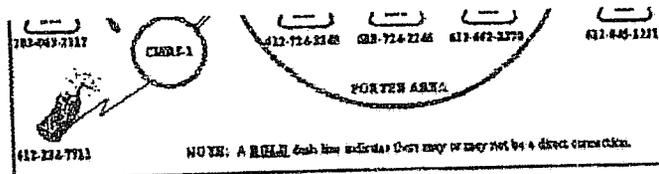
For you to route an interswitch telephone call to a location where number portability is available, you must determine the LRN for the switch that serves the terminating telephone number of the call. Once number portability is available for an NXX, you must "query" all interswitch calls to that NXX as appropriate, to determine whether the terminating end-user has ported the telephone number. You will accomplish this by sending a signal over the SS7 network to retrieve from a SCP or STP the LRN associated with the called telephone number.

The FCC has endorsed an "N minus one" (N-1) querying protocol. Under this protocol, if you are the N-1 CLEC, you will be responsible for the query, "where 'N' is the entity terminating the call to the end-user, or a network provider contracted by the entity to provide tandem access. Thus the N-1 CLEC (i.e. the last carrier before the terminating carrier) for a local call will usually be the billing owner of the call. The N-1 carrier for an interexchange call will usually be the calling end-user's IXC. If you are the N-1 CLEC you may perform your own querying, or you may arrange for other CLECs or third parties, or for Qwest to provide querying services on your behalf.

To better understand when queries are performed, download LNP Call Flow Diagram.

Following is a simplified trunking and SS7 diagram for connections within a ported area:





Click here to refer to NANC.

LRN Trunking, Signaling and Dialing Plans

An LRN looks just like a telephone number to a switch that is using the LRN for call routing purposes. It is very important to understand your signaling requirements and the result of the LERG inputs to set up your networks appropriately for LNP.

An LRN definition was provided to the industry via the NANC LNP Architecture and Administrative Plan (Issue 2, Revision 0, April 14, 1998):

"LRNs are 10-Digit numbers that are assigned to the network switching elements (Central Office - Host and Remotes as required) for routing of calls in the network. The first six digits of the LRN will be one of the assigned NPA NXX of the switching element. The purpose and functionality of the last four digits of the LRN have not yet been defined but are passed across the network to the terminating switch."

This definition can potentially create some confusion regarding whether a 7 or 10-Digit LRN is to be transmitted between Service Providers for LNP calls. A 7, 10 and 7 or 10-Digit LRN transmit option will work based on how the participating Service Providers have set up their trunking and signaling network. It is vital that Service Providers on both ends of a Trunk Group understand what is being sent and received. It is also important to understand that the 7 or 10-Digits are counted from right to left.

Technically, an LRN in a signaling message looks just like a telephone number. The switch uses the LRN for routing purposes, and handles the LRN just like a called party telephone number. Therefore, the switch determines where to route a call by the NPA NXX included in the LRN. This routing information provided in Section 4.6 of the LERG determines where and how (signaling) that the NPA NXX should be routed. The LERG input includes the number of digits signaled, whether SS7 or Multi-Frequency (MF), on trunk groups that are used by the complex translations routing group to complete the translations for a particular switch.

Timing and Coordination of Changes in the LERG and Switch

Changes that are entered into the LERG, intended for the network, have the potential to affect the end-user's telephone service. Therefore when signaling changes are required, it is critical that the timing considerations for LERG changes be fully understood and adhered to, including the Maintenance Window Policy.

These timing considerations are identified in the Central Office Code Assignment Guidelines. These guidelines also discuss minimum timing requirements for LERG changes. In viewing these guidelines, you will be able to locate INC Document Number 95-0407-008, Title CO Code (NXX) Assignment Request & Confirmation Form, Part 3. Upon consideration of the timing guidelines, complete this form and submit your LERG changes.

Changes to LRNs also require this same type of planning and coordination, as well as coordination with the NPAC to perform routing changes and mass updates. Changes to LRNs may be caused by various reasons, such as switch replacement, reassignment of NPA-NXX codes from one service provider to another and/or NPA splits.

For CLECs, the Interfacing company's Service Manager must be notified of the LERG updates, including 7 to 10-digit, LRN or other types of changes so they can be scheduled and coordinated with the Routing Translations.

groups in both companies. As a result of this coordination and planning for the minimum elapsed time, as prescribed in the Industry Guidelines, the involved Service Providers will be able to make the necessary changes to their respective networks on the "EFF DTE" shown in the LERG without disruption of end-user telephone services.

Dialing Plans

The information in the previous section addresses 7-Digit vs. 10-Digit LRN Trunk Signaling in the signaling network. A signaling plan differs from a dialing plan for a local calling area. Signaling plans are determined by the individual service provider, whereas dialing plans are determined by the state utilities commission.

Signaling changes may be required as a result of state-ordered dialing plan changes. Changes to a signaling network resulting from dialing plan changes may require coordination between CLECs, and this coordination is addressed in the ATIS Guideline referenced above.

[Click here to review Dialing Plans within Qwest territory.](#)

Following are examples of some specific Dialing Plans:

Minneapolis, MN	Seattle, WA	Denver, CO
<ul style="list-style-type: none"> - Multiple NPAs in the Minneapolis Metropolitan Statistical Area (MSA); NPAs are geographically assigned to a particular municipality and there may be multiple NPAs within a rate center. - Commission ordered TN porting cannot occur between NPAs. - If dialing outside of your own NPA, 10-Digit dialing is mandatory but not necessarily a toll call. 	<ul style="list-style-type: none"> - Multiple NPAs, not overlaid. - If dialing within your own NPA, 7 or 10-Digit dialing is permissive. - If dialing outside of your own NPA, 10-Digit dialing is mandatory but not necessarily a toll call. 	<ul style="list-style-type: none"> - Multiple NPAs; this is an overlay network. - Porting between NPAs is permitted. - 10-Digit local dialing is mandatory in all cases.

Implementation Plan for Single LRN

When you are ready to deploy Single LRN, contact your Qwest Service Manager. The Qwest Service Manager will send you the NPA NXX Code Request Routing Form for completion. This form asks you to identify the appropriate trunk groups (using 2-6 codes) for Single LRN traffic.

Your Qwest Service Manager will schedule a Single LRN planning meeting to clarify where and how the Single LRN will be applied within a Local Calling Area (LCA) or LATA. If you have an existing LIS network, your current network configuration will be shared at this meeting. In this meeting, both you and Qwest personnel will jointly establish the intervals and implementation date for deployment.

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Prerequisites

If you are a new CLEC and are ready to enter the interconnection business with Qwest or an existing CLEC wishing to amend your IA, you can find additional information in the Getting Started web page.

The following are actions that must be completed by you prior to submitting a Local Service Request (LSR) to port a telephone number:

- Provide after hours contact personnel, who will be responsible for general problem resolution
- Provide a valid FAX number that is operational Monday-Friday, 9 AM to 10 PM, Central Time Zone
- Test LSMS and the Service Order Administration (SOA) functions

Establish SS7 Requirements

Your SS7 network must adhere to the industry standards established for

LNP. Additionally, there are impacts to the Line Information Data Base (LIDB), Calling Name (CNAM), Custom Local Area Signaling Service (CLASS), and Inter-Switched Voice Messaging services as a result of the industry standards. It is critical that each company's SS7 technical experts review the requirements and your specific deployment plans as related to SS7 message queries. The use of an independent SS7 network and/or SS7 hub provider could introduce additional requirements. If there is another provider of SS7 service involved, they should be a part of the requirements review.

Establish E911 Requirements

All Carriers are required by state or municipality to connect to the E911 network. This includes specific trunking arrangements, default routing and data generation. The state or municipality should be contacted by the CLEC to determine the requirements for the metro area or state.

All carriers must adhere to the National Emergency Number Association (NENA) requirements for LNP. This requires that the Company ID be passed to the E911 database, along with the Service Provider Company ID and other data elements from the service order. There is a particular data structure that is to be followed along with specific function indicators (Unlock, Modify, etc.) that are to be used.

Determine Testing Requirements

If you wish to perform testing to ensure that your signaling, switching, databases, systems and processes are functioning properly prior to submitting LNP orders, you may want to contact your Qwest Sales or Service Manager.

When contacting Qwest, please provide information about your testing requirements:

- The serving area you plan to test within
- The switch(es) involved in the testing
- How many test numbers you need Qwest to establish and in what locations
- The timeframe you prefer to do the testing

Also, please provide as much information as possible about the type of testing you intend to perform. For example, are you planning to:

- Perform call processing tests only, to ensure that your network and signaling databases are capable of delivering calls to ported and/or non-ported numbers? (This type of testing may be applicable to wireless carriers and Interexchange Carriers (IXCs), as well as wireline Local Exchange Carriers (LECs).)
- Perform intra-company tests only, to ensure your switching, signaling and databases meet the LNP operational requirements and that you have the systems and processes in place to accommodate the porting of TNs?
- Perform end-to-end, inter-company testing that includes submitting LSRs to port test numbers between Qwest and your company?

Once you have provided your initial testing information to Qwest, your Sales or Service Manager will establish a meeting with you to further define your testing requirements, to identify the key personnel for conducting the test, from both your company and from Qwest, and to establish the testing a timeline. Additional meetings may need to occur prior to the testing, and may include identification of test scripts, if appropriate.

Qwest will initiate service orders to establish test accounts, based on your testing requirements, and will provide information about the test accounts, including the account name(s), telephone number(s), and due date of the new connect service order(s). If inter-company testing is required, critical dates will be jointly established and may include dates for:

- LSR exchange
- FOC exchange
- Porting of the TN(s)
- Disconnecting test account(s)

During inter-company testing, you will be responsible for:

- Ensuring the subscription is sent to the NPAC
- Verifying activity on subscriptions at the NPAC (i.e. T1 and T2 timers)
- Completing the provisioning on your switch for the test account(s)
- Sending the activation to the NPAC to port the TN(s) on the requested due date

Upon completion of intra-company testing, you will notify Qwest that the test accounts may be disconnected. For inter-company testing, you will need to disconnect the Qwest numbers from your switch and return them to Qwest, the original code holder. If test numbers have also been ported from your switch to Qwest, Qwest will need to disconnect the numbers and return them to you.

Provisioning - Single LRN per LATA

The provisioning process for Single LRN per LATA is outlined in the following steps:

- Contact your Qwest Service Manager with Single LRN request
- The Qwest Service Manager will explain the process and will supply the NPA/NXX Code Request Routing Form to you
- Provide the completed the NPA/NXX Code Request Routing Form to your Qwest Service Manager for distribution prior to the meeting
- The Qwest Service Manager will schedule and chair Qwest/CLEC meeting (including Qwest Routing Technical Managers) to review the proposed network configuration, gain clarification and establish jointly negotiated due dates
- Qwest internal groups will perform necessary internal work
- Translations are completed for your trunk groups (2-6 code) by an established jointly negotiated due date

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Pre Ordering

The following actions must be completed prior to submitting a LSR to port a telephone number:

- Obtain Letter of Authorization (LOA) from the end-user to act as their agent to transition and provide ported number service.
- Review the end-user's Customer Service Record (CSR) verifying all numbers to be ported, including any numbers for alarm services, custom ring numbers or off premise extensions. Your request for port activity only addresses porting of telephone numbers.

Single LRN per Switch, per LATA

If you are establishing a new LIS network in a given LCA, you may order Local Interconnection Service trunking any time before the establishment of Single LRN per switch, per LATA functionality. Once all the new LIS trunking has been ordered and you have a confirmed DD, you will need to fill out the NPA/NXX Code Request Routing Form to identify the appropriate trunk groups (2-6 Codes) that Single LRN per switch per LATA traffic will be pointed to.

Click here for general information about Pre Ordering.

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Ordering

Ordering standards are developed at the national Ordering and Billing Forum (OBF).

Complete LSR along with the following forms:

- EUI - End User Information
- NP - Number Portability Service or
- LSNP - Loop Service with Number Portability
- DSR - Directory Service Request

LNP orders are placed using a LSR.

To obtain these forms contact Telcordia.

The Interconnect Mediated Access (IMA) Reference Guide specifically details the information available for ordering functions.

Provisioning Interval guidelines are found in the Service Interval Guide (SIG).

For information on completing forms, refer to Manual Ordering/Process Forms General Information.

Additional ordering guidelines can be found in the general Ordering Information.

Hours of Operation

NPAC has defined their standard hours of business for LNP as 7:00 AM. to 7:00 PM, (CST/CDT), Monday through Friday. Non-business hours/days are defined as 7:01 PM to 6:59 AM Monday through Friday, and all day Saturday and Sunday. NPAC holidays include New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Eve Day and Christmas Day.

Qwest's normal hours of business coincide with the established NPAC's standard hours of business. Normal hours of operation for activating subscription DD and Frame Due Time (DD/FDT), submitting orders to the NPAC, error resolution, cancellation, conflict setting, and resolution will be Monday through Friday during the NPAC standard hours of business. Qwest's standard hours of operation for LNP are:

Hours	States
7:00 AM to 7:00 PM Central Time	Iowa, Minnesota, Nebraska, North Dakota, South Dakota
7:00 AM to 7:00 PM Mountain Time	Arizona (during MST), Colorado, Idaho, Montana, New Mexico, Utah, Wyoming
7:00 AM to 7:00 PM Pacific Time	Arizona (during MDT), Oregon, Washington

Based on the above chart, by time zone, Qwest's hours of operation for the Interconnect Service Center (ISC) are 6 AM to 8 PM Mountain Time, Monday-Friday. Qwest also has staff available from 7 AM to 5 PM Mountain Time on Saturday to support the following functions:

Name/Group/Title	Telephone Number	Functions
Call Center Representatives	888-796- 9087	<ul style="list-style-type: none"> • LSR/Order Status, Inquiries on Completion, Due Dates, FOCs, • Assisting with LSR Preparation • Resend FOCs/Rejects • Missed FOC Intervals, Due Date Expedites, Cut Overs, Out of Service, Emergency Cancels or Due Date Changes • Missed Due Dates • Feature Discrepancies



If you require any additional assistance, please contact your Service Manager directly. If you do not have the number of your Service Manager, the Call Center will contact them for you.

Directory Listings

You are responsible for contacting a listing service and establishing listings for your end-users.

Qwest has implemented unique non-OBF entries in the LSR ACT field. To ensure end-user listings are either retained or discontinued one of the following entries is required:

- An ACT entry of "Z" will retain the current listing(s)
- An ACT entry of "V" will discontinue listings associated with the port activity (all listings are removed)

If you wish to have Qwest listings retained, then the Directory Service Request (DSR) form should be forwarded to Qwest as follows:

- Qwest Listing Service System (LSS) FAX Number 503-242-1653
- Qwest LSS Contact Number 503-242-7822
- Qwest LSS Alternate Number 503-242-7856 or 503-242-7873

The DSR form is required and must be forwarded to the Qwest LSS if the ACT field on the LSR has an entry of "Z" and the listing(s) of the ported telephone number(s) is to be retained.

Supplemental Input

Supplemental Input to an LSR to add number(s) will not be accepted. You will need to issue a new LSR for the additional number to be ported.

Supplemental input to change the NSP ID or the OSP ID will not be accepted. You will need to cancel the incorrect activity and issue a new LSR.

Due Date Changes

You must notify Qwest via LSR supplement or a call to the ISC if you require a DD change for your port activity. Notifications of DD changes should be made as soon as possible on the DD and prior to 8:00 PM Mountain Time. Late notification of DD changes will require that you call the ISC prior to 12:00 noon on the day after the DD (in the end-users' time zone) and issue a LSR supplement via IMA or IIS to confirm the request. Late DD change notifications after 12:00 noon the day after the DD, will require you to contact the Call Center Representative at 888-796-9087 to initiate an escalation ticket for these late changes.

Cancel

You must notify Qwest via LSR supplement or a call to the ISC if you require a cancel of the port activity. Notifications of DD cancels should be made as soon as possible on the DD and prior to 8:00 PM Mountain Time. Late notification of DD cancels will require that you call the ISC prior to 12:00 noon on the day after the DD (in the end-users' time zone) and issue a LSR supplement via IMA or IIS to confirm the request. Late cancel notifications after 12:00 noon the day after the DD will require you to contact the Call Center Representative at 888-796-9087 to initiate an escalation ticket for these late cancels.

Managed Cuts

• **LNP Managed Cut Scheduling**

Up-front planning and coordination with Qwest is required to establish the date and time for an LNP Managed Cut. All requests will be processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Qwest will coordinate with you for an agreed upon FDT and Firm Order Confirmation (FOC) prior to issuing the FOC. Generally the FOC date will not exceed the standard interval.

- **LSR Entries for LNP Managed Cuts**

You may request an LNP Managed Cut by submitting an LSR and designating the order as a "Managed Cut" in the Remarks section of the LSR form. Specifically, LNP Managed Cuts require a notation in the Remarks and DFDT sections of the LSR, e.g.:

Remarks = Managed Cut
DFDT = Anytime 24x7

When submitting an LSR in the IMA GUI or EDI, you must populate the Manual Indicator field with the letter "Y".

All negotiated requests must be scheduled on the LNP Operations schedule in 30-minute time slots.

- **CLEC Responsibilities** You will need to schedule the appropriate personnel for the negotiated FDT for the LNP Managed Cut. You are also responsible for NPAC coordination if a Managed Cut is scheduled outside the NPAC's normal business hours.

Ordering Process (Single LRN per Switch, per LATA)

For new LJS trunking arrangements, Qwest Service Delivery Coordinators (SDCs) receive an Access Service Request (ASR) from you. There are some changes in the ASR entries for Single LRN. The current ASR process normally requires a local NPA-NXX for a trunk group order, however for Single LRN per Switch, per LATA this is not required. You will submit the ASR with the following two entries:

- In the ASR the Remarks field will contain "Single LRN Routed Only - See NPA-NXX Code Request Routing Form".
- On the Translations Questionnaire (TQ), the Remark will contain "Single LRN and the NPA-NXX-XXXX (10-Digit LRN)" and the NPA NXX Field will remain blank.

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Provisioning

General Reject Reasons are found in the general Ordering Information.

There are some additional specific reasons why the LSR request for LNP may be rejected. To view those reasons, download LNP LSR Reject Reasons.

Standard Intervals for LNP Service Intervals for LNP are described below. These intervals include the time for FOC. Orders received after 7:00 PM (Mountain Time) are considered the next business day. The following service intervals have been established for LNP:

Product Type	Quantity of Telephone Numbers to Port	Interval (Intervals for LNP without unbundled loops)
Simple (1FR/1FB)	1 -5	3 Business days (includes FOC 24 hr. Interval)
	6-50	4 Business days (includes FOC 24 hr. Interval)
	51 or more	Project Basis
Complex (PBX trunks, ISDN, Centrex)	1-25	5 Business days (includes FOC 24 hr. Interval)
	26 or more	Project Basis

For the Standard Interval Guide, please see the guidelines on the Qwest Wholesale Markets web site.

Listed below is an example of the steps taken in the port out process for 1-5 lines, simple, standard DD request. The steps for 6 or more lines or complex services will be the same, however the timing intervals will be based on standard intervals for the specific product type.

Step	Process	Result
1	CLEC completes sale to new customer, validates CSR and completes LSR forms	CLEC sends LSR to Qwest (Day 0)
2	Qwest receives LSR and processes request	Qwest provides FOC to CLEC and sends order. Subscription is created at NPAC. (Day 1)
3	CLEC receives FOC and sends create message to NPAC to match subscription activity	Qwest Proactive group calls CLEC if finds missing subscription activity, conflict or errors
4	Qwest sets 10 digit unconditional trigger no later than 11:59 PM the day before the DD. (Day 2)	10 digit trigger set (Day 2)
5	CLEC sends activation to NPAC to port number on DD/FDT. NPAC broadcast sent to all Service Providers. (Day 3)	Broadcast received, number is ported to CLEC. Qwest service order is completed. (Day 3)
6	Service Order completed	Data transmitted to E911 in daily batch file after service order completion
7	Disconnect and removal of switch translations is completed in Qwest switch no earlier than 11:59 PM the day after the DD	

LNP Proactive and Escalation Process for Failed Port

Qwest will place a call to you on LNP order activity if we find missing subscription activity, an error or conflict situation. This call will be placed up to 24 hours prior to the due date.

If you require manual concurrence of your subscription, contact the ISC prior to the scheduled port activity. You may contact the ISC up to 48 business hours prior to the scheduled DD/FDT to request a manual concurrence.

Failed Port Activities

If you have any problems during your port activity and determine the need to have the end-user restored on Qwest facilities, you must contact the Qwest ISC immediately and open an escalation ticket.

Any requests to cancel or withdraw a "port process" that are in progress will need to be addressed on an individual case basis. The New Service Provider (NSP) controls the port activation. Once the broadcast has been sent from the NPAC to all Service Providers and the subscription is "active"; the number has been ported to the NSP. At this point, Qwest, as the Old Service Provider (OSP), does not have control of the ported number and cannot change any part of the subscription in the NPAC. If you are having problems with the broadcast, Qwest will work cooperatively to assure the routing information is correct.

Qwest will require a supplemental LSR or a new LSR on all requests to restore service for the end-user in the Qwest Switch. If a new LSR is required then add a "WB" to the end of the original LSR PON number and submit the new LSR request.

You must contact the ISC in the event that the end-user's service has been disconnected, and you are requesting restoration of the service on Qwest facilities. The escalation representative in the ISC will request that you send an LSR indicating in the Remarks section, "Restore End-User

CONTINUATION

[1]

Service, cancel or change port DD", whichever is appropriate. Additionally, when submitting the LSR in IMA GUI or EDI, you must populate the manual indicator field with the letter "Y". Qwest will begin the restoration process for the end-user's service upon receipt of the LSR.

Timeframes to Contact the Interconnect Service Center or Repair Center:

- Up to 48 hours Prior to the Due Date:
 - Service Affecting Problems - Contact Retail Repair 800-954-1211
 - Any order changes (e.g., due date changes, change in order content) - Send a supplement
- Within 48 Hours of the Due Date (Before or After):
 - Service Affecting Problems - Contact ISC 1-888-796-9087
- Beyond 48 hours after the Due Date
 - Service Affecting Problems (after number(s) has been ported by you) - Contact Account Maintenance Support Center (AMSC) (Repair Service) 1-800-223-7881

Qwest's Interconnection Service Center Hours are 6 AM to 8 PM, Monday-Friday; and 7 AM to 5 PM, Saturday, Mountain Time. Please contact a Call Center Representative or a Customer Service Inquiry and Education Group Representative based on the following escalation steps:

Steps of Escalation	Name/Group/Title	Telephone Number	Function
1st Step of Escalation	Call Center Representatives	888-796-9087	-LSR/Order Status, Inquiries on Completion, Due Dates, FOCs -Assisting with LSR Preparation -Resend FOCs/Rejects -Missed FOC Intervals, Due Date Expedites, Cut Overs, Out of Service, Emergency Cancels or Due Date Changes, -Missed Due Dates -Feature Discrepancies
2nd Step of Escalation	Customer Service Inquiry and Education Group Representative	See product sheet for your support team list and TN's	-Any Missed Commitments of Escalation Reps, Assist Team with issues and Escalations

If you require any additional assistance, please contact your Service Manager directly. If you do not have the number of your Service Manager, the Call Center will contact them for you.

Return of Disconnected Ported Numbers

When a ported number is completely disconnected, you must return the number to its original code holder or block holder. Qwest numbers will return to Qwest on the effective release date. You shall age ported telephone numbers that have been disconnected based on the FCC's requirements, prior to returning them to Qwest. These requirements can be found in CC Docket No. 99-200 "Numbering Resource Optimization" orders.

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Maintenance

More information is available in the Maintenance and Repair Overview web page.

Trouble Reporting

You are responsible for resolving trouble reports from your own end-users. Misdirected repair and Customer Service calls from the end-user to Qwest will be referred to you as the new service provider.

Qwest will work cooperatively with you to resolve trouble reports when a trouble condition has been isolated and determined to be within the Qwest network.

If your end-user calls the Qwest Repair Center or Customer Service because they have experienced trouble on their line, they will be referred to you, as the provider serving their account.

The AMSC is open 24 hours a day and can be reached at 1-800-223-7881.

Refer/Open Customer Trouble Report (CTR)

- You will call the AMSC @ 1-800-223-7881
- You will provide the **Ported Telephone Number** in trouble, including the old and new service provider
- Qwest Repair Service Attendant (RSA) will verify ported TN
- You must test and isolate the trouble to the Qwest network

Following is the type of detailed information you will be asked to provide:

- State the **full trouble description**. If there are "can't call" or "can't be called" reports, be sure and state the full ten (10) digit telephone numbers (originating and terminating numbers) experiencing problems.
- State the name and number of the person to be **contacted** for cooperative testing, closing the ticket, etc
- State your **test call results**.
- If trunking is involved, state the **identifying trunk code or trunk routing**
- Identify the SS7 provider and provide SS7 trapped messages from your testing including if you have a SS7 hub provider
- State the **home tandem** (as identified in the Local Exchange Routing Guide (LERG))
- State whether **office translations** have been verified
- Validate and provide the **Location Routing Number (LRN)**
- If the trouble involves Customer Local Area Signaling Service (CLASS), Line Information Data Base (LIDB) and/or Caller ID with Name (CNAM) you should know who the Service Provider is and if you have an Interconnection (Signaling) Agreement
- State the **Destination Point Codes (DPCs)** for the switch, **CLASS/LIDB/CNAM**
- If the problem is pointing to Long Distance (LD), indicate the Long Distance carrier that testing shows is having the problem of terminating calls in the Qwest network. Also provide the name and number of the person in the LD company with whom you worked on the LD trouble.
- If you are receiving a recording, please state exactly what the recording says and the specific trailer, if applicable
- If the problem is in an area involving a NPA split, you need to state **NPA split data** that needs to be checked
- Qwest RSA needs to know of any recent order activity. You should include the any Qwest order number and due date.
- Qwest representative will give commitment time based on standard intervals
- Test results are not given by the RSA at this time
- RSA will advise you of the ticket number for tracking

NOTE: If the TN reported is not found in a Qwest database, the RSA will generate a message ticket on the TN reported. Once the TN is

determined, a new repair ticket will be opened and you will be notified.

Modify Existing Customer Trouble Report (CTR)

- You will call the AMSC @ 1-800-223-7881
- You will refer to CTR with ported TN
- Qwest RSA will add or change information provided by you

Qwest will only accept information for CTRs that are in an open status and depending on the information, may lead to a new commitment time

Customer Trouble Report (CTR) Status

- You will call the AMSC @ 1-800-223-7881
- You will refer to CTR with ported TN
- Qwest representative can provide immediate status (IST)

AMSC will not proactively status your CTR

Customer Trouble Report (CTR) Jeopardy

- Qwest can determine a jeopardy at any point in the CTR process when it becomes quite likely that the CTR commitment will be missed
- Qwest will keep working on the CTR until finished
- Whatever Qwest center has the CTR at the time a jeopardy is determined will attempt to contact your contact number. The Qwest center will attempt to renegotiate another commitment with you.

Escalation

- You will call the AMSC @ 1-800-223-7881
- You will refer to CTR with ported TN
- You will provide new CTR information or customer requirements
- Should the Qwest RSA need help to resolve the issue, the center escalation desk (Request for Center Assistance - (RCA)) will be asked to assist
- The RCA may need to call various Qwest centers for additional assistance
- You will not be given any Qwest internal telephone numbers to enable you to call directly into the Qwest centers
- If you are not satisfied with the progress of the CTR, you may escalate to the appropriate Qwest account representative

Cancel Customer Trouble Report (CTR)

- You will call the AMSC @ 1-800-223-7881
- You will refer to CTR with ported TN
- You will provide the name and contact number of the person who is canceling the CTR should future questions arise. You will be asked why the ticket is being cancelled for tracking purposes.
- The Qwest RSA will enter the appropriate information to cancel the CTR

Close Customer Trouble Report (CTR)

The Qwest group completing the repair report will call your contact shortly after completion. The call will include disposition and cause code information

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Billing

Rates for LNP Cost Recovery are billed via a CTRS end-user or Summary Bill.

Rates for LNP Managed Cuts are billed via a BARET bill

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Training

Qwest 101 "Doing Business With Qwest"

- This introductory course is designed to teach the CLEC and Reseller how to do business with Qwest. It will provide a general overview of products and services, Qwest systems, ASR/LSR, reports, and web resource access information. [Click here for Course detail and registration information.](#)

Local Number Portability (LNP) Product

[Click here to learn more about this course.](#)

Local Number Portability (LNP) Process and Systems

[Click here to learn more about this course.](#)

View additional Qwest courses by clicking on [Course Catalog](#).

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Contacts

General contact information is identified in the [Contact List web page](#).

Sales Manager
Service Manager

For additional information regarding the NFAC, NANC, FCC and Industry requirements for LNP implementation and administration, please refer to the following public web sites:

NeuStar - Number Portability Administration Center (NFAC)

FCC

North American Numbering Council (NANC)

Industry

Alliance for Telecommunications Industry Solutions (ATIS)

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Frequently Asked Questions (FAQs)

This section is currently being compiled based on your feedback.

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Last Update: August 17, 2001

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Qwest cannot provide InterLATA long distance service originating, InterLATA SXX service terminating or InterLATA private line or lease circuits with either end in the states of AZ, CO, ID, IA, MN, MT, NE, NM, ND, OR, SD, UT, WA, and WY. Qwest provides internet services in those states in conjunction with a separately billed, required Global Service Provider (GSP).

Qwest Release Notification Form

Log # PCRN051601-1

Status: **New - To be Industry Reviewed**

Submitted By: Lorna Dubose

Date Submitted: 5/15/01

Contact Information: Lorna Dubose, LNP Product Manager, ldubose@qwest.com, 303-896-5258 or Susie Bliss, Service Delivery Director, sbliss@qwest.com

Name, title, email, phone # _____

Title of Notification:

Local Number Portability Process Changes

Area of Release Notification: Please check mark as appropriate and fill out the appropriate section below
X System X Product X Process

Communicated To:

Date Communicated: 5/16/01

- Please check mark as appropriate
- Co-Provider Industry IMA EDI current users or with an agreed upon project work plan IMA CD Disclosure Document Recipients
 - Team
 - Public IMA GUI current and potential new users

Type of Notification: Please check mark as appropriate

- X Target Release Date May 15, 2001 and June 2001 Disclosure Document Addendum
- Target Release Life Cycle Training Schedule
- Co-Provider Change Request Options for a Release Release Notes Description
- Release Baseline Candidates with Descriptions Release Notes
- Draft Developer Worksheets Point Release Notes Description
- Disclosure Document Point Release Notes
- Recertification Notices System Available Times
- New Product Product Retirement
- X Product Enhancement
- Other

Please describe _____

Description of Notification: (e.g., mode/method of message and timing of delivery)

Local Number Portability - Change in Offering

Product Offering

The Local Number Portability product has implemented changes to the following:

- LNP Service Intervals
- Delay Disconnects
- LSR Reject Reasons

Effective Date

New LNP Service Intervals are effective **May 15, 2001**

Delay Disconnects and LSR Reject Reasons process changes are effective **June 1, 2001**

Process Description

Standard Due Date Intervals:

Change From:

Service Intervals for LNP are described below. Orders received after 3:00 p.m. (Mountain Time) are considered the next business day. The following service intervals have been established for Local Number Portability:

Product Type
(IFR/IFB)

Quantity
1-20 lines

Interval
4 business days

Complex (PBX) Trunks/ISDN	21-50 lines	5 business days
	51 or more	ICB
Centrex	1-8 lines	5 business days
	9-16 lines	6 business days
	17-24 lines	7 business days
	25 or more lines/trunks	ICB
Change To:	1-10 lines	5 business days
	11-20 lines	10 business days
	21 or more lines or trunks	ICB

Service Intervals for LNP are described below. These intervals include the time for Firm Order Confirmation (FOC). Orders received after 3:00 p.m. (Mountain Time) are considered the next business day. The following service intervals have been established for Local Number Portability

<u>Product Type</u>	<u>Quantity of Telephone Numbers to Port</u>	<u>Interval*</u>
Simple (1FR/1FB)	1-5	3 Business days (includes FOC 24 hr. interval)
	51 or more	4 business days (includes FOC 24 hr. interval) Project Basis
Complex (PBX, trunks ISDN, Centrex)	1-25	5 business days (includes FOC 24 hr. interval)
	26 or more	Project Basis

* Intervals for LNP without unbundled loops

(Standard Due Date Intervals: cont.)

For the Standard Interval Guide, please see the guidelines on the wholesale web site located at:
<http://www.qwest.com/wholesale/guides/sig/index.html>

In addition, you will find due date interval guidelines within the LNP Product Catalog found on the wholesale web site at:

<http://www.qwest.com/wholesale>

Navigation path:

- Products and Services
- Interconnection
- Select a Product
- Local Number Portability
- Ordering
- Due Dates Intervals

Delay Disconnects:

Local Number Portability (LNP) Switch Disconnect Timing

Effective June 1, 2001, Qwest will delay the disconnect of the end user customer's switch translations and unconditional 10 digit trigger to 11:59 p.m. of the business day (Monday – Friday) after the Due Date. This will allow additional time for the Co-Provider to notify Qwest when delays have been experienced (e.g., the customer is not home).

The Co-Provider should still notify Qwest as soon as possible (within 30-60 minutes) of Due Date changes and cancellations, per the normal notification procedures. For late in the day customer appointments, the Co-Provider should notify Qwest of Due Date changes and cancellations on the Due Date, if it is during the business hours or no later than noon (MT) of the day after the Due Date. Late notifications will require workback procedures for Qwest on the customer's service order which will have already processed through the internal Qwest systems as completed on the due date.

To mitigate the workback activities, Qwest will also be developing the capability to hold both the LNP disconnect service order and the disconnection of the customer's switch translations to the day after the due date. However, this capacity will not be available in the initial phase of the mechanized change.

A phased approach will be used to make the necessary system changes to delay the LNP disconnects to the day after the due date, as follows:

<u>Phase</u>	<u>Process Improvement</u>	<u>Targeted Timeframe</u>
Phase 1	Interim solution will cause April system to Delay the actual disconnect in the switch to 11:59pm of the day after the Due Date.	June 1, 2001
Phase 2	To augment service order systems front end and billing to allow a delayed completion of the disconnect service order following the TN port activity by 24 hours from the original requested due date/frame due time.	August 31, 2001

Local Service Request (LSR) – Service Request Rejection Process

The following outlines the process change Qwest will use for rejection of LNP pending orders.

Qwest will:

Continue to Reject orders that meet the follow criteria:

- Account not in Qwest local exchange territory
- No Valid Interconnection Agreement or tariff
- Customer Carrier Name Abbreviation (CCNA) missing or invalid.
- End User Authorization information missing
- Required forms missing or incomplete
- Wrong forms submitted
- Entries on forms illegible
- Non OBF forms

Cancel the pending Qwest order and process the LSR if the:

- Last name on the account matches the CSR and the address is the same we start processing the LSR.
- CSR has two numbers and LSR ports one of the two numbers and the second number is not addressed. We will make second number BTN.
- Port request fails to address all telephone numbers on account, partial port
- Disconnecting the lines involved and the DDD is before and after the pending order DD
- Changing the line(s) involved and the DDD is before the pending DD
- Number change on the line(s) involved before the pending order DD

Ignore the pending Qwest order and process the LSR if the:

- Disconnecting line(s) not involved and the DDD is after the pending order DD
- Number change on the line(s) not involved, same CSR.

Ignore the pending Qwest order, recap changes that will occur as a result of the pending order and issue

port order if the:

- Disconnect line(s) not involved and the DDD is before the pending order DD
- Changing the line(s) involved and the DDD is after the pending order DD.
- Adding a line involved after the pending order DD
- Number change on the line(s) not involved, same CSR after the pending order due date.

Call the co-provider and jointly determine resolution within 4 hours:

- The Last name on the account doesn't match the CSR.
- Some or all telephone numbers on LSR not associated with Account Telephone Number on LSR
- The LSR involves multiple Account Telephone numbers
- The CSR has five numbers and LSR ports main number and the other numbers are not addressed (assigning new BTN). Future IMA edit will not let Co-provider submit LSR without populating NAN field
- Adding a line and the DDD on the LSR is before the pending order DD
- The Number change on the line(s) involved and the DDD is after the pending order DD.
- The Port request fails to address all telephone numbers on account, full disconnect
- T&F of the lines involved both before and after the pending order DD.

Additional Information: (e.g., web sites)

System Release Notification Section

Interfaces Impacted: Please check mark as appropriate

- | | | | |
|--------------------------------|---|--|---|
| <input type="checkbox"/> CTAS | <input checked="" type="checkbox"/> IMA EDI | <input type="checkbox"/> MEDIACC | <input type="checkbox"/> TELIS |
| <input type="checkbox"/> EXACT | <input checked="" type="checkbox"/> IMA GUI | <input checked="" type="checkbox"/> Product Database | <input type="checkbox"/> Wholesale Billing Interfaces |
| <input type="checkbox"/> HEET | <input checked="" type="checkbox"/> SIG | | |
| | Other _____ | | |

_____ Please describe

Product Release Notification Section

Products Impacted: Please check mark all that apply (If "Other" please describe further)

- | | | | | |
|--|--------------------------------------|--|---|---------------------------------|
| <input type="checkbox"/> LIS/Interconnection | <input type="checkbox"/> Collocation | <input type="checkbox"/> UNE | <input type="checkbox"/> Ancillary | <input type="checkbox"/> Resale |
| <input type="checkbox"/> BICT | <input type="checkbox"/> Physical | <input type="checkbox"/> Switching | <input type="checkbox"/> AIN | |
| <input type="checkbox"/> Tandem Trans./TST | <input type="checkbox"/> Virtual | <input type="checkbox"/> Transport (incl. EUDIT) | <input type="checkbox"/> DA | |
| <input type="checkbox"/> DTT/Dedicated Transport | <input type="checkbox"/> Adjacent | <input type="checkbox"/> Loop | <input type="checkbox"/> Operation Services | |
| <input type="checkbox"/> Tandem Switching | <input type="checkbox"/> ICDF Collo. | <input type="checkbox"/> UNE - P | <input checked="" type="checkbox"/> INP/LNP | |
| <input type="checkbox"/> Local Switching | <input type="checkbox"/> Other _____ | <input type="checkbox"/> EEL (UNE-C) | <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Other _____ | | <input type="checkbox"/> UDF | | |
| | | <input type="checkbox"/> Other _____ | | |

Process Release Notification Section

Area Impacted: Please check mark all that apply

- Pre-Ordering
- Ordering
- Billing
- Repair
- Other _____

_____ Please Describe

Products Impacted: Please check mark as appropriate and list specific products within product group, if applicable

- | | | | |
|---|-------|--|-------|
| <input type="checkbox"/> Centrex | _____ | <input type="checkbox"/> Resale | _____ |
| <input type="checkbox"/> Collocation | _____ | <input type="checkbox"/> SS7 | _____ |
| <input type="checkbox"/> EEL (UNE-C) | _____ | <input type="checkbox"/> Switched Services | _____ |
| <input type="checkbox"/> Enterprise Data Services | _____ | <input type="checkbox"/> UDIT | _____ |
| <input type="checkbox"/> LIDB | _____ | <input type="checkbox"/> Unbundled Loop | _____ |
| <input type="checkbox"/> LIS | _____ | <input type="checkbox"/> UNE-P | _____ |

LNP
 Private Line
Please describe

Please describe

Wireless
 Other

Please describe

This Section to be Completed by Qwest CICMP Manager

Status, Evaluation and Implementation Comments:

5/15/01 – RN received from Lorna Dubose
5/15/01 – Status changed to New – To be Validated
5/16/01 – Status changed to New – To be Industry Reviewed
5/16/01 – Updated RN sent to the CICMP Team



Wholesale Product/Process
Final Response

November 06, 2001

Ms. Terry Bahner
Ms. Donna Osborne-Miller
AT&T Communications

This letter is in response to CLEC Change Request PCCR090401-4, dated September 4th, 2001, title of change: Clarify Qwest's process on completing LSR's day after due date. This Change Request pertains to the implementation of the new LNP process involving stand alone LNP port out service order requests.

Description of Change as noted in CR: QWEST notified CLEC community LSRS would complete orders day after at 11:59 pm of install date to coincide with disconnects in switch. Qwest escalation center is stating that orders can start closing as early as 3pm with the possibility of closing even sooner with disconnect to follow. Interconnect has stated that if Qwest determines that there is a large volume of orders to close, they can decide a random time to start the process. AT&T would like to understand why this time frame fluctuates if the closing of these orders causes the disconnect in the switch to shift to an earlier time. AT&T is requesting a flow chart or documentation explaining and listing the backend systems for this process.

Implementation of this Qwest business process change was included in the IMA 3.0 release and was deployed effective August 20th, 2001.

The change is as stated: The ten (10) digit unconditional trigger and switch translations associated with the end user customer's telephone number will not be removed, nor will Qwest disconnect the customer's billing and account information, until 11:59p.m. (local time) of the next business day after the due date. Internal Qwest systems have been adjusted to accommodate this process change.

- Order completion and disconnect of translation's will not occur prior to 11:59 p.m. the next business day following the due date.
- The subscription date to ASMS is sent to match the CLEC requested due date as available per the standard interval guide.
- The FOC is sent and matches the ASMS subscription date requested by the CLEC as available per the standard interval guide.
- An effective billing date to discontinue account billing is added to the order to match the actual port subscription date as requested by the CLEC and as available per the standard interval guide.
- Additional notification and a reminder of this current process was sent to the Interconnect Center's through an internal communicator dated 10/29/01. The title was "Qwest response to Clec questions concerning the current LNP Port Out process of holding switch translations and order completion until the next business day at 11:59pm."

ATTACHMENT B

- The process agreement is as stated. The ten (10) digit unconditional trigger and switch translations associated with the end user customer's telephone number will not be removed, nor will Qwest disconnect the customer's billing and account information, until 11:59 p.m. (local time) of the next business day after the due date

For due date changes or cancellation's on existing LSR's the following process should be followed:

Due Date Changes

- You must notify Qwest via LSR supplement or notification to the ISC if you require a DD change for your port activity
- Notifications of DD changes via a LSR supplement should be made as soon as possible on the DD and prior to 8:00 PM Mountain Time.
- Late notification of DD changes will require that you call the ISC prior to 12:00 noon on the day after the DD (in the end-users' time zone) and issue a LSR supplement via IMA or IIS to confirm the request. If the port due date falls on a Saturday, the CLEC should notify the ISC no later than the following Monday by noon of the DD change.
- Late DD change notifications after 12:00 noon the day after the DD, will require you to contact the Call Center Representative at 888-796-9087 to initiate an escalation ticket for these late changes. The CLEC should also issue a LSR supplement via IMA or IIS to confirm the request. The CLEC should also issue a LSR supplement via IMA or IIS to confirm the request.

Cancel's

- You must notify Qwest via LSR supplement or notification to the ISC if you require a cancel of the port activity.
- Notifications of DD cancel's via a LSR supplement should be made as soon as possible on the DD and prior to 8:00 PM Mountain Time.
- Late notification of DD cancel's will require that you call the ISC prior to 12:00 noon on the day after the DD (in the end-users time zone) and issue a LSR supplement via IMA or IIS to confirm the request. . If the port due date falls on a Saturday, the CLEC should notify Qwest no later than the following Monday by noon of the cancellation.
- Late cancel notifications after 12:00 noon the day after the DD will require you to contact the Call Center Representative at 888-796-9087 to initiate an escalation ticket for these late cancel's. The CLEC should also issue a LSR supplement via IMA or IIS to confirm the request.

Qwest Interconnect Service Center hours of operation to support the functions described above are:
 6 AM to 8 PM Mountain Time, Monday-Friday
 7 AM to 5 PM Mountain Time on Saturday

With the implementation of this new process, the CLEC is still responsible for notifying Qwest if they are unable to meet their requested port due date. Service order completion and disconnect of switch translation's are not scheduled to occur anytime prior to the 11:59 p.m. time frame the next business day following the due date. However, the port subscription message was sent for the initial CLEC desired due date and changes or cancellation's must occur as outlined above or as noted in the supplement information listed in the Product catalog.

Sincerely,

Joan Wells
 Process Manager Local Number Portability

CC:
 Margaret Bumgarner
 Lorna Dubose

ATTACHMENT B

Constance Overly
Kate Spry

ATTACHMENT B

AT&T EXHIBIT FOR COLORADO § 271 PROCEEDING

Proposed SGAT Language

8.4.2 Ordering - Virtual Collocation

8.4.2.1 Application -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space, power and HVAC can be found for the placement of CLEC's equipment within the Premise. The feasibility study will be provided within ten (10) calendar days of receipt of a complete Application, ~~if the Premise was included in the CLEC's forecast at least sixty (60) calendar days prior to the Application. If the Premise was not included in the CLEC's forecast at least sixty (60) calendar days prior to the Application, the feasibility study shall be completed within twenty (20) calendar days of receipt of a complete Application.~~

8.4.2.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the collocation queue for the requested Premise, CLEC must cure any deficiencies in its Application and resubmit the Application within ten calendar days after being advised of the deficiencies.

8.4.2.2 Quotation -- If Collocation entrance facilities and space are available, Qwest will develop a price quotation within twenty-five (25) calendar days of completion of the feasibility study. Subsequent requests to augment an existing Collocation also require receipt of an Application. Adding plug-ins, e.g., DS1 or DS3 cards to existing Virtually Collocated equipment, will be processed within ten (10) business days. Virtual Collocation price quotes will be honored for thirty (30) calendar days from the date the quote is provided. During this period the Collocation entrance facility and space are reserved pending CLEC's approval of the quoted charges.

8.4.2.3 Acceptance -- Upon receipt of complete Collocation Acceptance, as described in 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.2.4 Interval -- The interval for Virtual Collocation shall vary depending upon four factors -- 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7 2) whether CLEC provides its Acceptance within seven (7) calendar days receipt of the quotation, 3) whether the CLEC delivers its collocated equipment to Qwest in a timely manner, ~~which shall mean within forty-five (45) days of the receipt of the complete Collocation Application;~~ and 4) whether the application requires major infrastructure additions or modifications. The installation of line cards and other minor modifications shall be performed by Qwest on shorter intervals and in no

instance shall any such interval exceed thirty (30) calendar days. When Qwest is permitted to complete a collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.2.4.1 Forecasted Applications with Timely Acceptance – If an Application is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than ~~sixtyfourty-five~~ sixtyfourty-five calendar (6045) days after receipt of the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Application. If CLEC's equipment is not delivered to Qwest within ~~sixtyfourty-five~~ (6045) calendar days after receipt of the complete Collocation Application, Qwest shall complete the collocation installation within forty-five (45) calendar days of the receipt of all of the CLEC's equipment.

8.4.2.4.2 Forecasted Applications with Late Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than forty-five calendar (45) days after receipt of the complete Collocation Acceptance, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within forty-five (45) calendar days after receipt of the complete Collocation Acceptance, Qwest shall complete the collocation installation within forty-five (45) calendar days of the receipt of all of the CLEC's equipment. If CLEC submits its acceptance more than thirty (30) days after receipt of the Qwest quotation, the Application shall be resubmitted by CLEC.

8.4.2.4.3 Unforecasted Applications with Timely Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than ~~sixtyfourty-five~~ sixtyfourty-five calendar (6045) days after receipt of the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within ~~ninety one hundred and twenty~~ ninety one hundred and twenty (90120) calendar days of the receipt of the complete Collocation Application, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete

Collocation Application. If CLEC's equipment is not delivered to Qwest within ~~sixtyfourty-five (6045)~~ calendar days after receipt of the complete Collocation Application, Qwest shall complete the collocation installation within ~~forty-five (45) seventy-five (75)~~ calendar days of the receipt of all of the CLEC's equipment.

8.4.2.4.4 Unforecasted Applications with Late Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, and if all of CLEC's equipment is available at the Qwest Premises no later than ~~sixtyfourty-five~~ calendar (~~6045~~) days after receipt of the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within ~~ninetyone hundred and twenty (90120)~~ calendar days of the receipt of the complete Collocation Acceptance, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete Collocation Acceptance. If CLEC's equipment is not delivered to Qwest within ~~sixtyfourty-five (6045)~~ calendar days after receipt of the complete Collocation Application, Qwest shall complete the collocation installation within ~~forty-five (45) seventy-five (75)~~ calendar days of the receipt of all of the CLEC's equipment.

8.4.2.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted collocation application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.2.4.31 through 8.4.2.4.4 may shall be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, and if all of CLEC's equipment is available at the Qwest Premises no later than forty-five calendar (45) days after receipt of the complete Collocation Application, Qwest shall propose to complete its installation of the collocation arrangement within an interval of no more than 150 calendar days after receipt of the complete Collocation Application. The need for, and the duration of, such extended intervals shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, such an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

~~8.4.2.4.5.1 When major infrastructure modifications are required, and if all of CLEC's equipment is available at the Qwest Premises no later than forty-five calendar (45) days after receipt of~~

~~the complete Collocation Application, Qwest shall complete its installation of the collocation arrangement within the following extended periods after of the receipt of the complete Collocation Application:~~

- ~~a) DC Power Plants — 180 calendar days~~
- ~~b) AC Standby Generators — 240 days~~
- ~~c) HVAC — 210 days~~
- ~~d) Space Conditioning — 210 days~~

8.4.2.4.65-2 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. ~~If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to insure that it will meet the intervals set forth in Sections 8.4.2.4.1 and 8.4.2.4.2 when CLEC submits a Collocation Application, notify CLEC that the longer intervals will apply when the application is submitted. Qwest will not begin construction of the infrastructure modification until CLEC submits an application and acceptance.~~

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AT&T EXHIBIT FOR COLORADO § 271 PROCEEDING

Proposed SGAT Language

8.4.3.1 **Application** -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5 Qwest will perform a feasibility study to determine if adequate space, power, and HVAC can be found for the placement and operation of CLEC's equipment within the Premise. The feasibility study will be provided within ten (10) calendar days from date of receipt of a complete Application. ~~If the application was included in the CLEC's forecast at least sixty (60) calendar days prior to the Application. If the Application was not included in the CLEC's forecast at least 60 days prior to the application, the feasibility study shall be completed within twenty (20) calendar days of receipt of a complete Application.~~

8.4.3.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the collocation queue for the requested Premise, CLEC must cure any deficiencies in its Application and resubmit the Application within ten calendar days after being advised of the deficiencies.

8.4.3.2 **Quotation** -- If Collocation entrance facilities and space are available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar days of providing the feasibility study. Physical Collocation price quotes will be honored for thirty (30) calendar days from the date the quote is provided. During this period, the Collocation entrance facility and space is reserved pending CLEC's approval of the quoted charges.

8.4.3.3 **Acceptance** -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6 space will be reserved and construction by Qwest will begin.

8.4.3.4 **Interval** -- The interval for physical collocation shall vary depending upon three factors -- 1) whether the request was forecasted in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7, and 2) whether CLEC provides its Acceptance within seven (7) calendar days of receipt of the quotation and 43) whether the application requires major infrastructure additions or modifications. When Qwest is permitted to complete a collocation installation in an interval that is longer than the standard intervals set forth below, Qwest shall use its best efforts to minimize the extension of the intervals beyond such standard intervals.

8.4.3.4.1 **Forecasted Applications with Timely Acceptance** -- If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if the CLEC provides a

complete Acceptance within seven (7) calendar days of receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Application.

8.4.3.4.2 Forecasted Applications with Late Acceptance – If a Premise is included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance more than seven (7) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ninety (90) calendar days of the receipt of the complete Collocation Acceptance. If CLEC submits its acceptance more than thirty (30) days after receipt of the Qwest quotation, a new Application shall be resubmitted by CLEC.

8.4.3.4.3 Unforecasted Applications with Timely Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application, and if CLEC provides a complete Acceptance within seven (7) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ~~ninetyone hundred and twenty (90)120~~ calendar days of the receipt of the complete Collocation Application, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete Collocation Application.

8.4.3.4.4 Unforecasted Applications with Late Acceptance – If a Premise is not included in CLEC's forecast at least sixty (60) calendar days prior to submission of the Application and if CLEC provides a complete Acceptance more than eight (8) calendar days but less than thirty (30) calendar days after receipt of the Qwest collocation quotation, Qwest shall complete its installation of the collocation arrangement within ~~ninetyone hundred and twenty (90)120~~ calendar days of the receipt of the complete Collocation Acceptance, unless Qwest can demonstrate that the Premise does not have sufficient space, power & HVAC to satisfy the Collocation Application and the forecasted needs of other CLECs. If Qwest can demonstrate that such space, power and HVAC are not available, Qwest shall complete its installation of the collocation arrangement within one hundred and twenty (120) calendar days of the receipt of the complete Collocation Acceptance.

8.4.3.4.5 Intervals for Major Infrastructure Modifications Where No Forecast is Provided – An unforecasted collocation application may require Qwest to complete major infrastructure modifications to accommodate CLEC's specific requirements. Major infrastructure modifications that may be required include conditioning space, permits, DC Power Plant, Standby Generators, Heating, Venting or Air Conditioning Equipment. The installation intervals in Sections 8.4.3.4.31

through 8.4.3.4.4 may shall be extended, if required, to accommodate major infrastructure modifications. When major infrastructure modifications as described above are required, Qwest shall propose to complete its installation of the collocation arrangement within an interval of no more than 150 calendar days after of the receipt of the complete Collocation Application. The need for, and the duration of, such extended intervals shall be provided to CLEC as a part of the quotation. CLEC may dispute the need for, and the duration of, such an extended interval in which case Qwest must request a waiver from the Commission to obtain an extended interval.

~~8.4.2.4.5.1 When major infrastructure modifications are required, Qwest shall complete its installation of the collocation arrangement within the following extended periods after of the receipt of the complete Collocation Application:~~

- ~~a) DC Power Plants – 180 calendar days~~
- ~~b) AC Standby Generators – 240 days~~
- ~~c) HVAC – 210 days~~
- ~~d) Space Conditioning – 210 days~~

8.4.2.4.5.2 Major Infrastructure Modifications where CLEC Forecasts its Collocation or Reserves Space. If CLEC's forecast or reservation triggers the need for an infrastructure modification, Qwest shall take the steps necessary to insure that it will meet the intervals set forth in Sections 8.4.3.4.1 and 8.4.3.4.2 when CLEC submits a Collocation Application. ~~notify CLEC that the longer intervals will apply when the application is submitted. Qwest will not begin construction of the infrastructure modification until CLEC submits an application and acceptance.~~

.....

AT&T EXHIBIT FOR COLORADO § 271 PROCEEDING

Proposed SGAT Language

8.4.4 Ordering - Interconnection Distribution Frame ("ICDF") Collocation

8.4.4.1 **Application** -- Upon receipt of a complete Collocation Application as described in Section 8.4.1.5, Qwest will perform a feasibility study to determine if adequate space can be found for the placement and operation of CLEC's equipment within the Wire Center. The feasibility study will be provided within ten (10) calendar days from date of receipt of a complete Application, ~~if the Premise was included in the CLEC's forecast at least 60 days prior to the Application. If the Premise was not included in the CLEC's forecast at least 60 days prior to the application, the feasibility study shall be completed within 20 calendar days of receipt of a complete Application.~~ The ICDF Collocation Application shall include a CLEC-provided eighteen (18) month forecast of demand, by DS0, DS1 and DS3 capacities, that will be terminated on the Interconnection Distribution Frame by Qwest on behalf of CLEC. Such forecasts shall be used by Qwest to determine the sizing of required tie cables and the terminations on each Interconnection Distribution Frame as well as the various other frames within the Qwest Wire Center.

8.4.4.1.1 If Qwest determines that the Application is not complete, Qwest shall notify CLEC of any deficiencies within ten (10) calendar days of the Application. Qwest shall provide sufficient detail so that CLEC has a reasonable opportunity to cure each deficiency. To retain its place in the collocation queue for the requested Premise, CLEC must cure any deficiencies in its Application and resubmit the Application within ten calendar days after being advised of the deficiencies.

8.4.4.2 **Quotation** -- If office space is available, Qwest will develop a quote for the supporting structure. Qwest will complete the quotation no later than twenty-five (25) calendar days of providing the feasibility study. ICDF Collocation price quotes will be honored for thirty (30) calendar days from the date the quote is provided. During this period, the space is reserved pending CLEC's approval of the quoted charges.

8.4.4.3 **Acceptance** -- Upon receipt of a complete Collocation Acceptance, as described in Section 8.4.1.6, space will be reserved and construction by Qwest will begin.

8.4.4.4 **Interval** -- The interval for ICDF Collocation shall vary depending upon two factors -- 1) Whether the request was forecasted ~~in accordance with 8.4.1.4~~ in accordance with Section 8.4.1.4 or the space was reserved, in accordance with Section 8.4.1.7 and 2) Whether CLEC provides its Acceptance within seven (7) calendar days of the quotation. When Qwest is permitted to complete a collocation installation in an interval that is longer than the standard

This interval may be lengthened if space must be reclaimed or reconditioned.

8.4.4.5 ~~When ordering UNEs or ancillary services to be terminated on the Interconnection Distribution Frame, each UNE or ancillary service is ordered separately, using the existing ordering forms and intervals for the specific UNE or ancillary service. [Because this is inconsistent with the UNE combination language, this must be deleted]~~

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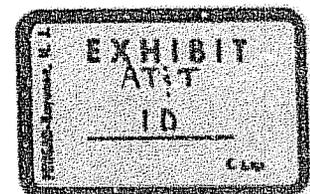
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC 01-165

AFFIDAVIT
OF
KENNETH L. WILSON
REGARDING
CHECK LIST ITEMS 1 AND 14
ON INTERCONNECTION, COLLOCATION AND RESALE

MARCH 18, 2002



AT&T Communications of the Midwest, Inc. (AT&T") hereby submits this Supporting Affidavit of Kenneth L. Wilson on § 271 Checklist Items 1 and 14 covering interconnection, collocation and resale issues. This affidavit describes AT&T's position on Interconnection, Collocation, and Resale as offered through Mr. Wilson.

AFFIDAVIT

I. INTRODUCTION AND QUALIFICATIONS

My name is Kenneth L. Wilson, and I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am submitting this affidavit on behalf of AT&T.

My education and relevant work experience are as follows. I received a Bachelors of Science in Electrical Engineering from the University of Illinois in 1972, and I received a Masters of Science in Electrical Engineering in 1974. In addition, I have completed all the course work required to obtain my Ph.D. in Electrical Engineering from the University of Illinois. The course work was completed in 1976. For 15 years before coming to Denver, I worked at Bell Labs in New Jersey in a variety of positions. From 1980 through 1982, I worked as a member of the network architecture and network planning team at Bell Labs for AT&T's long distance service. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1986 through 1992, I led a Bell Labs group responsible for network performance planning and assurance for AT&T Business Markets. From 1992 through 1993, I was a team lead on a project to reduce AT&T's capital budget for network infrastructure.

From January 1994 through May 1995 I led a team at Bell Labs investigating the various network infrastructure alternatives for entering the local telecommunications market. From 1995 through the spring of 1998, I was the Business Management Director for AT&T in Denver, managing one of the groups responsible for getting AT&T into the local market in Qwest's 14-state territory. In addition, I was also the senior technical manager in Denver working on local network and interconnection planning, OSS interface architectures and the technical aspects of product delivery.

As noted above, I am currently a consultant and technical witness with Boulder Telecommunications Consultants, LLC. In this capacity, I have worked with several companies, including AT&T, on interconnection, collocation and resale issues, among other things.

II. PURPOSE OF AFFIDAVIT

Because of my experience and background in helping to bring AT&T into the local market in numerous western region states, AT&T has asked me to review Qwest's South Dakota Statement of Generally Available Terms ("SGAT")¹ and the testimony of Qwest witnesses filed in support of its § 271 Application. In addition to reviewing the Qwest witnesses' testimony, I have—or my associates have—gathered information necessary to determine what AT&T's experience is, and has been, in employing the various methods of interconnection, collocation and resale at issue here.

Thus, the purpose of this affidavit is to provide: (1) my analysis of Qwest's SGAT in light of Qwest's legal and technical obligations thereunder; (2) to summarize the Qwest evidence in support of its application; (3) to examine Qwest's alleged

¹ All references to the South Dakota SGAT are to the SGAT dated 10/24/01 for South Dakota.

compliance with § 271 checklist items 1 and 14; and (4) to report AT&T's actual commercial experience related to interconnection, collocation and resale with Qwest.

III. SUMMARY OF MY ANALYSIS

In addition to analyzing Qwest's SGAT and its general compliance statements, it is critical to a complete investigation to examine Qwest's actual implementation of its SGAT provisions and its § 271 checklist obligations. Part of this investigation involves actual commercial usage and the experience of the competitors attempting such usage. While Qwest may claim that it complies with the law, the "proof," so to speak, is in the details of how it is actually implementing the alleged compliance.²

To summarize the conclusions of my analysis, I believe Qwest has not demonstrated that it is legally bound to provide and practically capable of providing competitive local exchange carriers ("CLECs") with nondiscriminatory interconnection and collocation in South Dakota. With respect to interconnection, Qwest is not providing interconnection at any technically feasible point that is at least equal in quality to that it provides itself or its affiliates on terms and conditions that are just, reasonable and nondiscriminatory. Concerning collocation, AT&T's experience shows that Qwest is not in compliance with its obligations to provide a process and procedure that is just, reasonable and nondiscriminatory.

Regarding resale, Qwest's SGAT provisions have the effect of impermissibly allowing Qwest to solicit CLEC customers and restrict the services available for resale.³ Furthermore, Qwest would utterly ignore state service quality standards in favor of a

² Part of the investigation into Qwest's implementation should include the time necessary to conduct a detailed review of the Qwest operational manuals that purport to instruct Qwest personnel on the proper implementation of interconnection, collocation and resale. During my review of Qwest's operational manual regarding 911/E911 for the previous workshop, I discovered several inconsistencies between the operations manual and the SGAT.

"parity" measure that will not ensure that resellers can provide service in compliance with state laws.

IV. ANALYSIS

As noted in the general Comment accompanying this affidavit, the South Dakota Commission's investigation is twofold: (1) to briefly outline the legal requirements associated with the topic; (2) to review the SGAT for approval and compliance with § 271 and (3) to examine Qwest's claims of compliance with § 271 checklist items. My analysis begins with a summary of the relevant legal obligations, an examination of the related SGAT provisions and then an investigation of Qwest's alleged checklist compliance in light of AT&T's experience derived from its commercial usage.

A. INTERCONNECTION

1. Definition of Interconnection and Legal Obligations to Interconnect.

Interconnection is the physical linking of two networks for the mutual exchange of traffic.⁴ Under the law, Qwest must provide interconnection at any technically feasible point within its network that is at least equal in quality to that provided by Qwest to itself or others on rates, terms and conditions that are just, reasonable and nondiscriminatory. Importantly, Qwest must provide interconnection in a manner no less efficient than the way in which it provides comparable function to its own retail operations.⁵

Finally, the FCC has declared that CLECs may "choose any method of technically feasible interconnection at a particular point *on the incumbent LEC's network*."

³ Restrictions on resale include the restrictions observed in Washington regarding CENTREX resale. Because AT&T is not a CENTREX reseller, it will not take up the issue here.

⁴ 47 CFR § 51.5 (definition of interconnection).

⁵ *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region IntraLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (Rel. Dec. 22, 1999) at ¶ 65 ("*FCC 271 BANY Order*").

Technically feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements.” *FCC 271 BANY Order* at ¶ 66 (emphasis added).

2. Analysis of Qwest’s SGAT for South Dakota.

Over the course of the last two years, AT&T—among other CLECs—have struggled through § 271 workshop after workshop with Qwest attempting to negotiate Qwest’s SGAT into compliance with the law, in particular §§ 251 and 252 of the Act. The fact that Qwest has changed its SGAT overtime shows, not only that it concedes many of the CLECs’ issues, but also that its original SGAT was a far cry from compliant. I will address the issues related to the Qwest South Dakota SGAT in its present state proceeding sequentially through the SGAT starting at the beginning of SGAT § 7.0 on interconnection. Within SGAT § 7.0, I will address the various sections that cause concern for AT&T.

a. SGAT §§ 7.1.1.1 & Proposed 7.1.1.1.2

Interconnection with the incumbent local exchange carrier (“ILEC”) is the lifeblood of the CLEC.⁶ Without timely, reliable provisioning of interconnection trunks, which can be expanded as quickly as the CLEC’s business expands, the CLEC will not have a business. Despite AT&T’s efforts to provide Qwest the necessary information to meet AT&T’s interconnection trunking needs during joint trunk planning sessions, AT&T frequently encounters Qwest-caused delays, and in some cases indefinite holds, when ordering interconnection trunks from Qwest.⁷

⁶ 12/18/00 Multi-state Tr. at p. 43.

⁷ 12/18/00 Multi-state Tr. at pp. 162-163.

While Qwest claims it has all the incentive it needs to timely and reliably install its competitor's interconnection trunks, in fact, it has provided no evidence of such incentive. Mere citation to a Performance Assurance Plan ("PAP") and overstated claims of large penalties there under do not provide a factual basis to find that Qwest will perform, that it has performed or that it won't target certain competitors for delayed installation. The fact of the matter is that where Qwest misses an installation interval for a particular CLEC once or several times, that CLEC will recover very little under the PAP—and Qwest will pay very little under the PAP—while the CLEC will likely lose much more by way of revenue, customer(s) and credibility.

Furthermore, it's important to bear in mind that late installation of interconnection trunks completely precludes a CLEC from conducting any business with any new customers served by those trunks. Thus, AT&T proposes an incentive that will ensure that Qwest, the entity in sole control over its service quality, meets its very important interconnection obligations. The incentive is provided in the form of a common contract indemnity provision used when one party's business must rely heavily upon timely, reliable delivery of a product from another party.

Because the SGAT (and the Qwest proposed Performance Assurance Plan) provide precious little to incent Qwest to provide timely installation of interconnection trunks for particular competitors it would like to put out of business, AT&T seeks Commission-imposed assurances that these lifeblood trunks arrive on time. Therefore, AT&T proposes the following incentive, which in general business dealings, is a method employed frequently to incent timely performance:

7.1.1.1 Qwest will provide to CLEC interconnection at least equal in quality to that provided to itself, to any subsidiary, affiliate, or any other party to which it provides interconnection. Notwithstanding specific

language in other sections of this SGAT, all provisions of this SGAT regarding interconnection are subject to this requirement. In addition, Qwest shall comply with all state wholesale and retail service quality requirements.

7.1.1.1.2 In the event that Qwest fails to meet the requirements of Section 7.1.1.1, Qwest shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees.

Qwest shall indemnify and hold harmless CLEC against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail or wholesale service quality standards in the provision of interconnection services.

AT&T requests that the Commission approve this indemnity proposal for inclusion in the SGAT. This proposal is consistent with goals of the Act and the FCC to ensure that the incumbent provides "interconnection to a competitor in a manner no less efficient than the way in which the incumbent LEC provides the comparable function to its own retail operations" which includes timely installation for those competitors that Qwest may target with little or no impact to itself from PAP penalties.⁸

b. SGAT § 7.1.2.1 - Entrance Facilities

Qwest's SGAT expressly provides three methods of interconnection that are available and allegedly compliant with the Act.⁹ The three methods are: (1) interconnection through something called "entrance facilities" (a/k/a "Qwest provided

⁸ *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, CC Docket No. 00-65, FCC 00-238 (Rel. June 30, 2000) at ¶ 63 ("*SWBT Texas 271 Order*").

⁹ While the SGAT states other technically feasible methods are available, it generally fails to list the primary means of obtaining an interconnection trunk to the POI selected by the CLEC. AT&T's experience has been that if the contract is not express, Qwest will engage in delay tactics and other subterfuge to prevent the CLEC from obtaining the most efficient and timely interconnect or other needed service.

facilities"); (2) interconnection using mid-span meets, and (3) interconnection at collocation points. Conspicuously missing from these methods is the opportunity for CLECs to obtain dedicated trunks to the CLEC-selected point of interconnection ("POI") on Qwest's network. In fact, it would appear that a CLEC has no way to actually select or reach a collocation POI because it cannot obtain a dedicated trunk to its collocation space under the SGAT prescribed interconnection methods.

The only method that comes close to dedicated trunks is the offer of "entrance facilities," but these fall far short because they dictate the location of the POI as somewhere on the CLEC network, not on Qwest's network. As it stands in Qwest's current SGAT, § 7.1.2.1 states:

7.1.2.1 Qwest-provided Facility. Interconnection may be accomplished through the provision of a DS1 or DS3 entrance facility. An entrance facility extends from the Qwest Serving Wire Center to CLEC's switch location or POI determined by CLEC. Entrance facilities may not extend beyond the area served by the Qwest Serving Wire Center. The rates for entrance facilities are provided in Exhibit A. Qwest's Private Line Transport service is available as an alternative to entrance facilities, when CLEC uses such Private Line Transport service for multiple services. Entrance facilities may be used for Interconnection with Unbundled Network Elements.¹⁰

What this provision means is that Qwest provides dedicated interconnection trunks as limited¹¹ "entrance facilities, [which] are high speed digital loops."¹² From Qwest's perspective the entrance facility is a "transport system ... that has one end at a CLEC's switch location or point of interconnect ("POI") and the other end at the [closest] Qwest serving wire center."¹³ Thus, Qwest tells the CLECs that their POI will be at the CLEC

¹⁰ Emphasis Added to highlight the offending provisions.

¹¹ While the term "entrance facility" has been employed to describe interconnection, its definition, as contained in commission-approved interconnection agreements, is different than the one proposed by Qwest in its recent SGAT and the SGAT utterly disallows the use of dedicated trunks to the point of interconnection chosen by the CLEC.

¹² SGAT at §§ 7.1.2 & 7.1.2.1; Rebuttal Testimony of Thomas Freeberg at p. 23 (from various preceding workshops).

¹³ WA Tr. at p. 1266; 10/25/00 OR Tr. at p. 485-88.

switch or somewhere on the CLEC network, and not where the CLEC chooses the POI to exist on Qwest's network (e.g., POI at the Qwest tandem switch or at the CLEC collocation space in the Qwest wire center). Beyond the entrance facility, Qwest's SGAT offers interoffice transport, an unbundled network element, to carry the calls where ever the CLEC apparently wants its calls to go on the Qwest network. Furthermore, Qwest's Exhibit A purports to charge CLECs DS-1 and DS-3 rates for the entrance facility even though that facility is on Qwest's side of the POI where the POI resides on the CLEC network.

Looking again at the SGAT provision above, it also offers—as an alternative to entrance facilities—Private Line Transport, which is a retail offering in Qwest's retail tariffs. Thus, the private line, much like the entrance facility would act as a loop to the closest serving wire center except that it would cost more, and it has an additional limitation placed on its use via some ill-defined “uses for multiple services” requirement.

The problem with Qwest's SGAT is that the Telecommunications Act of 1996 makes clear that the CLEC may choose the POI in Qwest's network. Section 251(c)(2) states in pertinent part that Qwest has:

[t]he duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at *any technically feasible point within the carrier's network ...*

The FCC has determined that CLECs may “choose any method of technically feasible interconnection at a particular point *on the incumbent LEC's network*. Technically

feasible methods also include, but are not limited to, physical and virtual collocation and meet point arrangements."¹⁴

Despite these Orders and the federal statute, Qwest's SGAT does not expressly allow CLECs to obtain a POI on Qwest's network because there is no way for the CLEC to obtain the dedicated trunk necessary to reach such POI.

In contrast, AT&T and other CLECs have, for some time and in accordance with the Act, designated their chosen points of interconnection, and paid for interconnection trunks that run from their points of presence ("POP") or switches to the designated POI *in the Qwest network*. Other RBOCs have defined "entrance facilities" that allow the CLEC to reach its selected POI, and not as Qwest has redefined them as loops requiring a POI on the CLEC network.¹⁵

AT&T proposes changing § 7.1.2.1 and a conforming change in § 7.3.2.1.1 to recognize modification described in § 7.1.2.1. AT&T proposes the following language to bring Qwest's SGAT into express compliance with the law:

7.1.2.1 Qwest-provided Facility. Interconnection may be accomplished, at CLEC's option, through the provision of a DS1 or DS3 entrance facility, Direct Trunked Transport, or both. Such a facility extends from a CLEC-determined point on the CLEC's network to a CLEC-determined POI in Qwest's network. The rates for such facilities are provided in Exhibit A. Qwest's Private Line Transport service is available as an alternative to other Qwest-provided facilities, when CLEC uses such Private Line Transport service for multiple services. Qwest-provided facilities may be used for Interconnection with Unbundled Network Elements.

7.3.2.1.1 Direct Trunked Transport (DTT) extends from a CLEC-determined point on the CLEC's network to a CLEC-determined POI in Qwest's network. The applicable rates are described in Exhibit A. DTT facilities are provided as dedicated DS3, DS1 or DS0 facilities.

¹⁴ FCC 271BANY Order at ¶ 66 (emphasis added).

¹⁵ *Id.*

c. SGAT §§ 7.1.2.2 & 7.3.1.2 – Qwest’s EICT Charges

The issue with respect to these sections was whether Qwest, consistent with the law, should have to pay for interconnection on its side of the POI. In SGAT §§ 7.1.2.2 and 7.3.1.2,¹⁶ Qwest proposed to charge for the wires it calls the Expanded Interconnection Channel Termination or “EICT.”¹⁷ Essentially these are Qwest’s physical connection to the CLEC’s collocation equipment when collocation is the method used to interconnect to Qwest’s network.¹⁸ That is, the CLEC collocation in this instance serves as its point of interconnection or POI, and the law requires that Qwest meet the CLEC at that point.¹⁹ Amazingly enough, Qwest’s SGAT initially demanded CLECs pay DS-1 or DS-3 circuit rates for this physical link between the CLEC POI and Qwest’s equipment in the same building.²⁰

Because it is Qwest’s legal obligation to take the traffic from the CLEC’s POI or collocation space in this instance, it is illegal, unjust and unreasonable for Qwest to shift the financial burden through EICT charges to the CLEC.²¹ The EICT is Qwest’s side of the interconnection, not the CLECs’. Furthermore, Qwest itself does not pay AT&T for similar service and it should therefore not be generally increasing costs to CLECs by such discriminatory behavior.²²

¹⁶ SGAT at § 7.3.1.2 must be modified to remove any reference to charges for EICT or such charges should be made reciprocal such that Qwest pays for its interconnection to the CLEC network through similar wires.

¹⁷ Early versions of the SGAT mistakenly employed the term ITP, when Qwest intended EICT. 9/27/00 & 12/15/00 SGAT versions.

¹⁸ Rebuttal Testimony of Freeberg at p. 20 (from various preceding workshops).

¹⁹ *SWBT Texas 271 Order* at ¶ 78.

²⁰ SGAT at § 7.3.1.2.1.

²¹ 47 C.F.R. §§ 51.305(a) & (e); *see also, SWBT Texas 271 Order* at ¶ 78.

²² The alternative would be to make such payments reciprocal between the CLEC and Qwest as more fully discussed below in § 7.3.1.2.1.

While Qwest apparently concedes this point by making its EICT charges, as listed in Exhibit A, zero, this Commission should ensure that Qwest doesn't simply change its prices and again require CLECs to pay EICT charges. The best way to ensure further conduct is to order it. That is what AT&T requests in this instance—an order confirming that Qwest is not to charge CLECs for EICT wires.

d. SGAT § 7.2.2.1.5 – Qwest's 50 Mile Limitation

Qwest proposes an addition to its SGAT that artificially limits its interconnection obligation under the Act and shifts the burden to build Qwest's network to the CLEC.²³ The proposal arbitrarily turns all interconnection trunks over 50 miles into mid-span meet arrangements where neither the CLEC nor Qwest have facilities in place. Throughout the previous workshops, Qwest generally attempts to justify this by proposal providing an extreme and unsubstantiated hypothetical of a CLEC that might demand hundreds of miles of direct trunk transport to interconnect its network to Qwest's network.²⁴

Nevertheless, the Act clearly states that it is Qwest's obligation to: "provide ... interconnection with the local exchange carrier's network ... for the transmission and routing of telephone exchange service and exchange access."²⁵ According to the FCC, "[s]ection 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing

²³ SGAT at § 7.2.2.1.5.

²⁴ 12/18/00 Multi-state Tr. at p. 111.

²⁵ 47 U.S.C. § 251(c)(2)(A).

carriers must compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect."²⁶

Simply put, Qwest's 50-mile limitation on its interconnection obligation violates the Act and the FCC's pronouncements. Moreover, Qwest has not presented even a single real case wherein it was required to construct such extremely long direct trunk transport, nor has it presented even a shred of evidence that it would not recover the costs to do so. Thus, the Commission should reject Qwest's attempt to artificially limit its legal obligations by requiring that Qwest remove § 7.2.2.5.1 from the SGAT.

e. **SGAT §§ 7.2.2.8.6 – Qwest's Interconnection Forecasting Requirement**

In SGAT § 7.2.2.8.6 *et seq.*, Qwest offers up a brand a new provision, § 7.2.2.8.6.1, not previously discussed in other workshops or reviewed by other states. Its newly revised provisions state:

7.2.2.8.6 Three (3) weeks after a forecasting cycle, Qwest will provide CLEC feedback in the form of a potentially lower forecast. In the event of a dispute regarding forecast quantities, where in each of the preceding eighteen (18) months, trunks-required is less than fifty percent (50%) of trunks in service, Qwest will make capacity available in accordance with the lower forecast.

7.2.2.8.6.1 If Qwest constructs non-reusable facilities in response to a CLEC forecast, and subsequent related orders are not issued by the CLEC within 6 months of the completed construction, Qwest may seek non-punitive liquidated damages, that do not exceed Qwest's actual construction costs.

²⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, First Report and Order, FCC 96-325 (Rel. Aug. 8, 1996) at ¶ 209 ("First Report and Order").

7.2.2.8.6.2 Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.

The older versions of SGAT language dealt with Qwest collecting and repaying trunk deposits for forecasting. Those provisions have now been removed in favor of liquidated damage payments for something defined as "non-reusable" trunks. While AT&T does not oppose this substitution, certain adjustments must be made to the provisions for purposes of clarity and fairness. Those adjustments are as follows.²⁷

7.2.2.8.6.1 If Qwest constructs non-reusable facilities in response to a CLEC forecast, and subsequent related orders are not issued by the CLEC within 6 months of the completed construction, through the Dispute Resolution process, Qwest may seek non-punitive liquidated damages, that do not exceed Qwest's actual construction costs.

~~7.2.2.8.6.2 Where there is a reasonably reliable basis for doing so, Qwest shall include in the trunks-required calculation any usage by others, including but not limited to Qwest itself, of facilities for which that CLEC has made deposit payments. Qwest shall not be required to credit such usage more than once in all the trunks-required calculations it must make for all CLECs in the relevant period.~~

These adjustments are required for two reasons. Turning first to SGAT § 7.2.2.8.6.1, because the SGAT lacks a definition of "non-reusable trunks" and because such term is highly susceptible to abuse, an independent third party should be the one making the determination that one party or the other is subject to construction costs. The dispute resolution process is defined in the SGAT and the parties have agreed to its structure so

²⁷ Qwest's SGAT has a mistake in providing a duplicate § 7.2.2.8.6.1 (listed under 6.2) that I have simply deleted in our discussion here.

the clarifying addition of that process inserted into this section should be of no concern to Qwest.

Second, the complete deletion of SGAT § 7.2.2.8.6.2 is necessary because it makes no sense in light of the fact that Qwest has removed the deposit requirement and because it was language offered by a Facilitator in the Multi-state proceeding to address deposit concerns. The language in this section is not only unnecessary, but it would create more disputes than it will resolve and it was never agreed to by the CLEC entities participating in the Multi-state proceeding.

The last point to consider with respect to interconnection trunk forecasting is that when Qwest makes a forecast and the CLEC makes a forecast, both companies are trying to predict the capacity needed so that no [call] blocking will occur. As revealed in its exhibits in other proceedings, Qwest's own region-wide trunk utilization was 50.45 % while the CLECs was around 48.08 %;²⁸ thus the dominant carrier, Qwest, showed only slightly more trunk utilization than the nascent CLECs.²⁹ Furthermore, it is doubtful that in South Dakota Qwest would even meet its 50 % utilization requirement itself. Thus, Qwest too should pay liquidated damages where its forecasts for CLECs are less than perfect projections of utilization, and where it has failed to timely install needed trunks for CLECs.

In considering the problem, bear in mind that there are no Performance Indicators ("PIDs") that allow a "per occurrence" recovery where Qwest builds to its lower forecast and fails to have trunks available for the CLEC when the CLEC places an order. Qwest has offered no SGAT language that would balance the risks. Thus, AT&T requests that

²⁸ Calculated from the Regional figures supplied by Qwest.

²⁹ 2/26/01 Multi-state Tr. at pp. 75, 84-85.

the Commission level the playing field and require that Qwest provide a per occurrence payment and late provisioning penalty to the harmed CLEC if Qwest fails to timely provision the CLEC's forecasted trunk needs when ordered. By not providing the CLECs with any indemnity provisions (as proposed by AT&T in SGAT § 7.1.1.1.2 discussed above) related to these very important trunks, the SGAT has essentially taken away the primary incentive Qwest has to provision individual CLEC trunks in a timely manner. The risk is out of balance.

f. **SGAT § 7.2.2.8.12 Confidentiality of Trunk Forecasts.**

While the parties to earlier § 271 proceedings agreed to these provisions, Qwest replaced SGAT § 7.2.2.8.12 with SGAT § 5.16.1.9. As a consequence, this particular provision is not duplicative and contradictory. It should be removed.

g. **SGAT § 7.2.2.8.13 – Qwest's Ability to Snatch Back Trunks that CLECs have Purchased**

The dispute here involves Qwest's unwarranted belief that once it sells to a CLEC various interconnection trunks, it has a unilateral right to determine that the CLEC is underutilizing its trunks and snatch various trunks back from the CLEC regardless of the CLEC's needs or plans for the trunks it holds and pays for. Economically it makes little sense for CLECs to install, maintain and pay for a vast number of underutilized trunks; thus, the motive for Qwest's desire to snatch back trunks must be judged in that light. Furthermore, Qwest's policies have created the need for more trunks than CLECs would otherwise have ordered and therefore, it creates a "Catch 22" for the CLECs' efficient trunk utilization.

CLECs are in the best position to judge and project their future needs for interconnection trunks. They should determine if it is appropriate to return underutilized trunks to Qwest. Qwest should not be allowed to make such a decision unilaterally. Thus, AT&T requests that the Commissions order Qwest to replace SGAT § 7.2.2.8.13 with the previous language that was agreed to by the parties and Qwest.

In its SGAT Qwest places itself as overseer of the CLEC's trunk utilization. SGAT § 7.2.2.8.13 gives Qwest the right to unilaterally determine that the CLEC isn't using its trunks according to Qwest's utilization demands and then allows Qwest to take back the trunks that Qwest wants. This gives Qwest unprecedented power to interfere in the business of the CLEC regardless of what the CLECs projected plans or needs for the trunks are. Furthermore, there is nothing in this section that requires Qwest to return the money the CLEC has paid for the trunks or use its own trunks at the same utilization rates it demands of the CLECs. As the evidence from other proceedings shows, Qwest's own trunk utilization on any given trunk may well be below the standard to which it holds CLECs.³⁰ Thus, Qwest is discriminating against CLECs and not provided parity of treatment.

h. SGAT § 7.2.2.9.3.2 – Qwest's Demand that CLEC's Inefficiently Use Interconnection Trunks

The issue in SGAT § 7.2.2.9.3.2 is that Qwest steadfastly refuses to employ the most efficient use of interconnection trunking that would combine all traffic types on the same trunks. Instead, Qwest demands that CLECs use separate trunk groups for interLATA, 1 + long distance calls and for local calls.³¹ This requirement increases the

³⁰ See the trunk utilization discussion contained in the forecasting provisions above.

³¹ 12/18/00 Multi-state Tr. at pp. 222-223.

number of trunks; increases the cost of interconnection and increases the inefficient use of trunks along with the under-utilization problems that Qwest's likes to complain about.

A shopping analogy best suits a clear discussion of this issue. If a consumer places a banana, a napkin and a steak in his basket, would it be fair for the market to charge the consumer three times the price of the steak simply because the consumer enjoys the convenience of carrying the other items in the same basket? The obvious answer is "no," it is inequitable to charge the consumer for more than he receives. Likewise, would it be fair to demand that if the consumer wants to purchase these seemingly unrelated items at their appropriate individual prices, he must use separate baskets for each item? Again, the obvious answer is "no," it would be inefficient and wasteful for the consumer to carry more baskets than necessary simply for the convenience of paying the appropriate price for the individual items.

CLECs should be treated no differently than this hypothetical consumer. In fact, Qwest has conceded that CLECs may use—for example—the DS-3 facility or "basket" to carrier interconnection trunks, UNE trunks³² and special access trunks. Just like the grocery shopper, CLECs too should pay the appropriate price for each item they purchase from Qwest.

By its proposal, AT&T is not asking to commingle local and long distance traffic using the same trunk; AT&T is not asking to pay less than it should for the items it purchases.³³ In contrast, Qwest is asking that CLECs pay more than they should either through the inefficiencies of having to carry and buy more "baskets" than they need or by

³² "UNE," as you know, means unbundled network elements. "UNE trunks" in this context means the trunks CLECs employ to access UNEs.

³³ 6/23/00 WA Tr. at pp. 617, ln. 19 – 618, ln. 20.

paying disproportionately for the highest priced item they need. If nothing else, simple fairness suggests Qwest's proposal should be rejected.

The combination of traffic-specific circuits or trunks on the same trunk group is technically feasible, and several states have required that Qwest combine such traffic.³⁴ Furthermore, the Ninth Circuit Court of Appeals has upheld such combination as appropriate.³⁵ Thus, AT&T requests that the South Dakota Commission likewise require that Qwest's SGAT allow efficient trunk use.

i. **SGAT § 7.2.2.9.6 – Qwest's Failure to Allow the CLEC to Interconnect at the Access Tandem**

In the South Dakota SGAT § 7.2.2.9.6, Qwest appears to have adopted the Multi-state Facilitator's decision, which adopted the Washington Commission's decision. Both the Facilitator and the Washington Commission have required Qwest to alter the SGAT to include some cost considerations. In Washington Qwest's SGAT reads as follows:

7.2.2.9.6 The Parties shall terminate Exchange Service (EAS/Local) traffic on Tandems or End Office Switches, at CLEC's option. When Qwest lacks available capacity at the access Tandem, Qwest will arrange local Tandem or end office Interconnection at the same cost to CLEC as Interconnection via the Qwest access Tandem.

7.2.2.9.6.1 Qwest will allow Interconnection for the exchange of local traffic at Qwest's access Tandem without requiring Interconnection at the local Tandem, at least in those circumstances when traffic volumes do not justify direct connection to the local Tandem; and regardless of whether capacity at the access Tandem is exhausted or forecasted to exhaust unless Qwest agrees to provide Interconnection facilities to the local Tandems or end offices at the same cost to CLEC as the Interconnection at the access Tandem.

The South Dakota Commission should order Qwest to adopt the language offered above.

This is the language employed in Washington and it is what the Multi-state Facilitator

³⁴ See e.g., Washington, Colorado, Arizona, Utah, New Mexico, Montana and Idaho.

³⁵ See *U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 99 Cal. Daily Op. Serv. 8279, 1999 Daily Journal D.A.R. 10, 571, 17 Communications Reg. (P&F) 1081 (9th Cir. (Wash.), Oct. 8, 1999) (No. 98-35146, 98-35203) at 1124-25.

was aiming at as well. It gives Qwest the option of allowing CLECs to interconnect at the local tandem for the same cost that they would otherwise pay for interconnection at the access tandem where Qwest prefers interconnection at the local tandem.

B. COLLOCATION

I. Definition of Interconnection and Legal Obligations to Allow Collocation.

Each incumbent local exchange carrier has the duty to:

provide, on rates, terms and conditions that are just, reasonable, and nondiscriminatory, for the physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

47 U.S.C. § 251(c)(6). Collocation provides the CLEC with the ability to place equipment in Qwest premises to facilitate interconnection and access to unbundled network elements.

Collocation is divided into two general types: (a) physical collocation and (b) virtual collocation. Generally the FCC and this Commission define physical collocation as an offering by the incumbent that enables a requesting carrier to place its own equipment in the premises of the incumbent for the purpose of interconnection and access to unbundled network elements.³⁶ Virtual collocation involves an offering by the incumbent that enables the requesting carrier to designate or specify the incumbent's equipment to be used for interconnection or access to unbundled network elements.³⁷

The FCC stated that the "provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the checklist. FCC 271 BANY Order at ¶ 66.

³⁶ 47 CFR § 51.5 (definition of physical collocation).

³⁷ *Id.*

2. **Analysis of Qwest's SGAT for South Dakota.**

As evidence of compliance, Qwest essentially recites the number of alleged collocators, provides its SGAT provisions on collocation, and provides PID data related thereto. Further, Qwest is frequently heard to complain about the length of time it has taken to work through the previous workshops as though such effort was merely an exercise in examining unimportant minutia. In fact, Qwest's early SGATs were littered with roadblocks for CLECs and opportunities for Qwest to avoid or completely defy its legal obligations under § 271. What generally remains in dispute are examples of Qwest's continuing efforts to avoid or make more difficult its obligations to CLECS. The disputes are:

a. **SGAT § 8.1.1- Products that Undermine or Conflict with the SGAT.**

The concern that arises with respect to Qwest's "productizing" its collocation offerings—and any other offerings for that matter—is that it issues policy statements further defining how the collocation product is to be accomplished. Within these policy statements Qwest demands that the CLECs subscribe to these policies regardless of what the SGAT or the interconnection agreements state.³⁸ Frequently the policies are contrary to the SGAT and interconnection agreements. In fact, Qwest has been known to demand that a CLEC sign just such a policy before Qwest will turn over provisioned collocation space that the CLEC has already paid for.³⁹

Qwest's practice of unilaterally altering its agreements through the development of written policies and performance requirements that are inconsistent with its interconnection agreements and the SGAT belies its non-compliance in deed as opposed

³⁸ See Exhibits A, B, C, and D attached hereto.

³⁹ 2/26/01 Multi-state Transcript at pp. 56-57.

to the words contained in the SGAT. In the case of collocation, my testimony in the Multistate proceeding and Mr. Zulevic's for Covad in Colorado showed that Qwest requires CLECs at the time they accept a collocation space to execute written policies and performance requirements that are inconsistent with the SGAT and their respective agreements.⁴⁰ Furthermore, in Exhibits attached hereto as **A**, **B**, **C**, and **D**, one can clearly demonstrate the difference between what Qwest's SGAT says and what Qwest's present practices are. For example, Exhibit **B** is Qwest's "Collocation Cancellation Policy," which AT&T didn't receive until at the end of February,⁴¹ states "[t]his policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement." The Policy goes on to describe charges that create double recovery for Qwest and are contrary to the SGAT (e.g., when the collocation quote is not accepted, the CLEC will be charged in full for installation elements that have started).⁴² Qwest, however, stated during the workshops that it does not start work unless the quote is accepted and 50% of the non-recurring charges are paid. Furthermore, the Policy is re-instituting the quote preparation fee ("QPF"),⁴³ which Qwest agreed to remove from its SGAT during the workshops.

Another example of these policies' inconsistency with the Act and the SGAT are also found in Qwest's recently issued "Collocation Decommissioning Policy" and its "Collocation Change of Responsibility Policy"⁴⁴ again both allegedly override all agreements and the SGAT and impose upon CLECs a payment scheme that allows Qwest

⁴⁰ 1/23/01 CO Tr. at pp. 117-19; *see also*, general discussion at pp. 111-149.

⁴¹ SGAT § 8.2.1.15 addresses cancellation and Qwest did not discuss nor indicate that it was developing these "policies" that it expected would override any contract including the SGAT during the months of workshops on collocation issues. One would expect an allegedly "pro-competitive" company to be more forthcoming in dealings with its competitor-customers and the state commissions during these workshops.

⁴² Exhibit **B** at 1.

⁴³ *Id.*

⁴⁴ *See* Exhibits **C** and **D**.

to double recover its costs and violates the FCC's orders. That is, the *FCC's Expanded Interconnection Order* states, in pertinent part,

We find that when an interconnector pays a nonrecurring charge for interconnector-specific construction or equipment and the interconnector discontinues taking service before the end of the useful life of these assets, the initial interconnector must receive a pro rata refund for the undepreciated value of the assets, if a subsequent interconnector takes service and uses the assets or the LEC uses the assets. That is, if the LEC uses an asset for which an interconnector has paid after that interconnector discontinues service, the LEC will be responsible for paying the interconnector for the undepreciated value of the asset.⁴⁵

Examination of Qwest's policies reveals that it intends to keep 100% of the payments with apparently no intention of refunding anything. Clearly, Qwest should be bound by the law as stated in the FCC's orders, and Qwest's SGAT should likewise reflect compliance with the law. The mere existence of such policies, however, clearly undermines the validity of the SGAT as purported evidence of Qwest's *present* compliance with its § 271 obligations.

Furthermore, while not directly related to collocation, WorldCom witness, Jill Wicks' testimony in Colorado describes in great detail the obstacles presented by Qwest's decision to "productize" a service, in this case managed cuts that had been provided to WorldCom for over two years under its interconnection agreement.⁴⁶ WorldCom's experience demonstrates that a CLEC, faced with Qwest's demand that it amend its interconnection agreement to incorporate additional terms and conditions associated with a "new" product offering or policy, has only two choices – either accept Qwest's terms no matter how impractical or unreasonable in order to timely take

⁴⁵ *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation and Special Access and Switched Transport*, Second Report and Order, CC Docket No. 930162, FCC 97-208 (Rel. June 13, 1997) at ¶ 54 (*"FCC Expanded Interconnection Order"*).

⁴⁶ 1/25/01 CO Tr at pp. 42-60.

advantage of the new "product," or engage in months of extended negotiations that may or may not prove to be productive.

The same testimony of Ms. Wicks in Colorado shows that even when a service is covered generally by the terms of an existing interconnection agreement, Qwest's practice of "productizing" the wholesale services it provides to competitors hinders the CLECs' ability to obtain interconnection, collocation and UNEs in a timely fashion.

To the extent that Qwest is relying on its SGAT as proof of its compliance with the competitive checklist under § 271, it can only be found to have satisfied the checklist if it is also shown that Qwest is *presently* providing service consistent with the provisions of the SGAT. The Qwest Collocation Policies and Performance Requirements set forth the attached Exhibits are inconsistent with the terms of the SGAT. As a consequence, Qwest should not be found to be in compliance with Checklist Item 1 until such time as it demonstrates that its collocation policies and performance requirements are, in fact, consistent with its SGAT and interconnection agreements.

b. **SGAT § 8.1.1.8.1 – Collocation at the MTE NID**

In its SGAT section on collocation, Qwest has added the following proposal:

8.1.1.8.1 With respect to Collocation involving cross-connections for access to sub-loop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning sub-loop access and intervals are contained in Section 9.3.

From this proposal it is clear that Qwest has determined that cross-connections between a CLEC's network interface device and Qwest's network interface device often referred to as NIDs, located at multiple tenant environments ("MTEs") or multiple dwelling units ("MDUs"), constitute some form of collocation, which is subject—at this stage in this

workshop—to unknown intervals for provisioning. In regard to the NID, the FCC has stated:

The network interface device (“NID”) is a “cross-connect device used to connect loop facilities to insider wiring. ... The Commission also concluded that a requesting carrier is entitled to connect its loops, via its own NID, to the incumbent LEC’s NID.

We modify that definition of the NID to include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism.⁴⁷

In its discussion of the NID, the FCC went further in stating,

We define subloops as portions of the loop that can be accessed at terminals in the incumbent’s outside plant. An accessible terminal is a point on the loop where technicians can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within. These would include a technically feasible point near the customer premises, such as the pole or pedestal, the NID (which we discuss below), or the minimum point of entry to the customer premises (MPOE).⁴⁸

We decline to adopt parties’ proposal to include the NID in the definition of the loop. Similarly, we reject arguments that should include inside wiring in the definition of the NID in order to permit facilities-based competitors access to inside wiring. ... We therefore find no need to include inside wiring in the definition of the NID, or to include the NID as part of any other subloop element.⁴⁹

Specifically, an incumbent LEC must permit a requesting carrier to connect its own loop facilities to the inside wire of the premises through the incumbent LEC’s network interface device, or at any other technically feasible point, to access the inside wire subloop network element.⁵⁰

Thus, the NID is not an unbundled subloop element, but rather it is a UNE itself.⁵¹

In a previous workshop—on collocation AT&T offered pictures of its NIDs at

⁴⁷ *UNE Remand Order* at ¶¶ 230 & 233.

⁴⁸ *UNE Remand Order* at ¶ 206.

⁴⁹ *UNE Remand Order* at ¶ 235.

⁵⁰ *UNE Remand Order* at ¶ 237.

⁵¹ 47 C.F.R. § 51.319(b).

MDU/MTEs that are connected to Qwest's NIDs.⁵² These pictures reveal that NIDs can be open termination blocks containing multiple wires mounted on plywood or they can be enclosed in box-like cabinets.⁵³

Where a CLEC, in particular a facilities-based CLEC such as AT&T, runs its own network to the furthest feasible point of interconnection with a customer at the MTE or MDU, it merely needs access to the Qwest NID so that it can provide service to the end-user customers whose inside wiring is connected to Qwest's NID. The right of CLECs to access the internal wiring at the NID is indisputably set out by the FCC orders.⁵⁴

Qwest's proposal suggests that AT&T would have to collocate in a UNE in order to gain the access to the end-user customers. Where, for example, Qwest has ready access to those customers, AT&T would have to wait for extended collocation provisioning intervals and could not service its customers in the same time frames as Qwest—clearly creating a parity problem.⁵⁵ Moreover, by Qwest's own admission in subsequent workshops, collocation is not required at a NID.⁵⁶

For purposes of defining access to the NID as collocation, Qwest is drawing a distinction between when it owns the inside wiring to the MDU/MTE and when it does

⁵² Exhibit E, attached hereto.

⁵³ 2/26/01 Multi-state Tr. at pp. 17-24.

⁵⁴ *UNE Remand Order at ¶ 202 et. seq.; In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets Wireless Comm'n Assoc. Int'l, Inc. Petition for Rulemaking to Amend § 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Serv. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, etc.*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366 (Rel. Oct. 25, 2000) at ¶ 48, and other state commissions have enforced such rights. See e.g., Washington Utilities and Transportation Commission, *AT&T Communications of the Pacific Northwest, Inc. v. Qwest Corporation*, Docket No. UT-003120, Second Supplemental Order Granting Motion to Amend Answer, Denying Emergency Relief and Denying Motion for Summary Determination at 9 (concluding that AT&T should have prompt access in any technically feasible manner to the NID/MPOE and hence the sub-loop).

⁵⁵ 2/26/01 Multi-state Tr. at p. 25.

⁵⁶ 2/26/01 Multi-state Tr. at p. 26.

not own the wiring.⁵⁷ Whether the NID is enclosed or not, is apparently no longer the dispositive point.⁵⁸ When it owns the wiring, Qwest claims that such access becomes collocation, and as noted above, when Qwest doesn't own the wires no collocation is required. I have testified in other proceedings as well as this one that there is absolutely no difference technically between the two situations.⁵⁹ Drawing an ownership distinction does not serve competition, but rather creates a barrier thereto by injecting greater expense and delay in the CLECs' ability to access the end-user customer than Qwest itself experiences. Qwest can have almost immediate access to the MDU/MTE end-user customer, whereas AT&T and other CLECs could as well if they did not have to wait out Qwest's collocation provisioning intervals. AT&T explained during the workshops on this topic that it can send its service representatives out to provision the interconnection between the AT&T NID and the Qwest NID in a fraction of the time it would take Qwest to implement a physical collocation. Simply put, suggesting that CLECs suffer the expense and delay associated with Qwest's attempt to define access to the NID as collocation, is a barrier to entry and a violation of Qwest's § 271 obligation. Instead AT&T recommends editing SGAT § 8.1.1.8.1 as follows:

8.1.1.8.1 With respect to ~~Collocation involving cross-connections~~ for access to sub-loop elements in multi-tenant environments (MTE) and field connection points (FCP), the provisions concerning sub-loop access and intervals are contained in Section 9.3 This type of access and cross-connection is not collocation.

c. **SGAT §§ 8.4.2; 8.4.3 and 8.4.4 – Collocation Intervals**

Pursuant to FCC Order, Qwest should provide collocation within the intervals outlined by the FCC, which require, among other things, that within 10 calendar days

⁵⁷ 2/26/01 Multi-state Tr. at pp. 35-36.

⁵⁸ 2/26/01 Multi-state Tr. at pp. 17-19, 22.

⁵⁹ 2/26/01 Multi-state Tr. at pp. 31-32.

after receiving an application, Qwest must inform the CLEC whether its application meets collocation standards.⁶⁰ Then, Qwest must complete physical collocation arrangements within 90 calendar days after receiving an application that meets the collocation standards.⁶¹ Furthermore, Qwest must finish construction and turn functioning space over to the CLEC within the 90 day interval.⁶² Longer intervals must be submitted to the state commissions for approval.⁶³

While the FCC has set national standards for the provisioning intervals of physical collocation, it has—as yet—declined to do so for virtual collocation.⁶⁴ Nevertheless, the FCC has declared that “intervals significantly longer than 90 days generally will impede competitive LECs’ ability to compete effectively.”⁶⁵

Contrary to § 251(c)(6) and thus § 271, there are four SGAT sections that create unwarranted exceptions to Qwest’s obligations to provide timely and reasonable collocation for CLECs within the 90 day intervals. They are: (1) § 8.4.1.9 (formerly 8.4.1.8) imposing excessive limitations on the number of collocation applications a CLEC may submit to Qwest; (2) § 8.4.2.4.3 & .4 imposing outrageously long provisioning intervals for virtual collocation; (3) § 8.4.3.4.3 & .4 again imposing excessive provisioning intervals on physical collocation; and (4) § 8.4.4.4.3 & .4 also imposing excessive provisioning intervals on ICDF collocation orders. Because SGAT sections 8.4.2.4.3/4, 8.4.3.4.3/4 and 8.4.4.4.3/4 are identical in the interval requirements,

⁶⁰ 47 C.F.R. § 51.323(1)(1).

⁶¹ 47 C.F.R. § 51.323(1)(2).

⁶² See, *Order on Reconsideration* at ¶ 30.

⁶³ *Order on Reconsideration* at ¶ 29.

⁶⁴ *Id.* at ¶ 32.

⁶⁵ *Id.* at ¶ 29.

AT&T will discuss those sections together, but provide individual language proposals in attached **Exhibit F**, that if adopted, would alleviate the non-compliance problems.

i. Through SGAT § 8.4.1.9 (formerly 8.4.1.8) Qwest illegally attempts to limit the number of CLEC collocation applications it will accept.

Qwest's SGAT § 8.4.1.9 states:

The intervals for Virtual Collocation (Section 8.4.2), Physical Collocation (section 8.4.3), and ICDF Collocation (Section 8.4.4) apply to a maximum of five (5) Collocation Applications per CLEC per week per state. If six (6) or more Collocation orders are submitted by CLEC in a one-week period in the state, intervals shall be individually negotiated. Qwest shall, however, accept more than five (5) Applications from CLEC per week per state, depending on the volume of Applications pending from other CLECs.

This SGAT section applies to all CLEC collocation applications – whether small, large, augments to existing collocations or complex collocation requests. Rather than hiring the people necessary to meet customer needs, Qwest seeks to control and limit customer demand so that it can ensure that it meets its ROC PID measurements. In support of its position, Qwest cites to the FCC *Order on Reconsideration* ¶ 24 and it cites to *SWBT Texas 271 Order* ¶ 73.

Despite its hopes of limiting all CLEC orders, neither of the FCC decisions upon which Qwest relies to support upholding SGAT § 8.4.1.9 in fact supports such a proposal. First, the *Order on Reconsideration* states, in pertinent part:

An incumbent LEC must perform essentially three groups of tasks in order to provision collocation space in response to a competitive LEC's request. The incumbent LEC must determine whether the competitive LEC's application for collocation space meets any requirements the incumbent has established for such applications. In the Advanced Services First Report and Order, we stated that ten days constitutes a reasonable period within which an incumbent LEC should inform a new entrant whether its collocation application has been accepted or denied. Based on the record before us, we believe that an incumbent LEC has had ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to

meet this deadline, absent the receipt of an extraordinary number of complex collocation applications within a limited time frame.⁶⁶

Qwest has not shown that it has ever received “an extraordinary number of complex collocation applications.” Rather it has shown that it seeks to unilaterally limit all orders, complex or simple. Yet, the FCC’s statement is clear, Qwest has had ample time to have prepared itself to meet customer demand (were it a willing seller in any other market it would strive to meet customer demand rather than trying to limit it). It does not appear that Qwest has sufficiently upgraded its processes to handle the loads it can clearly track.⁶⁷

Moreover, the time periods for Qwest to report back to the CLEC whether its application is accepted or denied and the time periods to perform feasibility studies and the like all have “buffers” built into them. That is, it does not take 10 days to inform a CLEC whether its application is denied or accepted nor is 10 days required to do a feasibility study.⁶⁸ So the allocation of these time periods to the tasks assigned already takes into consideration the need for some flexibility—no more is needed.

Likewise, the Texas 271 decision does not support Qwest’s desire. It states, in pertinent part:

Except where a competitive LEC places a large number of collocation orders in the same 5-business day period, SWBT responds to each request within 10 days.⁶⁹

Again, Qwest is not attempting to create a reasonable exception to limit the number of complex orders it can handle in a week’s period from a single carrier; rather, it seeks to limit all CLECs all of the time. This is an “unjustified restraint on the CLEC’s business.”

⁶⁶ *Order on Reconsideration* at ¶ 27 (emphasis added).

⁶⁷ 1/17/01 Multi-state Tr. at pp. 328-329.

⁶⁸ 1/17/01 Multi-state Tr. at p. 329.

⁶⁹ *SWBT Texas 271 Order* at ¶ 73 (emphasis added).

There is no legal support for such a limitation, and it creates a barrier to competition on its face. Thus, Qwest is not in compliance with § 251(c)(6) nor § 271. To remedy this lack of compliance, Qwest should delete SGAT § 8.4.1.9.

- ii. **SGAT § 8.4.2.4.3 & .4, § 8.4.3.4.3 & .4 and § 8.4.4.4.3 & .4 all impose excessive provisioning intervals for virtual, physical and ICDF collocation in violation of the FCC's orders and § 271 of the Act.**

The FCC's recent *Reconsideration Order* determined, among other things, that:

an incumbent LEC should be able to complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premise and the state commission does not set a different interval or the incumbent and requesting carrier have not agreed to a different interval.⁷⁰

This statement and its meaning are fairly straightforward; only two circumstances should relieve an incumbent from meeting the 90 day interval where space is available: (a) a state commission's different intervals or (b) a mutual agreement between the CLEC and the incumbent LEC. Furthermore, where space is available or not, the FCC did not perceive the 90 day standard interval as imposing an undue hardship on incumbents; rather, the FCC stated:

[b]ased on the record before us, we believe ... that a maximum 90 calendar day interval will give an incumbent LEC ample time to provision most, if not all, physical collocation arrangements. We recognize, of course, that many incumbent LECs will have to improve their collocation provisioning performance significantly in order to meet this interval. Significant improvement is needed, however, only where incumbent LECs have taken insufficient steps to ensure the adequacy of their collocation provisioning processes. ... Incumbents already have extensive experience with handling large numbers of collocation applications on an ongoing basis. This experience should enable them to upgrade their internal controls, methods, and procedures to the extent necessary to provision all,

⁷⁰ *Order on Reconsideration* at ¶ 27.

or virtually all, physical collocation arrangements in no more than 90 calendar days.⁷¹

In fact, the FCC found that intervals significantly longer than 90 days would generally impede the CLEC's ability to compete effectively.⁷² To that end, the FCC amended its rules to state:

[a]n incumbent LEC must offer to provide and provide all forms of physical collocation (i.e., caged, cageless, shared, and adjacent) within the following deadlines, except to the extent a state sets its own deadlines or the incumbent LEC has demonstrated to the state commission that physical collocation is not practical for technical reasons or because of space limitations.⁷³

Ultimately, then, there are only three general exceptions to the 90 day interval: (a) state deadlines; (b) mutually agreed to deadlines between CLEC and ILEC; and (c) lack of space in the premises.

On November 7, 2000, the FCC issued its Memorandum Opinion and Order ("Memorandum")⁷⁴ in response to Qwest's request for a waiver of the imposition of the 90 day intervals pending the FCC's consideration of Qwest's Reconsideration Petitions. In its Memorandum, the FCC clarified that:

The Collocation Reconsideration Order does not permit an incumbent LEC to set unilaterally different standards by incorporating time periods of its own choosing into its SGATs and tariffs and having those standards take effect through inaction by the state commission. Indeed, such an approach would eviscerate the Commission's intent in the Collocation Reconsideration Order to establish national standards applicable except where specifically modified through interconnection agreement negotiations or deliberative processes of a state commission.⁷⁵

Thus, unilateral declarations, not approved by the FCC or the State, cannot go into effect

⁷¹ *Id.* at ¶ 28 (emphasis added).

⁷² *Id.* at ¶ 29.

⁷³ 47 C.F.R. § 51.323(l).

⁷⁴ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capabilities*, Memorandum Opinion and Order, CC Docket No. 98-147, DA 00-2528 (Rel. Nov. 7, 2000) ("Memorandum").

⁷⁵ *Id.* at ¶ 7 (emphasis added).

on an interim or permanent basis here. That is, SGAT § 8.4 should be amended to reflect only that which the South Dakota Commission ultimately approves.

In addition to addressing unilateral action, the FCC also clarified that Qwest's interim waiver limited Qwest to:

increase the provisioning interval for a proposed physical collocation arrangements no more than 60 calendar days in the event a competitive LEC fails to timely and accurately forecast the arrangement We expect Qwest to use its best efforts to minimize any such increases⁷⁶

Qwest, therefore, was given no more than an additional 60 days for provisioning unforecasted requests *on an interim basis*, and it was further expected to minimize that time period.

Qwest's SGAT, however, demands that the CLECs provide very specific forecasts, requiring much of the same detailed information found in an application, before Qwest will agree to meet the 90 day interval.⁷⁷ Thus, even where space is available and Qwest could otherwise meet the interval, it—nevertheless—refuses to do so and gives itself another two months to provision the collocation request by demanding a “pre-application” a/k/a forecast 60 days in advance of the actual order. Five months is simply an outrageous amount of time to obtain collocation, particularly in the case of cageless physical collocation requests where appropriate space is readily available whether forecasted or not. Moreover, it appears that Qwest is doing little else than arbitrarily lopping off 30 days, of the 60 additional days, to minimize the extended time frames for unforecasted collocation requests (*see* Qwest's FCC matrix interval). There is no reason that Qwest shouldn't be required to actually minimize the delay and meet the 90 day

⁷⁶ Memorandum at ¶ 19.

⁷⁷ Compare SGAT § 8.4.1.4 (outlining the information demanded in a forecast) and § 8.4.1.5 (outlining the information that constitutes an application).

provisioning interval where space is available regardless of its receipt of a forecast; the FCC certainly did not preclude such action, and in fact, admonished Qwest to "use best efforts to minimize increases."⁷⁸

Qwest implied during the workshop, by omission of a critical portion of the quote, that the FCC allows an incumbent LEC to unilaterally require a CLEC to forecast its collocation needs as a precondition to receiving the standard intervals. What the FCC actually said was:

[a]n incumbent LEC also may require a competitive LEC to forecast its physical collocation demands. *Absent state action requiring forecasting*, a requesting carrier's failure to submit a timely forecast *will not* relieve the incumbent LEC of its obligation to comply with the time limits set forth in this section. Similarly, an incumbent LEC may penalize an inaccurate collocation forecast by lengthening a collocation interval only if the state commission affirmatively authorizes such action.⁷⁹

On the heels of its slanted forecast assertion, Qwest's witnesses also suggested that the FCC's interim order governing Qwest included an ongoing forecasting obligation as a precondition to receiving the 90 day interval.⁸⁰ Two things are important to remember in relation to the relief that Qwest obtained from the FCC. First, the FCC provided Qwest with only a temporary conditional waiver in the absence of state rules. Second, the FCC did not contemplate that Qwest had failed to obtain the necessary approval for forecasting as a precondition to meeting all the required intervals from this Commission nor that the forecasts that Qwest demands in its SGAT are closer to applications for collocation than real forecasts. Examination of the FCC's Memorandum makes clear that such unilateral action is contrary to the FCC's intent and the Colorado Commission should determine for

⁷⁸ Memorandum at ¶ 19.

⁷⁹ FCC Reconsideration Order at ¶ 39.

⁸⁰ 12/19/00 Multi-state Tr. at p. 208.

itself whether it is appropriate for Qwest to take longer provisioning intervals where the space is available.

In attempting to rationalize its position, Qwest claims that without automatically obtaining longer intervals for unforecasted collocation orders, CLECs will not provide forecasts.⁸¹ As an initial matter, if an interconnection agreement (or in this case an "opted into" SGAT) says that the parties shall provide forecasts, it is then a likely breach of contract not to do so. Furthermore, CLECs have all the incentive they need to provide forecasts if it will ensure that Qwest has the HVAC and upgrades to the collocation space necessary for smooth provisioning. The goal of the CLEC is to obtain the space when needed, not to play forecasting games nor did the FCC suggest that Qwest should be creating interval penalties via forecasting. Rather, the FCC instructed Qwest to minimize increases in provisioning intervals.

While on the topic of incentives, Qwest's SGAT sections do not provide it with any incentive to do as the FCC has admonished it "use best efforts to minimize increases" to the standard collocation interval. Rather, CLECs must accept it on blind faith that Qwest will minimize increases.⁸² AT&T's experience in dealings with Qwest have suggested that Qwest will not in fact cooperate especially where contract language is silent on any topic.

In any event, AT&T proposes the SGAT language, contained in the attached Exhibits, to remedy the compliance problems created by Qwest's proposals. In these exhibits essentially altering the disputed sections from SGAT §§ 8.4.2, 8.4.3 and 8.4.4. AT&T proposes that the 90 day standard for physical and the lesser standards for virtual

⁸¹ 1/17/01 Multi-state Tr. at p. 377.

⁸² 2/20/01 Multi-state Tr. at p. 5.

and ICDF collocation intervals would apply for forecasted or unforecasted collocation orders where Qwest has collocation space available. In exceptional circumstances where Qwest lacks the necessary space, power or HVAC to accommodate the order's needs, Qwest may employ the longer interval, which it has an express obligation to minimize. The AT&T proposals are consistent with the FCC's orders, and thus, the Commission should adopt them over Qwest's proposals.

d. SGAT § 8.3.1.9 – Channel Regeneration Charges.

AT&T objects to Qwest's imposition of a channel regeneration charge when the distance between the CLEC's collocation space and Qwest's network facilities is so great as to require regeneration.⁸³ The CLECs have no control over either the location of their collocation space within Qwest's central office or its relation to Qwest's network facilities. In a forward-looking environment, facilities would be placed such that the distance between the CLECs collocation space and Qwest's network facilities would not require channel regeneration. A channel regeneration charge is by definition inconsistent with the principle that collocation rates be based on forward-looking cost developed using a least cost network configuration.

Moreover, the SGAT should create some incentive for Qwest to minimize the need for regeneration charges by encouraging it to place its competitors' equipment appropriately. Therefore, the Commission should require Qwest to delete this provision before it is found to be in compliance with Checklist Item 1.

⁸³ 1/16/01 Multi-state Tr. at pp. 18-19.

e. SGAT §§ 8.3.5.1 & 8.3.6 – ICB Pricing

AT&T objects to Qwest's proposal to price both adjacent collocation and remote collocation on an ICB basis. Rather, Qwest should be required to develop a set of standard adjacent and remote collocation offerings, incorporating collocation rate elements to the extent possible. This is consistent with the FCC's expectation that Qwest has created specific and concrete terms under which it provides interconnection, collocation and its other wholesale offerings.

Both remote and adjacent collocation are likely to become more and more frequent requests as wire centers become more congested and as digital loop carrier systems are more frequently deployed, requiring carriers to access the loop at the FDI. Allowing Qwest to price these two types of collocation on an ICB basis leads to delay, unjust pricing and potential discrimination.

Qwest has generally agreed to defer the question of appropriate pricing for remote and adjacent collocation to the costing and pricing proceedings. At a minimum, AT&T urges the Commissions to defer this issue to an appropriate cost docket so that all parties have the opportunity to submit proposals for standardizing the prices of adjacent and remote collocation.

g. SGAT § 8.4.1.7.4 – Collocation Space Reservation Forfeiture

The parties have reached agreement on the majority of the provisions in § 8.4.1.7. The only issue that remains at impasse is the forfeiture provision set forth in § 8.4.1.7.4. AT&T opposes Qwest's proposal to require CLECs to forfeit their space reservation fee upon cancellation of the reservation. Such a forfeiture provision is discriminatory and would result in an unlawful windfall for Qwest.

In its *First Report and Order*, the FCC first ruled that incumbent LECs may not reserve space for future use on terms more favorable than those that apply to other telecommunications carriers seeking to reserve collocation space for their own uses.⁸⁴ The FCC confirmed this determination in August 2000 in its Order on Reconsideration in the Advanced Services docket.⁸⁵ The forfeiture provision set forth at § 8.7.1.7 violates the requirement that space reservation policies apply equally to both the ILEC and its competitors. In the event Qwest determines to cancel its reservation, Qwest stands in a completely different position than the CLECs. Unlike the CLECs, Qwest has placed nothing at risk of forfeiture. Given the discriminatory nature of the forfeiture provision, it must be struck down.

The forfeiture provision creates the additional problem that it allows Qwest a windfall and thus confers a competitive advantage. There is simply no evidence supporting Qwest's contention that the deposit amount at risk of forfeiture bears any reasonable relation to costs Qwest incurs in connection with maintenance of the space reservation policy. Thus, for this reason as well, the forfeiture provision cannot stand.

C. RESALE

1. Definition Of Resale and Legal Obligations to Resell.

With respect to the Act, § 271(c)(2)(B)(xiv) requires Qwest to make "telecommunications services ... available for resale in accordance with the requirements of §§ 251(c)(4) and 252(d)(3)."⁸⁶ Section 251(c)(4)(A) mandates that Qwest "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail

⁸⁴ *First Report and Order* at ¶ 604; see 47 C.F.R. § 51.323(f)(4).

⁸⁵ *Order on Reconsideration* at ¶ 48.

⁸⁶ 47 U.S.C. § 271(c)(2)(B)(xiv).

to subscribers who are not telecommunications carriers.”⁸⁷ And § 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”⁸⁸

In addition to the affirmative obligations to provide telecommunications services for resale, Qwest also has an obligation to refrain from placing “unreasonable or discriminatory conditions or limitations” on the services subject to resale.⁸⁹ In short, Qwest’s restrictions on resale are presumed to be unreasonable unless it can prove to this Commission that the restriction is reasonable and non-discriminatory.⁹⁰ The issues in dispute here concern Qwest’s (1) discriminatory and unreasonable restrictions on resale service quality assurances and (2) unreasonable conditions allowing the abuse and misuse of CLEC customer contact.

2. Analysis of Qwest’s SGAT for South Dakota.

Following are the few issues AT&T wants to address in relation to Qwest’s resale obligations.

a. SGAT § 6.2.3 - Service Quality Indemnity

In its SGAT, Qwest would like to essentially insulate itself from any responsibility for the harm its poor service causes to its wholesale reseller customer and the wholesale reseller’s end-user customers. Because resellers do not own or control the underlying facilities or the services they resell, they have no control over the quality of

⁸⁷ 47 U.S.C. § 251(c)(4)(A).

⁸⁸ 47 U.S.C. § 252(d)(3).

⁸⁹ 47 U.S.C. § 251(c)(4)(B).

⁹⁰ *First Report and Order* at ¶ 939; *see also*, 47 C.F.R. § 51.613(b).

service they provide or whether that service complies with any retail service quality rules. As a result, resellers are completely at the mercy of their competitor, Qwest.

Under the original terms of the SGAT, if Qwest provided poor service such that it subjected its resellers to end-user customer complaints and such that the resellers did not receive the wholesale service for which they paid, Qwest's historical response has largely been, tough luck.⁹¹ The Act, however, states in pertinent part:

Except as provided in section 253, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of such [SGAT], including requiring compliance with intrastate telecommunications service quality standards or requirements.⁹²

Furthermore, the Act and the FCC's rules require that Qwest treat its wholesale customers at parity with the treatment it provides to Qwest retail customers.⁹³ Finally, any restrictions that Qwest attempts to place on wholesale service quality assurances are presumptively unreasonable. The State Commissions can easily determine the services, terms and conditions that Qwest must offer for resale by examining the incumbent "LEC's retail tariffs" and the Commissions' retail service quality rules.⁹⁴

AT&T's proposed indemnity provision is aimed at creating "concrete and specific" obligations in the parity of treatment between the Qwest retail customer and the wholesale reseller in regard to service quality assurance terms by making Qwest expressly responsible for the service quality it provides to its wholesale customers.⁹⁵

⁹¹ 1/17/01 Multi-state Tr. at p. 472.

⁹² 47 U.S.C. § 252(f)(2).

⁹³ *Id.* at § 251(c)(4)(B) (nondiscrimination requirement); 47 C.F.R. § 51.603(b) (equal in quality, subject to the same conditions and intervals as those provided to end-users).

⁹⁴ *First Report and Order* at ¶ 872.

⁹⁵ Qwest must "establish that it is 'providing' a checklist item, [by] demonstrat[ing] that it has a concrete and specific legal obligation to furnish the item upon request pursuant to a state-approved interconnection agreement or agreements that set forth prices and other terms and conditions for each checklist item" *In the Matter of Application of BellSouth Corporation et al. for Provision of In-Region InterLATA Services*

Contrary to Qwest's assertions otherwise, its ROC Performance Assurance Plan ("PAP") does not address parity of recovery opportunities between Qwest's retail customers and its reseller customers nor does it address the harm to the individual reseller's reputation when the underlying provider, Qwest, provides poor service. The reseller's customer believes the problem to be the reseller, not Qwest; given enough poor service Qwest could put the reseller out of business thus having an adverse impact on competition generally. The record is completely devoid of any PAP or other evidence to the contrary.

Qwest eventually altered its SGAT in §§ 6.2.3.1 and 6.2.3.2 to provide a rather limited and internally inconsistent mechanism under which it takes minimal responsibility for the service quality it provides to the reseller customers' end users while still leaving the reseller itself "twisting in the wind."⁹⁶ Under the proposal, CLEC wholesale customers are never made whole upon suffering harm at the hands of Qwest's poor service quality. Moreover, the CLEC end-user customer is also left without a remedy where no CLEC retail service quality rules exist.⁹⁷

Qwest's recent concession on resale service quality assurances still unreasonably limits its liability for harm caused by Qwest's poor service quality to the reseller's end-

in Louisiana, Memorandum Opinion and Order, CC Docket No. 98-121, FCC 98-271 (Rel. Oct. 13, 1998) at ¶ 54 ("BellSouth Louisiana Order").

⁹⁶ SGAT §§ 6.2.3.1 and 6.2.3.2 provide either for a wholesale credit pass-through to the end user or a discounted fine/penalty to the CLEC, respectively. The apparent intent of Qwest is that these two sections are mutually exclusive such that only one applies but not both. 1/17/01 MS Tr. 465-466.

⁹⁷ One might argue that CLEC service quality rules are unnecessary in light of the fact that they are indeed competitors and as such the competitive market should ensure service quality.

user, and it utterly leaves the reseller without a real remedy.⁹⁸ Generally Qwest's purported solution will only provide a "partial" credit pass-through to the reseller's end-user customer, if and only if, the reseller is legally required to provide such credit to its end users under the Commission's service quality rules.⁹⁹ The credit is "partial" because Qwest will only agree to reimburse those harmed end-user customers the wholesale amount paid by the CLEC and not the amount the end-user actually paid for the service. In order to be in business at all the reseller is not likely charging its end-user the wholesale rate it receives from Qwest for the service the reseller provides to its customers; rather it must adjust the cost of that service to meet its own expenses and realize a profit—while still providing service at competitive prices. Thus, in the case of poor service quality, the innocent reseller not only did not acquire the service for which it paid, but it may be liable to its end-user customer for the full cost of the end-user's service while Qwest—the cause of the problem—would limit its liability to a fraction of the actual damage it caused.¹⁰⁰ This is manifestly unfair and certainly not at parity with what Qwest would have to do in regard to making its own end-user customers whole for their losses under the retail service quality tariff. Qwest is expressly discriminating against its wholesale customers and creating unreasonable and discriminatory limitations

⁹⁸ SGAT §§ 6.2.3.1 and 6.2.3.2 create identical limitations; they are:

d) Qwest shall not be liable to provide service credits to CLEC if CLEC does not provide service quality credits to its end users.

e) In no case shall Qwest's credits to CLEC exceed the amount Qwest would pay a Qwest end user under the service quality requirements, less any wholesale discount applicable to CLEC's resold services.

f) In no case shall Qwest be required to provide duplicate reimbursement or payment to CLEC for any service quality failure incident.

⁹⁹ 1/17/01 Multistate Tr. at pp. 464–472.

¹⁰⁰ 1/17/01 Multi-state Tr. at p. 466.

on the services subject to resale.¹⁰¹ Such conduct is contrary to the Act, 47 U.S.C. § 251(e)(4)(B) and the FCC's requirements, *First Report and Order* at ¶ 939 and 47 C.F.R. § 51.603(a).

AT&T recommends that the State Commissions order Qwest to delete SGAT §§ 6.2.3.1 and 6.2.3.2, replacing them with the following language:

6.2.3 Qwest shall provide to CLEC Telecommunications Services for resale that are at least equal in quality and in substantially the same time and manner that Qwest provides these services to others, including subsidiaries, affiliates, other Resellers and end users. Notwithstanding specific language in other sections of this SGAT, all provisions of this SGAT regarding resale are subject to this requirement. In addition, Qwest shall comply with all state wholesale and retail service quality requirements.

6.2.3.1 In the event that Qwest fails to meet the requirements of Section 6.2.3, Qwest shall release, indemnify, defend and hold harmless CLEC and each of its officers, directors, employees and agents (each an "Indemnatee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees.

Qwest shall indemnify and hold harmless CLEC against any and all claims, losses, damages or other liability that arises from Qwest's failure to comply with state retail service quality standards in the provision of resold services.

b. SGAT §§ 6.4.1 & 6.6.3 – Qwest's Desire to Take Unfair Advantage of Misdirected CLEC Customer Contact.

SGAT §§ 6.4.1 and 6.6.3 deal with customers that, in error, call the wrong carrier with questions about service or maintenance and repair. Under the terms of its SGAT,

¹⁰¹ Not only does Qwest's SGAT provision show discrimination as between wholesale and retail customers, but by Qwest's own admission it doesn't perceive the reseller as a customer at all; "[w]ell, we don't provide the service to the CLEC, in fact; we provide it to the end user. I do appreciate the semantics or the theoretical notion that we provide the service to the reseller, but we don't; we provide it to the end user." Washington Workshop Tr. at 2609 (quoting Ms. Lori Simpson, Qwest resale witness).

Qwest maintains that it ought to be allowed to turn these misdirected calls into solicitation opportunities for itself.¹⁰² As grounds for this anticompetitive conduct, Qwest claims that the U. S. Constitution demands that it be granted an unfettered right to interfere with the relationship between the CLEC and its end-user customer.¹⁰³

Fortunately, the U. S. Constitution provides no such right. Rather, the U.S. Supreme Court has clearly stated that freedom of speech is not without bounds.¹⁰⁴ In particular, for commercial speech—which is precisely the speech Qwest employs in its attempt to snatch CLEC customers via erroneous or misdirected calls—enjoys only “a limited measure of protection.”¹⁰⁵ In fact, the Supreme Court has held:

We have always been careful to distinguish commercial speech from speech at the First Amendment’s core. “[C]ommercial speech [enjoys] a limited measure of protection, commensurate with its subordinate position in the scale of First Amendment values,” and is subject to “modes of regulation that might be impermissible in the realm of noncommercial expression.”¹⁰⁶

Generally, commercial speech is protected if, and only if, it concerns lawful activity or is not misleading.¹⁰⁷ Even if the speech falls into these categories, it may still be subject to governmental regulation where, as here, the government has a substantial interest in support of its regulation and that the proposed restriction is narrowly tailored to materially advance that interest.¹⁰⁸

¹⁰² 10/4/00 Multi-state Tr. at pp. 299-300.

¹⁰³ 10/4/00 Multi-state Tr. at pp. 307 & 312-314.

¹⁰⁴ *Florida Bar v. Went For It, Inc.*, 515 U.S. 618, 623, 115 S.Ct. 2371, 2375 (1995); see also, *Heffron v. International Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 646, 101 S.Ct. 2559, 2564 (1981) (“the First Amendment does not guarantee the right to communicate one’s views at all times and places ...”).

¹⁰⁵ *Florida Bar*, 115 S.Ct. at 2375; *Central Hudson Gas & Electric Corp. v. Public Utilities Comm’n of New York*, 447 U.S. 557, 562, 100 S.Ct. 2343, 2350 (1980); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Counsel, Inc.*, 425 U.S. 748, 770, 96 S.Ct. 1817, 1830 (1976).

¹⁰⁶ *Florida Bar*, 115 S.Ct. at 2375.

¹⁰⁷ *Id.*

¹⁰⁸ *Florida Bar*, 115 S.Ct. at 2375; *Central Hudson*, 100 S.Ct. at 2350 (“The protection available for particular commercial expression turns on the nature both of the expression and of the governmental interests served by its regulation.”).

By legislative mandate, a substantial interest exists here (e.g., opening the local markets to competition and preventing anticompetitive behavior that threatens such competition).¹⁰⁹ The CLECs are only asking that the limitation be narrowly drawn to apply to misdirected or erroneous calls, which Qwest's representatives can quickly discern by asking the customer the purpose of his or her call (most likely, the customer will volunteer this information in his or her first sentence or so). Such questioning is within reason and easily incorporated into the representative's existing scripts.¹¹⁰

Based upon this supporting law, AT&T asks that the Commission protect nascent competition by not allowing Qwest to abuse its unique position as the dominant reseller controlling the underlying service provided in the resale context. Qwest should therefore be expressly prohibited in its SGAT from using the misdirected CLEC end-user calls as a sales opportunity. AT&T proposed just such language, which states:

6.4.1 CLEC, or CLEC's agent, shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. CLEC's end users contacting Qwest in error will be instructed to contact CLEC; and Qwest's end users contacting CLEC in error will be instructed to contact Qwest. In responding to calls, neither Party shall make disparaging remarks about each other. To the extent the correct provider can be determined, misdirected calls received by either Party will be referred to the proper provider of local exchange service; however, nothing in this Agreement shall be deemed to prohibit Qwest or CLEC from discussing its products and services with CLEC's or Qwest's end users who call the other Party seeking such information.

This is clearly a narrowly drawn restriction that safeguards the very important legislative goal of encouraging the growth of competition in the local telecommunications market.

¹⁰⁹ 47 U.S.C. §§ 251 & 253.

¹¹⁰ Most companies such as Qwest provide computer-available scripts for their representatives to follow while on the phone with customers.

V. CONCLUSION

This concludes my comments related to Qwest's performance and its South Dakota SGAT.

January 19, 2001

Qwest Collocation Policies and Performance Requirements

2001 Update

Qwest would like to assure all CLEC customers are aware of Qwest Central Office and Collocation policies. This is particularly important with changes that have been made over the last 12 months. Please see our guidelines identified below.

General Policies and Procedures:

- The following policies and procedures are to be followed by Co-Providers, their employees, agents, contractors and invitees. Where the term Co-Provider is used it shall apply to Co-Provider, their employees, agents, contractors and invitees.
- This document will be provided to the Co-Provider before or during the Collocation acceptance procedure by the Qwest State Interconnect Manager (SICM). The Qwest SICM will review this information with the Co-Provider and assist them in locating their equipment cable termination points for test access, Collocation equipment areas, as well as the allowed access routes to these locations.
- Qwest will hold the Co-Provider responsible for (i) willful or intentional misconduct (including gross negligence and trespass); (ii) bodily injury, death or damage to tangible real or tangible personal property (including services provided by Qwest network infrastructure) resulting from the Co-Provider's actions or the actions of Co-Provider's agents, subcontractors or employees. Qwest will utilize its standard damage claims processes to assess damages and seek restitution. In cases where damage to Qwest property occurs but no cause can be identified, both Qwest and the Co-Provider will meet jointly to resolve the issue. The Co-Provider may make a claim by calling 1-800-654-2525, option 1. For detailed descriptions, please refer to your Interconnection Agreement.
- If at any time the actions of the Co-Provider or their equipment operation are deemed compromising or present risk to Qwest Network elements or to Central Office functions, Qwest reserves the right to cease all Co-Provider activities until potential problems or concerns are addressed by the appropriate Qwest parties. Any Qwest employee can request Co-Provider activity to cease. The Co-Provider activity or work may resume when so designated by the SICM.

Collocation Co-Providers must:

- Ensure that installed Co-Provider equipment will be used for access to UNEs or interconnection. Installed Co-Provider equipment cannot be solely used for switching purposes
- Secure and lock all doors and gates.
- Report to Qwest Security at 1-888-879-7328
 - Lost cards or keys and property and equipment losses immediately
 - Any vandalism to company or personal property
 - Unsecured conditions and security violations
 - Anyone who is unauthorized to be in the work area or is not wearing the Qwest identification/access card.
- Co-Providers must comply with central office fire and safety regulations, OSHA, EPA, Federal, State and local regulations, which include but are not limited to:
 - Individuals must wear safety glasses in designated areas
 - Keep floors and aisles clean and free of trip hazards such as wire
 - Check ladders before moving
 - Do not leave tools or test equipment on rolling ladders
 - Do not block open doors
 - Provide safety straps and cones in installation areas
 - Place and observe electrical Tag Out program

- * Exercise good housekeeping
- * Cellular telephones are not permitted within the central office.
- * Extension cords are not to cross aisles/walkways without proper safety markings.
- * No open flames or smoking shall be permitted anywhere within the building
- * No flammable or explosive fluids or materials are to be kept or used anywhere within the building or on the grounds.

General Building and Grounds:

- * No signs, advertisements or notices shall be visible from outside the tenants designated space from either inside or outside of the building. No canvassing, peddling, soliciting shall be permitted within the building or on the grounds.
- * Co-Providers are required to remove all trash from the central office on a daily basis and may not use Qwest trash containers. Sidewalks, vestibules, offices, hallways, stairways, elevator lobbies, etc. shall not be used for storage of materials or disposal of trash. If Qwest is required to or dispose of any trash the Co-Provider shall be responsible for the expense of such removal. Co-Providers are responsible to ensure that their space is kept clean and free of hazards. This could include light housekeeping i.e. dusting and rubbish removal
- * Co-Providers will have access to Qwest rolling A frame ladders, if available.
- * Co-Providers shall not tamper with, damage, or attempt to adjust or remove any environmental control device, building alarm component or other building fixture. Co-Providers shall not make any modifications, alterations, addition or repairs to any space within the building or on the grounds.
- * Qwest shall not be held liable or responsible for lost or stolen possessions or personal property of the Co-Provider.
- * The Co-Provider will not ship material direct to a Qwest Central Office. Co-Provider will not to sign for, or open, any boxes or delivery intended for Qwest or their vendors.
- * Qwest will not provide designated parking for Co-Providers where such space is available. Space in any company parking facility is based on availability and authorization granted by the local building representative. Qwest is not liable for any damage, theft, or personal injury resulting from the Co-Provider's parking in its parking facilities.
- * Building related problems can be referred to the Work Environment Centers:

* Colorado, Wyoming, Arizona, New Mexico	1-800-879-3499
* Idaho, Montana, Oregon, Utah, Washington, Iowa, Minnesota, Nebraska, North Dakota, South Dakota	800-201-7033 OPTION 2

Access to and use of Qwest Central Office telephones:

- * Co-Providers are required to order their own telephone lines for normal work operation communications. Co-Provider personnel are not allowed to use Qwest telephone lines except as delineated below. Co-Provider telephones must be mounted within their leased space or at a location negotiated with the local Central Office manager, where such space is available.
 - * Qwest will provide Co-Provider personnel access to telephone service, provided by Qwest at any ICDF locations where Co-Provider test access may be required. Co-Providers are to use these lines for circuit testing only and may use them only for a reasonable time for such purpose, releasing them to other Co-Providers or Qwest personnel as needed.
 - * Co-Provider personnel using the frame testing lines are allowed to make local, toll free, calling card or reversed charge calls only.

General Work Activity:

- * The Co-Provider must adhere to the standards in the following Qwest Technical Publications. Copies of these Technical Publications are available on the web at: <http://www.uswest.com/techpub/>
 - * 77324 DS3 Service
 - * 77350 Installation Guidelines
 - * 77367 Hazardous Materials
 - * 77351 Engineering
 - * 77355 Bonding & Grounding
 - * 77375 1.544 Mbit/s channel Interfaces
 - * 77385 Power

- Any work activity that has a potential to negatively impact customer service, employee work operations, safety or company investments must be approved in advance and appropriate procedures followed. This includes installation work, power and cabling work, etc as identified in Tech Pub 77350. A completed and signed Method of Procedure (MOP) document is required prior to starting this activity. The Co-Provider must make arrangements to have the C.O. Manager (or their designate) approve the MOP before any material delivery or installation start. Some work activity may have to be performed during established maintenance windows. The MOP document describes the work activities to be performed to ensure service reliability. If, at any time, the equipment in the physical space is deemed a danger to Qwest Network elements, Qwest reserves the right to have the Co-Provider cease all activities until any potential problems or concerns can be addressed by the appropriate parties. A separate MOP may be required to turn up power to the collocation space.
- Co-Providers and Qwest will work jointly to maintain installation/service quality standards at their equipment termination points. The SICM will escalate known discrepancies in installation quality for resolution.

Central Office Security:

- The Co-Provider must submit a request for Qwest Access Cards via e-mail for those individuals who need to be authorized to enter a Qwest facility. The requests for Access cards and updates should be directed to ICCbade@uswest.com. It is the Co-Provider's responsibility to renew any Access Badges on an annual basis (prior to their expiration date). Failure to do so will deny access for the cardholder and may require submitting a new request. Contact ICCbade@uswest.com for renewals.
- All Co-Provider contractors requiring unescorted access to the physical space must be issued a Qwest Access card. The Co-Provider assumes responsibility for the actions of their contractors while on Qwest property. If at any time a Co-Provider employee or their contractor is observed outside the designated Co-Provider access area or without proper identification, the parties will be asked to vacate the premises and Qwest Security will be notified.
- Return Access Cards immediately when employees/contractors leave your business or change job responsibilities and no longer require access to Qwest's Central Offices. Immediate notification is required if the Co-Provider has information that its employee poses a safety and/or security risk. Failure by the Co-Provider to provide such notification may result in denial of the Co-Provider to Qwest collocation facilities. Submit the notification to ICCbade@uswest.com
- Problems with Access Cards and/or Qwest Card Readers should be reported to 1-888-261-9493
- Co-Providers shall be required to wear a Qwest Access card or Visitor's Pass above the waist at all times while on the grounds or in buildings. If Qwest determines that the Co-Provider was not authorized to have entry into the physical facility, the Co-Provider is subject to trespass, civil and criminal. If Qwest determines that an authorized Access card was used to provide unauthorized entry, Qwest will revoke the access privileges for the individual to whom the card was issued and such person may be subject to trespass, civil and criminal.
- Co-Providers shall be restricted to corridors, stairways, and elevators that provide direct access to their space and designated equipment termination points for test access, or to the nearest restroom facility from the Co-Provider's designated space. They could be subject to removal from the premises and possible criminal charges and/or trespassing for repeated offenses.
- Registers or logbooks may be maintained in some buildings to record entry and departure. These must be filled out accordingly.

Unauthorized Persons:

- Report the presence of any unauthorized person(s) to the guard station, local Qwest Management, or Qwest Security at 1-888-879-7328

Visitor Pass:

- Any Qwest or authorized Co-Provider employee with a valid and activated Qwest Access card may serve as an escort to a visitor and may sponsor fellow employees who have forgotten or lost their cards. Visitors only have access to the Co-Providers space and must be escorted at all times while in the Qwest property. The Co-Provider assumes responsibility for the actions of their contractors while on Qwest property.
- Visitors are issued a badge that expires daily. A new one is required each day. These visitor badges may be ordered by calling the Qwest Central Access Control Center on 1-303-707-8357.

Access:

- Access to leased physical space may be provided 7 days per week, 24 hours per day, subject to Qwest terms for ensuring safety and security.
- All authorized Co-Provider's will need to notify the Qwest Network Reliability and Operations Center (NROC) when gaining access into a central office after hours. Normal business hours are assumed to be 7:00 a.m. to 7:00 p.m. The notification numbers are as follows:
 - **1-800-341-8188, press 1, press 4** for Washington, Oregon, Minnesota, North Dakota, South Dakota, Nebraska and Iowa.
 - **1-800-713-3666, press 1** (Any option can be chosen in the next layer since the calls go to one location no matter what the switch technology type) for Idaho, Montana, Wyoming, Utah, Colorado, Arizona, and New Mexico.

Admission and Visitor Control:

- When keys and/or access cards are issued for access into buildings, the Co-Provider will be responsible for the return of the keys and/or access cards immediately or upon Qwest's request for their return since they are the property of Qwest. Failure by the Co-Provider to return such items may result in denial of the Co-Provider to Qwest collocation facilities.
- If a key and /or Access Card is lost or access is changed as a result of a Co-Provider's request, the Co-Provider is responsible for replacement cost up to and including re-keying and/or reprogramming the access code of the building, if required. The Co-Provider is prohibited from duplication of any key issued by Qwest and any unauthorized use of such key and/or Access Card by the Co-Provider's representatives subjects the Co-Provider to possible prosecution for criminal trespass.

Security Access to Co-Provider's Cages:

- Qwest requires emergency access to all cages for safety purposes. Combination locks (or combination lock-boxes, with a key inside to unlock a keyed padlock) must be provided by the Co-Provider and attached to each cage to allow the C.O. Operations organization emergency access into the cage in the event of fire, safety, water hazards, etc. The Co-Provider will provide the combination to Qwest personnel requiring access to collocation space.
- Qwest requires that the Co-Provider provide the combination to their cage lock for repair or installation of finished service/administrative lines where the DMARC is located inside the cage. The information is provided at the time the repair or installation work order is requested. Co-Provider employees can be on site to open cage doors in lieu of providing the combination on the work order.
- The Co-Provider's emergency contact number located on the Co-Provider's sign must also have the combination.

Cageless Equipment Collocations:

- A reasonable amount of space around the Co-Providers cageless collocation space will be made available for short term administrative and trouble clearing work. The Co-Provider will be allowed to use this space only for the time necessary to perform a specific work function. In no case will the time extend beyond 8 hours.
- Use of this space would be to use test equipment or correct an immediate problem.
- Co-Providers will not be allowed to use Qwest records, equipment carts, hand tools or test equipment. Co-Providers must provide their own test equipment, hand tools and materials.
- A Co-Provider will be allowed to temporarily block equipment aisles during installation and repair operations but will be required to clean up and open the area between shifts.
- Co-Provider's may place protection on the front and rear of their equipment in Cageless Collocation equipment areas. Technical publication 77350 also allows for of temporary protection during installation placing and cabling.
- Co-Providers can place permanent equipment covers on their equipment as long as they do not extend into the equipment aisles and common walk space. Maximum front and rear equipment space, including protective covers must be included in the collocation order and approved in advance. Cageless collocated equipment must conform to industry dimension standards for transmission equipment and Qwest equipment line-up limitations.
- Co-Provider's will be allowed temporary access to AC outlets to operate test equipment and installation hand tools only. It is expected that these connections would be no longer than a few hours at a time and not

be connected for more than one work shift. Co-Provider's may order a separate AC outlet at their collocation on their order.

- At Cageless equipment collocations, Co-Provider's will need to install their own test batteries and ESD ground points. Only during the early stages of installation will Co-Provider's be allowed access to the Qwest ESD ground connections. Co-Provider's will not be allowed to place electrostatic mats in Qwest equipment aisles. Electro-static plugs with wrist strap connections to a suitable ESD ground source are required.

February 23, 2001

Collocation Cancellation Policy - effective March 15, 2001

This policy addresses the applicable requirements for the cancellation of a collocation site request under construction. This policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement.

Cancellation, for purposes of this policy, applies to all collocation sites which are under construction and have not been completed, as defined by Request For Service (RFS) complete. A cancellation can occur by the result of a Co-Provider request or due to expiration. Expiration of a collocation request occurs where the Co-Provider fails to take the following action:

- ◆ Accept the quote and pay the initial 50% by the 30 day quote acceptance timeframe.

Cancellation Terms and Conditions

The following describes the two scenarios for which a collocation request will be considered cancelled.

1. Quote is not accepted by the Co-Provided or the Quote expires
 - ◆ Upon cancellation of the collocation site construction will cease;
 - └ *Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full.*
 - ◆ **Payments owed to Qwest;** (*Quota acceptance is defined as the receipt of the first 50% payment and written acceptance of the quote.*)
 - └ Original QPF payment is required
2. After Quote acceptance (*Quota acceptance is defined as the receipt of the first 50% payment and written acceptance of the quote.*), but prior to RFS a cancellation may be requested.
 - ◆ **Payments owed to Qwest**
 - └ QPF payment associated with the original order
 - └ First 50% of quoted charges
 - └ QPF payment associated with the cancellation request
 - └ Engineering Labor charges (*Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full*)
 - └ Cancellation Assessment Fee

General Terms

1. Qwest requires all cancellation requests to be submitted to the Account Team Representative in writing, and accompanied by a completed collocation application indicating the cancellation request requirements.

General Terms (continued)

2. Provider when a cancellation request is received, with the exception of work for which installation has begun (*Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full*)
 - a. Upon receipt of the cancellation request, Qwest will assess the project status to determine if specific elements will be finished or are in progress.
3. Qwest will prepare a cancellation bill and remit to the Co-Provider within 30 days. Payment of cancellation bill is due within 30 days of quote date.
4. If payment is not made within 30 days of receiving the cancellation bill, the Co-Provider's account is subject to collection.
 - a. Prior to Qwest accepting another collocation application from the Co-Provider; all outstanding financial obligations must be paid to Qwest
Collocation Payments owed to Qwest:
 - ┆ 100% of all incurred recurring charges
 - ┆ 100% of all incurred non-recurring charges
 - ┆ All associated cancellation charges
 - b. Collocation space returned to Qwest, due to cancellation, is subject to all remedies associated with Qwest's collection's process
- 5) Upon cancellation, the Co-Provider requests removal in writing.
will be retained unless the Co-Provider requests that the materials that it owns (i.e. cage/fencing and cabling) be removed. Qwest will add charges for the removal of these items to the cancellation quote. *By Whom?*
 - ┆ If the equipment cable was procured by Qwest, per Co-Providers application, and not installed: Qwest will reuse it when possible for future requests.
 - ┆ If the cable has been procured by the Co-Provider and not installed, the cable will be returned.) *What does this mean*
- 6) Space returned to Qwest's control is used to meet Qwest's valid space requirements, as well as, offered to other requesting Co-Providers on a first come first serve basis.
 - a. Co-Providers presented the opportunity to occupy the collocation space relinquished by another Co-Provider will be charged:
 - i) Non-recurring and recurring charges stipulated in the Collocation section of the new Co-Providers Interconnection Agreement or tariff.
 - ii) Non-recurring material charges paid by the previous Co-Provider and relinquished will not be assessed to the new occupant.
 - iii) Expedited structure charge
- 7) The vacating Co-Provider must relinquish security access, if they do not lease another collocation site at the vacated Central Office. A New Co-Provider must submit its request for security access utilizing Qwest procedures.
- 8) Space returned to Qwest is not subject to change of responsibility or decommission.

If you have any questions regarding this please do not hesitate to contact your Qwest Account Manager.

Sincerely,

Qwest

February 27, 2001

Collocation Change of Responsibility Policy - effective March 15, 2001**Target Audience: CLEC****Notification Classification: Product, Network**

This policy addresses the applicable requirements for Change of Responsibility for Co-Provider who wishes to transfer the lease of its collocation site to another Co-Provider. This policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement.

Change of responsibility refers to the authorized transfer of a specific collocation site, and the associated payment obligations for the transfer of that site, from one Co-Provider to another Co-Provider with a commission approved Interconnection Agreement. Two options for a change of responsibility are available:

1. Decommission Avoidance Request - (DAR)
 - a. A DAR permits a Co-Provider to vacate and transfer responsibility for a completed collocation site to another Co-Provider in good standing, who agrees to take on the legal and financial responsibilities of occupying the collocation. Please see the general terms and conditions contained in this document relating to DAR
 - b. DAR is submitted in lieu of a Decommission request.
2. Cancellation Avoidance Request - (CAR)
 - a. A CAR permits a Co-Provider to stop work on a collocation site in progress, as well as, transfer the responsibility of the collocation site to a new Co-Provider in good standing, who agrees to take on the legal and financial responsibilities of occupying the collocation. Please see the general terms and conditions contained in this document relating to CAR
 - b. CAR is submitted in lieu of a cancellation order.

Change of Responsibility Options and Requirements**Decommission Avoidance Request - DAR**

A DAR will only be accepted after:

1. Original collocation request has been completed and 100% of the associated financial obligations have been paid.
2. Qwest has not taken action to decommission an order due to expiration.
 - a. Expiration is defined as an existing collocation request that terminates by lack of customer action.
 - b. If a Co-Provider fails to take the following actions, the collocation request will expire. To avoid decommissioning the following actions must be taken by the Co-Provider prior to expiration.
 - i. Accept the quote and payment of the initial 50% by the 30 day quote acceptance timeframe.
 - ii. Payment of the final 50% must be made within 30 days of Ready For Service (RFS).
 - iii. Schedule and perform a walk through within 3 weeks of RFS.
3. A DAR is not permitted if the Co-Provider has previously submitted a decommission request or the collocation build has not been completed.

DAR Charges

Rate Elements Charged to the New Co-Provider

The following fees will be assessed:

- Engineering Record Transfer Fee
- Security Access Charges
- Administrative Costs
- Engineering Labor Charges
- Expedited Structure Charge

Rate Elements Charged to Vacating Co-Provider

- Engineering Labor Charges
- Change of Responsibility Assessment Fee

Cancellation Avoidance Request - CAR

A CAR can be requested only if:

1. A collocation site request has not been completely constructed as defined by RFS complete.
 - a. If the collocation has been completely constructed as defined by RFS, a CAR is not available.
2. A collocation site request has been accepted through the quote acceptance procedures but is prior to RFS. (*Quote acceptance is defined as the receipt of the first 50% payment and written acceptance of the quote.*)
 - a. Any financial obligations to Qwest for the collocation must be satisfied in full.
3. Qwest has not taken action to cancel an order due to expiration.
 - a. Expiration is defined as an existing collocation request that terminates by lack of customer action.
 - i. If a Co-Provider fails to take the following actions the collocation request will expire. To avoid cancellation the following actions must be taken by the Co-Provider prior to expiration.
 - (1) Accept the quote and pay the initial 50% by the 30 day quote acceptance timeframe.
4. A CAR is not permitted if the Co-Provider has previously submitted a cancellation request or an order has expired.

CAR Charges

Outstanding Financial Obligations

These obligations may include but are not limited to:

Payments owed to Qwest*

- QPF payment associated with the original order
- First 50% of quoted charges
- Engineering Labor charges (*Elements of work in progress (i.e. cage enclosure, bay space, racking, power or termination wiring, blocks, etc.) for which installation has started will be charged in full*)

**Any payments received for the specific collocation will be applied to the Billing Account Number (BAN)*

Change of Responsibility Rate Elements Charged to the New Co-Provider

The following charges will be assessed:

- Engineering Record Transfer Fee
- Security Access Fees
- Administrative Fees
- Engineering Labor Charges
- Expedited Structure Charge

Change of Responsibility Rate Elements Charged to Vacating Co-Provider

- Engineer Labor Charges
- Change of Responsibility Assessment Fee

General Terms for Change of Responsibility Requests:

1. The new Co-Provider must submit their change of responsibility request via the Collocation Order Form.
2. Change of Responsibility is offered for Caged Collocation, Cageless Collocation, and Virtual Collocation.
3. In all Central Offices in which a Co-Provider wishes to vacate a collocation site, the Co-Provider must have the collocation offered to Co-Providers who have requested similar collocation sites and are on Qwest's Queue list.
 - a. Qwest will administer the offering of the collocation site on behalf of the vacating Co-Provider to Co-Providers in queue. The collocation site will be offered in the order in which Qwest received the Co-Providers requests.
 - b. If a Co-Provider indicates interest, Qwest will notify the vacating Co-Provider.
 - i. Negotiation of the terms and conditions between the vacating Co-Provider and the new Co-Provider are the responsibility of the two parties. Qwest does not participate in these discussions, nor have any responsibility for any terms and conditions negotiated by the Co-Providers beyond those stated in the Change of Responsibility Policy.
 - c. If no Co-Providers are in queue or this is no interest, the vacating Co-Provider will be notified.
 - i. If no Co-Provider is in queue, the vacating Co-Provider may select to transfer the responsibility to an interested commission approved Co-Provider they have identified, if the following steps have been taken:
 - (1) Interested party is a commission approved Co-Provider;
 - (2) Interested Co-Provider and applicable information was indicated on the submitted Change of Responsibility query request;
 - (3) Required Change of Responsibility order information and documentation is submitted to Qwest within 7 days;
 - (a) Documentation requirements are indicated in the Change of Responsibility Policy
 - ii. If no interested party is identified in queue or indicated on the Change of Responsibility query request by the vacating Co-Provider, Qwest will cancel the request and the legal and financial responsibilities remain with the original Co-Provider.
 - (1) A new Change of Responsibility Assessment Fee will need to be submitted for each additional query.
4. The Co-Provider to whom the collocation site is being transferred must be in good financial standing and have a commission approved Interconnection Agreement with Qwest.
 - a. The terms of the Co-Provider's Interconnection Agreement to whom the collocation site is being transferred must have negotiated terms and conditions for the type of the collocation for which they are accepting responsibility.
 - i. If terms and conditions for the specific collocation are not included in the Interconnect Agreement and have not been established the Co-Provider must renegotiate those portions of its existing Interconnect Agreement with Qwest prior to the completion of the change of responsibility.
5. Prior to the completion of the Change of Responsibility Decommission Avoidance Request, the vacating Co-Provider must pay 100% of its outstanding financial obligations.
6. The change of responsibility policy is for the entire collocation site "as is", which includes all materials utilized in the initial design of the collocation site with the exception of the Unbundled Elements, finished services, administrative lines or entrance facilities. These elements are required to be disconnected prior to the completion of the transfer

- a. All Unbundled Elements or finished services of the vacating Co-Provider must be disconnected from the collocation space, before the change of responsibility order will be completed and transferred.
 - i. Prior to disconnecting circuits associated with the collocation Co-Provider must notify all current end users of the discontinuance of service.
 - (1) A copy of the notification letter must be submitted with the application for the change of responsibility of the collocation site or the application will be refused.
- b. Entrance Facilities must be unspliced at the POI but the facilities are transferred "as is" with the change of responsibility available for two standard entrance facility options. All other entrance facilities choices must be completely disconnected from the collocation site prior to the completion of the change of responsibility. The two standard entrance facilities that can be transferred and the associated actions are as follows:

Standard Entrance Facility

- Vacating Co-Provider is responsible for the removal of the original splice.
- New Co-Provider delivers fiber at the POI and is responsible for scheduling the splicing of the entrance facility to the collocation site.

Express Fiber Entrance Facility

- If no splice exists at the POI the vacating Co-Provider's fiber will be cut.
- If the express entrance facility has a splice at the POI the vacating Co-Provider is responsible for the removal of the original splice.
- New Co-Provider must deliver fiber at the POI and is responsible for scheduling the splicing of the express fiber to the collocation.

- 7. Prior to the completion of a Change of Responsibility Cancellation Avoidance Request, the vacating Co-Provider must pay 100% of the non-recurring and recurring charges that are outstanding.
 - a. Upon the acceptance of the Change of Responsibility – Cancellation avoidance application, Qwest will stop construction and consider the job 100% complete and the RFS met.
 - i. Any outstanding charges and payments will be assessed in accordance with the CAR terms as described in the CAR and DAR sections of this document.
- 8. Vacating Co-Provider is obligated to pay all recurring charges until Change of Responsibility is completed. The change of responsibility is considered complete when:
 - a. Network record changes are complete
 - b. Billing is transferred to the new Co-Provider
 - c. Letter of Agreement is signed by both Co-Providers
 - d. Letter of Agreement is received and approved by Qwest via certified mail
- 9. The vacating and the new Co-Provider must submit 100% payment for the billed charges within 30 days of their billing date or the Change of Responsibility application will be cancelled.
 - a. If cancellation of the change of responsibility application occurs all preexisting financial and legal obligations will remain responsibilities of the original (vacating) Co-Provider.
- 10. Upon completion of the change of responsibility, the new Co-Provider will be assessed ongoing and future charges for the collocation site based on the terms and conditions of its Interconnection Agreement.
- 11. Qwest does not participate in the financial negotiations between the vacating Co-Provider and the new Co-Provider regarding capital expenditures incurred by or charged for by the vacating Co-Provider for the transfer of the collocation site.
- 12. Upon completion of the change of responsibility the new Co-Provider may modify the collocation site by submitting augment orders.
 - a. Types of Augment orders that might need immediate consideration are:
 - i. Entrance Facility requirements
 - ii. Finished Services or UNES
 - iii. Power Requirements

13. Charges for Augments requested to modify Collocation sites obtained through Cancellation Avoidance Request will be billed based upon the New Co-Provider's interconnection agreement.
14. The vacating Co-Provider must relinquish security access, if they do not lease another collocation site at the vacated Central Office. New Co-Providers must submit its request for security access utilizing Qwest procedures.

If you have any questions regarding this please do not hesitate to contact your Qwest Account Manager.

Sincerely,

Qwest

February 27, 2001

Collocation Decommissioning Policy - effective March 15, 2001

Target Audience: CLEC

Notification Classification: Product, Network

This policy addresses the applicable requirements for a Co-Provider to submit an order to decommission a completed collocation site, as defined by Ready For Service (RFS). This policy will be effective regardless of whether it is explicitly stated in a particular Interconnection Agreement.

A decommission refers to the removal of a specific collocation site, which the Co-Provider desires to be deactivated, which includes the removal of Co-Provider equipment and associated elements from the Qwest central office. (If the Co-Provider requests that the materials it owns (i.e. cage/fencing and cabling) be removed, Qwest will add charges for the material removal to the decommissioning quote.) The completion of a decommission and 100% payment of any outstanding financial obligations, will terminate a Co-Providers obligation for payment of recurring charges for the site.

Decommission Requirements

1. Decommissioning is offered for Caged Collocation, Cageless Collocation, Virtual Collocation and ICDF Collocation.
2. A Decommission request will only be accepted after the original collocation request has been completed and a 100% of the Co-Provider's financial obligations have been paid.
3. A Decommission request will be accepted as long as the application has been properly completed and the Co-Provider does not have a Change of Responsibility-Decommission Avoidance Request (DAR) in process.
4. The Co-Provider must submit its Decommissioning Request to a Qwest Account Manager via certified mail. A completed Collocation application must be sent, accompanied by a written request (Letter of Authorization) on company letterhead, and must be signed by an authorized Co-Provider agent.
 - a. Additional requirements exist for Co-Providers that have end users utilizing leased Qwest services (i.e. CLEC to CLEC, UNEs, Finished Services, etc. - Please review additional Decommission requirements)
5. The terms of the Interconnection Agreement for the Co-Provider requesting a decommission, must negotiate or have negotiated terms and conditions for the type of collocation for which the decommission is being requested.
 - a. If negotiations for terms and conditions have not been completed, the Co-Provider must enter into negotiations with Qwest prior to acceptance of the Decommission Request.
6. A Decommission Request, if approved, will authorize Qwest to remove the specified collocation site. The Decommission includes removal of all materials utilized in the design of the collocation site.
 - a. Prior to decommissioning, Qwest will assess the collocation space and materials, with the exception of the Co-Provider owned equipment, to identify if the elements used in building the collocation site, may be reused to meet other existing or future collocation requests.
 - b. Co-Providers presented the opportunity to occupy the collocation space relinquished by another Co-Provider will be charged:
 1. The non-recurring and recurring charges stipulated in the new Co-Providers Interconnection Agreement or the tariff.
 - (1) Non-recurring material charges paid by the previous Co-Provider and relinquished will not be assessed to the new occupant.

6. If Qwest determines the elements are reusable, Qwest will not remove the materials utilized to construct the collocation space unless requested by the Co-Provider in writing.
 - i. If materials are requested to be removed, charges for removal will be added to the Co-Provider's decommissioning cost.
 - ii. If the materials are not to be removed, the materials will remain in place and all usable materials will be reused for existing or future collocation requests.
 - (1) This will reduce the vacating Co-Providers decommissioning expense and the new Co-Provider's construction expenditures.
7. Co-Provider has 60 days to remove its equipment or Qwest will send notification to the Co-Provider that the equipment is considered abandoned.
 - a. Co-Provider then has 15 days to notify Qwest that the equipment is not abandoned.
 - i. Co-Provider must remove the equipment within 15 days after it sends notification to Qwest, or the equipment will be considered abandoned.
 - b. After Qwest notification procedures are completed, Qwest will review Co-Provider responses and assess if the equipment has been abandoned: If abandoned, Qwest will send final notification and a bill to the Co-Provider for the labor charges associated with the abandoned equipment removal. Qwest will then sell the equipment as scrap.
 - i. In the case of Virtual collocation, Qwest will automatically remove all equipment within 60 days and return it to the Co-Provider. An additional charge will be assessed and billed for the removal of the Co-Provider's equipment.
8. All Unbundled Network Elements, finished services and administrative lines are required to be disconnected and removed prior to the decommission process proceeding.
9. All Unbundled Network Elements, CLEC to CLEC, administrative lines or finished services of the vacating Co-Provider must be disconnected and removed. If they are not disconnected, charges for these elements will continue to be billed and the decommission request will not be processed.
 - a. Prior to disconnecting circuits associated with the collocation, the Co-Provider must notify, in writing, all current end users of the discontinuance of service.
 - i. A copy of the notification letter must be submitted with the decommission request or the application will not be accepted.
 - b. In the case of CLEC to CLEC and shared collocation, the Co-Provider submitting the decommission request must:
 - i. Send written notification of the requested decommission to the partnering Co-Provider, with a copy of the same notification sent to Qwest as an attachment to the decommission request.
 - ii. Submit an Augment order, with a copy of the written notification indicated above, to remove the CLEC to CLEC connection, or recurring billing will continue. (Please see CLEC to CLEC policy for additional CLEC to CLEC terms and requirements.)
 - iii. If a copy of the required notification(s) are not attached to the decommission request, Qwest will not accept the application.
10. Vacating Co-Provider is obligated to pay all recurring charges until the decommission is completed. The decommission is considered complete when:
 - a. Power has been removed from the collocation site;
 - b. Collocation financial obligations for the site have been met;
 - i. 100% of decommission charges have been paid
 - ii. 100% of outstanding non-recurring and recurring charges have been paid;
 - c. Letters of Authorization and notification(s) are submitted with the application, received via certified mail and accepted by Qwest.
11. The vacating Co-Provider must submit 100% payment for the billed charges within 30 days of the quote or the recurring charges and the associated liability (i.e. power and terminations) will continue to be billed and assessed against the Co-Provider.
12. If 100% of the Co-Provider's financial obligation are not received within 90 days, the Co-Provider will receive notification that no new collocation applications will be accepted until all past due balances are paid and accounts are brought current.

13. The vacating Co-Provider must relinquish security access, if they do not lease another collocation site at the vacated Central Office. New Co-Providers must submit its request for security access utilizing Qwest procedures.

Rate Elements Charged for Decommissioning

The following fees will be assessed:

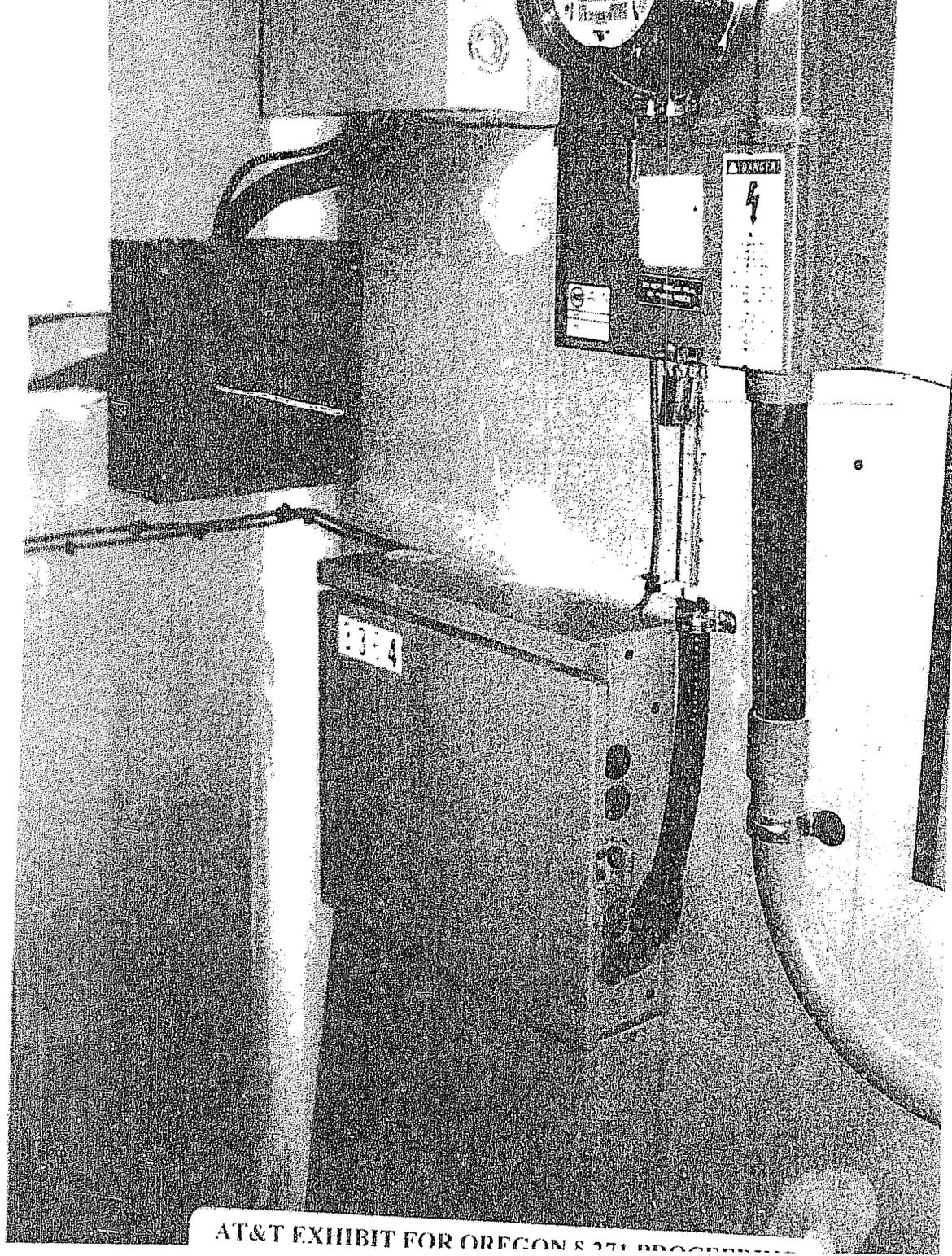
- ☐ QPF
- ☐ Network System Administrative Fee
- ☐ Billing Administrative Fee
- ☐ Engineering Labor Charges
- ☐ Additional Removal Fees*
- ☐ Decommission Assessment Fee

**If the Co-Provider requests that the materials that it owns (i.e. cage/fencing, and cabling) be removed, Qwest will add charges for the removal of these items to the decommissioning quote.*

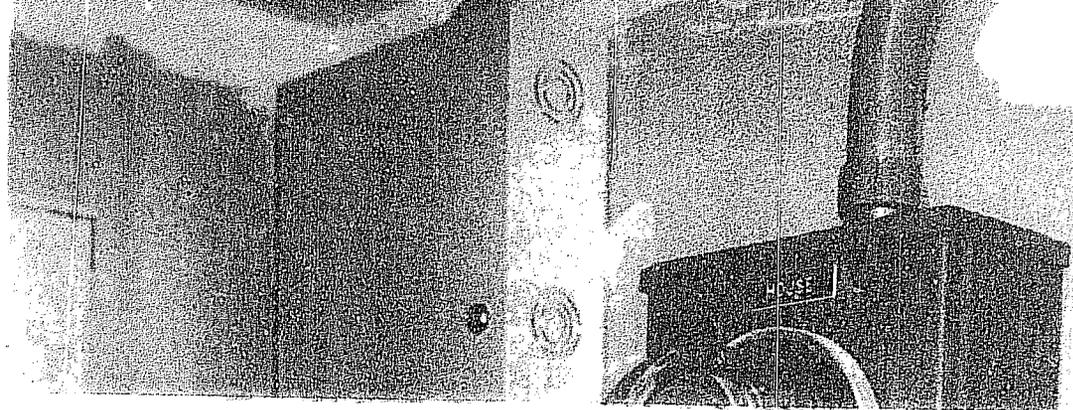
If you have any questions regarding this please do not hesitate to contact your Qwest Account Manager.

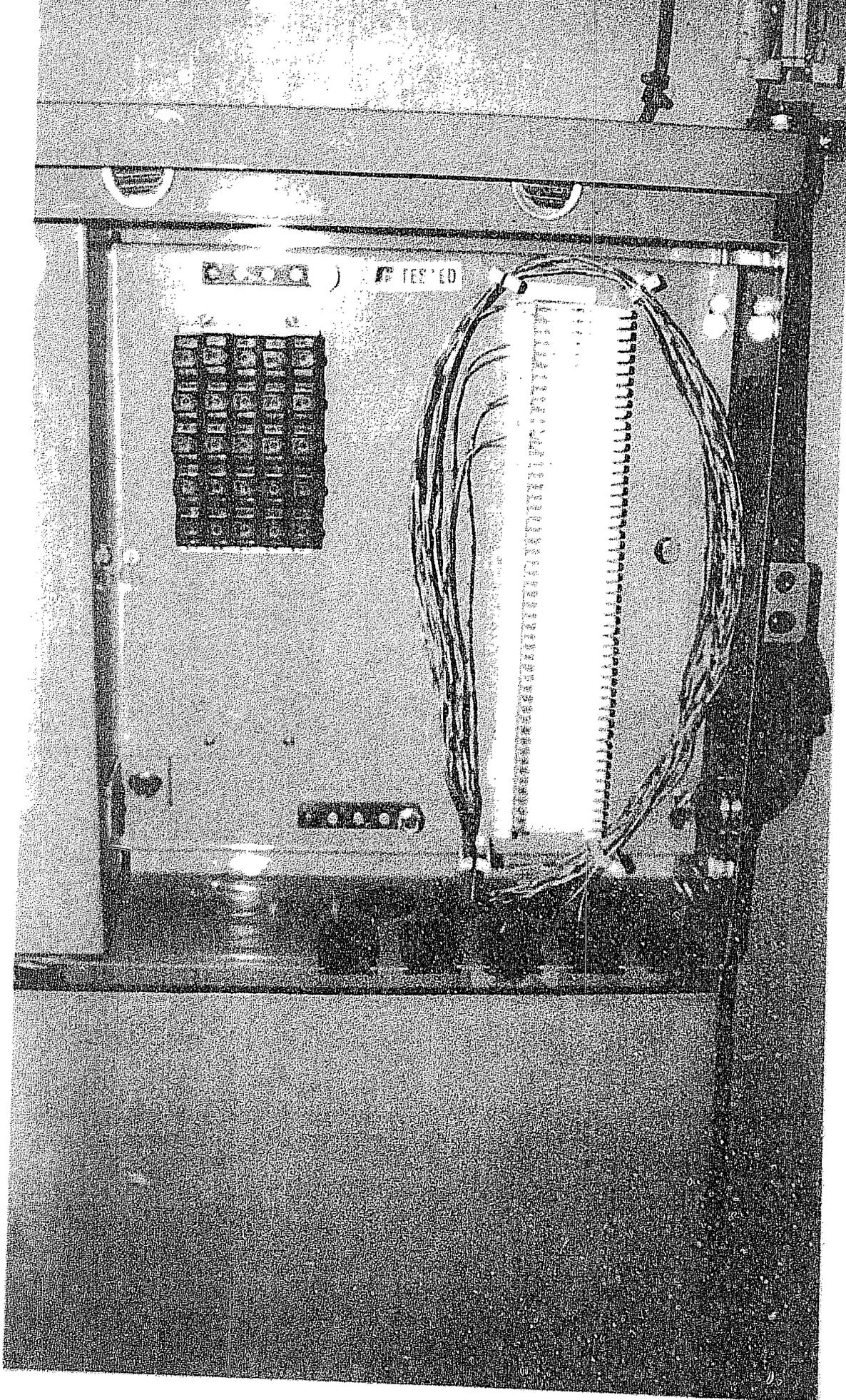
Sincerely,

Qwest



AT&T EXHIBIT FOR OREGON 8 271 PROGRESS



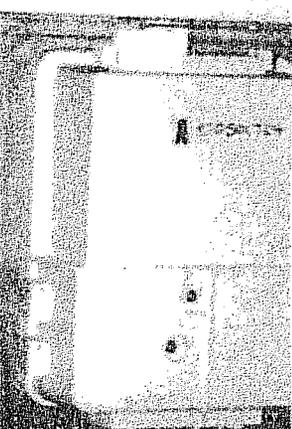
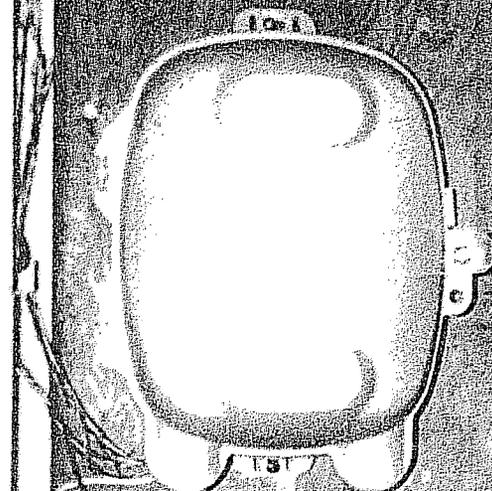


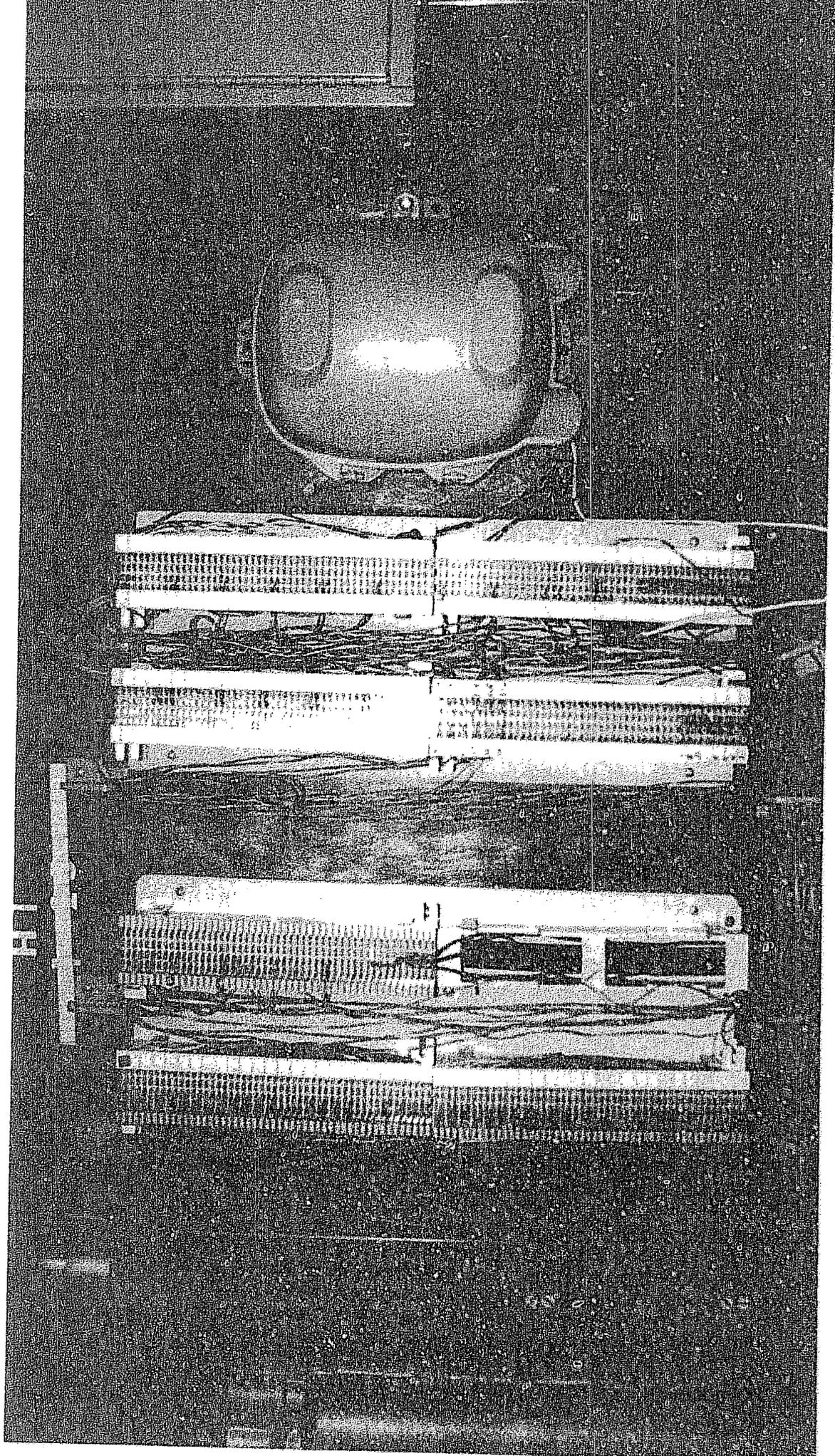
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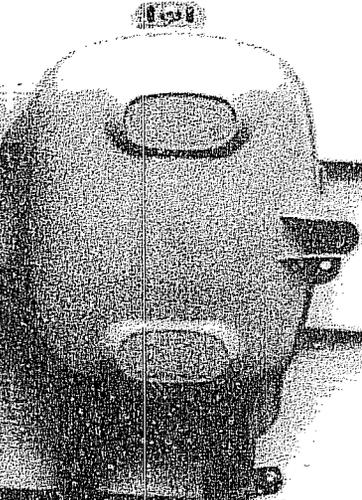
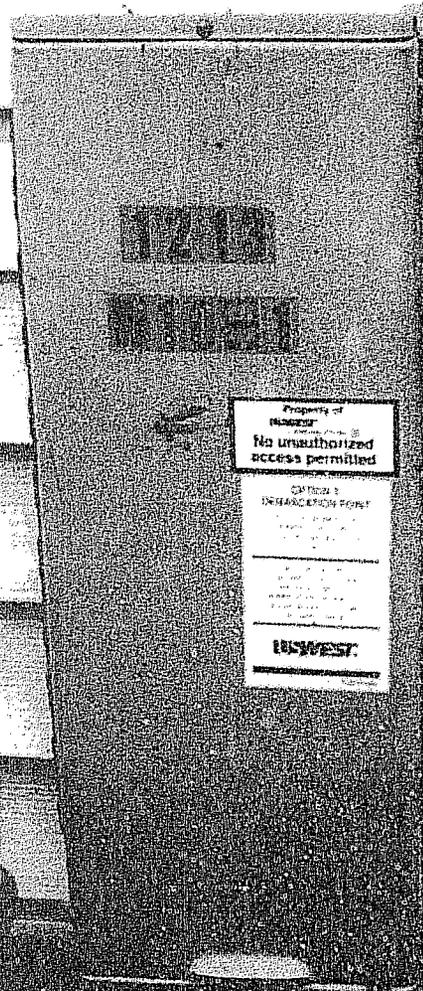
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(1-7)



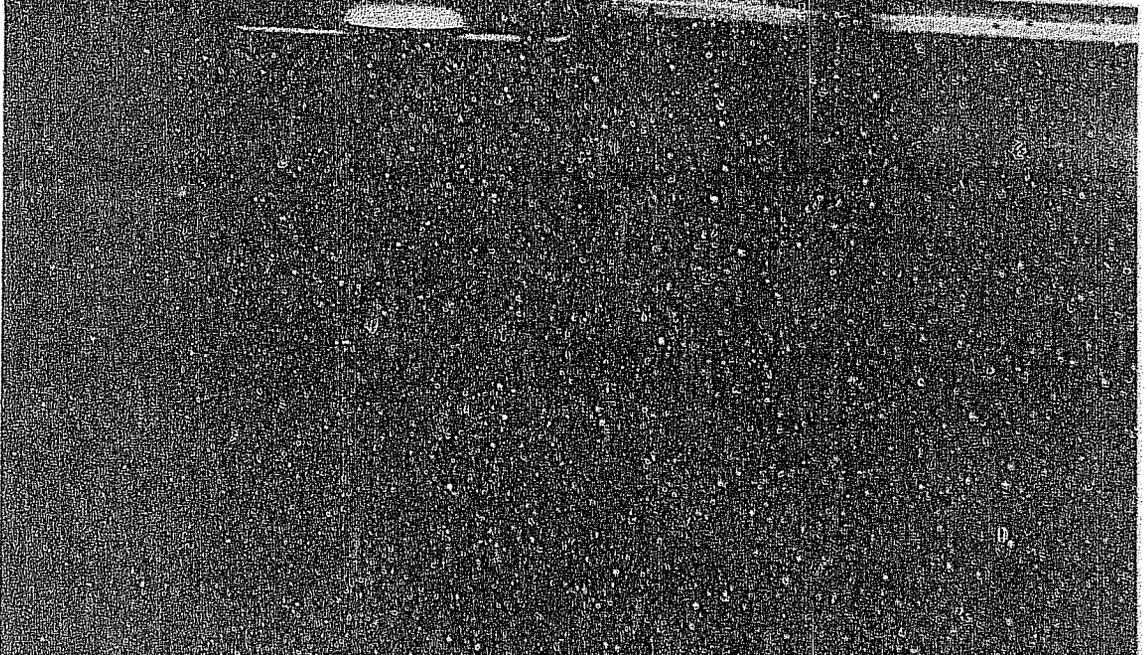
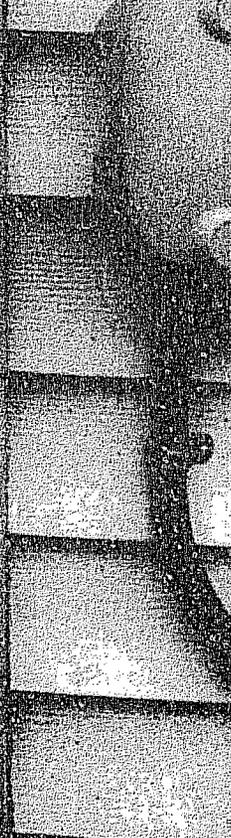
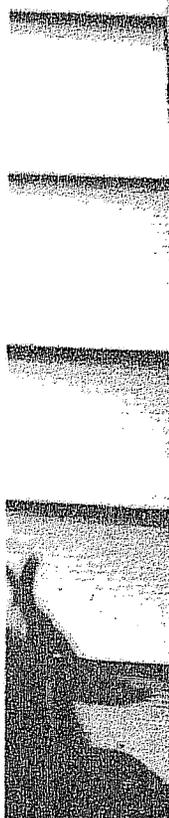




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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC 01-165

AFFIDAVIT
OF
KENNETH L. WILSON
REGARDING CHECKLIST ITEM 13 -
RECIPROCAL COMPENSATION
ON BEHALF OF
AT&T

March 18, 2002

EXHIBIT
AT&T
11

A. INTRODUCTION AND QUALIFICATIONS

My name is Kenneth L. Wilson, and I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am submitting this affidavit on behalf of AT&T.

My education and relevant work experience are as follows. I received a Bachelors of Science in Electrical Engineering from the University of Illinois in 1972, and I received a Masters of Science in Electrical Engineering in 1974. In addition, I have completed all the course work required to obtain my Ph.D. in Electrical Engineering from the University of Illinois. The course work was completed in 1976.

For 15 years before coming to Denver, I worked at Bell Labs in New Jersey in a variety of positions. From 1980 through 1982, I worked as a member of the network architecture and network planning team at Bell Labs for AT&T's long distance service. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1986 through 1992, I led a Bell Labs group responsible for network performance planning and assurance for AT&T Business Markets. From 1992 through 1994, I was a team lead on a project to reduce AT&T's capital budget for network infrastructure.

From 1995 through the spring of 1998, I worked in AT&T's Local Services Organization as the Business Management Director, leading one of the groups responsible for getting AT&T into the local market in U S WEST's 14-state territory. I was the senior technical manager in Denver working on planning AT&T's local network, OSS interface architectures and the associated negotiations for AT&T to accomplish

these goals. In this position, I was the lead negotiator for AT&T in establishing interconnection contracts with U S WEST (now Qwest) in its 14 states.

Since Spring of 1998, as a consultant and expert, I have evaluated technical issues for a number of companies in complaints, anti-trust cases and § 271 compliance proceedings. I have represented AT&T on all fourteen § 271 checklist items in five different cases, including all of the § 271 cases in Qwest's region that have been considered to date. This representation involved attending over 40 workshops and hearing sessions to address various § 271 checklist issues. A copy of my curriculum vitae is incorporated into this document as Attachment A. This attachment also includes a list of testimony and expert reports I have submitted as well as my depositions and court appearances during last 10 years.

B. PURPOSE OF AFFIDAVIT

Because of my technical background, my experience in bringing AT&T into the local markets in Qwest's region, and my experience in other § 271 proceedings in Qwest's region relating to these checklist items, AT&T has asked me to review the relevant documents in this case and assist it in assessing Qwest's compliance with the § 271 checklist obligations and present AT&T's concerns regarding Qwest's compliance. To that end, I have reviewed the Qwest SGAT and testimony submitted in this case. In addition to reviewing these documents, I have reviewed materials submitted by AT&T and Qwest in other jurisdictions regarding these same issues and I have conducted interviews with AT&T operations personnel.

Based upon my review of this material, I conclude that Qwest has not met its obligation to provide reciprocal compensation in a manner that is consistent with the Act

and FCC requirements. The following paragraphs give detailed explanations of the basis for this conclusion.

C. RECIPROCAL COMPENSATION.

Qwest's reciprocal compensation proposal is inconsistent with the Act and the FCC's rules and orders relating to reciprocal compensation. Qwest's proposal fails to establish reciprocal and symmetrical reciprocal compensation. Instead, Qwest's proposal 1) fails to fully reflect language AT&T and Qwest have agreed to addressing compensation for internet service provider ("ISP) traffic; 2) seeks to impose numerous additional and non-reciprocal costs on CLECs; and 3) seeks to impose non-TELRIC-based charges for calls that are clearly local calls.

1. Legal Requirements.

Section 271(c)(2)(B)(xiii) of the Act (Checklist Item 13) requires that an RBOC's access and interconnection include "[r]eciprocal compensation arrangements in accordance with the requirements of § 252(d)(2)."¹ In turn, § 252(d)(2)(A) states that "a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."²

¹ 47 U.S.C. § 271(c)(2)(B)(xiii).

² *Id.* § 252(d)(2)(A).

Similarly, § 251(b)(5), LECs have a duty to establish reciprocal compensation arrangements for the transport and termination of "telecommunications."³ Under § 3(43), "[t]he term 'telecommunications' means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."⁴ Section 251(c)(2)(A) provides that an incumbent LEC must provide interconnection with its local exchange network to "any requesting telecommunications carrier . . . for the transmission and routing of telephone exchange service and exchange access."⁵

In § 51.701 of its Rules, the FCC has established the scope of the reciprocal compensation provisions of § 251(b)(5) of the Act as follows:

a. The provisions of this subpart apply to reciprocal compensation for transport and termination of local telecommunications traffic between LECs and other telecommunications carriers.

b. Local telecommunications traffic. For purposes of this subpart, local telecommunications traffic means:

i. telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission; or

ii. telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the same Major Trading Area, as defined in § 24.202(a) of this chapter.⁶

In addition, the FCC concluded that the pricing standards established by § 252(d)(1) for interconnection and unbundled elements, and by § 252(d)(2) for transport and termination of traffic, are sufficiently similar to permit the use of the same general

³ 47 U.S.C. § 251(b)(5).

⁴ 47 U.S.C. § 153(43).

⁵ 47 U.S.C. § 251(c)(2)(A).

⁶ 47 C.F.R. ¶51.701.

methodologies for establishing rates under both statutory provisions.⁷ The FCC reasoned that there is some substitutability between the new entrant's use of unbundled network elements for transporting traffic and its use of transport under § 252(d)(2) and that depending on the interconnection arrangements, carriers may transport traffic to the competing carriers' end offices or hand traffic off to competing carriers at meet points for termination on the competing carriers' networks. Transport of traffic for termination on a competing carrier's network is, therefore, largely indistinguishable from transport for termination of calls on a carrier's own network. For these reasons, the FCC determined that transport of traffic should be priced based on the same cost-based standard, whether it is transport using unbundled elements or transport of traffic that originated on a competing carrier's network and that the "additional cost" standard permits the use of the TELRIC-based pricing standard established for interconnection and unbundled elements.

The FCC has concluded that the incumbent LEC's transport and termination prices should be used as a presumptive proxy for other telecommunications carriers' additional costs of transport and termination prices.⁸ Accordingly, in § 51.711, the FCC made clear that reciprocal compensation must be symmetrical, stating:

- a. Rates for transport and termination of local telecommunications traffic shall be symmetrical, except as provided in paragraphs (b) and (c).
 - i. For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of local telecommunications traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.
 - ii. In cases where both parties are incumbent LECs, or neither party is an incumbent LEC, a state commission shall establish the

⁷ 47 U.S.C. § 252(d)(2)(A)(ii).

⁸ *Local Competition Order*, ¶ 1085.

symmetrical rates for transport and termination based on the larger carrier's forward-looking costs.

iii. Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate.⁹

The FCC reasoned that such symmetrical treatment is appropriate since, both the incumbent LEC and the interconnecting carriers will be providing service in the same geographic area, the forward-looking economic costs should be similar in most cases.¹⁰

The FCC further concluded that this symmetrical treatment:

satisfies the requirement of § 252(d)(2) that costs be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." Using the incumbent LEC's cost studies as proxies for reciprocal compensation is consistent with § 252(d)(2)(B)(ii), which prohibits "establishing with particularity the additional costs of transporting or terminating calls."¹¹ If both parties are incumbent LECs (e.g., an independent LEC and an adjacent BOC), we conclude that the larger LEC's forward-looking costs should be used to establish the symmetrical rate for transport and termination.¹²

The FCC also reasoned that symmetrical rates may reduce an incumbent LEC's ability to use its bargaining strength to negotiate excessively high termination charges that competitors would pay the incumbent LEC and excessively low termination rates that the incumbent LEC would pay interconnecting carriers.¹³ That is precisely what Qwest's reciprocal compensation proposal in its SGAT seeks to do. Symmetrical rates largely eliminate such advantages because they require incumbent LECs, as well as competing carriers, to pay the same rate for reciprocal compensation.

⁹ 47 C.F.R. §51.711. Paragraph b provides an exception for the CLEC to obtain non-symmetrical rates by filing its own cost studies and paragraph c addresses paging services. Neither are relevant here.

¹⁰ *Id.*

¹¹ 47 U.S.C. §252(d)(2)(B)(ii).

¹² *Local Competition Order*, ¶ 1085.

¹³ *Id.*, ¶ 1087.

The FCC concluded that symmetrical compensation rates are also administratively easier to derive and manage than asymmetrical rates that are based on the costs of each of the respective carriers and that using the incumbent LEC's cost studies to establish the presumptive symmetrical rates will establish reasonable opportunities for local competition, including opportunities for small telecommunications companies entering the local exchange market.¹⁴

2. Disputed Issues

Set forth below is a discussion of the reciprocal compensation issues in dispute, why Qwest's SGAT does not demonstrate compliance with its legal obligations, and how these issues must be resolved to bring Qwest into compliance.

3. Internet Service Provider Traffic.

Over the recent months, Qwest has proposed language that it contends complies with the FCC's *ISP Remand Order*.¹⁵ AT&T disagreed. AT&T and Qwest engaged in off-line discussions regarding SGAT §§ 7.3.4.3, 7.3.4.4 and 7.3.6 because it appeared from briefing that the parties were not far off in their positions on the ISP sections of the SGAT. As a result of these discussions, AT&T and Qwest reached consensus on all of their language disputes for these SGAT sections. SGAT §§ 7.3.4.3, 7.3.4.4 and 7.3.6, as filed in South Dakota, are not fully consistent with the language agreed to by AT&T and Qwest. I have provided a redlined version of these SGAT Sections that identifies where the SGAT language differs from the agreed to language.¹⁶ I would recommend that the consensus language be adopted by the Commission.

¹⁴ *Id.*, ¶ 1088.

¹⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket 96-98, FCC 01-131 (April, 27, 2001) ("*ISP Remand Order*").

¹⁶ See Exhibit KLW - 1 and 2.

4. Qwest's SPOP Proposal, Section 7.2.2.1.5, and Section 7.2.2.9.6.

Section 7.2.2.1.5, § 7.2.2.9.6 of the SGAT and Qwest's SPOP are contrary to the Interconnection and symmetrical requirements established by the Act and the FCC. With regard to § 7.2.2.1.5, Qwest requires CLECs to build to a mid-span trunk to all trunk interconnection routes over 50 miles where neither the CLEC nor Qwest have facilities in place. This provision artificially limits its interconnection obligation under the Act, increases the CLEC's reciprocal compensation costs and improperly shifts the burden to build Qwest's network to the CLEC.

With regard to § 7.2.2.9.6, Qwest has artificially divided its tandem switches into local tandems and access tandems. In an effort to maintain its switch dichotomy, Qwest demands that CLECs terminate local traffic on either Qwest local tandems or end offices. While Qwest will allow a CLEC conditional interconnection at the access tandem, it will completely deny such interconnection if there exists a local tandem serving a particular end office, apparently even if the local tandem has exhausted capacity. Nevertheless, Qwest has admitted that interconnection at the access tandem is technically feasible. And the FCC has concluded that interconnection at the tandem is appropriate and technically feasible.¹⁷

Similarly, the SPOP product unlawfully limits the CLECs' ability to interconnect at the access tandem to cases where a local tandem is not available to get to an end office. Moreover, among its other failings, the SPOP product wrongfully requires CLECs to choose between utilizing the SPOP in the LATA product offering or interconnecting at multiple points in Qwest's network. By limiting the CLECs' ability to design

¹⁷ *Local Competition Order*, ¶ 210.

interconnection to meet their own needs for efficiency, the SPOP product violates § 251(c)(2) and the FCC's implementing regulations.

As the FCC stated in its First Report and Order, "[t]he interconnection obligation of § 251 (c)(2) . . . allows competing carriers *to choose* the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers' costs of, among other things, transport and termination of traffic."¹⁸ This means that, in contrast to Qwest's practice of narrowly proscribing the means by which CLECs may obtain interconnection, the Act allows interconnection and access to unbundled elements by any technically feasible means and at any technically feasible point in Qwest's network.

At the center of this dispute is Qwest's continuing refusal to accept the FCC's, state commission's and the Ninth Circuit's determinations that a CLEC may interconnect at any technically feasible point, including a single point of interconnection ("POI"). Qwest refuses to accept that where the CLEC establishes a single POI, Qwest must carry traffic to that POI at its own expense, based on properly apportioned reciprocal compensation for such traffic.

The benefits of these proposals for Qwest are obvious - Qwest would significantly reduce its interconnection and reciprocal compensation costs, shifting the vast percentage of the cost burden on the CLECs. Qwest argues this is fair because to allow CLECs to interconnect at any single POI or at any technically feasible point chosen by the CLEC would require Qwest to transport traffic to the CLEC. Qwest's assertions are contrary to the Act, binding precedent in the Colorado federal court and the FCC's symmetry rules. The FCC has concluded that "by providing interconnection to a

¹⁸ *Local Competition Order*, ¶ 172. (Emphasis added.)

competitor in a manner less efficient than an incumbent LEC provides itself, the incumbent LEC violates the duty to be "just" and "reasonable" under § 251(c)(2)(D)."¹⁹ That is precisely what Qwest attempts to do in its SGAT.

The law is clear. A CLEC may interconnect at any technically feasible point. The FCC has established a list of standard, technically feasible interconnection points that it found "critical to facilitating entry to competing local service providers,"²⁰ which includes both the local or access tandem switch (the interconnection point at the top of the network recommended by AT&T).

The FCC has also found that the technical feasibility of interconnection at tandem switches is demonstrated by the fact that interexchange carriers and competing access providers use tandem switching facilities as interconnection points.²¹ Indeed, the FCC found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently clear and compelling to intervene in court reviews of interconnection disputes. In an interconnection dispute in which the precise issue presented here was at issue, the FCC intervened as *amicus curiae* and urged the court to reject U S WEST's argument that the Act requires competing carriers to "interconnect in the same local exchange in which it intends to provide local service."²² There, it wrote "[n]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement

¹⁹ *Local Competition Order*, ¶ 218.

²⁰ *Id.*, ¶ 209.

²¹ *Id.*, ¶ 211.

²² Memorandum of the Federal Communications Commission as Amicus Curiae, at 10-21, *U/S West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (D.Or. 1998) (No. CV 97-1575-JE).

could be so costly to new entrants that it would thwart the Act's fundamental goal of opening local markets to competition."²³ Many federal district courts have agreed, and have rejected as inconsistent with § 251(c)(2) the incumbent LECs' efforts to require competing carriers to establish points of interconnection in each local calling area because such a requirement imposes undue costs and burdens on new entrants.²⁴

The Ninth Circuit Court of Appeals has interpreted the Act to permit the CLEC to establish a single POI if it wishes. The Ninth Circuit has affirmed the CLECs right to establish a single point of interconnection per local access and transport area ("LATA"), stating:

The plain language [of the Act] requires local exchange carriers to permit interconnection at any technically feasible point with the carrier's network.²⁵

Qwest's SGAT is inconsistent with the Act and these rulings.

²³ *Id.*, p. 20.

²⁴ See, e.g., *US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al.*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998). (US West's contention that the "Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service" is "wrong"); *US West Communications, Inc. v. Minnesota Public Utilities Commission, et al.*, Civ. No. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West's argument that section 251(c)(2) requires at least one point of interconnection in each local calling exchange served by US West."); *US West Communication, Inc. v. Arizona Corporation Commission*, 46 F.Supp. 2d 1004, 1021 (D.Ariz. 1999) ("The court also rejects U S West's contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than U.S. West"); *U S West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.*, 31 F. Supp. 2d 839, 852 (D. Or. 1998) ("Although the court agrees with US West that the Act does not define the minimum number of interconnection points, the court also rejects US West's contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective customers."); see also *U S West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff'd* *U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999). Most recently, the U.S. District Court for Colorado issued a similar ruling in *U.S. West Communications, Inc. v. Robert J. Hix, et al.*, No. C97-D-152, __ F.Supp. __ (D.Colo., June 23, 2000) ("Moreover, the Court holds that it is the CLEC's choice, subject to technical feasibility, to determine the most efficient number of interconnection points, and the location of those points.").

²⁵ *U S West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

Qwest cannot dictate to CLECs where in Qwest's network the CLEC must interconnect. CLECs are entitled to choose the most economically efficient points of interconnection and Qwest may not object absent a showing of technical infeasibility. Qwest has not made and cannot make such a showing. The purpose of the FCC's policy is to prevent incumbent LECs from imposing inefficient interconnection terms that preclude new entrants from configuring their local service networks in the most efficient way.²⁶ Incumbents cannot require additional points of interconnection for the purpose of reducing their own transport costs and forcing those costs back on the new entrants. This is exactly the situation that Qwest's proposed interconnection policy would further. The interLCA proposal is designed to force Qwest's transport costs onto the CLECs. This proposal violates the law.

The CLECs right to interconnect at the "most efficient points at which to exchange traffic with incumbent LECs," and the fact that Qwest cannot force CLECs to "transport traffic to less convenient or efficient interconnection points" were reaffirmed in the recent FCC decision in the SBC Texas 271 proceeding.²⁷ The FCC noted with approval the WorldCom interconnection agreement, which permits WorldCom to designate "a single interconnection point within a LATA."²⁸

Accordingly, until these provisions in the SGAT are revised and Qwest's interconnection and reciprocal compensation proposals are truly mutual and reciprocal,

²⁶ Local Competition Order, ¶ 209.

²⁷ Local Competition Order, ¶ 172.

²⁸ Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Payment to Service 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. 99-65, ¶ 178 (released June 30, 2000).

Qwest is not in compliance with the reciprocal compensation obligations of the Act and its SGAT does not satisfy § 271.

5. Ratcheting.

Section 7.3.1.1.2 of Qwest's SGAT improperly requires CLECs to pay private lines rates for interconnection service provided using spare capacity on special access facilities. However, since certain of the circuits on the special access facility are being used for local interconnection purposes, the Act requires that those circuits be priced at TELRIC rates and not at rates taken from Qwest's non-cost-based, interstate or intrastate private line tariffs. Therefore, § 7.3.1.1.2 should be rewritten to read:

If CLEC chooses to use an existing facility purchased as Private Line Transport Service from the state or FCC Access Tariffs the tariff rates shall be ratcheted to reflect the local usage and the recurring rate for Entrance Facility shall be priced at the TELRIC based rates.

Contrary to Qwest's claims, AT&T's proposal does not involve any prohibited commingling of traffic. Unlike the situation addressed by the FCC in its *Supplemental Order* and *Supplemental Order Clarification*, in which the FCC has temporarily prohibited interexchange carriers from converting special access lines to combinations of UNE loops and transport or EELS (extended enhanced loops) to take advantage of lower UNE prices, AT&T simply seeks the right to pay the correct price for the facility depending on the use to which the facilities are put. To the extent that special access facilities are used to provide access services or are idle, special access rates should apply. However, to the extent spare capacity on such facilities is devoted to providing local interconnection, only TELRIC prices may be applied.

Qwest has agreed to allow CLECs to use idle portions of special access facilities for interconnection purposes. Therefore the only issue for resolution is the price to be

paid for those facilities or portion of facilities that are used for interconnection purposes. On that issue, the Act is very clear. The Act requires that all interconnection be priced at cost.

On its face, the *Supplemental Order*²⁹ and *Supplemental Order Clarification*³⁰ are limited to commingling of access traffic/long distance on unbundled network elements/loops. Paragraph 2 in the *Supplemental Order* describes the FCC's concern it plainly states:

In the *Third Report and Order*, we explained that incumbent LECs routinely provide the functional equivalent of combinations of unbundled loop and transport network elements (also referred to as the enhanced extended link) through their special access offerings. Because § 51.315(b) of the Commission's rules precludes the incumbent LECs from separating loop and transport elements that are currently combined, we stated that a requesting carrier could obtain these combinations at unbundled network element prices. At the same time, we stated our concern that allowing requesting carriers to use loop-transport combinations solely to provide exchange access service to a customer, without providing local exchange service, could have significant policy ramifications because unbundled network elements are often priced lower than certified special access services. Because of concerns that universal service could be harmed if we were to allow interexchange carriers (IXCs) to use the incumbent's network without paying their assigned share of the incumbent's costs normally recovered through access charges, we agreed that we should further explore these considerations, recognizing that full implementation of access charge and universal service reform was still pending.

To address this concern, the FCC stated that interexchange carriers ("IXCs") may not convert special access services to combinations of unbundled loop and transport network elements, until resolution of the Fourth NIPRM.³¹ The FCC further stated that this limitation would not apply if an IXC used combinations of unbundled loop and

²⁹ *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-45, FCC 96-172 (Feb. 24, 1996) (hereinafter "Supplemental Order").

³⁰ *Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, Supplemental Order Clarification, CC Docket No. 96-45, FCC 96-181 (Feb. 2, 1996) (hereinafter "Supplemental Order Clarification").

³¹ *Id.* at ¶ 4.

transport network elements to provide a significant amount of local exchange services, in addition to exchange access service, to a particular customer.³² This determination was confirmed in the *Supplemental Order Clarification*.³³

The *Supplemental Order* does not address spare trunks used exclusively to provide local interconnection service as AT&T proposed. Instead, the *Supplemental Order* only addressed incumbent local exchange carriers' ("ILECs") concerns that IXCs might use their right to obtain UNEs as a vehicle to convert dedicated access lines to UNEs and thus pay less than they should for access lines.

In addition, nothing in the *Supplemental Order Clarification* altered the FCC's ruling in the *Supplemental Order*. In the *Supplemental Order Clarification*, the Commission adopted a definition of "a significant amount of local service" that was proposed jointly by the largest ILECs and four CLECs.³⁴ That definition limits the use of loop-transport combinations, or EELs, to three "options" that the Commission found "presented a reasonable compromise proposal under which it may be determined that a requesting carrier has taken affirmative steps to provide local exchange service to a particular end user and is not seeking to use unbundled loop-transport combinations solely to bypass tariffed special access service."³⁵ Each of the options limits the use of unbundled network elements to carry tariffed access services.

Qwest has relied on paragraph 28 of the *Supplemental Order Clarification* to support its argument. Paragraph 28 provides as follows:

We further reject the suggestion that we eliminate the prohibition on "co-mingling" (*i.e.* combining loops or loop-transport combinations with

³² *Id.* at ¶ 5.

³³ *Supplemental Order Clarification* at ¶ 8.

³⁴ *Supplemental Order Clarification* at ¶ 21.

³⁵ *Id.*

tariffed special access services) in the local usage options discussed above. We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services. We emphasize that the co-mingling determinations that we make in this order do not prejudice any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001.

This paragraph of the FCC's Order does not in any way address the proposal at issue here.

D. CONCLUSION

Based upon the above analysis, I conclude that Qwest has failed to satisfy Checklist Item 13. Until Qwest revises its SGAT to be compliant with the Act and the FCC's rules and implementing orders to satisfy Checklist Item 13, Qwest cannot satisfy 271 of the Act.

FURTHER AFFIANT SAYETH NOT.

Tandem Switching and Tandem Transmission. These rates are described below.

7.3.2.1.3 Mileage shall be measured for DTT based on V&H coordinates between the Serving Wire Center and the local/access tandem or end office.

7.3.2.1.4 Fixed Charges per DS0, DS1 or DS3 and per mile charges are defined for DTT in Exhibit A of this Agreement.

7.3.2.2 If the Parties elect to establish LIS two-way DTT trunks, for reciprocal exchange of Exchange Service (EAS/Local) traffic, the cost of the LIS two-way DTT facilities shall be shared among the Parties by reducing the LIS two-way DTT rate element charges as follows:

7.3.2.2.1 The provider of the LIS two-way DTT facility will initially share the cost of the LIS two-way DTT facility by assuming an initial relative use factor of fifty percent (50%) for a minimum of one quarter. The nominal charge to the other Party for the use of the DTT facility, as described in Exhibit A, shall be reduced by this initial relative use factor. Payments by the other Party will be according to this initial relative use factor for a minimum of one quarter. The initial relative use factor will continue for both bill reduction and payments until the Parties agree to a new factor, based upon actual minutes of use data for non Internet related traffic to substantiate a change in that factor. If either Party demonstrates with non Internet Related data that actual minutes of use during the first quarter justify a relative use factor other than fifty percent (50%), the Parties will retroactively true up first quarter charges. Once negotiation of new factor is finalized, the bill reductions and payments will apply going forward, for a minimum of one quarter. By agreeing to this interim solution, Qwest does not waive its position that Internet related traffic is interstate in nature.

7.3.2.3 Multiplexing options (DS1/DS3 MUX or DS0/DS1 MUX) are available at rates described in Exhibit A.

7.3.3 Trunk Nonrecurring charges

7.3.3.1 Installation non-recurring charges may be assessed by the provider for each LIS trunk ordered. Qwest rates are specified in Exhibit A.

7.3.3.2 Nonrecurring charges for rearrangement may be assessed by the provider for each LIS trunk rearrangement ordered, at one-half (1/2) the rates specified in Exhibit A.

7.3.4 Exchange Service (EAS/Local) Traffic

7.3.4.1 End Office Call Termination

7.3.4.1.1 The per minute of use call termination rates as described in Exhibit A of this Agreement will apply reciprocally for Exchange Service (EAS/Local) traffic terminated at a Qwest or CLEC end office.

7.3.4.1.2 For purposes of call termination, CLEC Switch(es) shall be treated as End Office Switch(es) unless CLEC's Switch(es) meet the definition of a

Tandem Switch in this Agreement in the Definitions Section.

7.3.4.1.3 Reserved for Future Use.

7.3.4.1.4 Neither Party shall be responsible to the other for call termination charges associated with third party traffic that transits such Party's network.

7.3.4.2 Tandem Switched Transport

7.3.4.2.1 For traffic delivered through a Qwest or CLEC tandem Switch (as defined in this Agreement), the tandem switching rate and the tandem transmission rate in Exhibit A shall apply per minute in addition to the end office call termination rate described above.

7.3.4.2.2 Mileage shall be measured for the tandem transmission rate elements based on V&H coordinates between the tandem and terminating end office.

7.3.4.2.3 When a Party terminates traffic to a remote Switch, tandem transmission rates will be applied for the V & H mileage between the host Switch and the remote Switch when the identity of each is filed in the NECA 4 Tariff.

7.3.4.2.4 When Qwest receives a unqueried call from CLEC to a number that has been ported to another Qwest Central Office within the EAS/Local calling area, and Qwest performs the query, mileage sensitive tandem transmission rates will apply which reflect the distance to the end office to which the call has been ported.

7.3.4.2.4.1 To determine the responsible originating Carrier of unqueried calls for purposes of identification of the Carrier to bill LNP query charges, Qwest and CLEC are required to utilize the Number Portability Administration Center (NPAC) database, or another database that is supported by OBF.

7.3.4.3 Intentionally Left Blank.

7.3.4.4 ~~If Qwest elects not to offer to exchange all EAS/Local (§251(b)(5)) and Information Services Access traffic at the FCC ordered rate, the state-ordered rates for End Office call termination and Tandem Switched Transport will apply to ISP-bound traffic in addition to EAS/Local traffic (§251(b)(5)). CLEC may choose one (1) of the following two (2) options for the exchange of traffic subject to §251(b)(5) of the Act ("§251(b)(5) Traffic") (See Exhibit Z):~~

7.3.4.4.1 The rates applicable to §251(b)(5) Traffic between Qwest and CLEC shall be the same as the rates established for ISP-bound traffic pursuant to Section 7.3.6.2.3. Such rate for ISP-bound traffic will apply to §251(b)(5) Traffic in lieu of End Office Call Termination rates, and Tandem Switched Transport rates.

7.3.4.4.2 Compensation rate for §251(b)(5) Traffic shall be as established by the Commission. The Parties shall cooperate in establishing a process by which §251(b)(5) Traffic and ISP-bound traffic will be identified in order to compensate one another at the appropriate rates and in a prompt manner (See §7.3.6).

7.3.5 Miscellaneous Charges

7.3.5.1 Cancellation charges will apply to cancelled LIS trunk orders, based upon the critical dates, terms and conditions in accordance with the Access Service Tariff

Section 5.2.3, and the Trunk Nonrecurring Charges referenced in this Agreement.

7.3.5.2 Expedites for LIS trunk orders are allowed only on an exception basis with executive approval within the same timeframes as provided for other designed services. When expedites are approved, expedite charges will apply to LIS trunk orders based on rates, terms and conditions described in Exhibit A.

7.3.5.3 Reserved for Future Use.

7.3.6 ISP-bound Traffic

7.3.6.1 Qwest elects to exchange ISP-bound traffic at the FCC ordered rates pursuant to the FCC's Order on Remand and Report and Order (Inter-carrier Compensation for ISP-bound Traffic) CC Docket 01-131 (FCC ISP Order), effective June 14, 2001. While the subsections of this 7.3.6 reference dates that precede the Effective Date, the Parties agree that the terms of such subsections apply on a prospective basis, commencing with the Effective Date. If the Parties were exchanging traffic prior to the Effective Date, then for such period prior to the Effective Date, the Parties agree to be bound by the terms and conditions of the FCC ISP order as such order applies to the Interconnection agreement (i) that was in effect between the Parties when such order was adopted, and (ii) pursuant to which the Parties were exchanging such traffic.

7.3.6.2 The following usage-based compensation applies if Qwest and CLEC were exchanging traffic pursuant to an to Interconnection configurations exchanging traffic pursuant to Interconnection agreements as of the FCC's adoption of the FCC ISP Order, April 18, 2001:

7.3.6.2.1 Identification of ISP-bound traffic -- The Parties will presume traffic delivered to a Party that exceeds a 3:1 ratio of terminating to originating (CLEC to Qwest) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the state Commission.

7.3.6.2.2 Growth Ceilings for ISP-bound Traffic -- Inter-carrier compensation for ISP-bound traffic will be subject to growth ceilings. ISP-bound MOUs exceeding the growth ceiling will be subject to Bill and Keep compensation.

7.3.6.2.2.1 For 2001, a Party will pay for ISP-bound minutes up to the ceiling equal to, on an annualized basis, the number of ISP-bound minutes for which it was responsible for payment, to the other Party, during first quarter 2001, plus a ten percent (10%) growth factor.

7.3.6.2.2.2 For 2002 and subsequent years, until further FCC action on inter-carrier compensation, a Party will pay for ISP-bound minutes up to the ceiling equal to the minutes for which it was responsible for payment, to the other Party, in 2001, plus another ten percent (10%) growth factor.

7.3.6.2.3 Rate Caps -- ISP-bound traffic exchanged between Qwest and CLEC will be billed in accordance with a state Commission-ordered compensation rate, or as follows, whichever rate is lowest:

7.3.6.2.3.1 Intentionally Left Blank.

7.3.6.2.3.2 \$.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003.

7.3.6.2.3.3 \$.0007 per MOU from June 14, 2003 until thirty six (36) months after the Effective Date or until further FCC action on intercarrier compensation, whichever is later.

7.3.6.2.3.4 Intentionally Left Blank.

7.3.6.3 In the event CLEC and Qwest were not exchanging traffic pursuant to interconnection agreements prior to adoption of the FCC ISP Order on April 18, 2001, CLEC and Qwest will exchange ISP-bound traffic on a Bill and Keep basis until further FCC action on intercarrier compensation. This includes CLEC expansion into a market it previously had not served.

7.3.7 Transit Traffic

The following rates will apply:

7.3.7.1 Local Transit: The applicable LIS tandem switching and tandem transmission rates at the assumed mileage contained in Exhibit A of this Agreement, apply to the originating Party. The assumed mileage will be modified to reflect actual mileage, where the mileage can be measured, based on negotiations between the Parties.

7.3.7.2 IntraLATA Toll Transit: The applicable Qwest Tariffed Switched Access Tandem Switching and tandem transmission rates apply to the originating CLEC or LEC. The assumed mileage contained in Exhibit A of this Agreement shall apply.

7.3.7.3. Jointly Provided Switched Access: The applicable Switched Access rates will be billed by the Parties to the IXC based on MECAB guidelines and each Party's respective FCC and state access Tariffs.

7.3.8 Signaling Parameters: Qwest and CLEC are required to provide each other the proper signaling information (e.g., originating call party number and destination call party number, etc.) to enable each Party to issue bills in a complete and timely fashion. 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. If CLEC fails to provide CPN (valid originating information), and cannot substantiate technical restrictions (i.e., MF signaling) such traffic will be billed as Switched Access. Traffic sent to CLEC without CPN (valid originating information) will be handled in the following manner: The transit provider will be responsible for only its portion of this traffic, which will not exceed more than five percent (5%) of the total Exchange Service (EAS/Local) and Exchange Access (IntraLATA Toll) traffic delivered to the other Party. Qwest will provide to CLEC, upon request, information to demonstrate that Qwest's portion of no-CPN traffic does not exceed five percent (5%) of the total traffic delivered.

7.3.9 To the extent a Party combines Exchange Service (EAS/Local), Exchange Access (IntraLATA Toll carried solely by Local Exchange Carriers), and Jointly Provided Switched Access (InterLATA and IntraLATA calls exchanged with a third-party IXC) traffic on a single LIS

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INFO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC 01-165

AFFIDAVIT
OF
KENNETH L. WILSON
REGARDING
CHECKLIST ITEM 4 - UNBUNDLED LOOPS
AND CHECKLIST ITEM 11 - LOCAL NUMBER PORTABILITY
ON BEHALF OF
AT&T

March 18, 2002



A. INTRODUCTION AND QUALIFICATIONS

My name is Kenneth L. Wilson, and I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am submitting this affidavit on behalf of AT&T.

My education and relevant work experience are as follows. I received a Bachelors of Science in Electrical Engineering from the University of Illinois in 1972, and I received a Masters of Science in Electrical Engineering in 1974. In addition, I have completed all the course work required to obtain my Ph.D. in Electrical Engineering from the University of Illinois. The course work was completed in 1976.

For 15 years before coming to Denver, I worked at Bell Labs in New Jersey in a variety of positions. From 1980 through 1982, I worked as a member of the network architecture and network planning team at Bell Labs for AT&T's long distance service. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1986 through 1992, I led a Bell Labs group responsible for network performance planning and assurance for AT&T Business Markets. From 1992 through 1994, I was a team lead on a project to reduce AT&T's capital budget for network infrastructure.

From 1995 through the spring of 1998, I worked in AT&T's Local Services Organization as the Business Management Director, leading one of the groups responsible for getting AT&T into the local market in U S WEST's 14-state territory. I was the senior technical manager in Denver working on planning AT&T's local network, OSS interface architectures and the associated negotiations for AT&T to accomplish

these goals. In this position, I was the lead negotiator for AT&T in establishing interconnection contracts with U S WEST (now Qwest) in its 14 states.

Since Spring of 1998, as a consultant and expert, I have evaluated technical issues for a number of companies in complaints, anti-trust cases and § 271 compliance proceedings. I have represented AT&T on all fourteen § 271 checklist items in five different cases, including all of the § 271 cases in Qwest's region that have been considered to date. This representation involved attending over 40 workshops and hearing sessions to address various § 271 checklist issues. A copy of my curriculum vitae is incorporated into this document as Attachment A. This attachment also includes a list of testimony and expert reports I have submitted as well as my depositions and court appearances during last 10 years.

B. PURPOSE OF AFFIDAVIT

Because of my technical background, my experience in bringing AT&T into the local markets in Qwest's region, and my experience in other § 271 proceedings in Qwest's region relating to § 271 checklist items, AT&T has asked me to review the relevant documents in this case and assist it in assessing Qwest's compliance with the § 271 checklist obligations and presenting AT&T's concerns regarding Qwest's compliance. To that end, I have reviewed Qwest's SGAT, as well as materials submitted by AT&T and Qwest in other jurisdictions regarding these same issues and I have conducted interviews with AT&T operations personnel.

Based upon my review of this material, I have identified a number of areas where Qwest's compliance is deficient on Checklist Item 4 and Checklist Item 11. The following paragraphs give detailed explanations of the basis for this conclusion.

C. UNBUNDLED LOOP.

L. Legal Requirements.

Section 271(c)(2)(B)(iv) of the Act, item 4 of the competitive checklist, requires that a BOC provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."¹ The FCC has defined the loop as a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the demarcation point at the customer premises.² This definition includes different types of loops, including "two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS1-level signals."³

In order to establish that it is "providing" unbundled local loops in compliance with § 271(c)(2)(B)(iv), the FCC has stated that Qwest must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality.⁴

In addition, the FCC orders state that Qwest must provide access to any functionality of the loop requested by a competing carrier unless it is not technically

¹ 47 U.S.C. § 271(c)(2)(B)(iv).

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 99-325, ¶ 380 (released August 8, 1996). ("Local Competition Order"); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC 99-238, ¶¶ 166 - 167, n. 301. (released November 5, 1999) ("UNE Remand Order") (retaining definition of the local loop from the Local Competition First Report and Order, but replacing the phrase "network interconnection device" with "demarcation point," and making explicit that dark fiber and loop conditioning are among the features, functions and capabilities of the loop).

³ *Local Competition Order*, ¶ 380; *UNE Remand Order*, ¶¶ 166 - 167.

⁴ *BANY 271 Order*, ¶ 269; *Application of BellSouth Corporation Pursuant to § 271 of the Communications Act of 1934, As Amended, To Provide In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, FCC 98-271, ¶ 54 (released October 13, 1998). ("BellSouth Second Louisiana 271 Order").

START

OF

RETAKE

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END

OF

RETAKE

feasible to condition the loop facility to support the particular functionality requested.⁵ In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, Qwest may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, with the competing carrier bearing the cost of such conditioning.⁶ Qwest must provide competitors with access to unbundled loops regardless of whether Qwest uses integrated digital loop carrier (IDLC) technology or similar remote concentration devices for the particular loops sought by the competitor. Again, the costs associated with providing access to such facilities may be recovered from competing carriers.⁷

In the *UNE Remand Order*, the FCC concluded that “LECs must provide access to unbundled loops, including high-capacity loops, nationwide” and that “requesting carriers are impaired without access to loops, and that loops include high-capacity lines, dark fiber, line conditioning, and certain inside wire.”⁸

Accordingly, the FCC redefined the “local loop,” stating that:

The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises, including inside wire owned by the incumbent LEC. The local loop network element includes all features, functions, and capabilities of such transmission facility. Those features, functions, and capabilities include, but are not limited to, dark fiber, attached electronics (except those electronics used for the provision of advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. The

⁵ *BANY 271 Order*, ¶ 271; *BellSouth Second Louisiana 271 Order*, ¶ 187.

⁶ *BANY 271 Order*, ¶ 271.

⁷ *Local Competition Order*, ¶ 384.

⁸ *UNE Remand Order*, ¶ 165.

local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.⁹

The FCC stated that its intent in adopting this definition is to “ensure that the loop definition will apply to new as well as current technologies...”¹⁰

As a result, the termination of the loop must be clearly defined in the manner set forth by the FCC in the *UNE Remand Order*. In addition, the FCC concluded that defining the loop termination point as the demarcation point is preferable to the NID “because, in some cases, the NID does not mark the end of the incumbent’s control of the loop facility.”¹¹ Citing § 68.3 of its rules, the FCC determined that:

the demarcation point is defined by control; it is not a fixed location on the network, but rather a point where an incumbent’s and a property owner’s responsibilities meet. The demarcation point is often, but not always, located at the minimum point of entry (MPOE), which is the closest practicable point to where the wire crosses a property line or enters a building. In multiunit premises, there may be either a single demarcation point for the entire building or separate demarcation points for each tenant, located at any of several locations, depending on the date the inside wire was installed, the local carrier’s reasonable and nondiscriminatory practices, and the property owner’s preferences. Thus, depending on the circumstances, the demarcation point may be located at the NID, outside the NID, or inside the NID.

In addition, Qwest must provide high capacity loops, including “DS1, DS3, fiber, and other high capacity loops.”¹² The FCC determined that “high-capacity loops retain the essential characteristic of the loop: they transmit a signal from the central office to the subscriber, or vice versa.”¹³

⁹ 47 C.F.R. § 319(a)(1).

¹⁰ *UNE Remand Order*, ¶ 167.

¹¹ *Id.*, ¶ 168.

¹² 47 C.F.R. § 51.319(a)(1)

¹³ *UNE Remand Order*, ¶ 176.

The FCC stated that the definition of the loop includes "attached electronics including multiplexing equipment used to derive the loop transmission capacity" because the definition of a network element is not limited to facilities, but includes features, functions, and capabilities.¹⁴ This expanded definition requires the RBOC to provide all types of loops, including, DS1 and DS3 loops and fiber loops, which would include OC3 and OC12 loops, at a minimum.

In addition, because the FCC drafted its definition to specifically encompass new technologies, the SGAT must allow CLECs to obtain other "fiber" and "high capacity" loops as new technology emerges.

For some disputed issues, Qwest has asserted that because another RBOC is provisioning loops, line splitting or NIDs in a certain manner and that RBOC was awarded § 271 relief, that determination is dispositive on the issue and the matter should be resolved in Qwest's favor, even if no party raised that particular issue. That is not the case. If no party raised the issue before the FCC, the FCC had no opportunity to confront the issue. Therefore, there is no binding ruling by the FCC on that issue simply by virtue of the FCC awarding the RBOC § 271 authority. In order for the FCC's § 271 orders to have precedential effect, the FCC must have confronted and ruled on a particular disputed issue.

2. Disputed Issues on Loops.

Qwest's provisioning of unbundled loops and its SGAT provisions related to unbundled loops are insufficient to demonstrate compliance. There are numerous examples of evidence that Qwest's performance is unsatisfactory in provisioning

¹⁴ *Id.*, ¶ 175.

unbundled loops and where Qwest policy positions are contrary to the Act, FCC Orders and will deter the development of competition. Until Qwest's performance and its position on the disputed issues are brought into compliance with the Act and FCC Orders, Qwest cannot be deemed to be in compliance with Checklist Item 4.

a. Obligation to Build.

The Act states that Qwest and other incumbent local exchange companies ("CLEC") must provide access to UNEs "on rates, terms and conditions that are just, reasonable, and nondiscriminatory."¹⁵ Qwest currently constructs facilities for customers requesting service under the terms and conditions established in its federal and state tariffs. Qwest's SGAT permits Qwest to refuse to provide service to a requesting CLEC if no facilities are available, except under very narrow conditions.¹⁶

Specifically, Qwest has stated that it will only build DS0 loops for CLECs if Qwest has an obligation to build under its provider-of-last-resort obligations.¹⁷ This offer is limited to the "first voice grade line per address." For all other loops, Qwest will not add capacity to its network to meet CLEC demand.¹⁸ Qwest's SGAT does not go far enough and does not comply with the Act and the FCC's rules. Qwest construes its carrier-of-last-resort obligations to extend only to basic residential and business service. Qwest, however, provides far more services than these services to South Dakota customers, including DS-1, DS-3, and other high

¹⁵ 47 U.S.C. § 251(c)(3).

¹⁶ See, e.g., SGAT §§ 9.1.2 & 9.23.1.4-6. See also, Exhibit KLV-1, policy statement that was sent to CLECs prior to the SGAT revisions described herein outlining Qwest's change in policy.

¹⁷ See SGAT, § 9.1.2; Exhibit KLV-1.

¹⁸ *Id.*

capacity circuits. The language in Qwest's SGAT would permit Qwest to deny a CLEC's request to provision these circuits as UNEs due to lack of facilities, when Qwest's tariffs, price lists, or contracts would obligate Qwest to construct those same facilities for its retail customers. In fact, the CLEC itself could require Qwest to construct those facilities if the CLEC ordered the services under Qwest's tariff or price list services, rather than as UNEs. Such blatant discrimination violates federal law.

This was the conclusion reached by the Washington Commission in its Workshop 2 Order, where Qwest was required to revise its SGAT to reflect that Qwest has an obligation to build UNES in any areas currently served by Qwest's network.¹⁹ In fact, the Initial Order on the Loop Workshop in Washington states that the Workshop 2 ruling applies equally to loops.²⁰

The FCC has stated that:

[t]he duty to provide unbundled network elements on "terms, and conditions that are just, reasonable, and nondiscriminatory" means, at a minimum, that whatever those terms and conditions are, they must be offered equally to all requesting carriers, and where applicable, they must be equal to the terms and conditions under which the incumbent LEC provisions such elements to itself.²¹

¹⁹ *In re Investigation Into U S WEST's Compliance With § 271*, WUTC Docket Nos. UT-003022 & 003040, Twenty-Fourth Supplemental Order ¶¶ 79-80 (December 20, 2001) ("Washington Final Order on Workshop 3").

²⁰ *In re Investigation Into U S WEST's Compliance With § 271*, WUTC Docket Nos. UT-003022 & 003040, Twenty-Eighth Supplemental Order ¶¶ 20-22 (March 12, 2002) ("Washington Final Order on Workshop 4").

²¹ *Local Competition Order*, ¶ 315. In an accompanying footnote, the FCC stated that "[t]he term 'provisioning' includes installation." *Id.*, n. 684.

The FCC's rules also require that the ILEC provision network elements to CLECs on terms and conditions no less favorable than the terms and conditions under which the ILEC provides such elements to itself.²²

In its *Local Competition Order*, the only limitation the FCC places on the ILEC's obligation relates to unbundled interoffice facilities. In that Order, the FCC stated:

Rural Telephone Coalition contends that incumbent LECs should not be required to construct new facilities to accommodate new entrants. We have considered the economic impact of our rules in this section on small incumbent LECs. In this section, for example, we expressly limit the provision of unbundled interoffice facilities to existing incumbent LEC facilities. We also note that Section 251(f) of the 1996 Act provide relief for certain small LECs from our regulations under § 251.²³

While the FCC recognized the economic impact on small ILECs of having to build transport and explicitly held that all ILECs need not build transport, it made clear that for all other network elements, § 251(f) provides the relief for rural ILECs from any economic impact imposed on the rural ILECs as a result of having to build network elements for CLECs.²⁴ The clear inference to be drawn from this portion of the Order is that, with the exception of interoffice transport, the ILECs do have an obligation to construct UNEs to meet CLEC demand.

As further evidence of the FCC's intent, when citing to this section of its order in the *UNE Remand Order*, the FCC states:

In the *Local Competition First Report and Order*, the Commission limited an incumbent LEC's transport unbundling obligation to

²² 47 C.F.R. § 313(b).

²³ *Id.* ¶ 451. See also, *UNE Remand Order*, ¶ 324.

²⁴ Section 251(f) applies only to rural ILECs; therefore, ILECs such as Qwest cannot seek exemption from its obligation to build under § 251(f).

existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.²⁵

Specifically, in this paragraph, the FCC concludes that "the ILEC's unbundling obligation extends throughout its ubiquitous transport network." The inescapable conclusion is that the only limitation on the ILEC's obligation to build is for interoffice facilities to existing facilities. For all other UNEs, Qwest has an obligation to build to meet CLEC demand throughout its service territory.

In addition, the FCC has held that the ILECs have an obligation to replace UNEs that are being provided to CLECs.²⁶ An obligation to replace UNEs is essentially the same thing as an obligation to build UNEs. Finally, the FCC's rules also require that the ILEC provision network elements to CLECs on terms and conditions no less favorable than the terms and conditions under which the ILEC provide such elements to itself.²⁷

Nothing in the Eighth Circuit's ruling in *Iowa Utilities Board* appears to require a different result. Qwest has stated under *Iowa Utilities Board*, it is not required to build an unbuilt "superior network." The Eighth Circuit's superior network statement was made in the context of the Court's rejection of the FCC's superior quality rules – rules that required an incumbent LEC, if requested by the

²⁵ *UNE Remand Order*, ¶ 324.

²⁶ *Local Competition Order*, ¶ 268; 47 C.F.R. § 51.309(c).

²⁷ 47 C.F.R. § 313(b).

CLEC, to provide UNEs at a level of quality superior to that which the incumbent LEC provides to itself. That is not the nature of the CLECs' request here. CLECs are requesting that Qwest augment its existing network with added capacity - the same type of facilities it provides to its existing retail customers. That certainly can't be characterized as a superior network.

The Commission, therefore, should refuse to approve Qwest's SGAT, or permit Qwest to rely on the SGAT for purposes of § 271, until Qwest revises the SGAT to require Qwest to construct UNEs for CLECs throughout its service territory.

An additional reason that Qwest must be required to build facilities for CLECs is that CLECs are already paying for the build of new facilities in the prices they pay for UNEs. Fill factors are used in the calculation of UNE prices. A fill factor is used to ensure that sufficient capacity is always available. Once a certain percentage fill is achieved, a new facility is built. If a fill factor of 50% were used in the calculation of UNE prices, then the CLEC is being charged for a whole facility when only 50% of the facility's total capacity is being used. The effect of using fill factors, especially low fills, is that the CLEC is being charged to build new facilities in order to ensure that the fill level remains constant and Qwest does not run out of capacity. The fact that fill is included in UNE pricing means that CLECs are being charged for building new capacity, yet because of Qwest's new policy, only Qwest would be the beneficiary of that new capacity. That is inappropriate and a clear basis for rejecting Qwest's SGAT language in § 9.1.2.

Finally, with respect to high capacity loops, Qwest has argued that these loops are subject to competition from other carrier's services.²⁸ In fact, Qwest has asserted that AT&T and WorldCom are routinely building such facilities and have a larger share of some segments of the high-capacity market than Qwest. Of course, the evidence that Qwest relies upon for this assertion shows that AT&T and WorldCom rely on Qwest for the facilities they use to provide such high capacity services in Qwest's region and that Qwest has a monopoly foothold on the capacity for the wholesale side of this market.²⁹

At the same time Qwest informed CLEC's of its new build policy, Qwest also indicated that it had altered its policy on held orders. Specifically, Qwest has now determined that orders that are currently in held status will be rejected if there are no facilities and no current construction jobs planned.³⁰ For new services orders placed by CLECs, if no facilities are available and no construction jobs are planned, the LSR will be rejected, rather than place the order in a held order status.³¹

Numerous CLECs expressed concerns with this new policy for several reasons. First, the policy appears to be primarily designed to alleviate Qwest's PID performance, creating the false perception that Qwest is provisioning network elements, in particular loops, at a quantity that CLECs may demand.³² Clearly, that would not be the case as Qwest would be rejecting and not counting

²⁸ WA Transcript, p. 4198 (Exhibit KLW-2).

²⁹ WA Transcript, pp. 4252-53 (Exhibit KLW-2).

³⁰ Exhibit KLW-1; SGAT § 9.1.2.1.

³¹ Exhibit KLW-1; SGAT § 9.1.2.1; WA Transcript, pp. 4226-27 (Exhibit KLW-2).

³² WA Transcript, pp. 4227-28, 4237-38 (Exhibit KLW-2).

CLEC demand in its PID data, while the retail order would be accepted and, because no facilities are available, would count such order as a hit against Qwest's retail performance. Second, Qwest has not invoked a similar policy for its retail customers.²⁵ Qwest is discriminating against its wholesale customers by refusing to keep track of CLEC held orders and failing to take those held orders into account in developing its construction plans.

Third, CLECs questioned Qwest's ability to get in queue for new facilities ahead of CLECs on the basis that Qwest will always possess superior and advanced knowledge regarding its own build plans. Qwest agreed to add a provision to the SGAT that would provide CLECs with notice of major facilities build that states as follows:

Qwest will provide CLEC notification of major loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering job that exceeds \$100,000 in total cost, the estimated ready for service date, the number of pair or fibers added, and the location of the new facilities (e.g., distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for service dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

However, this proposed SGAT revision does not completely alleviate CLEC concerns that Qwest will be able to give its customer preferential treatment in the design, development and access to future facilities builds initiated by Qwest.

Accordingly, the language "provided that facilities are available" should be stricken from SGAT §§ 9.2.4.3.1.2.4, 9.23.1.4, 9.23.1.5, 9.23.1.6 and

²⁵ Id., pp. 437, 441 (Exhibit KLV-2).

9.1.1.7.2.1.2.8 and any other conforming changes required to remove any limitation on Qwest's obligation to build and that permit Qwest to reject LSRs for no facilities available, rather than allowing such orders to go held. Furthermore, SGAT § 9.19 should be amended. The first sentence of this section should be amended to read:

Qwest will conduct an assessment of any request which requires construction of network capacity, facilities, or space for access to or use of unbundled loops.

The Commission should also make clear that under § 9.1.2 of the SGAT and related provisions, Qwest is obligated to build UNEs, except dedicated transport, on a nondiscriminatory basis at cost-based rates under § 252(d).

b. Qwest Must Refund Conditioning Charges When Qwest's Performance Causes the End User to Abandon the CLEC/DLEC.

In the SGAT, Qwest seeks to impose a charge for conditioning unbundled loops. AT&T disputes this charge on the grounds that Qwest is already recovering the cost of conditioning in its UNE loop charge.³⁴

In addition, AT&T contends that if Qwest is permitted to assess a separate conditioning charge, it should be required to refund such charge when Qwest's performance causes the end user to abandon the CLEC/DLEC. Throughout the 771 workshops, AT&T and other CLECs raised concerns regarding the quality and timeliness of delivery of conditioned unbundled loops. Under the terms of Qwest's SGAT, the CLEC end users' experience could be adversely affected by

³⁴ WA Transcript, pp. 4290-91 (Exhibit KLV-2).

Qwest's poor performance, causing the end user to abandon the CLEC, and the CLEC would still be obligated to pay the conditioning charges.¹⁰

Initially, AT&T proposed language that would require Qwest to refund to the CLEC a pro rata portion of the conditioning charges if the customer migrated away from the CLEC within a certain period after the service was requested, irrespective of Qwest's fault. As a result of discussions in workshops, AT&T now proposes the following language, which could be a new § 9.2.2.4.1 in the BEAT:

9.2.2.4.1 If CLEC's end user customer, for which CLEC has ordered x-DSL capable Unbundled Loops from Qwest, (i) never receives x-DSL service from CLEC, (ii) suffers unreasonable delay in provisioning, or (iii) experiences poor quality of service, in any case due to Qwest's fault, Qwest shall refund or credit to CLEC the conditioning charges associated with the service requested. This refund or credit is in addition to any other remedy available to CLEC.

This language would ensure that Qwest is compensated when it performs the loop conditioning in a timely manner and delivers a quality loop, as contracted for by the CLECs. If Qwest fails to do so, the CLEC should not have to bear the conditioning cost. This acts as an incentive for Qwest to perform and works toward making the CLEC whole. Arguably, even with this type of provision, the CLEC cannot be made whole if Qwest does not perform and causes a bad end user experience. Not only will the CLEC lose future revenue, but its reputation will be damaged. Customers do not care that it is Qwest rather than the CLEC who causes their bad experience. From the customers' perspective, the experience with the CLEC was bad.

¹⁰ See, e.g., 47 C.F.R. § 51.301.

Qwest took issue with AT&T's proposal, stating that it should be addressed as a billing dispute.³⁶ This is not an appropriate resolution. It would enable Qwest to collect payment for a service when it performed badly, and force the CLECs to pursue dispute resolution for each line that is misprovisioned. Dispute resolution is not a quick process and could be very costly depending on the number of disputes. According to Qwest's SGAT, a billing dispute would take in excess of 2 months just to get in front of a decision maker.³⁷ Arbitration will likely take several months to complete. This process is untenable for refund of conditioning charges, especially when Qwest purports to hold the funds while the dispute is pending and would be incented to keep that money as long as possible.

Some claims for conditioning charge refunds may end up in dispute resolution, but there should be an obligation up front that Qwest will refund the conditioning charge if Qwest fails to perform. AT&T believes that many cases of fault are clear-cut and not subject to debate. In those cases, this provision would be a quick and efficient mechanism to address the problem.

Qwest has suggested that CLECs should enter into termination liability agreements with end user customers to compensate for the conditioning cost if the customer leaves after requesting CLEC xDSL service. This is unacceptable and side-steps the real issue, which is Qwest's failure to perform.

³⁶ W.A. Transcript, pp. 4299, 4301-02 (Exhibit KLV-2).

³⁷ SGAT §§ 5.4.4 and 5.18.

AT&T requests that the proposed language set forth above be added to the ECAT. This provision would help ensure that CLECs have a meaningful opportunity to compete consistent with the intent of the Act.

e. Qwest Must Provide CLECs with Loop Qualification Information, Including Access to LFACs.

Qwest is required to provide access to all loops qualification that any Qwest employee has access to, including LFACs database, and any other database or back office information that contains information regarding Qwest's loop plant. Qwest refuses to provide such access. AT&T seeks access to this loop information in order to obtain accurate loop qualification information and to learn whether spare facilities, including "fragments" of loops, can be made available by Qwest.

The FCC has made clear that CLECs must have access to this loop and loop plant information for loop qualification purposes. Specifically, in the *UNE Reconnect Order*, the FCC stated:

We clarify that pursuant to our existing rules, an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install. Based on these existing obligations, we conclude that, at a minimum, incumbent LECs must provide requesting carriers the same underlying

information that the incumbent LEC has in any of its own databases or other internal records.³⁷

In addition, the FCC made clear that:

In addition, we agree with Covad that an incumbent LEC should not be permitted to deny a requesting carrier access to loop qualification information for particular customers simply because the incumbent is not providing xDSL or other services from a particular end office. We also agree with commenters that an incumbent must provide access to the underlying loop information and may not filter or digest such information to provide only that information that is useful in the provision of a particular type of xDSL that the incumbent chooses to offer. For example, SBC provides ADSL service to its customers, which has a general limitation of use for loops less than 18,000 feet. In order to determine whether a particular loop is less than 18,000 feet, SBC has developed a database used by its retail representatives that indicates only whether the loop falls into a "green, yellow, or red" category. Under our nondiscrimination requirement, an incumbent LEC can not limit access to loop qualification information to such a "green, yellow, or red" indicator. *Instead, the incumbent LEC must provide access to the underlying loop qualification information contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer.* Otherwise, incumbent LECs would be able to discriminate against other xDSL technologies in favor of their own xDSL technology.³⁹

* * * * *

We disagree, however, with Covad's unqualified request that the Commission require incumbent LECs to catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself. *If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers.* We find, however, that an incumbent LEC that has manual access to this sort of information for itself, or any affiliate, must also provide access to it to a requesting competitor on a non-

³⁷ *FCC Record Order*, ¶ 427.

³⁹ *Id.* ¶ 428.

*discriminatory basis. In addition, we expect that incumbent LECs will be updating their electronic database for their own xDSL deployment and, to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface.*⁴⁰

* * * * *

*Consistent with the framework we adopted in the *Local Competition First Report and Order*, we conclude that access to loop qualification information must be provided to competitors within the same time intervals it is provided to the incumbent LEC's retail operations. To the extent such information is not normally provided to the incumbent LEC's retail personnel, but can be obtained by contacting incumbent back office personnel, it must be provided to requesting carriers within the same time frame that any incumbent personnel are able to obtain such information.*⁴¹

In its *Kansas/Oklahoma 271 Order*, the FCC required RBOCs to provide carriers with the same underlying information that they have in any of their own databases or internal records for pre-ordering, loop qualification purposes and how such access must be afforded:

In this proceeding, we require a BOC to demonstrate for the first time that it provides access to loop qualification information in a manner consistent with the requirements of the *UNE Remand Order*. In particular, we require SWBT to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, SWBT must provide carriers with the same underlying information that it has in any of its own databases or internal records. We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying information but

⁴⁰ See ¶ 140.
⁴¹ See ¶ 151.

whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel. Moreover, SWBT may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers. SWBT must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that SWBT provides such information to itself. Moreover, SWBT must also provide access for competing carriers to the loop qualifying information that SWBT can itself access manually or electronically.⁴²

In this case, the FCC has established the parity standard as any loop or loop plant information that "any Qwest employee has access to," not what is accessible by Qwest's retail operations.

As the FCC indicates, CLECs need access to loop and loop plant information so they can make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. In addition, CLECs need access to this loop information in order to determine whether they can provision service to areas that are served by IDLC loops. Qwest has claimed that unbundling IDLC loops is difficult and can take a significant amount of time and that it is not always technically feasible to unbundled these loops. As a result, CLECs need the ability to understand, in those areas where IDLC has been

⁴² *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶ 121 (released, January 22, 2001) ("BellSouth Kansas/Oklahoma 271 Order" (citations omitted)). See also *UNE Remand Order*, ¶ 430; *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, CC Docket No. 01-8, FCC 01-130, ¶ 54 (released April 16, 2001) ("Massachusetts Verizon 271 Order").

~~deployed~~, what spare copper facilities are available, including loop fragments, to ~~determine~~ whether they can provision service in these areas. A CLEC may ~~determine~~ that it is too risky to market to that area because they would face delays in provisioning due to IDLC issues. This particular issue is not confronted by Qwest's retail arm, because Qwest does not need to unbundle IDLC to provision service over IDLC.

Qwest has refused to provide access to LFACs or to any other source of loop information available to its employees. During the course of the loop workshops, obtaining information regarding where loop or loop plant information resides in Qwest's database(s) or back office systems that are accessible by any Qwest employee has been like pulling teeth. Qwest has dodged these queries or has spun a record so confusing that it is impossible to tell where loop qualification information resides in Qwest's systems and back office files. At varying times, Qwest claimed this information resides in LFACs, or LEIS and LEAD, which are subset of LFACs.⁴¹ Irrespective of where it resides, if there is loop or loop plant information that is accessible to any Qwest employee, the FCC Orders state that CLECs are entitled to access that same information.

Qwest has claimed that all of the information on LFACs is available on the raw loop data tool.⁴² As an initial matter, whether that is true or not is irrelevant. The FCC has made clear that CLECs are entitled to access the same loop information that any Qwest employee has access to and such information

⁴¹ Colorado Transcript (05/25/01), pp. 74-75 (Exhibit K LW-3); WA Transcript, pp. 4319-20 (Exhibit K LW-2).

⁴² WA Transcript, pp. 4316-17 (Exhibit K LW-2).

may not be filtered by Qwest. The information in the raw loop data tools has been filtered by Qwest.

In any case, Qwest has admitted that not all loop qualification information is in the raw loop data tools. For example, information on loop conditioning and spare facilities is not in the raw loop data tools.⁴⁵ Information regarding all spare facilities, including fragments, is necessary for CLECs to have a meaningful opportunity to compete. Qwest maintains records of spare facilities, including loop fragments, somewhere in its back office systems. Qwest's witness in Colorado stated that this information is available to Qwest engineers.⁴⁶ Qwest is required to provide CLECs with access to this information.

Qwest claims that spare facility information regarding loops that are attached to the switch or partially attached to the switch is now available in the RLDT. This leaves a very large and important gap – loops, and loop elements such as distribution and feeder, that are not attached to the switch. This is the spare facility information that AT&T was concerned about from the outset. This information does not reside in the RLDT. Even if it did, however, this would not change Qwest's obligation under the FCC orders.

Qwest has also asserted that the information that a CLEC can obtain is equal to that available to Qwest's retail arm.⁴⁷ Ms. Liston claims that there is nothing in the FCC rules that requires Qwest to give CLECs more information.⁴⁸

⁴⁵ CO Transcript (04/18/01), pp. 25-53 (Exhibit K LW-4); CO Transcript (05/25/01), pp. 74-77 (Exhibit K LW-3).

⁴⁶ CO Transcript (05/25/01), p. 74 (Exhibit K LW-3).

⁴⁷ *Id.*, pp. 78-79 (Exhibit K LW-3); CO Transcript (05/23/01), pp. 141-44 (Exhibit K LW-5).

⁴⁸ *Id.*, pp. 143-45 (Exhibit K LW-5).

The FCC orders that I have cited clearly state that CLECs must have access to the same information as any Qwest employee, not just its retail personnel.

More importantly, Qwest's retail arm has already pre-qualified the loops on which it wants to provide its DSL service. As Ms. Liston testified in Washington, Qwest was encountering loop accuracy issues with LFACs – the very information that was used to populate the RLDT.⁴⁹ Qwest embarked on a bulk deload process for certain predefined wire centers in each state. As part of this process, Qwest conducted MLTs on the copper loops in those wire centers and then conditioned any loop in these wire centers that had load coils or bridge taps. In short, Qwest predetermined where it intended to provide DSL service and obtained accurate information for those loops. As Ms. Liston testified, Qwest will not provision service to any customer seeking service on a loop that does not qualify for its Megabit service. Qwest will not condition loops that weren't already conditioned and Qwest will not search for spare facilities.⁵⁰

The bottom line is that Qwest's retail representatives are assured of getting accurate loop information on the loops that Qwest wants to serve. While the MLT information for these loops was loaded into LFACs and the RLDT, there remain a significant number of loops where such updated loop information has not been obtained. Of course, if the CLEC were satisfied with limiting its marketing to the same customers that Qwest wants to serve, then they would benefit from the same accurate information. However, the CLEC should not be limited in their marketing to areas that neatly match Qwest business plans. They

⁴⁹ WA Transcript, pp. 4341-42 (Exhibit K1W-2).

⁵⁰ CO Transcript (04/18/01), pp. 228-229 (Exhibit K1W-4)

must have the ability to pre-qualify their loops, even loops outside of Qwest's predetermined marketing area, in the same manner as Qwest. To put the CLEC on a level playing field, they must have access to all of Qwest's loop qualification information.

Qwest has claimed that it cannot provide access to LFACs or other databases because they contain information proprietary to Qwest, other CLECs or end user customers. Qwest has access to all of this so-called competitive information. There is no reason that CLECs could not be afforded the same access. In fact, AT&T would support the inclusion of an SGAT provision that would restrict CLEC use of information contained in LFACs, or other databases that may be made available, for proper purposes and not for gathering competitive information of competing carriers. AT&T is certain that accommodation can be made to ensure no improper access to or use of proprietary information results from CLEC access to LFACs. Verizon provides access to LFACs, apparently finding some solution to the proprietary information issue.⁵¹

Next, Qwest has asserted that LFACs is not a search engine, rather it is an assignment tool. This is a red herring. Qwest employees have access to LFACs and other databases for obtaining loop information.⁵² As Ms. Liston stated in the Colorado workshop, "the information [on spare facilities] is stored in different portions of the LFACs database. The tools are built strictly from a provisioning

⁵¹ *BellSouth Kansas/Oklahoma 271 Order*, ¶ 122; *Massachusetts Verizon 271 Order*, ¶ 57.
⁵² *Id.*, pp. 73 - 76.

standpoint to provision services in terms of looking for, how do you get from Point A to Point B. They are engineering tools.”⁵³

In addition, the process that Qwest employed in the FOC trial in Colorado demonstrates that Qwest has the ability to use LFACS to locate loop information and that the ability to do this review is important to the loop qualification process. Specifically, Step 3 of the FOC trial process indicates that once Qwest receives an accurate LSR, it will access LFACS to attempt to assign pairs not in need of conditioning and create a design of the loop.⁵⁴ As the FOC Trial process documents reveal, Qwest takes this step for CLECs “because LFACS may reveal information not available through the RLDT, especially with regard to loops not already connected to a switch. The RLDT provides information from the Loop Qualification Database (LQDB), which in turn is derived from LFACS and other sources. But the LQDB covers only loops connected to a switch. LFACS, on the other hand, contains information for all facilities, even those not connected to a switch, but does not contain some of the information available through the RLDT, such as the results of the MLT.”⁵⁵

That is precisely why CLECs need access to LFACS or whatever database has loop plant and spare facilities information. They need the ability to determine if they can provision service in an area that is served by IDLC with the services they seek to provide, just as Qwest’ engineers do.

⁵³ *Id.*, p. 78.

⁵⁴ Exhibit KLV-6.

⁵⁵ *Id.*

Perhaps most telling on this issue is a comparison of the loop qualification information that Verizon and Southwestern Bell are providing to CLECs. This comparison highlights the disparity of Qwest's offering when compared to the type of information access provided by Verizon and Southwestern Bell -- access that was determined by the FCC to satisfy the legal requirement.

For example, as discussed in the *SBC Kansas/Oklahoma 271 Order*, Southwestern Bell provides competitors access to:

actual loop make-up information, theoretical, or design, loop make-up information, or can request that SWBT perform a manual search of its paper records to determine actual loop information. SWBT provides competitors access to actual loop make-up information contained in SWBT's back-end system Loop Facilities Assignment and Control System (LFACS) through the pre-ordering interfaces Verigate, Datagate and EDI/CORBA. Because LFACS was designed as a provisioning system, LFACS will provide the requesting carrier with actual information on the loop that SWBT or ASI, would use if it were going to provision the service requested. If, however, actual loop make-up information is not available in LFACS, SWBT will automatically provide theoretical, or design, loop makeup information. Specifically, SWBT will cause a query to be made into its LoopQual database for loop information based on a standard loop design for the longest loop in that end user's distribution area. The requesting carrier can then use this theoretical loop information to determine if it would be willing to provide xDSL service to that end-user. Additionally, a carrier may also request loop design information without having to first request an actual loop make-up query. Finally, carriers may also request that SWBT perform a manual search of SWBT's engineering records. Such a request may be submitted via Verigate or DataGate directly to SWBT's engineering operations personnel. Once SWBT engineers complete the manual search, they will update the information in LFACS and the competing carrier can either receive the results via email or review the results in LFACS.⁵⁶

⁵⁶ *SBC Kansas/Oklahoma 271 Order*, ¶121.

According to the Order, in addition to the ability to access LFACs directly via three OSS interfaces, a CLEC may also request that SWBT perform a manual search of its engineering records. Qwest does not offer access to LFACs or the ability to have a manual search of engineering records – both of which, as discussed above, are activities that Qwest performs when provisioning service for its customers and activities that Qwest undertook in the Colorado FOC trial.

Similarly, in the *Verizon Massachusetts 271 Order*, the FCC recounted the loop qualification information that Verizon gives CLECs access to, stating:

Verizon provides four ways for competing carriers to obtain loop make-up information: (1) mechanized loop qualification based on information in its LiveWire database; (2) access to loop make-up information in its Loop Facility Assignment and Control System (LFACS) database; (3) manual loop qualification; and (4) engineering record requests. As we discuss in more detail below, competitors can request loop make-up information from the LFACS and LiveWire databases, or can request that Verizon perform a manual search of its paper records to determine whether a loop is capable of supporting advanced technologies.⁵⁷

In addition to providing direct access to the Live Wire and LFACS databases, the Order describes the manual access offered by Verizon, indicating that Verizon provides a manual loop qualification process as a pre-order function in which Verizon examines information from the LiveWire and LFACS databases, and performs a mechanized line test (MLT) on the loop to verify the actual loop length.⁵⁸ If this information is inconclusive, engineers in Verizon's Facilities Management Center examine paper records to determine the loop

⁵⁷ *Verizon Massachusetts 271 Order*, ¶ 55.

⁵⁸ *Id.* ¶ 58.

length, whether or not the loop is qualified and, if it is not, the reasons why.⁵⁹ Finally, Verizon, through an engineering record request, provides additional types of loop make-up information not returned through the mechanized and manual loop qualification processes. Verizon indicates that competitors may request this engineering query on a pre-order basis. To conduct this engineering query, Verizon's Facilities Management Center conducts a search of loop inventory and paper records. The additional information provided through an engineering query includes the exact locations of load coils, the exact locations and lengths of bridge taps, as well as actual cable gauges and the length of each gauge and provides loop make-up information for loops not in the LFACS database.⁶⁰

Clearly, the Raw Loop Data tool fails in comparison to the comprehensive access to loop qualification information that is provided by Verizon and Southwestern Bell. Both Verizon's and Southwestern Bell's offers to CLECs are more comparable to the process that these RBOCs employ in provisioning service to their customers. The record demonstrates that Qwest has the ability to access to LFACS, other databases, and manual review processes to provision service to its customers, yet Qwest has refused to provide any loop qualification information beyond the RLDT available to CLECs. Qwest's offer is plainly discriminatory and contrary to the FCC's orders.

By denying competing carriers' access to loop qualification information as required by the *UNE Remand Order*, Qwest fails to meet its obligation to provide a competitor a meaningful opportunity to compete. Accordingly, AT&T

⁵⁹ *Id.* ¶ 58.

⁶⁰ *Id.* ¶ 59.

recommends the following provision be added to the SGAT to afford CLECs the access to Qwest loop information that is permitted under the Act and FCC orders:

Qwest shall provide to CLEC on a non-discriminatory basis access to all company's records, back office systems and databases where loop or loop plant information, including information relating to spare facilities, resides that is accessible to any Qwest employee or any affiliate of Qwest. CLECs shall have the ability to audit Qwest's company records, back office systems and databases in each state to determine that Qwest is providing the same access to loop and loop plant information to CLECs that any Qwest employee has access. Such audit will be in addition to the audit rights contemplated by § 18 of this Agreement, but the processes for such audit shall be consistent with the processes set forth in § 18. CLEC agrees the access afforded to CLEC to Qwest's records, back office systems and databases and the use by the CLEC of any information obtained under this section shall be limited to performing loop qualification and spare facilities checks.

d. Qwest Must Allow CLECs to Perform or Request a Pre-Order MLT.

Mechanized loop testing (MLT) enables a carrier to test an actual loop and retrieve information regarding the loop length and other characteristics. MLT capability is another key component for loop qualification. A CLEC needs the ability to perform, or to have performed on its behalf, an MLT before provisioning of that loop in order to verify that the loop can support the services the CLEC intends to provide over that loop facility. In addition, an MLT would allow the CLEC to verify the presence of digital loop carriers or other facilities – valuable information for assessing whether the loop is capable of providing the services the CLEC seeks to offer. Access to MLT would assist in solving a

serious problem CLEC are encountering in getting access to good, accurate prequalification information on loops, in particular for line sharing on loops.⁶¹

Qwest has responded to the CLEC's request for MLT information by stating that Qwest's retail operations do not have the ability to order MLTs on an individualized basis. This claim is misleading. Qwest has no need to do new MLTs on an individualized basis for several reasons. First, Qwest knows where it has deployed digital loop carrier and can assess for itself whether it can deploy the services it seeks in those areas. Second, as discussed above, Qwest has already performed MLTs in the areas where it has determined it will market its Megabit service.

In any case, Qwest has the ability to run MLT for its services on a pre-order basis if it desires. Qwest has conceded that it has the ability to perform MLT on its switched based services.⁶² It can do so any time it wants. For example, Qwest has the ability to expand the area that it seeks to provide DSL service and to select additional wire centers to test and which loops or service terminals to test. CLECs must have the same access to be afforded parity.

Qwest has stated that an MLT test cannot be done by a CLEC or on the CLEC's behalf because the test is invasive and may result in the customer being disconnected.⁶³ This assertion is simply false. Qwest has conceded that the customer's line is put out of service momentarily, less than a minute.⁶⁴ In addition, the MLT has the ability to determine whether the line is in use, so

⁶¹ WA Transcript, p. 4334 (Exhibit K LW-2); CO Transcript (05/23/01), pp. 195-96 (Exhibit K LW-5).

⁶² CO Transcript (04/18/01), p. 248 (Exhibit K LW-4).

⁶³ WA Transcript, p. 4335 (Exhibit K LW-2).

⁶⁴ *Id.*, pp. 4335-36.

interference with customer's usage can be minimized. The fact that Qwest conducted MLTs on loops in connection with its bulk deload process is evidence that MLTs are not invasive.

Qwest's has also stated that MLTs are only performed for repair purposes.⁶⁵ Obviously, the fact that Qwest conducted MLTs for its own loop qualification purposes suggests that is not a true statement.

Qwest asserts that there is no need for CLECs to run MLT because the information the CLECs require is already in the raw loop data tool.⁶⁶ Again, Qwest's claim is inaccurate and is contrary to the FCC's requirements. Not every copper loop in the RLDT has an MLT distance. In addition, Ms. Liston verified that the information in the raw loop data tool associated with MLT is the MLT distance.⁶⁷ More information can be derived from an MLT than distance. An MLT also tells you whether there are electronics or equipment on the loop that would interfere with DSL service, very important information in determining whether the loop will support the services the DLEC seeks to provide.

As summarized in the FCC's *Kansas/Oklahoma 271 Order*, the *UNE Remand Order* required RBOCs to provide carriers with the same underlying information that they have in any of their own databases or internal records for pre-ordering, loop qualification purposes:

In this proceeding, we require a BOC to demonstrate for the first time that it provides access to loop qualification information in a manner consistent with

⁶⁵ *Id.*, pp. 4336-37; CO Transcript (05/23/01), p. 194 (Exhibit K LW-5).

⁶⁶ WA Transcript, p. 4337 (Exhibit K LW-2).

⁶⁷ CO Transcript (04/18/01), p. 257 (Exhibit K LW-4).

the requirements of the *UNE Remand Order*. In particular, we require SWBT to provide access to loop qualification information as part of the pre-ordering functionality of OSS. In the *UNE Remand Order*, we required incumbent carriers to provide competitors with access to all of the same detailed information about the loop that is available to themselves, and in the same time frame, so that a requesting carrier could make an independent judgment at the pre-ordering stage about whether a requested end user loop is capable of supporting the advanced services equipment the requesting carrier intends to install. At a minimum, SWBT must provide carriers with the same underlying information that it has in any of its own databases or internal records. We explained that the relevant inquiry is not whether SWBT's retail arm has access to such underlying information but whether such information exists anywhere in SWBT's back office and can be accessed by any of SWBT's personnel. Moreover, SWBT may not "filter or digest" the underlying information and may not provide only information that is useful in the provision of a particular type of xDSL that SWBT offers. SWBT must provide loop qualification information based, for example, on an individual address or zip code of the end users in a particular wire center, NXX code or on any other basis that SWBT provides such information to itself.

Moreover, SWBT must also provide access for competing carriers to the loop qualifying information that SWBT can itself access manually or electronically.⁶⁸

Thus, having access to filtered MLT distance information in the loop qualification databases is insufficient.

Finally, contrary to Qwest's claims, at least one other incumbent carrier recognized the need for this test and includes it as one way for CLECs to obtain loop qualification information on a pre-order basis. Verizon offers competing carriers manual loop qualification as one of four methods of obtaining loop make-up information. Upon request for manual loop qualification by a competing carrier, a CLEC may request that Verizon perform an MLT on the loop. If this test does not provide adequate information, Verizon engineers examine paper records to determine loop length, whether or not the loop is qualified and, if not, why.⁶⁹ It cannot be disputed that Verizon is offering MLTs on a pre-order basis. Qwest has refused to perform such MLTs for CLECs or to allow the CLECs to do the MLT themselves.

In sum, Qwest has the ability to perform an MLT on a copper loop connected to its switch at any time, and can perform this test to obtain loop qualification information prior to provisioning Megabit. Qwest performed

⁶⁸ *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, CC Docket No. 00-217, FCC 01-29, ¶ 121 (released January 22, 2001) ("BellSouth Kansas/Oklahoma 271 Order") (Citations omitted). See also *UNE Remand Order*, ¶ 430; *In the Matter of Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, Memorandum Opinion and Order, CC Docket No. 01-8, FCC 01-130, ¶ 54 (released April 16, 2001) ("Massachusetts Verizon 271 Order").

⁶⁹ *Massachusetts Verizon 271 Order*, ¶ 58.

thousands of MLTs on its copper loops to pre-qualify its own loops for its Megabit service. AT&T requests access to the same information to which Qwest personnel have access, which includes the ability to perform and MLT prior to the provisioning an unbundled loop. This access is consistent with and required by the *UNE Remand Order*.⁷⁰

e. Qwest should revise certain of its Loop intervals.

A number of the standard intervals set forth in Exhibit C for Unbundled Loops should be revised. Specifically, the standard intervals for 1(g) DS-1 Loops and 1(h) Repair Intervals for Basic 2-Wire Analog Loops are too long to provide the CLEC a meaningful opportunity to compete, are discriminatory, anticompetitive, and in some cases are contrary to applicable state law, and place the CLECs in a position where they cannot comply with established service quality standards that have been adopted in Washington.

The standard interval is the interval in which Qwest is committing to provide a particular UNE to the CLEC. It is the interval that the CLEC will rely upon in providing information to its retail customer when the CLEC will be able to provision service to that customer.⁷¹ It is the interval which the CLEC uses for calculating its due date for submission of its order to Qwest and in designing and provisioning other components and facilities that make up the service that the CLEC is provisioning to its retail customer. Qwest's proposed intervals are set forth in the Service Interval Guide ("SIG") - Exhibit C to the SGAT.

⁷⁰ *UNE Remand Order*, ¶ 427.

⁷¹ *Id.*

Before addressing the specific revisions AT&T has proposed to Exhibit C, Qwest has asserted in other loop workshops and here that the loop intervals set forth in its SIG were agreed upon as part of the negotiations surrounding PID OP-4 in the ROC OSS test process and that, therefore, CLECs are foreclosed from requesting revisions to the SIG in this Loop workshop. Qwest's assertion is flawed on many levels.

The SIG cannot be afforded any weight whatsoever, since it was never presented to the ROC for its review and approval. To conclude otherwise would deprive parties of their right in this proceeding to confront evidence presented by Qwest. As discussed below, the record is undisputed that the SIG was never presented to the ROC for its review and approval and therefore cannot be viewed as dispositive here.

In the multistate loop workshop, this issue was fully addressed by the parties, including a representative of MTG, Denise Anderson. As a result of these discussions several facts became clear. First, the SIG was never presented to the ROC TAG for its approval.⁷² Nor did the ROC TAG formally approve any of the standard intervals in the SIG.⁷³ The reason the SIG was not presented to the ROC TAG is because the ROC TAG does not control the approval of standard intervals.⁷⁴ As a result, it was the CLECs understanding that the CLECs were free to propose specific changes to Exhibit C in the § 271 workshop process. Indeed, Ms. Anderson from MTG testified that she did not believe that CLECs are

⁷² Multistate Transcript (06/05/01), pp. 162, 164 (Exhibit KLV-7).

⁷³ *Id.*, p. 162.

⁷⁴ *Id.*, p. 164.

foreclosed from raising issues regarding the service intervals in this workshop.⁷⁵ In addition, she confirmed that the TAG minutes which reflect the June 2000 agreement regarding the benchmarks for the 3 loop types described above specifically state that “once data is available in Q2, 2001, the intervals will be adjusted. This item will be open on the future discussion topic list.”⁷⁶

Certainly, Qwest does not appear to believe that the SIG has been agreed to and cannot be changed, since Qwest has proposed both reductions and increases for certain intervals in the SIG, without submitting those changes to the ROC TAG for their approval. For example, Qwest unilaterally increased the DS-1 intervals and decreased the xDSL/ISDN capable loop and analog (Quick) loop intervals – all without submission of those changes to ROC for their approval. It would be antithetical to allow Qwest the discretion to change the SIG at its whim, but at the same time refuse the CLECs the opportunity to challenge the SIG. In sum, there is no basis to conclude that CLECs should be foreclosed from raising and requesting revisions to intervals that were never confronted and discussed by the ROC TAG.

Based upon the multistate discussion and ROC documents, the only intervals that Qwest brought into the ROC TAG discussions were the intervals for Analog Loops, Non-Loaded Loops and ADSL-Qualified loops, and then the intervals that were considered were for order quantities of 9-16 loops.⁷⁷ The sole purpose for Qwest bringing these intervals into the TAG was to use those

⁷⁵ *Id.*, pp. 183 - 84, 196.

⁷⁶ *Id.*, p. 181. *See also* June 2000 Minutes of ROC TAG (Exhibit K LW-8).

⁷⁷ Multistate Transcript (06/05/01), pp. 194 – 95 (Exhibit K LW-7).

intervals as the average for establishing the benchmark. There was no discussion as to whether the intervals Qwest raised in discussions were the appropriate standard intervals.⁷⁸ Also, there was no discussion of any of the intervals for other quantities of loop types.⁷⁹ Moreover, there was clearly no discussion whatsoever regarding the appropriate standard interval for DS-1 loops.⁸⁰

For these reasons, CLECs should not be foreclosed from advocating changes to the SIG in the § 271 workshops. Clearly, state commissions have the authority to order different standard intervals than those proposed by Qwest in its SIG and that, to the extent that a party seeks to have that new interval incorporated into the PIDs for some future purpose, the party must take that issue to the ROC.⁸¹

As the Washington Administrative Law Judge stated in the Thirteenth Supplemental Order issued in the Loop workshop:

The ROC OSS Test collaborative process did provide a number of measurements as benchmarks, as Qwest pointed out in its brief. However, other measurements were kept at the retail analog. In essence, there are both wholesale and retail service quality standards that must be followed. By saying that "Qwest shall comply with all state wholesale service quality standards," Qwest completely omits any requirement to follow retail service quality standards. In the absence of such requirements, Qwest could with impunity provide elements that would prevent an interconnecting carrier from meeting applicable standards in its retail service. That is unacceptable. Qwest must make every effort to comply with both wholesale and retail service quality standards.⁸²

⁷⁸ *Id.*, pp. 194, 198.

⁷⁹ *Id.*

⁸⁰ *Id.*, pp. 166 - 67.

⁸¹ *See id.*, pp 168 - 169. For example, to the extent that the PIDs have some relevance to the PEPP, parties may want to update the PIDs.

⁸²

That is precisely AT&T's point. The fact that certain benchmarks were established by the ROC for testing purposes does not undermine the state's right to enforce its own service quality standards, or to change them at their discretion.

The retail and wholesale service quality standards established by the state commissions are relevant to the assessment of whether the wholesale service intervals proposed by Qwest are appropriate. This is a relevant inquiry for several reasons. First, state commissions may have already established wholesale service intervals in which Qwest must provision the UNEs at issue here. Second, state commissions may have established retail service quality standards that apply to CLECs. To the extent that the standard interval proposed by Qwest impairs the CLEC's ability to meet any retail service quality standards imposed on the CLEC by state commissions, Qwest's standard is improper. Section 253 of the Act specifically enables state commissions impose requirements necessary to "ensure the continued quality of telecommunications services."⁸³

Accordingly, AT&T recommends the following revisions to Exhibit C:

- (d) Established Service Intervals for existing DS-1 Capable Loops, DS1 Capable Feeder Loop, 2-Wire Analog Distribution Loop:

a)	1 - 8 lines	9 5 business days
b)	9 - 16 lines	9 6 business days
c)	17 - 24 lines	9 7 business days
b(d)	25 or More	ICB

- (h) Established Repair Intervals for Basic 2-wire Analog Loops, Line Sharing and Line Splitting:

⁸³ 47 U.S.C. § 253 (b).

24 18 Hours OSS *** the "24" needs a strike through as has been done with the "9s" above. I don't know how to do that
***** In addition, I don't know why the "12" is in this. We have talked about 18 and that is in the text below.

48 Hours AS

The rationale for these revisions is as follows.

With respect to Interval 1(d), DS-1 loops, in prior versions of Exhibit C, Qwest proposed the very intervals AT&T is requesting. Qwest now claims that it lengthened these intervals because those are the intervals that exist on the retail side (apparently from Qwest's interstate special access tariff) and, therefore, the intervals in Exhibit C are parity.⁸⁴ Qwest notified CLECs of these changes to the standard intervals for DS-1s in the ROC process, but did not seek the approval or agreement of the ROC participants for these changes. Nor were these changes discussed by the ROC or TAG participants.

AT&T objects to Qwest's revised intervals. AT&T is the largest purchaser of DS-1s from Qwest on the "retail" side. Qwest arbitrarily and unilaterally changed the intervals offered to retail customers in the last year. For years prior to that, Qwest provided DS-1s pursuant to the intervals AT&T is proposing here, although it did not do so in a timely fashion. As has been the case with local service, Qwest has failed to build facilities to meet customer needs in a timely manner and AT&T filed service quality complaints to attempt to resolve this issue. Qwest's response was not to improve its service, but rather to change its provisioning commitment to its retail customers by lengthening the intervals. It now uses those retail intervals that it arbitrarily altered to argue parity. In

⁸⁴ WA Transcript, p. 4471 (Exhibit KLW-2).

AT&T's view, the solution to poor service is not to change the intervals. Moreover, poor service on the retail side should not be used to drive parity decisions of the wholesale side. Qwest should be required to establish an appropriate interval and meet that interval.

Qwest has been ordered to revise its DS-1 intervals in Arizona, New Mexico and Washington. In Arizona, the staff final report recommends that Qwest be directed to adopt the following intervals for DS-1:

1-8 lines	5 business days
9-16 lines	7 business days
17-25 lines	9 business days
25 and above lines	ICB ⁸⁵

In Washington, the Commission directed Qwest to revise the SGAT to include the following intervals:

1-8 lines	5 days (high density) 8 days (low density)
9-16 lines	6 days (high density) 9 days (low density)
17-24 lines	7 days (high density) 10 days (low density)
25 or more	ICB ⁸⁶

In New Mexico, the Commission directed Qwest to adopt the following DS-1 intervals:

5 business days in high density areas
8 business day in low density areas.⁸⁷

The intervals proposed by AT&T here are consistent with the high density intervals ordered by these Commissions.

⁸⁵ Cite AZ Staff Recommendation on Workshop 4, ¶ 164.

⁸⁶ Cite WA Workshop 4 Initial Order, ¶ 124-25.

⁸⁷ Cite to NM Group 4 Order, ¶ 72.

As for 1(h), AT&T contends that an 18-hour interval on repair is more than sufficient given Qwest performance on mean time to restore. For its retail customers Qwest's mean time to restore is in a range of 7 to 14 hours, with and without dispatch. That is the parity figure that should be used as the basis for establishing the wholesale service interval. Thus, the 18-hour interval proposed by AT&T is clearly appropriate and should be reduced even further to be at parity with retail. If Qwest is not required to do better than a 24-hour interval on the wholesale side, CLECs will never be able to come close to matching Qwest's repair time for its retail customers.

Qwest has argued that the performance measures establish a 24-hour repair interval and the repair interval for retail basic service is 24 hours. That is not the measure of parity. Parity is measured based upon the actual service Qwest provides to its retail customers, itself or its affiliates, not the standard established by state commissions.⁸⁸ That is the only measure that will provide CLECs with a meaningful opportunity to compete, particularly where Qwest is performing better than the standard. As the record and the reported performance results indicate Qwest' repair performance for its retail customers is significantly better than the 24-hour repair interval proposed in Exhibit C.

Finally, Qwest's interval fails to take into account work that the CLEC must perform relating to the repair. The CLEC must work the customer to receive the repair and identify the problem. Under SGAT § 9.2.5.1, the CLEC must perform trouble isolation prior to reporting the trouble to Qwest. The trouble

⁸⁸ *Ameritech Michigan Order*, ¶ 139.

must then be reported to Qwest and the appropriate documentation created. Once Qwest responds, the CLEC must contact the customer to let them know the trouble is fixed and determine if the Customer agrees. Qwest's interval fails to take this work activity into consideration.

For all the reasons set forth herein, Qwest should be required to revise its service intervals in the manner proposed by AT&T. Such revisions are necessary to afford CLECs a meaningful opportunity to compete, to afford the CLEC nondiscriminatory access to UNE loops, to comply with state commission requirements, and to afford the CLEC the ability to comply with state commission rules.

E. Qwest Should Redesignate Interoffice Facilities Where Loop Facilities are at Exhaust.

This issue concerns whether Qwest must redesignate fiber spans between Qwest offices as loops facilities if Qwest's distribution facilities in that area are at exhaust. Qwest designates fiber spans between Qwest offices as interoffice facilities. AT&T contends that if the distribution facilities are at exhaust between two Qwest offices and Qwest receives orders for UNE loops that could be filled by redesignating those facilities as distribution facilities, Qwest should be required to do so to meet CLEC demand. Given Qwest refusal to build facilities to meet CLEC demand, this requirement makes sense. It also will eliminate any incentive for Qwest to improperly designate facilities as interoffice in order to reserve such facilities for Qwest's own use.

Qwest concedes that there is spare capacity, including dark fiber, that has been designated by Qwest as interoffice facilities, but states that it will not

redesignate these facilities as loop or subloop facilities if demand requires and alternative facilities do not exist.⁸⁷ Qwest's policy is contrary to law, effectively allowing Qwest to reserve capacity for itself, denying CLECs access to unused capacity while, at the same time, refusing to build to meet CLEC demand. It would allow Qwest to game the Act by designating facilities as IOF, thus eliminating the availability of capacity for UNE loops.

Qwest's defense is that it does not redesignate facilities for itself so it will not do so for CLECs. Qwest has never presented any evidence to validate this statement. Nor has it presented any policy stating that such facilities will never be redesignated. In fact, in the Washington 271 proceeding, Mr. Zulevik, Covad's witness and a former employee of U S WEST, testified that fiber that was forecasted for interoffice facilities was made available when needed for distribution facilities.⁸⁸ Certainly, Qwest has the discretion to use its facilities however it chooses if the need arises. AT&T understands that this should be an exception not the rule. However, it would be better to look to redesignate IOF facilities than dig up streets, if there is available capacity. Accordingly, AT&T requests such redesignation if facilities are at exhaust in order to meet CLEC demand for UNEs, rather than denying the CLEC the ability to serve its customers. AT&T's proposal is efficient and pro-competitive and should be adopted.

⁸⁷ WA Transcript, pp. 4407-10 (Exhibit K LW-2); See CO Transcript (04/20/01), pp. 62 – 68 (Exhibit K LW-01).

⁸⁸ WA Transcript, p. 4411 (Exhibit K LW-2).

g. Qwest Must Provide Access to Loops Served Using IDLC.

Section 9.2.2.2 describes the analog loops Qwest intends to offer on an unbundled basis. Initially, the last sentence of this section contained a limitation that UNE loops would be provided "to the extent possible." This was included to limit Qwest's obligation to provided loops that are served using Integrated Digital Loop Carrier ("IDLC").

In the *Bell South Second Louisiana Order* and the *SBC Texas Order*, the FCC states that "[t]he BOC must provide competitors with access to unbundled loops regardless of whether the BOC uses [IDLC] technology . . ."⁹¹ Qwest's SCAT, as initially filed, was not consistent with this requirement.

Qwest contends that the FCC has acknowledged the difficulty of provisioning loops that are served off of IDLC. That is true; however, the FCC has never altered the ILEC's obligation to provide IDLC loops.

CLECs have experienced coordination problems when there is a transition from Qwest's services provisioned in a community served by IDLC to UNE Loop. When a CLEC orders basic installation in a community served by IDLC they have encountered a high percentage of disconnects. It appears that the process problem stems from the fact that the Qwest disconnect order is not getting stopped while the technicians are determining whether the end-user customer's loop is served using IDLC and, if so, how Qwest is going to provision that loop. This results in the customer experiencing a loss of service. Qwest has indicated it has made some process changes that it represents will solve this problem. It is

⁹¹ *BellSouth Second Louisiana 271 Order*, ¶ 187, *SBC Texas 271 Order*, ¶ 248.

uncertain whether these process changes will, in fact, resolve this problem. However, AT&T agreed to close this issue in Washington, subject to ROC testing and satisfactory performance by Qwest.

Since the filing of testimony in these workshops, Qwest has made considerable progress in the steps it will take in provisioning IDLC loops. Specifically, during the course of the workshops, Qwest proposed new SGAT language to § 9.2.2.2.1 and introduced new processes and several exhibits that outline these new processes for provisioning loops that use IDLC technology.⁹² In addition, Qwest has altered its position that hair pinning would be limited to 3 loops per central office and agreed to provision more than the three loops per central office on an interim basis.⁹³ Qwest also stated that a decision will be made to place a Central Office terminal when the number of hair pinned loops exceeds three loops.

With these commitments and Qwest's commitment to revise its technical publications to be consistent with these commitments, AT&T agreed to close this issue. However, it should be made clear in the order issued on this checklist item that Qwest remains obligated to provision loops served by IDLC and that the ultimate objective of the steps outlined in the workshop and to be addressed in the technical publication is to ensure that CLEC/DLECs have access to unbundled loops served using IDLC.

⁹² See Exhibits JML Loop 8 and 9 and K LW-10.

⁹³ WA Transcript, 4516-17 (Exhibit K LW-2).

D. Line Splitting

1. Legal Requirements.

Line splitting is the ability for different carriers to provide voice and data services over a single loop, utilizing both the high and low frequency spectrum portions of the loop. The FCC has determined that incumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements.⁹⁴ The FCC's rules require incumbent LECs to provide requesting carriers with access to unbundled loops in a manner that allows the requesting carrier "to provide any telecommunications service that can be offered by means of that network element."⁹⁵ As a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over any loop or loop combination.

In addition, Qwest is required to provide to CLECs all the functionalities and capabilities of the loop, including electronics attached to the loop.⁹⁶ The splitter is an example of such electronics that is included within the loop unbundled network element.

2. Disputed Issues on Line Splitting.

As AT&T demonstrates below, Qwest fails to comply with the Act and applicable FCC Orders with regard to line splitting. Therefore, the Commission should find that Qwest has failed to satisfy its § 271 obligations. In failing to comply with its obligations to provide nondiscriminatory access to line splitting, Qwest has failed to comply with checklist items 2 (unbundled network elements) and 4 (local loop transmission).

⁹⁴ *Line Sharing Reconsideration Order*, ¶ 18.

⁹⁵ 47 C.F.R. § 51.307(c).

⁹⁶ *UNE Remand Order*, ¶ 175.

a. **Qwest Should be Required to Provide Access to Outboard Splitters on a Line-At-A-Time, or Shelf-At-A-Time Basis.**

AT&T contends that Qwest should be required to provide access to outboard splitters that it places in its central offices and remote terminals and make them available on a line-at-a-time or shelf-at-a-time basis. Qwest objects to such a requirement. There is no legitimate legal, technical or operational justification for Qwest's refusal. Qwest allows access by its retail customers to its splitters on a line-at-a-time basis. It has presented no technical reason why similar access cannot be provided to CLECs. Qwest should be required to modify its SGAT to state that, to the extent Qwest deploys in its network splitters that are not integrated with the DSLAM and are capable of being provided to DLECs on a line-at-a-time or a shelf-at-a-time basis, that Qwest will provide DLECs with access to such splitters.

Qwest has not disputed that it is technically feasible for Qwest to provide access to outboard splitters on a line-at-a-time basis. Rather, Qwest contends that they are not required to provide line-at-a time access.

CLECs purchasing UNE Loops or UNE combinations are entitled to "all capabilities of the loop including the low and high-frequency spectrum portions of the loop . . ."⁹⁷ In the FCC's Line Sharing Order, the FCC defined the high frequency portion of the loop as a capability of the loop.⁹⁸ In order to gain access to the high frequency portion of the loop, line splitting is required. Such line splitting is accomplished by means of passive electronic equipment referred to as

⁹⁷ 47 C.F.R. § 51.319(a)(1).

⁹⁸ *Line Sharing Order*, ¶ 17.

splitters, which splits the low and high frequency portions of the loop. The FCC has also determined that ILECs must afford CLECs access to all of the UNE's features, functions, and capabilities, including attached electronics, in a manner that allows the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element, specifically including DSL services.⁹⁹ The FCC reiterated that the loop includes "attached electronics" if such electronics are necessary to fully access the loops feature, functions and capabilities in order to provide service to end users.¹⁰⁰ Under these determinations of the FCC, the splitter is a feature, function or capability of the loop that must be provided to CLECs.

Qwest cites to the SBC Texas 271 Order in support of its position. My reading of the *SBC Texas 271 Order* does not support Qwest's position. In that Order, the FCC merely notes that it had not yet exercised its rulemaking authority to require ILECs to provide access to splitters, and therefore, it would not require SBC to provide access to splitters as part of that proceeding.¹⁰¹ The FCC explicitly declined to comment on the requirement that an ILEC provide access to an ILEC-owned splitter on the grounds that it was considering this issue in response to AT&T's petition for reconsideration of the *UNE Remand Order*.¹⁰² The FCC decision with regard to SBC's application on this issue was set at a particular point in time. As all participants know, the law is constantly evolving in this area. The SBC decision does not address the issue as to what the FCC may

⁹⁹ 47 C.F.R. §51.307; *UNE Remand Order*, ¶¶166-67.

¹⁰⁰ *Id.* ¶ 175.

¹⁰¹ *SBC Texas 271 Order*, ¶ 328.

¹⁰² *Id.*

decide at the point in time when Qwest is before the FCC with its application for § 271 relief, nor does it address what state commissions may order to promote the development of competition and the broader availability of advanced services.

The FCC's decision to not impose a requirement on ILECs to provide access to ILEC-owned splitters in its review of the SBC § 271 Application should not deter any state commission from imposing such a requirement on Qwest. It is my understanding that the state commissions are free to establish additional procompetitive requirements that are consistent with the Act, and the FCC's implementing rules and orders.

That is precisely what the Texas Public Utilities Commission concluded in a recent arbitration decision.¹⁰³ There, concluding that the FCC's BellSouth Texas 271 Order did not prevent the Texas Commission from doing so, the PUC affirmed an arbitrators' recommended decision, which required Southwestern Bell to provide splitters on a line-at-a-time basis. Specifically, the Arbitrator stated:

Although, as noted by SWBT, the FCC has to date, not required ILECs to provide the splitter in either a line sharing or line splitting context, the Arbitrators believe this Commission has the authority to do so on this record. The FCC has clearly stated that its requirements are the minimum necessary, and that state commissions are free to establish additional requirements, beyond those established by the FCC, where consistent. Indeed, in the *SWBT Texas 271 Order*, the FCC acknowledged that line splitting, a recent development, would be subject to potential arbitration before the Texas Commission. The Arbitrators, therefore, believe on this record that it is sound public policy to require SWBT to

¹⁰³ *Order Approving Revised Arbitration Award, Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas*, Docket No. 22315, pp. 7 - 9 (dated March 14, 2001) (Exhibit KLW-11).

provide AT&T with a UNE loop that is fully capable of supporting any xDSL service.¹⁰⁴

Then, citing the rulings of the FCC referenced above, the Arbitrators determined that SBC must provide access to its splitters. The decision stated (1) that "excluding the splitter from the definition of the loop would limit its functionality," (2) that "it is technically feasible for SWBT to furnish and install splitters to [enable CLECs to] gain access to the high frequency portion of the loop when purchased in combination with a switch port," and (3) that it is "inaccurate from a technical standpoint to analogize splitters to DSLAMs."¹⁰⁵

Finally, the Texas decision noted that SWBT's effort to require LECs to collocate in order to gain access to the high-frequency portion of the loop "(1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction and splitter installation; and (3) unnecessarily wastes central office and frame space."¹⁰⁶ Thus, the arbitrators found that SWBT's approach "significantly prohibits UNE-P providers from achieving commercial volumes."¹⁰⁷ On the flip side, they found that requiring the ILEC to provide the splitter not only advances

¹⁰⁴ Revised Arbitration Award, *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas*, Docket No. 22315, p. 16 (released September 27, 2000) ("Texas Arbitration Award"). (Exhibit KLV-12).

¹⁰⁵ *Id.*, pp. 17 - 19.

¹⁰⁶ *Id.*, p. 19.

¹⁰⁷ *Id.*

competition but also “promotes more rapid deployment of advanced services to a broader cross section of consumers, as required by § 706” of the Act.¹⁰⁸

Qwest has also claimed that it does not currently use outboard splitters in its central offices, stating that its splitters are integral, hard wired units.¹⁰⁹ During the Colorado Loop workshop, Qwest finally revealed the type of splitters it deploys in its network and testified that, in Qwest’s current configuration, a shelf of splitters are “connecterized” to their DSLAMs.¹¹⁰ Splitters that are “connecterized” to the DSLAM are not integrated into the DSLAM and, therefore, it is technically feasible to separate the splitter from the DSLAM.¹¹¹ For the splitters used by Qwest, it is technically feasible to break out the splitter from the DSLAM.¹¹² In fact, Covad testified in Colorado that the Qwest DSLAM/splitter configuration is no different than the Covad/Qwest splitter/DSLAM configuration that Qwest is requiring CLEC to use in lieu of the Qwest splitter and under this configuration the Covad splitters are “connecterized to the Qwest DSLAM.”¹¹³ Indeed, Qwest’s witness conceded that it was possible to provide access to a shelf of Qwest splitters in this configuration.¹¹⁴

Access to Qwest-owned splitters will serve to advance competition for DSL service and bundles of voice and data service, and as such, are very much in the public interest. As AT&T discussed in its comments relating to the Emerging

¹⁰⁸ *Id.*

¹⁰⁹ WA Transcript, p. 4559 (Exhibit KLW-2).

¹¹⁰ CO Transcript (05/22/01), pp. 141-42 (Exhibit KLW-13); WA Transcript, 4560-61 (Exhibit KLW-2).

¹¹¹ CO Transcript (05/22/01), pp. 149 – 50 (Exhibit KLW-13).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*, pp. 143- 45.

Services workshop, there are several significant benefits to Qwest providing access to outboard splitters. When data CLECs share an ILEC-owned splitter, switching a voice customer's data provider among such providers is much simpler and conserves valuable resources.

Access to Qwest owned splitters also yields benefits when a customer terminates individual services, allowing for the efficient usage of splitters and racks within central offices where space is already scarce, and promotes competition among data CLECs because voice providers and ISPs encounter fewer barriers to switching from one provider to another.

Requiring Qwest to provide access to its splitters also promotes the ability of CLECs to offer a bundle of voice and data service in competition with Qwest. One of the procompetitive aspects of UNE-P is that it allows a voice CLEC to enter the market and compete with Qwest without having to obtain collocation space. Access to Qwest-owned splitters on a line-at-a-time basis eliminates the need for UNE-P providers to secure collocation arrangements, and thus provides similar benefits to the expansion of DSL with UNE-P. For example, by having access to splitters, UNE-P providers can effectively partner with any data CLEC that has deployed a DSLAM in the central office, and are not limited to those that have already deployed their own splitters or lack space for additional splitters. By making it less difficult for UNE providers to access the high frequency portion of the loop, this impediment to competition may be avoided.

Accordingly, Qwest should be required to modify its SGAT to state that it will provide access to its splitters on a shelf-at-a-time basis.

b. **Qwest Should be Required to Provide Line Splitting on all Types of Loops.**

Qwest is required to provide line splitting on all forms of loops and Qwest's differentiation between UNE-P splitting and other forms of Loop Splitting.

In its SGAT, Qwest proposes to make line splitting available only for loops provided via its UNE-Platform ("UNE-P") POTS offering. AT&T and other CLECs objected to this. It is AT&T's position that Qwest must offer line splitting on the UNE loop and any combination that uses the UNE loop. Qwest indicated later that it would offer loop splitting on UNE loops as of August 1, 2001.¹¹⁵ That offer does not appear to be reflected in the South Dakota SGAT. Qwest must do loop splitting on UNE loops and its failure to do so makes Qwest's offer insufficient to constitute compliance with § 271 for several reasons.

Qwest's attempt to differentiate UNE-P line splitting and Loop Splitting demonstrates the fundamental dispute between Qwest and CLECs/DLECs. Qwest has asserted that its obligation to provide line splitting under the FCC's Orders is limited to UNE-P line splitting, citing to the FCC's *Line Sharing Reconsideration Order*, claiming that the Order is somehow ambiguous as to its applicability beyond UNE-P.¹¹⁶

AT&T disagrees. The FCC stated in its *Line Sharing Reconsideration Order* that the line sharing and line splitting obligations apply to the entire loop.

¹¹⁵ WA Transcript, pp. 4571-72 (Exhibit K LW-2); See also, SGAT § 9.24.

¹¹⁶ WA Transcript, pp. 4575-77 (Exhibit K LW-2).

Specifically, with respect to line splitting, the FCC stated in the *Line Sharing*

Reconsideration Order:

We find that incumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements. The Commission's existing rules require incumbent LECs to provide competing carriers with access to unbundled loops in a manner that allows the competing carrier "to provide any telecommunications service that can be offered by means of that network element." Our rules also state that "[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on ... the use of unbundled network elements that would impair the ability of" a competing carrier "to offer a telecommunications service in the manner" that the competing carrier "intends." We further note that the definition of "network element" in the Act does not restrict the services that may be offered by a competing carrier, and expressly includes "features, functions, and capabilities that are provided by means of such facility or equipment." As a result, independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the Line Sharing Order, *incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop.* This obligation extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting.¹¹⁷

The FCC concluded that requiring RBOCs to provide line splitting:

will further speed the deployment of competition in the advanced services market by making it possible for competing carriers to provide voice and data service offerings on the same line. As we found in the Line Sharing Order, these offerings are especially attractive to residential and small business customers. At present, end users receiving voice service from competing carriers via the UNE-platform may be unable to get xDSL service from a competing carrier without migrating their voice service back to the incumbent LEC. Line splitting, however, increases consumer choices by making it possible for carriers to compete effectively with the combined voice and data services that are already available from incumbent LECs and through line sharing arrangements. In addition, line splitting provides voice carriers who do not wish to provide xDSL service at this time to develop

¹¹⁷ *Line Sharing Reconsideration Order*, ¶ 18 (Emphasis added).

partnerships with data carriers and thereby offer end users voice and data services on the same line. Furthermore, as the New York Public Service Commission has found, the availability of line splitting may increase the likelihood that competing carriers will make investments in facilities that will help solidify competing carrier market share.¹¹⁸

The FCC makes no distinction in the manner in which the loop is delivered to the CLEC in its line splitting requirement. The FCC confirms that CLECs should have broad access to use all the features and functionalities of the loop and that ILECs may not impose any limitations on the use of the loop by the CLEC.¹¹⁹ Qwest's refusal to allow CLECs to use the full functionality of the loop for purposes of line splitting is an improper limitation on the CLECs use of the loop. Qwest should be required to permit line splitting on all loops and loop combinations.

As a practical matter, there is no material difference between Qwest permitting line splitting on UNE-P, UNE Loops or any UNE loop combination. In all of these cases, the underlying loop facilities are being leased by the CLEC and the CLEC should be allowed to use the full features and functions of the loop as they choose. Moreover, splitting of the UNE loop and the EEL loop both involve splitting the line at the central office and should not require any different work by Qwest.

Qwest must make line splitting available on all loops, including all loop combinations, as a standard offering, on an unlimited basis. CLECs/DLECs must not be forced to use the time consuming SRP process to implement line splitting.

¹¹⁸ *Id.*, ¶ 23.

¹¹⁹ *Id.*, ¶ 27.

Accordingly Qwest should revise § 9.21 of its SGAT to clearly set forth its obligation to provide line splitting on all loops and loop combinations. In addition, the SGAT should be revised to clearly state that Qwest will offer EEL splitting as a standard offering and to state the terms and conditions of such an offering. Until Qwest does so, it cannot comply with Checklist Item 4.

E. Network Interface Device (NID)

I. Legal Requirements.

Section 271(c)(1)(B)(ii) states that a BOC must provide “[n]ondiscriminatory access to network elements in accordance with the requirements of §§ 251(c)(3) and 252(d)(1). In its recent *UNE Remand Order*, the FCC on remand identified the list of network elements that Qwest must provide pursuant to § 251(c)(3).

The FCC redefined the NID to “include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism.”¹²⁰ Specifically, the FCC defined the NID to include “any means of interconnection of end-user customer premises wiring to the incumbent LEC’s distribution plant, such as a cross connect device used for that purpose.”¹²¹ The FCC also requires that “an incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC’s network interface device, or at any other technically feasible point.”¹²²

¹²⁰ *UNE Remand Order*, ¶ 233.

¹²¹ 47 C.F.R. § 51.319(b).

¹²² *Id.*

In addition, the FCC's definition encompasses "smart NIDs" which are devices used on PLEX trunks and DS1 loops that give some maintenance monitoring for the loop. Qwest must also make available the full features and functions of the NID, such as termination devices for ISDN loops.

2. Disputed Issues on NIDs.

a. Qwest Must Make the NID Available on a Stand-Alone Basis.

The issue at dispute is the manner in which Qwest is defining the NID. Qwest's NID definition is found at § 9.5.1 of the SGAT. Qwest asserts that the NID definition reflects merely the FCC's language.¹³³ However, Qwest clearly intends for its definition of a NID to provide access to a terminal only when such terminal constitutes the demarcation between a customer's inside wire and Qwest's network. If Qwest owns the inside wire then the CLEC obtains access to the NID terminal via the subloop processes. Qwest's testimony clearly indicates that it intends for the NID product to be narrower than the FCC's expansive definition. AT&T seeks to ensure that Qwest does not eliminate, through its narrowing of the FCC's broad definition of NIDs, access that is contemplated by the FCC in its unbundling rules.

In the *Local Competition Order*, the FCC defined the network interface device ("NID") as a cross-connect device used to connect loop facilities to inside wiring.¹³⁴ Subsequently, in the *UNE Remand Order*, the FCC broadened its definition "to include all the features, functions and capabilities of the facilities

¹³³ Qwest curiously introduces part of the FCC's definition with the phrase "The NID carries with it all features. *Id.*" § 9.5.1 (emphasis added). The modification itself, which does not precisely track the FCC's definition, introduces some interpretive uncertainty as to how Qwest intends on the FCC's definition to be incorporated.

¹³⁴ *Local Competition Order*, ¶ 392, n. 852.

used to connect loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism."¹²⁵

Specifically, FCC rules now define the NID as follows:

The **network interface device network** element is defined as any means of interconnection of end-user customer premises wiring to the incumbent LEC's distribution plant, such as a cross connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's **network interface device**, or at any other technically feasible point.¹²⁶

Qwest definition of the NID is not consistent with this definition. The FCC makes clear that access to the physical devices that might be described as a NID are less important than access to the functions constituting the NID. The FCC has made clear that the NID "structure" and "function" are distinct, concluding that "[a]lthough the physical structure of the NID is widely available, it is access to the function, rather than the hardware itself, that competitors rely upon."¹²⁷

Qwest has stated that the NID definition is irrelevant because Qwest is providing the CLEC every conceivable access it could want through the NID or subloop products. That is not the case. Qwest's own witness observed that Qwest's deployment of NIDs was complex, noting that there are "hundreds of variations of [NID] terminals out there."¹²⁸ As was clear from the subloop workshop, the terms and conditions associated with accessing subloop are

¹²⁵ UNE Remand Order, ¶ 233.

¹²⁶ 47 C.F.R. § 51.319(b).

¹²⁷ UNE Remand Order, ¶ 232.

¹²⁸ *Id.*, p. 77.

significantly different and more complex and time consuming than the NID access terms. Therefore, CLECs need the assurance of specific rules applicable to all NIDs. CLECs should not be forced to risk Qwest's application of such specific rules to limit the CLEC's "access to the function, rather than the hardware" of a NID. This is precisely why AT&T seeks to ensure that the expansive definition established by the FCC is not undermined by Qwest.

The FCC has also indicated that incumbent LECs, such as Qwest, have used the MTE chokepoint as a means to severely inhibit competition. In the *MTE Order*, the FCC found that "incumbent LECs are using their control over on-premises wiring to frustrate competitive access in multitenant buildings."¹²⁹ Further, the FCC found "that incumbent LECs possess market power to the extent their facilities are important to the provision of local telecommunications services in MTEs."¹³⁰ Finally, the FCC recognized that "[i]n the absence of effective regulation, they therefore have the ability and incentive to deny reasonable access to these facilities to competing carriers."¹³¹

Without a clear statement that Qwest is indeed required to provide access to the NID to the full extent of the FCC's order, CLEC's risk problematic interpretive disputes with Qwest. These disputes may require initiation of the Bona Fide Request process, Dispute Resolution or, possibly, arbitration under the Act. Although CLECs specific operational issues may be inevitable, it is

¹²⁹ *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, WT Docket No. 99-217, FCC 00-366, ¶ 6 (released October 25, 2000) ("*MTE Order*").

¹³⁰ *MTE Order* ¶ 11.

¹³¹ *Id.*

CONTINUATION

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unacceptable to have to litigate every form of NID access, when the law is so expansive.

Accordingly, Qwest must be required to revise the definition of the NID in its SGAT to be consistent with the FCC's definition. In addition, the remainder of § 9.5 should be conformed to be consistent with the FCC's definition. For example, Qwest has maintained that where Qwest owns the on-premises wiring, Qwest will not offer the NID to CLECs. In such instances, Qwest maintains the NID is only available as a component of Qwest's subloop product.¹³² The application of the definition of NID may extend beyond the physical terminal Qwest restrictively identifies as the NID. Indeed the functions and features of the NID may extend to certain "downstream" network components that may include some wiring, adjacent protectors and other equipment. Qwest should be required to make all components of the NID—including all features and functions of the NID—available to CLECs.

This is precisely what applicable law requires. The FCC's definition of the NID "include[s] all the features functions and capabilities of the facilities used to connect loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism."¹³³ It bears repeating: the FCC made clear that "[a]lthough the physical structure of the NID is widely available, it is access to the function, rather than the hardware itself, that competitors rely

¹³² SGAT § 9.5.1.

¹³³ *UNE Remand Order*, ¶ 233.

Accordingly, all components of the NID must be made available to CLECs, not merely the NID "terminal."

b. Qwest should be required to remove its connections from protectors when CLECs access the protector.

CLECs may encounter situations where they will need to request that Qwest free capacity on the NID so that the CLEC can provide service to the customer. This is an important issue because § 9.5.2.1 of the SGAT limits the CLEC's access to NID to cases where space is available on the NID. There is no provision that would require Qwest to make space available on the NID. This may be particularly necessary in situations where the customer does not want an additional NID on their premise or in MTE setting where association rules limit additional boxes. Failure to free such capacity may make the NID, or connections within the NID, inaccessible to the CLEC.

Qwest has objected to this request, claiming it has no obligation to make space available on the NID and that AT&T's proposal for removing Qwest loop connection violates the National Electrical Code. Qwest is obligated to provide access to the NID, unless it is technically infeasible for it to do so. Therefore, Qwest is obligated to remove its loop connections from the NID, absent technical infeasibility.

There is no question that it is technically feasible for Qwest to remove its connections from the NID. Qwest does not dispute this. AT&T provided a Bell System Practice that explicitly permits a procedure called "capping off," a procedure which would entail removing the Qwest circuit from the NID and tying

¹³⁴ *UNE Remand Order*, ¶ 232.

it down.¹⁵⁸ Qwest claims that this practice is from 1969, implying it is outdated. Qwest has never presented any evidence that this practice was ever superceded in the Bell System or U S WEST/Qwest.

Qwest has also claimed that this Bell System practice addresses a scenario that is different from the removal of the loop by the ILEC for use by the CLEC. This argument is false. Of course, the precise scenario at issue here did not exist at the time since CLECs were not envisioned at the time the Bell System practice was adopted. However, the procedure depicted in the Bell System practice of removing the protector from the house is analogous to the procedure proposed by AT&T. More to the point, lightning and over-voltage issues have not change since the date of this practice. The Bell System practice depicts a procedure that is proper and acceptable practice. If this practice was acceptable then from a safety perspective, there is no reason it would not be safe now.

The only evidence Qwest has presented to support its refusal to provide access to the NID is its reference to § 315A of the National Electrical Safety Code and the § 800-30(a) of the National Electrical Code.¹⁵⁹ Qwest claims that these provisions somehow proscribe it from removing its loop connections in the manner proposed by AT&T. Neither of the provisions cited by Qwest to the National Electrical Safety Code and the National Electrical Code address the proposal made by AT&T. Section 315A of the National Electrical Safety Code addresses the need for protection where a "communications apparatus is handled by other than qualified persons." That is not the case here. We are talking about

¹⁵⁸ Exhibit K.L.W.-14.

¹⁵⁹ Exhibit K.L.W.-15 and 16

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¹³⁵ Exhibit K LW-14.

¹³⁶ Exhibit K LW-15 and 16

situations where company technicians that are qualified persons would be capping off loop facilities.

Similarly, § 800-30(a) of the National Electrical Code is not applicable. This section applies to circuits that run partly or entirely in aerial wire or aerial cable that not confined within a block or circuits, aerial or underground, located within the block containing the building served so as to be exposed to accidental contact with electric light or power conductors operating at over 300 volts to ground. A block is defined in § 800-2 as square or portion of a city, town, or village enclosed by streets and including the alleys so enclosed, but not any street. "Exposed" has three definitions in the Code. In Article 100 – Definitions, exposed (as applied to live parts) is defined as capable of being inadvertently touched or approached nearer than a safe distance by a person and it is applied to parts that are not suitably guarded, isolated, or insulated. Also in Article 100, exposed (as applied to wiring methods) is defined as on or attached to the surface or behind panels designed to allow access. Finally, in § 800-2 Definitions, exposed is defined as a circuit that is in such a position that, in case of failure of supports and insulation, contact with another circuit may result.

A capped circuit is not exposed under any of these definitions. Based upon the first definition, when the conductors are capped, the wire cannot be inadvertently touched. For purposes of the second definition, a capped circuit is not attached directly to the structure, it is attached to a standoff that is an insulator. Finally, based upon the third definition, the circuit is doubly insulated

and so it cannot come in contact with another circuit even if one insulating sheathe is compromised.

When a communications circuit actually interfaces with inside wire at a building, then it is "exposed" and must have a protector under the National Electrical Code.

In essence, paragraph 800-30(a) requires Qwest to have a protector on a pole in the block for each circuit. This is because not all distribution facilities are actually connected to premises. Spare facilities exist in the loop plant that are not "dropped" to buildings. The reference to electric light or power conductors at over 300 volts is referring to the fact that telephone wires typically coexist on power poles with high voltage lines. Workmen must be protected from accidental contact with communications circuits that have become connected to high voltage power lines or lighting. If Qwest does not have such protectors on all circuits in the block, they are in violation of the National Electrical Code. All cables must have such protection as there is no assurance that any particular circuit actually terminates in a protector at a building. There is no exposure to voltages over 300 volts at buildings (with the exception of industrial facilities that are covered by other sections) as the voltage that is available to such buildings is at maximum 220 V. However, the National Electrical Code does not require a protector at the house when the drop does not penetrate the building. Thus, this section of the National Electrical Code is not germane to AT&T's proposal.

Therefore, Qwest has not presented any viable technical or safety concerns. It must remove its loop connections in order to provide access to its

NID in order to provide CLECs access to its NID where space is not otherwise available. AT&T proposes the following modification to the last sentence of § 9.5.2.1 to implement this obligation: "At no time should either Party remove the other Party's loop facilities from the other Party's NID without appropriately capping off the other Party's loop facilities."

F. Local Number Portability.

1. Legal Requirements.

Number portability is the ability of users of telecommunications services "to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."¹³⁷ In its initial order on number portability, the FCC noted that number portability is essential to meaningful competition in the provision of local exchange services and affirmed that number portability provides consumers flexibility in the way they use their telecommunications services and promotes the development of competition among alternative providers of telephone and other telecommunications services.¹³⁸

Conversely, the FCC recognized that:

a lack of number portability likely would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. Business customers, in particular, may be reluctant to incur the administrative, marketing, and goodwill costs associated with changing telephone numbers. As indicated above, several studies show that customers are reluctant to switch carriers if they are required to change telephone numbers. To the extent that customers are reluctant to change service providers due to the absence of number portability, demand for services provided by new entrants will be

¹³⁷ 47 U.S.C. § 153(30).

¹³⁸ *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286, ¶ 28 (released July 2, 1996) ("First Number Portability Order").

depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act.¹³⁹

Section 271(c)(2)(B) of the 1996 Act requires a BOC to comply with the number portability regulations adopted by the FCC pursuant to § 251.¹⁴⁰ Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."¹⁴¹ In order to prevent the cost of number portability from thwarting local competition, Congress enacted § 51(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."¹⁴²

Pursuant to these statutory provisions, the FCC requires that RBOCs provide number portability in a manner that allows users to retain existing telephone numbers "without impairment in quality, reliability, or convenience."¹⁴³ In addition, the FCC requires the RBOC to demonstrate that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption.

2. Disputed Issues.

To satisfy Checklist Item 11, Qwest must demonstrate that it provides LNP with minimum service disruptions and without impairment of quality. Qwest's performance

¹³⁹ *Id.*, ¶ 31 (citations omitted).

¹⁴⁰ 47 U.S.C. § 271(c)(2)(B)(xii).

¹⁴¹ *Id.*, § 251(b)(2).

¹⁴² *Id.*, § 251(e)(2); see also *BellSouth Second Louisiana 271 Order*, ¶ 274; *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-04 (1998) ("Third Number Portability Order"); *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, ¶¶ 1, 6-9 (released June 23, 1999) ("Fourth Number Portability Order").

¹⁴³ *BellSouth Second Louisiana 271 Order*, ¶ 276.

demonstrates Qwest is not providing nondiscriminatory access to LNP with minimum service disruptions and without impairment of quality. In addition, Qwest's processes do not ensure that CLEC's will obtain LNP in this manner and that Qwest's SGAT must be revised to provide such assurances. As discussed in more detail below, Qwest has now proposed a mechanized process that will delay the disconnect of its loop from its switch to 11:59 p.m. of the day following the CLEC's scheduled customer conversion. While AT&T commends Qwest for the movement it has made on this issue and AT&T is hopeful that this process change will resolve this issue ultimately, Qwest proposal is now merely a paper promise. Until the process is, in fact, implemented and tested and the parties have sufficient experience that the process will in fact resolve the problems that AT&T and Cox have encountered, Qwest cannot be deemed to be providing nondiscriminatory access to local number portability with minimum service disruptions and without impairment of quality. In addition, while Qwest has distributed its documentation that reflects its revised product offering, Qwest has steadfastly refused to fully reflect the new process in its SGAT. Until Qwest does so, it has no legally binding commitment to provide LNP.

When AT&T provides a new loop to a customer, either via its cable telephony or fixed wireless facilities, and requests that the customer be ported for this new physical loop, if Qwest disconnects its loop before the new CLEC loop is in place, the customer will lose telephone service. There are numerous reasons why the disconnect may occur before the port: to name a few, customers don't keep their installation appointments, the installers could be delayed, or there could be installation problems. Whatever the reasons, to avoid customer service outages, coordination must occur on these conversions

and some verification process needs to exist to ensure that the port has been activated by the CLEC before Qwest disconnects its loop.

Coordination of cutovers – whether it be for a Qwest-provided loop or a CLEC-provided loop – is critical to ensuring that the port is completed without interruption of the customer's service. Qwest's LNP process does not provide sufficient protection against customer service outages. Qwest's own testimony highlights the problem. While Qwest attributes the problem to two CLECs and their processes, AT&T and Cox presented testimony that Qwest's processes have caused customers to lose dial tone. SGAT revisions must be made to provide CLECs with the assurance that their customers will not lose dial tone when switching service from Qwest to the CLEC.

Qwest refuses to put forth the SGAT language that would put teeth behind such coordination for CLEC-provided loops.

The FCC has stressed the importance of such coordination, stating:

a BOC must be able to deliver within a reasonable timeframe and with a minimum of service disruption, unbundled loops of the same quality as the loops the BOC uses to provide service to its own customers. In the context of checklist item (xi), we interpret this to mean that the BOC must demonstrate that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption.¹⁴⁴

In addition, in the context of hot cut loop conversion, the FCC has stressed the importance of proper hot cuts to avoid customer service outages and the impact that the failure to provision proper hot cuts will have on competition:

The ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period. Moreover, the failure to provision hot cut loops effectively has a particularly significant adverse impact on

¹⁴⁴ *BellSouth Second Louisiana 271 Order*, ¶ 279. (Citations omitted.)

mass market competition because they are a critical component of competing carriers' efforts to provide service to the small- and medium-sized business markets.¹⁴⁵

This same logic applies equally to all coordinated cutovers for LNP with Unbundled Loops or CLEC-provided loops. Clearly, the objective should be, as is reflected in the FCC LNP standards, to avoid customer service outages. Otherwise, the service outages will reflect adversely on the CLEC and will negatively impact the CLEC's ability to obtain and retain customers. Customers blame the CLEC when they encounter problems with their service when they convert to a CLEC. It is not uncommon for customers who have encountered service disruptions when switching from the incumbent LEC to the CLEC to return to the incumbent LEC. Therefore, from a competitive standpoint, smooth conversions are critical to competition.

This is not a hypothetical issue. Both Cox Communications and AT&T raised concerns regarding the impact that Qwest's disconnect process is having on their provision of service to residential customers, particularly where the CLEC is providing that service using its own loops. Cox, the other CLEC that Qwest acknowledges is providing local service over its own loops, raised concerns about the coordination of ports for its loops with the removal on the translations from the Qwest switch in the fall of 1999 in the Nebraska § 271 proceeding and requested that Qwest delay its disconnect until the day after the Cox scheduled install. Cox in Arizona, appeared at the workshop and again raised concerns regarding Qwest's LNP performance in coordinating its disconnect with the Cox install and requested that Qwest's disconnect be delayed until

¹⁴⁵ See *Trans. 271 Order*, ¶ 256.

the day following the scheduled install of Cox's service. AT&T has raised this same concern throughout the § 271 LNP workshops.

Qwest initially responded that if a CLEC wishes to coordinate LNP with CLEC-provided loops, the CLEC must order the managed cut process that is set forth in § 10.2.5.3. The managed cut process set forth in § 10.2.5.3 is designed to manage the cutover of large business customer conversions. The managed cutover process, while acceptable for large business conversions, would be unwieldy, costly and an implementation nightmare if applied to the mass-market. In order to ensure that residential cutovers were coordinated, AT&T would have to subject every conversion to the managed cut process. Not only would this impose significant cost on every conversion, but given the number of AT&T residential conversions in Qwest's region, there is simply not enough manpower in either AT&T or Qwest to accomplish the conversions.

Qwest then offered was to move the disconnect time back to 11:59 p.m. on the day of the CLEC's install, which means that the CLEC must provide notice to Qwest by 8:00 p.m. on the day of the disconnect. While AT&T agreed that Qwest's proposal was an improvement from the 8 p.m. time frame, it was still insufficient to protect customers from losing dial tone. AT&T presented evidence that demonstrated that Qwest was having difficulty stopping its disconnect even when it received notice in the morning of the day of the port.

After much debate and several adverse rulings, Qwest proposed a new next-day disconnect solution, designed to resolve the significant problems that AT&T and Cox, in

Arizona, was experiencing.¹²⁰ AT&T believes that the new process has improved the situation and AT&T is seeing fewer premature disconnects. However, AT&T believes it is premature to reach any conclusion regarding Qwest's performance on LNP for several reasons.

As an initial matter, OP-17, the PID that is designed to measure Qwest's performance on this disconnect issue, will not fully measure the new disconnect process implemented by Qwest. The OP-17 states that one of the prerequisites for measurement is that the CLEC must notify Qwest by 8:00 p.m. on due date in order to be counted as a CLEC-requested delay, if not, that order is excluded from the PID measure. However, Qwest's new product offer indicates that CLECs have until noon of the day following the scheduled due date to notify Qwest to delay the disconnect. Thus, absent a notification by 8 p.m. of the due date, under the current PID, Qwest will count that order as an exclusion and Qwest would not be measuring whether the disconnect was made on the day after the due date or not. Thus, the PID will not produce any evidence of whether Qwest's new process is working or not. AT&T has proposed a revision to OP-17 in the ROC process that would synch up the PID with Qwest's new offering. Qwest has objected to revising the PID.

In addition, in other states, Qwest has presented results from its self-reported data, claiming that this data demonstrates that Qwest's new process is working. However, Qwest has never provided the underlying data that supports these results, so there is no way to analyze this data to understand whether it is accurate and verifiable. Nor can it be determined whether this data even tests Qwest's new process. It is unclear how this data

¹²⁰ Exhibit KLW-17.

is being computed and what it is measuring. Nor can it be ascertained what input data was used for those results. Qwest's process for collecting input data must be tested, and the accuracy of the input data must be verified. It is only after this comparative evaluation is completed and Qwest has corrected any identified deficiencies, that Qwest's results can truly be considered to be audited and reliable.

Second, there is no SGAT language that addresses this new offering. Specifically, the last sentence in § 10.2.2.4 states "If CLEC requests Qwest to do so by 5:00 p.m. mountain time, Qwest will assure that the Qwest Loop is not disconnected that day." Similarly, § 10.2.3.3.1 states:

Qwest will set the ten (10) digit unconditional trigger for numbers to be ported, unless technically infeasible, by 11:59 p.m. (local time) on the business day preceding the scheduled Port date. (A 10-digit unconditional trigger cannot be set for DID services in IAESS, AXE10, and DMS10 switches that managed cuts are required, at no charge.) The ten (10) digit unconditional trigger and Switch translations associated with the End User Customer's telephone number will not be removed, nor will Qwest disconnect the Customer's Billing and account information, until 11:59 p.m. (local time) of the next business day after the Due Date.

These provisions do not address Qwest's new product offer, which specifically states that CLECs have until noon of the day following the scheduled due date to notify Qwest to delay the disconnect.¹⁴⁷

Qwest touted this offering as the solution to the premature disconnects that AT&T and other CLECs were encountering. It is Qwest that proposed this solution, not AT&T. Qwest made this change because of the commercial experience evidence produced by AT&T and Cox that showed Qwest processes were causing the premature disconnection of CLEC customers. Qwest changed its processes in response to this evidence, so that it

¹⁴⁷ See Exhibit K1.W-17

would gain approval on Checklist Item 11. It is this process change that prompted AT&T to seek a revision to the PID to synch up the PID with the product offering initially made and then clarified by Qwest. It is this process change that has prompted AT&T to seek changes to the SGAT to ensure that the SGAT language properly reflects Qwest's new commitment. Yet, now despite Qwest's claim that this is the solution that will put Qwest in compliance with Checklist Item 11, Qwest refuses to reflect this solution in its SGAT. Without SGAT language describing this solution, CLEC's have no assurance that Qwest will live up to this obligation or that Qwest will not unilaterally alter this product, forcing the CLEC's to invoke the CMP process to reinstate this process. Ultimately, the SGAT language permits Qwest to respond to every failure to stop the disconnect from the switch when it received appropriate notice from the CLEC by 12:00 noon on the day after the originally scheduled disconnect by saying "we tried." That is unacceptable from a legal standpoint. It is Qwest's burden to demonstrate that it has the legal obligation in its SGAT to provide LNP in accordance with the FCC's standards. AT&T has demonstrated that Qwest's SGAT is deficient. Until Qwest revises its SGAT to properly reflect what it has agreed to, Qwest has not and cannot fulfill the requirements of Checklist Item 11.

To cure this problem, AT&T proposes that § 10.2.5.3.1 be revised as follows:

Qwest will set the ten (10) digit unconditional trigger for numbers to be ported, unless technically infeasible, by 11:59 p.m. (local time) on the business day preceding the scheduled Port date. (A 10-digit unconditional trigger cannot be set for DID services in IAESS, AXE10, and DMS10 switches that managed cuts are required, at no charge.) The ten (10) digit unconditional trigger and Switch translations associated with the End User Customer's telephone number will not be removed, nor will Qwest disconnect the Customer's Billing and account information, until 11:59 p.m. (local time) of the next business day after the Due Date. CLEC is required to make timely notifications of Due Date changes or cancellations by 8:00 p.m. mountain time on the Due Date through a supplemental LSR order. In the event CLEC does not make a timely notification, CLEC may

submit a late notification to Qwest as soon as possible but in no event later than 1:00 p.m. on the next business day after the Due Date to Qwest's Interconnect Service Center in the manner set forth below. For a late notification properly submitted, Qwest agrees to ensure that the End User's service is not disconnected prior to 11:59 p.m. of the next business day following the new Due Date or, in the case of a cancellation, no disruption of the End User's existing service. Late notifications must be made by calling Qwest's Interconnect Service Center followed by CLEC submitting a confirming supplemental LSR order.

Qwest has agreed to this language in other states, with the addition of two additional words in the second to last sentence:

For a late notification properly submitted, Qwest agrees to try to ensure that the End User's service is not disconnected prior to 11:59 p.m. of the next business day following the new Due Date or, in the case of a cancellation, no disruption of the End User's existing service.

Qwest claims this revision is necessary because of some fear that the late notice language will become the norm. AT&T disagrees. Qwest's new process has been in effect for some time and, as far as AT&T is aware, the concern raised by Qwest that late notice would become the norm has not materialized. Moreover, clearly Qwest's product was that is responsible for this product was not concerned about Qwest's ability to meet the obligation and did not require the wishy-washy language that Qwest is now trying to insert into its SLAT. Finally, during the workshops, Qwest claimed that it could stop the disconnect by 11:59 p.m., if it received notice from the CLEC by 8:00 p.m. on that day. CLEC's questioned that claim based upon CLEC experience. Here, Qwest has nearly 12 hours to stop the disconnect. Based upon its own testimony this should pose no problem for Qwest. Accordingly, Qwest's concern is unfounded and must be rejected in favor of language that more accurately tracks its product offering.

More importantly, AT&T objects to Qwest's proposed addition, because with the addition of the words "try to" Qwest would effectively eliminate any binding

commitment to the new process. The CLEC could suffer extensive customer disconnects and all Qwest would have to do is say that they tried to stop the disconnect in accordance with the contract. The CLEC would have no commitment that they could enforce.

C. CONCLUSION

For all the reasons set forth herein, Qwest has failed to comply with Checklist Items 4 and 11.

FURTHER AFFIANT SAYETH NOT.

QWEST POSITION STATEMENT ON BUILD REQUIREMENT FOR UNBUNDLED LOOPS

Effective:
May 1, 2001

Introduction:

In an effort to provide more clarity around Qwest's position concerning construction of facilities for unbundled loops, Qwest is pleased to offer the construction of facilities to meet your DSO Voice Grade Unbundled Loop requests, pending certain conditions. This document is intended to provide the necessary information to make it easier to do business with us.

Network Build Position for the Unbundled Loop (UBL) Product:

When the CLM submits a request for an UBL, the request will follow the normal assignments process for assignable facilities that fit the criteria necessary for the service requested.

All times, it is necessary to perform additional work, on existing copper facilities, to make facilities available to fit the request. If cable capacity is available, Qwest will complete supplemental facility work in order to effect complete facilities to the customer premises. This work includes but is not limited: placement of a drop, addition of a Network Interface Device, addition of Cards to an existing Subscriber Loop Carrier Systems at the Central Office and Remote Terminal, addition of Central Office Tie Pairs, and addition of Field Cross Jumpers. This process will not include the splicing of dark fiber. This work may require additional time to make the facility ready to complete an order.

Available Facilities:

All Services: If available facilities (facilities that fit the parameters required by the service requested on the order) are identified, the order will be provisioned. The order will be completed on the requested Due Date but no sooner than the standard interval for the service requested.

If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the requested due date, (i.e. LST cuts). The order will be completed on the requested Due Date but no sooner than the standard interval for the service requested.

If the facilities require additional time to make ready, as described above, Qwest will use the process defined Delayed Order Section below.

If there are no facilities available that fit the criteria necessary for the service requested, the order will fail to the following process.

No Available Facilities:

All Services: Qwest will follow the steps identified in the Available Facilities section above to determine if there are available facilities (facilities that fit the parameters required by the service requested). As mentioned, Qwest will follow the normal assignment process to free potential facilities that may not currently be readily available (including authorized lead coil and bridge tap removal) if necessary.

Using the normal assignment process, if no available facilities (facilities that fit the parameters required by the service requested) are identified for the service requested, Qwest will look for existing Engineering Job Orders that could fill the request in the future. See information in the Delayed Order, Qwest Delays Section below.

NOTE: This process will be applied across the board in each State where Qwest has a presence. Exceptions will be made ONLY if ordered by a State Commission or a Court or to comply with Customer Obligations.

QWEST POSITION STATEMENT ON BUILD REQUIREMENT FOR UNBUNDLED LOOPS

If the assignment process identifies no planned Engineering Job Order, requests will fall to the following process.

No Available Facilities/No Planned Engineering Job:

DS0 - Analog (Voice Grade): When the CLEC submits a request for a DS0 - Analog (Voice Grade) only UBL, and that loop is considered Primary Service (as defined in the Qualifying Requests Section below) the normal assignment process will be followed in it's entirety. If no facilities can be found, and there is No Planned Engineering Job, an Engineering Job Order will be initiated to ensure the delivery of primary service to that end-user.

As soon as it is determined that facilities are not available, the CLEC will receive a Reject Notice identifying that Facilities are not available. The CLEC may choose to cancel their order at this point with no Cancellation Charges.

Qualifying Requests: Qwest will construct facilities for UBL that are in alignment with its Eligible Telecommunications Carrier (ETC) obligation to provide basic local exchange service in the retail markets. This means that Qwest will construct facilities to satisfy the primary DS0 - Analog (voice grade) lines for UBL as Qwest constructs these facilities for it's own end-users.

The Primary services identified above are specific to the set number of lines per address. Address is defined as the specific Unit (Loc).

When the CLEC submits a request for a DS0 - Analog (Voice Grade) only UBL, and that loop is considered Secondary Service (as defined in the Qualifying Requests Section above) the normal assignment process will be followed in it's entirety. If no facilities can be found, and there is No Planned Engineering Job, the LSR will be rejected (the CLEC will receive a Reject Notice) and the Order will be cancelled. The CLEC now has the opportunity to request construction by filing the proper request through their Account Team.

DS0 DSL Services/DS0 ISDN Services/DS1/DS3 requests: When the CLEC submits a request for a DSL, ISDN, DS1 or DS3 service, the normal assignment process will be followed in its entirety. If no facilities can be found, and there is No Planned Engineering Job, the LSR will be rejected (the CLEC will receive a Reject Notice) and the Order will be cancelled. The CLEC now has the opportunity to request construction by filing the proper request through their Account Team.

Delayed Orders:

Qwest Delays: In some cases, in order to modify facilities to make them ready for assignment, the CLEC request must be Delayed. The Delayed status of a job allows management flow to the departments responsible for the additional work necessary and route the job to the correct work groups. Addition of incremental elements includes but is not limited to: placement of a drop, addition of a Network Interface Device (NID), Card existing Subscriber Loop Carrier (SLC) Systems at the Central Office and Remote Terminal, addition of Central Office Tie Pairs, Field Cross Jumpers. This position will not include the splicing of dark fiber.

Qwest will initiate a Delay when attempting to resolve a facility issue to free or modify facilities to satisfy an order. Delay time varies depending on the specific work group(s) involved.

NOTE: The process will be applied across the board in each State where Qwest has a presence. Exceptions will be made ONLY if ordered by a State Commission or a Court or to comply with Governmental Directives.

QWEST POSITION STATEMENT ON BUILD REQUIREMENT FOR UNBUNDLED LOOPS

If the facilities require additional time to make ready, the CLEC will receive a Jeopardy Notice stating that the order will be delayed until the facilities can be readied for service. Once the facilities are ready, Qwest will notify the CLEC of the new Due Date when the service will be completed. The CLEC may choose to cancel their order at this point with no Cancellation Charge. On the assigned Due Date, or on the later Requested Due Date received on a complete and accurate SUP, the service will be completed.

Qwest will impose a Delay when attempting to Complete an Engineering Job to modify or correct the facilities requested by the CLEC.

If an Engineering Job currently exists, Qwest will include the facilities necessary in the CLEC's request in that Engineering job. When this happens, the CLEC will receive a Jeopardy Notice.

- If an Engineering Job has already been completed, within 72 hours the CLEC will be contacted with a new due date.
- If an Engineering Job is currently under development, the CLEC will be notified of the new Due Date at the completion of the Engineering work.

Qwest will impose a delay to develop the necessary Engineering Job to construct facilities for Primary DSL - Analog (Voice Grade) service (or as required by State Ruling). As soon as an Engineering Job is completed and a Ready For Service (RFS) Date is determined, Qwest will notify the CLEC of the new Due Date when the service will be completed. On the assigned Due Date, or on the later Requested Due Date received on a complete and accurate SUP, the service will be completed.

Existing Requests in Qwest Delayed Status: Within 30 business days, Qwest will begin reviewing requests currently in the Qwest delayed status. Each request will be individually reviewed to determine if there are available facilities (facilities that fit the parameters required by the service requested). This review process will include all of the steps previously identified in this document.

- If facilities are identified, Qwest will notify the CLEC of the new Due Date.
- If it is determined that there are no available facilities (facilities that fit the parameters required by the service requested) and no planned Engineering Job Orders that will satisfy the request, the LSR will be rejected (the CLEC will receive a Reject Notice) and the Service Order will be cancelled. The CLEC now has the opportunity to request construction by filing the proper request through their Account Team.

CLEC Delay: If a CLEC is unable to accept an UBL as originally specified on the Requested Due Date, the CLEC may request that the Order be Delayed. When a CLEC requests a Delay for any reason, a 30 business day clock will begin. Within the 30 day period, the CLEC will receive an e-mail or fax notice stating "This is to advise you that PON ~~was not~~ has not been completed due to customer reasons. We will hold this order for 30 days from (and 30 business days to the date the order was held for CLEC reasons). If billing is not accepted and begins within this 30 day period, the order shall be cancelled." The CLEC will have the time identified to accept billing on the circuit or the LSR will be rejected (the CLEC will receive a Reject Notice) and the Service Order will be cancelled. Qwest cannot accept a SUP beyond the first 30 business days for an existing order.

If both sides find that the circuit meets the requirements of the service requested by the CLEC and the CLEC will not accept the circuit, the dispute must be resolved between the Qwest center and the CLEC within the 30 business day period. To resolve the dispute, the CLEC must cause a SUP to re-schedule testing. The notification process defined in the paragraph

NOTE: This process will be applied across the board in each State where Qwest has a presence. Exceptions will be made ONLY if entered by a State Commission or a Court or to comply with Federal Regulations.

QWEST POSITION STATEMENT ON BUILD REQUIREMENT FOR UNBUNDLED LOOPS

Qwest will apply. If a SUP is not received within the 30 business day period, the LSR will be rejected (the CLEC will receive a Reject Notice) and the Service Order will be cancelled.

The CLEC can release the request by submitting a SUP to the order with a future Due Date. Qwest will apply the new Due Date to the order and will allow the order to flow. Qwest cannot accept a SUP beyond the first 30 business days for an existing order.

If the CLEC fails to release the request prior to the 30 business day interval, on the 31st day, the LSR will be rejected (the CLEC will receive a Reject Notice) and the Service Order will be cancelled.

Existing Requests in the CLEC Delay Status: Within 30 business days, Qwest will begin processing requests currently in CLEC delay status. The notification process defined above will apply. If the request is not addressed by the CLEC the LSR will be rejected (the CLEC will receive a Reject Notice) and the Service Order will be cancelled.

01140

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
4 Investigation into)
5 U & WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
6) Volume XXX
7 Compliance with Section 271 of) Pages 4140 to 4414
8 the Telecommunications Act of)
9 1996)
10 In the Matter of)
11) Docket No. UT-003040
12 U & WEST COMMUNICATIONS, INC.'s) Volume XXX
13) Pages 4140 to 4414
14 Statement of Generally)
15 Available Terms Pursuant to)
16 Section 252(f) of the)
17 Telecommunications Act of 1996)

18
19 A Workshop in the above matters was held on
20 July 11, 2001, at 8:30 a.m., at 1300 South Evergreen
21 Park Drive Southwest, Room 206, Olympia, Washington,
22 before Administrative Law Judge ANN RENDAHL.
23 The parties were present as follows:

24 THE WASHINGTON UTILITIES AND TRANSPORTATION
25 COMMISSION, by PAULA STRAIN and DAVE GRIFFITH, 1400
26 South Evergreen Park Drive Southwest, Post Office Box
27 40128, Olympia, Washington, 98504-0128.

28 WORLDCOM, INC., by ANN HOPFENBECK, Attorney
29 at Law, 707 - 17th Street, Suite 3900, Denver, Colorado
30 80202.

31 AT&T, by SARAH KILGORE, Attorney at Law, and
32 via bridge line by REBECCA DECOOK, Attorney at Law, 1875
33 Lawrence Street, Suite 1575, Denver, Colorado 80202.

34
35 Joan E. Kim, CCR, RPR
36 Court Reporter

04195

1 option, we can say no to a customer, that we will not
2 build for additional high capacity loops. So it is not
3 an automatic process. If we look at the OCN loops that
4 we're talking about now, the retail side of the house
5 has liability terms and agreements associated with them
6 that require the customer to be in place for a certain
7 period of time, and that's also to help ensure that the
8 cost of building is taken into consideration.

9 So there isn't -- there isn't a one for one
10 saying that there's a requirement saying that you have
11 to build on retail, and that is built into our cost
12 models because of the fill factor that the cost of
13 building is there, it's not true is the way that the
14 cost witnesses have explained to us. And we -- the way
15 we have said it before is that this really is a cost
16 issue if we want to talk through does the fill factor
17 compensate for building new facilities. It's not
18 strictly a loop issue.

19 The last issue is that for the high capacity
20 loops, they are competitive services. The placement of
21 fiber has occurred, and we have seen quite a bit of that
22 here in Washington where carriers and CLECs and Qwest
23 are putting fiber in the ground and placing their own
24 facilities. Qwest's position is that we should not be
25 required to build on behalf of the CLECs and that the

04351

1 place an order, and that's where the harm is.

2 MS. SACILOTTO: Can you tell me how many of
3 the field orders are of the incompatible facility type as
4 opposed to the exhaust type, such as Covad placing
5 orders for any copper loops in areas that are pair gain.

6 MS. DOBERNECK: I believe, I could be wrong,
7 and I would try and check, well, now obviously it
8 doesn't matter.

9 MS. SACILOTTO: No, now I have to use the
10 same rule against you.

11 MS. DOBERNECK: We will check and get back to
12 you.

13 MS. SACILOTTO: Okay.

14 MS. DOBERNECK: Because we have an
15 understanding, but we would have to confirm it.

16 MS. CUTCHER: That's all we had.

17 JUDGE RENDAHL: Okay, Mr. Wilson, and then
18 Mr. Diemore.

19 MR. WILSON: Quick comment on Ms. Liston's
20 testimony. In this section on construction, she
21 referred to JML-46, which is an exhibit that is a study
22 that was done for Qwest regarding CLEC facilities, and I
23 think this may have actually even been mentioned in the
24 UNE workshop, but on closer inspection, I believe
25 Mr. Liston is misreading part of what's in there. She

04221

1 has looked in the past at some pie charts that show, for
2 instance, AT&T and WorldCom as having very big shares of
3 the retail market for telecom. And what I would just
4 like to point out is that may be true, but about two
5 thirds to three quarters of all of that is provided over
6 leased facilities that Qwest owns. And so referring to
7 that particular chart is kind of misleading because the
8 underlying facilities are largely owned by Qwest.

9 MS. HOPFENBECK: I would add to that that not
10 only -- I mean in WorldCom's case, not only is what
11 Mr. Wilson states true, but that 80% of WorldCom's
12 facilities that are leased from Qwest are not UNE loops
13 but special access facilities that we're using to
14 provision loops, and that was reflected in the discovery
15 responses that we recently provided to you. 80% of our
16 loops in Washington are special access facilities, not
17 in the loops that we're using to provide them over.

18 JUDGE RENDAHL: Okay, very briefly.
19 Mr. Dittmore and Mr. Wilson of Commission Staff, and
20 then I think we need to conclude unless there's
21 something pressing. Mr. Dittmore.

22 MR. DITTMORE: Thank you.
23 I would like just to pursue a concern with a
24 rejection of order situation. Could you provide us in
25 some manner an example of this rejection notice you said

04126

1 what should we be planning for specific loop facilities.
2 So Quest has dropped the requirement in forecasting and
3 said we will not require forecasts from the CLECs.

4 And that was part of the process in there is
5 that there was concern regarding the use of the
6 forecasts, how we would use them, how it would be
7 forecast in, versus the burden of creating the
8 forecasts, and they weren't linked together. The only
9 way that you could ever do a loop forecast that would
10 provide enough information would have to be down at the
11 DA level for the actual distribution area saying where
12 they wanted us to build if they wanted us to build for
13 them.

14 JUDGE RENDAHIL: DA?

15 MR. LISTON: Being the distribution area.

16 JUDGE RENDAHIL: Thank you.

17 Okay, any additional comments on this before
18 we keep going?

19 Okay, so now we need to talk about issue 8.

20 MR. WILSON: Specifically 8(a) was a concern
21 AT&T had, and I think it relates here, and this is a new
22 policy that Quest has created that they're essentially
23 want -- they did a one time clear out of backlogged
24 orders over 30 days, essentially hold orders for
25 facilities by and large, and then the new policy is that

0437

1 going forward where no facilities are available, Qwest
2 will now cancel the orders instead of backlogging them
3 or listing them as held orders.

4 And I think this accentuates the problem that
5 we were just discussing of CLECs not being on an equal
6 footing with retail customers. I think that the new
7 Qwest position does two things. One, it shows a
8 difference between how CLECs are treated and how retail
9 customers are treated, because I don't believe that they
10 do that type of order cancellation for retail customers.
11 And the second problem I have with this goes more to the
12 metric. I think it will mess up the parity comparisons
13 for intervals, because where you're canceling CLEC
14 orders so you're not having long orders that would tend
15 to make the average lengthen, I don't believe that they
16 do that for themselves. In other words, I think that
17 they keep held orders for internal purposes and for
18 retail customers in their system, so this I think will
19 tend to skew the results of the ordering intervals.

20 MR. STRAIN: Mr. Wilson, do you have an SGAT
21 option or another reference that reflects the Qwest
22 policy that you just described?

23 MS. KILGORE: This was a Qwest policy that
24 was touted to the CLEC community, and I apologize, I
25 don't have the product announcement number with me. I

0000

1 I think it was issued about two months ago effective -- I
2 think it was effective the end of May.

3 MS. SACILOTTO: It's in 9.1.2.1 of the SGAT,
4 the gist of it, and I think, let me look at this exhibit
5 but here to see if there's something else.

6 MS. DOBERNECK: Could I, I apologize, could I
7 get that SGAT section again?

8 MS. SACILOTTO: 9.1.2.1.

9 MS. DOBERNECK: Thank you.

10 MS. SACILOTTO: And then Ms. Liston attached
11 to her direct testimony as Exhibit JML-37, which is on
12 the official log as 922, the CLEC notification of the
13 build policy.

14 MS. DOBERNECK: I have one preliminary
15 question sort of acting off of something Mr. Wilson
16 commented about. Has this new build policy, or I'm
17 sorry, not the new build policy, but the provisions
18 relating to this policy in JML-37 and particularly what
19 Qwest will be doing with held orders been reported to
20 the ROC for purposes of evaluating its impact on OP-15?

21 MS. LISTON: I don't know.

22 MR. VIVEROS: I don't believe it has. I'm
23 struggling with that, because I'm trying to recollect
24 whether or not someone did raise an issue in the weekly
25 ROC PAC meetings around this particular CLEC notice.

0427

1 in in one bucket or the other, the pigs fly bucket or
2 the bucket that, you know, sometime it's going to be out
3 there?

4 MS. LISTON: My understanding is that when
5 the rejection notice comes, in the situation where -- in
6 the situation where we have the mismatch between the
7 network infrastructure and the CLEC request, copper
8 versus a pair gain system situation, that the rejection
9 notice has the information on it. And I know there's a
10 special phrase that's put on there so that you do have
11 that information. So that, for instance, like Minda
12 said earlier, they can provision DSL services on pair
13 gain using a different kind of DSL, so that information
14 would be included in the rejection, saying this is the
15 situation where, I don't remember the exact words, but
16 no copper is available or it's not a copper facility.

17 MS. HOPFENBECK: And that tells me that it
18 will be at some point or that it won't ever be?

19 MS. LISTON: It indicates that that type of
20 facility is not available. So it would be -- it would
21 be in a situation where they would then be able to maybe
22 extend it for pair gain. And I think it does say
23 actually that there are no -- there's no copper, it is
24 pair gain, served by pair gain, because we wanted to do
25 -- what I had asked for was a notice that would allow

04236

1 the CLEC to know that this community is not served by
2 copper, so that was what the reject notice was going to
3 include was the information. I just can't remember what
4 the exact words were on the reject notice. The other
5 one would be that there aren't, you know, no facilities
6 available, and that would be the exhaust.

7 MS. HOFFENBECK: Okay. Now is it also true
8 that in the exhaust situation, as soon as the reject
9 notice goes out, that particular order is not held, as
10 Mr. Wilson described?

11 MS. LISTON: That's correct.

12 MS. HOFFENBECK: And so to the extent there
13 are ROC PIDs that generally cover what happens with
14 orders, that particular order would fall out and not be
15 captured by those ROC PIDs; is that right?

16 MS. LISTON: That's right.

17 MS. HOFFENBECK: Okay, that's all I have.

18 JUDGE RENDAHL: Ms. Kilgore.

19 MS. KILGORE: To follow up on this line of
20 questioning, with respect to this particular bucket
21 where you have a facilities exhaust situation, when
22 Qwest gets a call from its retail customer for
23 facilities in that location, will Qwest hold those
24 orders if the customer so requests? Will they keep the
25 order on file even though they will not -- it won't be

00272

1 one of them, several times are included in an obligation.
2 that the -- I know that the orders are held and they do
3 -- and they sit in a hold status. I don't know all the
4 processes that pass around the retail handling of those.

5 MR. MILGORE: Well, it appears to me that a
6 successful company who was operating a phone network
7 would use that type of information in order to
8 understand where hold is required on a going forward
9 basis.

10 MR. LISTON: And I didn't disagree with that.
11 I just said I didn't know the specifics on how that's
12 handled. That's exactly what happens. I mean when their
13 orders are held that they go into our overall
14 forecasting plans. I don't know the mechanics of that
15 specifically, but yes, that information is used for
16 those plans.

17 MR. MILGORE: So we're in an area where we
18 have ordered, what Qwest's new policy does is reject
19 those orders out of hand, and what I would like to know
20 is whether Qwest is maintaining a record of the request
21 even if you're rejecting the order that would be used
22 for the same purpose of what we just talked about?

23 MR. LISTON: We're not, no.

24 MR. MILGORE: Okay. And my next line of
25 questioning is when that facility is built, you're in

04290

1 bases so that it would reflect the deload had taken
2 place, and then it was posted to the Web site and
3 simultaneously -- well, it was actually the same Web
4 site that was used for Qwest and for wholesale.

5 MS. DOBERNECK: Okay. And when you say data
6 bases, which data bases are you talking about
7 specifically?

8 MS. LISTON: It would have been the update of
9 the LFACs data base to show that loads were no longer
10 present.

11 MS. DOBERNECK: Thank you.

12 JUDGE RENDAHL: I have a quick question
13 before you go, Mr. Wilson. The action status listing
14 for this action item is deferred to the cost docket.

15 MS. SACILOTTO: That's what happened in
16 Colorado. I mean --

17 MS. DECOOK: I think that may be our issue.

18 MR. WILSON: Which I was going to address
19 next.

20 JUDGE RENDAHL: Please let's go ahead then,
21 Mr. Wilson.

22 MR. WILSON: Yes, one additional issue
23 relating to this, it's AT&T's position that Qwest is
24 already recovering the costs for deloading in the price
25 of the loop. Qwest has historically done deloading of

04291

1 loops, and that work and the associated cost for it has
2 always been in their maintenance category of costs, one
3 of the categories that is, in fact, used in the cost
4 models to generate the costs for unbundled loops. So we
5 believe that charging CLECs in addition is defacto
6 double recovery since the price for the cost for the
7 activity is already built into the cost of the loop
8 itself through the maintenance cost that Qwest has used.

9 JUDGE RENDAHL: Response from Qwest.

10 MS. LISTON: We disagree with that position.
11 Like I said this morning, I'm not a cost witness, but
12 based on the discussions I have had, the conditioning of
13 a loop is not included in our maintenance cost, and
14 that's why it was deferred to the cost docket.

15 JUDGE RENDAHL: In Colorado.

16 MS. DECOOK: And, Your Honor, the reason it
17 was deferred to the cost docket is because all of the
18 facts that would support either our argument or Qwest's
19 would reside in the cost docket information, not in any
20 information that's in this case.

21 JUDGE RENDAHL: Ms. Anderl, do you have
22 anything to clarify here on that point?

23 MS. ANDERL: I just wanted to add that the
24 parties did brief that issue in the Part B briefs that
25 are currently being considered in Docket 003013.

04296

1 make clear that Covad has the same concern as AT&T about
2 the double recovery on the conditioning costs.

3 JUDGE RENDAHL: Okay, then we will expect to
4 hear about it on briefing if you have not resolved it by
5 then.

6 MS. DOBERNECK: Yep.

7 JUDGE RENDAHL: Mr. Wilson, are you going to
8 address Section 2(b)?

9 MR. WILSON: Yes, Your Honor.

10 JUDGE RENDAHL: Okay.

11 MR. WILSON: Section 2(b), or I mean sorry,
12 yes, loop 2.

13 JUDGE RENDAHL: Item 2(b).

14 MR. WILSON: Item 2(b) regarding an issue on
15 the situation where a CLEC would pay for loop
16 conditioning, which can be a substantial amount, and
17 because of problems or other issues with the
18 provisioning of the circuit could lose the customer to
19 Qwest and will have essentially lost an investment that
20 the CLEC has made in Qwest's plan back to Qwest. So we
21 have actually proposed some language to add to the SGAT
22 that would address this situation. This is Exhibit 955
23 that we passed out this morning.

24 We have focused this language for situations
25 where either we never received the xDSL service from

04297

1 Qwest, or there's an unreasonable delay in provisioning,
2 or we experienced poor quality in the service that is
3 Qwest's fault. And we are saying that in those
4 circumstances, Qwest should refund or credit the CLEC
5 for the conditioning charge associated with the service.

6 And the rationale here is that we are, in
7 fact, paying for Qwest to improve its plant facilities,
8 because once this conditioning is done, Qwest could use
9 it for its own megabyte service, and that since Qwest
10 retains the use and, in fact, the asset itself, that we
11 should be compensated or credited back for what we have
12 paid.

13 MS. SACILOTTO: I'm going to turn this over
14 to Jean in just a second to address the sort of the last
15 parts of this, but from our perspective, and this isn't
16 going to be factual testimony, it's more in the nature
17 of legal stuff, you know, this language is full of words
18 that are just impossible to implement on a stand alone
19 basis, things such as poor quality of service and
20 unreasonable delay in provisioning. There's no
21 mechanism in this language to make those assessments,
22 and our problem with this language has been that AT&T
23 wants it to be sort of a self executing, whereas those
24 kinds of determinations are subject to variation. And I
25 will let Ms. Liston address these aspects of our

04299

1 and we ate it. So we're in a situation where that
2 version doesn't even apply.

3 Experiences poor quality and service, how do
4 you determine due to Qwest's fault. The concerns I have
5 there are there are lots of different kinds of DSL
6 services that can be provisioned. Some of them are more
7 sensitive to voltage issues on a circuit or can be
8 related to the equipment at the customer's premise. It
9 would impact the circuit, it would make it appear like
10 the circuit is not working, they couldn't get the
11 correct speeds; however, it's not Qwest's fault that
12 that happened. So we're in more of a dispute issue than
13 simply a credit or a refund issue. Qwest did say that
14 we would address these the same way as we would address
15 any other billing dispute, that if it doesn't work,
16 there's billing dispute avenues that they can go through
17 to work through the issue.

18 The last piece on here is the poor quality.
19 Again, it has the qualifier on there due to Qwest's
20 fault. How do we determine whose fault it is. And any
21 time that there is a fault issue, we're into a dispute
22 issue. And that if AT&T wanted to pursue this issue,
23 the billing dispute is in place, it can be done. it can
24 be addressed that way. But to put a blanket statement
25 like this into the SGAT, Qwest does not believe it's

04301

1 two I guess at dispute. And as I said, we have tried to
2 make this such that it does not cause the parties the
3 agony and aggravation of a billing dispute, which can be
4 very involved and much more expensive than the refund
5 itself.

6 MS. LISTON: Ken, a couple of things. One is
7 I don't see anything in here that says you have to lose
8 the customer, first of all. Second of all, the fact
9 that you lose a customer does not mean that the customer
10 did not go to another CLEC. So what's being asked of
11 Qwest in this situation is to put into the SGAT language
12 that says, if an end user customer for some reason
13 leaves and you pay for conditioning, that you will have
14 to get a refund.

15 There's no language in here that puts a time
16 frame on this, there's no -- there's just -- it just --
17 first, you know, you say you don't want to do a billing
18 dispute, but as soon as you say it is poor quality or
19 experiences unreasonable delay, that puts it into a
20 dispute issue. You can't -- there is no way of saying
21 it's going to happen black or white.

22 I mean you can't put it -- it's after the
23 fact also, and so it's not like the credit can be -- it
24 can be a waived charge or anything like that. The
25 customer is up and running already, so it's not like

04302

1 we're waiving an existing nonrecurring charge, it's
2 something that's already happened.

3 I would never accept what you're saying that
4 I was saying is that because the first one doe-n't
5 happen I agree to the language. I'm not going to put in
6 the SGAT language that if you don't get the end user
7 that you're not going to get charged for it, because
8 then that would put us in the position where all you
9 have to do is put the order in, wait until we condition
10 the loops, cancel your orders, then come back later on
11 and get the conditioned loop.

12 In my mind, this provisioning that you're
13 asking us to put in is unreasonable, it is a billing
14 dispute issue that if you want to pursue billing
15 dispute, it's already covered in the SGAT, and we will
16 not agree to any kind of conditioning charge refund
17 issue.

18 JUDGE RENDAHL: Okay, Ms. Doberneck, and then
19 I think we may be through, and Ms. Kilgore and then
20 Mr. Dittmore.

21 MS. DOBERNECK: I think we can all agree we
22 are, I think as Kara has put it elsewhere, way at
23 impasse. But, you know, and another big shocker, we
24 certainly concur with AT&T on this point also.

25 I think though what I would like to point out

04316

1 MR. WILSON: Mr. Zulevic wants to do Part B.

2 JUDGE RENDAHL: And does that address Section

3 9.2.2.8?

4 MR. WILSON: I believe --

5 JUDGE RENDAHL: Or 9.2.4.3?

6 MS. SACILOTTO: 9.2.2.8 is just the generic
7 section that describes our loop qual tool, so it's more
8 or less an arbitrary designation.

9 JUDGE RENDAHL: It's not an SGAT language
10 issue, it's an issue arising out of how Qwest is
11 providing the service?

12 MS. SACILOTTO: Right.

13 MR. WILSON: Yes, and I guess you could say
14 that if the Commission agreed with the CLECs, we should
15 add a paragraph 2 to the SGAT to give us for part A
16 access to LFACs.

17 JUDGE RENDAHL: Okay, so is there a response
18 from Qwest on A?

19 MS. LISTON: Yes, there is, thank you.

20 The LFACs data base is an assignment data
21 base, and Qwest uses it to make actual line assignments.
22 The information that's stored in LFACs has the loop
23 makeup information, what kind of gauge it is, where the
24 pair, you know, what terminals it goes through. Qwest
25 has made that information available.

04317

1 JUDGE RENDAHL: Ms. DeCook, your radio is
2 playing wonderful music, but I think we need to turn it
3 off. Maybe it's not Ms. DeCook. Is there someone on
4 the bridge line listening in?

5 Well, we will enjoy the music.

6 Okay, Ms. Liston.

7 MS. LISTON: So the data that's stored in the
8 LFACs data base in terms of loop makeup information is
9 provided to the CLECs through various loop qualification
10 tools. We focus primarily on the raw loop data tool.
11 If we look at the raw loop data tool, there's two
12 different venues that the CLECs have access to the raw
13 loop data. One is at a telephone number basis. The
14 other is at an address number basis. They also can get
15 it at an entire wire center level basis. So one of the
16 issues that was raised by Ken a minute ago about is the
17 community served by iDLC and can we know that, if the
18 wire center level reports were pulled, it would show
19 where there's a concentration of iDLC, and they would be
20 able to have that information available.

21 The tool is -- LFACs is not a search engine
22 tool to look for facilities or anything, but it's really
23 an assignment tool. So you can't go in and say, tell me
24 where you have spare capacity. What you wind up doing
25 instead is say, I need a circuit from point A to point

04319

1 given information availability on spares through
2 facility check issues parity with retail, and nowhere
3 does Qwest provide direct access to LFACs to our sales
4 representatives, and it's not a tool to be used for a
5 search engine. It would require significant system
6 changes to do what Mr. Wilson said.

7 MS. SACILOTTO: Jean, could you discuss a new
8 exhibit that we're submitting in Washington, which is
9 one we handed out earlier this morning, 939, it's from
10 the ROC test.

11 JUDGE RENDAHL: Let's be off the record.
12 (Discussion off the record.)

13 JUDGE RENDAHL: We were discussing Exhibit
14 939.

15 MS. LISTON: 939 is a copy of -- from the
16 master test plan to the OSS test that will be done to
17 validate that the loop qualification process and the
18 data that we provide is in parity between wholesale and
19 retail. And these are the specific steps that the
20 process will go through to make sure that the
21 information that we provide to CLECs is consistent with
22 what we do on a retail basis also. So in terms of a
23 parity issue, we will be testing that through the OSS
24 test.

25 MR. WILSON: And it's AT&T's position that

04320

1 the UNE remand says that the CLECs should have the same
2 information as the ILEC personnel, not the ILEC retail
3 personnel, so we don't feel that that parity with retail
4 in this situation is the bench mark. We're -- we need
5 this for back office, not for our retail personnel, to
6 see more generally where spare facilities are so that we
7 can provision in general to neighborhoods in alternative
8 ways.

9 And Qwest can do this with their other
10 operations people. And it may be that Qwest should
11 offer other data bases such as LAID or LEAD, which in
12 other jurisdictions they said might be more appropriate
13 for the information we need. We mainly need the
14 information. I think the secondary concern is which
15 data base.

16 MS. LISTON: And Qwest's position is that the
17 LFACs data base and even some of the other data bases
18 that Mr. Wilson referred to are not searchable tools
19 where they would show the spare facilities.

20 When you think about spare facilities, you
21 can have two different kinds. One is where we have a
22 facility in place end to end for a specific customer,
23 and that would be -- it's kind of in place, but it's not
24 in use. That information will be made available to the
25 CLECs through raw loop data tools. Some of it is

04341

1 for qualification.

2 MR. ZULEVIC: So you did not use the MLT tool
3 specifically for that?

4 MS. LISTON: No.

5 MR. ZULEVIC: You did say that at one time
6 you did do a total run of MLT to input as a data field
7 into the raw loop data tool. Was that done coincidental
8 with this, or is that something that was done later?

9 MS. LISTON: This is an interesting thing.
10 and, in fact, I don't know if we have ever had this
11 discussion, but when Qwest first started doing megabyte
12 qualification, we were using LFACs data. And what I'm
13 gathering from some of the other ILECs is that LFACs
14 data is being used for qualification issues. What we
15 were finding was a fairly high reject rate using
16 straight LFACs data.

17 As a result of that, the loop qualification
18 data base was built, and it included things like the MLT
19 distance in it. And at that point in time, everything
20 was, you know, I'm not sure how they did the overall
21 bulk test thing, but it was loaded into the data base.
22 and then they started using that for qualification for
23 megabyte. That data base that we used for qualification
24 of megabyte is then also the same data base that we have
25 made available to the CLECs for qualification.

04342

1 And what we found was by using the RLD data
2 base information, that we were getting better success
3 rate than using straight LFACs data, and one of the
4 pieces has to do with the MLT just as, you know, as a
5 cross check on overall loop length. So we only - the
6 only thing that we use for qualification is the same
7 tool that we have provided to the CLEC.

8 JUDGE RENDAHL: Mr. Doberneck and then
9 Mr. Wilson, did you have a thought.

10 MS. DOBERNECK: I may be dense, I am not
11 certain yet I understand exactly what Qwest and how it
12 did it to get that MLT link into the raw loop data tool.
13 My understanding has always been that in connection with
14 the development of the raw loop data tool, Qwest did a
15 sort of one time only bulk complete, you know, for all
16 those loops connected to a switch MLT test to the extent
17 it could and then plugged that into the raw loop data
18 tool. So my understanding always was that the MLT
19 capability that we have been asking for on a per-order
20 basis is what Qwest itself did at one point in
21 connection with the development of the raw loop data
22 tool, and that was my understanding based on discussion
23 elsewhere. Am I wrong, or is that correct?

24 MS. LISTON: That is - that's my
25 understanding.

04334

1 to loop qualification, and I understand there have been
2 some improvements made to the raw loop data test and so
3 forth. I'm still not sure that it will give us
4 everything we need so far as loop qual information is
5 concerned, and so I have asked that Quest give us access
6 to the MLT or mechanized loop test capability in order
7 to confirm and do further testing on a loop prior to
8 placing an order.

9 JUDGE RENDAHL: So MLT is mechanized loop?

10 MR. ZULEVIC: Mechanized loop test.

11 JUDGE RENDAHL: Test, thank you.

12 MR. ZULEVIC: And this is a system that is
13 switch based and so therefore will only operate if there
14 is a telephone number already assigned, and so where
15 this comes into play is with assisting us to do a
16 pre-qual verification, if you will, on an ADSL or line
17 shared service. It won't help us at all with respect to
18 UNE loops. But because of the number of problems we
19 have had, we're looking for any tool that may be
20 available that will help us further qualify customers
21 for line shared services. And the MLT is designed
22 primarily as a maintenance and repair tool, however, I
23 see no reason why it can't be used on an as needed basis
24 to confirm or do further prequalification of loops prior
25 to actually issuing an order.

04335

1 JUDGE RENDAHL: Qwest response?

2 MS. LISTON: As Mike was saying, MLT is a

3 repair tool, and it does need to be a switch based

4 service. It also needs to be a copper facility for MLT

5 to work. The concerns Qwest has on the MLT are

6 multiple. One is that to do a preorder test, that means

7 the customer, the end user customer, is not associated

8 with the CLEC that wants to do the test, so here's the

9 situation. We have a voice customer, and it could be

10 anybody, it could be associated with Qwest or it could

11 be another CLEC that's using a resale service based out

12 of the Qwest switch. Covad wants to do an MLT test on

13 it, they would be doing an invasive test that although

14 it's a short period of time basically would interrupt

15 service to do the test on the MLT basis. At that point

16 in time, because an order hasn't been placed, the

17 customer is not a Covad customer, but yet Covad would

18 like access to be able to test facilities associated

19 with an end user customer of a different provider.

20 Qwest does not believe that's appropriate.

21 JUDGE RENDAHL: When you say it's an invasive

22 test, what exactly happens when you do an MLT?

23 MS. LISTON: The customer is put out of

24 service momentarily while the test is -- while the test

25 is being run, there will be an interruption in service.

04336

1 JUDGE RENDAHL: I mean how long, what kind --
2 I mean I have been at home and had telephone
3 interruptions at home, but I'm just curious how long
4 we're talking here. Is it a minute, a half an hour, two
5 hours?

6 MS. LISTON: It's a very short test, so it
7 would take less than a minute, maybe less, it would be a
8 less than a minute test, but it would be for the time
9 that the test occurs.

10 JUDGE RENDAHL: Okay.

11 MS. LISTON: But the concern is that it would
12 be access to somebody else's customer also, so there's a
13 concern around that.

14 The other concern is that it really is
15 strictly a repair tool, and Qwest does provide MLT
16 access to the CLECs on a repair basis when it is Qwest's
17 switch based. So if you were a reseller, you do have
18 access to MLT to perform the MLT repair tests today.
19 But the requirement is that that's your customer when
20 you do that. So the way that the MLT process is built
21 into the wholesale environment today strictly has to do
22 with you gain permission because you own that customer
23 at that point in time. To do this on this basis, you
24 would -- it would not be your customer, so we would not
25 have the permissions built into the system that you can

04337

1 access somebody else's customer to do the test.
 2 The other concern is that Qwest has
 3 provided, although I will admit it's not 100% there.
 4 we're making strides to continue increasing it. In the
 5 raw loop data tool, there is a field on MLT data, and
 6 and that's the particular type of MLT test that we have
 7 talked about without naming it is being able to tell how
 8 long the loop is. That data has been populated into the
 9 raw loop data tool. That information is available to
 10 the CLECs and Qwest, and it's the same information
 11 that's available both to wholesale and retail. The --
 12 so it's already there to some extent, and it's not there
 13 for everything, but we're working on increasing
 14 information that's in the MLT field in the raw loop data
 15 tool.

16 The last piece is that MLT is only one -- is
 17 one way of estimating loop length. However, it's not
 18 always 100% reliable, because it doesn't measure actual
 19 length, but it rather measures resistance on the line
 20 and can give a false reading up to 20% if you have a lot
 21 of CPE equipment on the line. So it's not the simple
 22 that is definitely going to give overall loop
 23 information.

24 So Qwest feels that basically we have
 25 provided information providing actual loop length in the

04471

1 Qwest arbitrarily changed their retail
2 interval to nine business days, and now they're saying
3 that allows them to change the interval here to nine
4 business days because it's parity. I think it points to
5 several problems, one, that Qwest can change its retail
6 interval and thus change the wholesale interval because
7 of their interpretation of parity, and second, we had
8 the five, six, and seven in the initial SGATs, and we
9 think that was appropriate. So we would like to see the
10 SGAT go back to the original intervals for DS1.

11 JUDGE RENDAHL: Response?

12 MS. LISTON: Ken summarized what the issue
13 is. The DS1 service, if you look at performance
14 measurements perspective, DS1 is on parity with DS1
15 retail service. The interval changed for retail to a
16 nine day interval, and we then went ahead and changed
17 the interval for the wholesale. If you look at the
18 measurement, we have said within the discussions that
19 went on for the overall performance measurement
20 indicators that where you had a service where there was
21 a retail analog that we would be providing the service
22 in the same time and manner, the same quality.

23 The issue is for the DS1 services, we have
24 said that there is a retail analog. And when the
25 interval on retail changed to nine days, if we remained

04407

1 design facilities, a couple of issues I would like to
2 mention on this issue. One of these -- one of the
3 issues is that as a design engineer and outside plant
4 engineer, we don't have access ourselves to IOF
5 facilities. Even under the same -- if they're in the
6 same sheath, IOF and design, outside plant design
7 facilities, the IOF facilities are basically reduce
8 those numbers of strands of fibers are reduced from the
9 availability of the full count of that fiber. So as a
10 design engineer, we don't even see those fibers as being
11 available.

12 When you place, on the second issue, when you
13 place IOF and design facilities in the outside plant,
14 most of the times they're in what we call splice cases
15 or waffle cases. When you splice fiber in a waffle
16 case, the IOF is spliced in an inner compartment of that
17 waffle case, and the design, outside plant design
18 circuits are then placed in trays that are then separate
19 from the IOF facilities.

20 JUDGE RENDAHL: Mr. Hubbard, can you --

21 MR. HUBBARD: And they don't have access.

22 JUDGE RENDAHL: Can you explain, is that a
23 waffle case?

24 MR. HUBBARD: Waffle case, it's a splice
25 case, water tight splice case.

04408

1 JUDGE RENDAHL: Is it like what you eat, I
2 mean is it spelled like what you eat, waffle, or is it
3 an acronym for something?

4 MR. HUBBARD: No, it's spelled just like you
5 eat it.

6 JUDGE RENDAHL: Thank you, I just wanted to
7 confirm for the record.

8 Okay, go ahead.

9 MR. HUBBARD: It's kind of waffle shaped, if
10 you will.

11 Like I was stating, in the waffle case, we
12 have IOF facilities in there. They're in an inner
13 compartment that's closed and segregated from the
14 outside plant facilities or the fibers for outside
15 plant. And so basically the splicers do not have access
16 to those inner fibers that are designated as IOF.

17 MS. SACILOTTO: Jeff, could you clarify for
18 those of us who are not engineers what you mean by the
19 design circuits, are those as opposed to the IOF, which
20 was what we're talking about?

21 MR. HUBBARD: I guess what I was referring to
22 when I was talking, if I said design, I meant the
23 outside plant type of circuits, if you will, that are --

24 MS. SACILOTTO: Loops?

25 MR. HUBBARD: Loops, not loops, but the

04409

1 fibers basically.

2 MS. SACILOTTO: Okay. And just to clarify,
3 does Qwest for itself if it needs extra loop facilities,
4 does it redesignate working IOF as new facilities for
5 itself?

6 MR. HUBBARD: I could never say never on
7 that, but I haven't seen them do that. As a design
8 engineer, I could never get IOF to release any fibers to
9 me to redesignate as distribution, if you will.

10 MS. SACILOTTO: And what does Qwest do if it
11 retires IOF or replaces it with new facilities if those
12 interoffices -- what does it do with those facilities?
13 We had a discussion about this in other jurisdictions.

14 MR. HUBBARD: Yeah, it -- older trunk cables
15 that were copper facilities that were replaced with
16 interoffice facilities that are of fiber, if that copper
17 cable that was once a trunk cable or interoffice cable
18 is still in good shape, it can be redesignated as
19 distribution or feeder cables and put into a normal
20 outside plant.

21 MR. WILSON: Would Qwest do that before, for
22 a CLEC, before it would declare a route not available
23 because of lack of facilities if you had old copper that
24 had been used for trunks that could be redesignated, was
25 idle essentially, but currently designated as IOF, would

04410

1 Qwest redesignate that for a CLEC?

2 MR. HUBBARD: Like I said, that old copper
3 cable that would have been converted to fiber would have
4 to be totally spare and still in good shape to
5 redesignate, but it would be after all the IOF
6 facilities were transferred over to the fiber
7 facilities, if you will.

8 JUDGE RENDAHL: Mr. Zulevic has a question
9 and also Mr. Dittmore.

10 MR. ZULEVIC: More comment than question
11 actually. In a previous life, I did some integrated
12 planning, which consisted of both IOF as well as feeder
13 route planning, and it was my experience that while we
14 were looking at that, we took a look at our forecast and
15 allocated a certain portion for IOF and a certain
16 portion for loop on a basic route, and hopefully we got
17 our forecast right. But if not, the fiber is still
18 there and available to either be used for one or the
19 other depending on how far you taper the fiber.

20 But even though I understand the fact that
21 the loop plant people don't have ready access to all the
22 data on the IOF, I think that in situations where you
23 would have to hold an order that that data can be made
24 available, and if for some unknown reason the
25 requirement for the interoffice facility portion was

04411

1 greatly overestimated leaving a great deal of excess
2 fiber between those points that it should be made
3 available rather than holding an order.

4 MR. HUBBARD: Well, Mike, being an old
5 planner like you were and I am, no emphasis on old, but
6 in the planning on IOF fiber that I have been involved
7 with, the route and is chosen usually by the IOF
8 planners and the number of fibers that IOF is going to
9 use based on their forecast. They allow, if you will,
10 the outside plant to upsize the fiber cable to have the
11 outside plant have availability of having their own
12 fibers out there into the route. But we still do not
13 have access to the interoffice facilities.

14 And you should know as an older cable guy
15 that it was like pulling teeth to get anything out of
16 IOF. They do not release it. It's based on their
17 forecasts. And as an outside plant engineer, we didn't
18 have even available strands in our forecasting tools.
19 Those strands are already deducted from our forecasting
20 tool.

21 MR. ZULEVIC: Well, hopefully the new Qwest
22 has found a greater degree of cooperation among those
23 groups. I would also point out that with the new
24 technologies that are available, specifically DWDM or
25 dense wave division multiplexing.

04516

1 matter with SunWest, and we closed iDLC in every other
2 state based upon Mr. Wilson's request that we make a
3 commitment to perform hairpinning on an interim basis on
4 more than three unbundled loops, which we have done. We
5 also provided the detailed information that gives all of
6 the intervals of when we're going to perform the various
7 functions for providing a loop over iDLC, when we will
8 order the COT, when we will make the engineering
9 decisions, how we will perform the hairpinning, all of
10 that, the engineering decision trees, the commitments,
11 the 11 step process for doing this, all of this has been
12 presented, all of this has been discussed, and all of
13 this has been closed in three other states, including
14 the information that we provided to AT&T for the wire
15 center raw loop data tool that can show them every
16 instance of iDLC in a particular wire center.

17 MS. DECOOK: Kara, it's Becky DeCook. I
18 didn't see the commitments that you just articulated on
19 the removing the limitation of three lines on
20 hairpinning in your testimony. Can you cite me to that?

21 MS. SACILOTTO: Well, if it's not in the
22 testimony, I'm sure that we're prepared to do that right
23 now.

24 Mr. Hubbard.

25 MR. HUBBARD: Jeff Hubbard with Qwest. Yes,

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1 we did say that we would provide more hairpinning, more
2 than three loops. It was on the transcripts. I forget
3 which state it was in, but you were there, Ken, and so
4 we are prepared to do that on more than three loops,
5 provide hairpinning.

6 MS. KILGORE: Just for the record, I would
7 also like to clarify, we did leave this at impasse in
8 Colorado, because we still had concerns. We appreciated
9 the documentation that Qwest provided. However, we did
10 keep this open as an issue, and it's at impasse there.
11 So I think at this point, you know, we have concerns, we
12 have not seen -- we have not seen Qwest yet implementing
13 -- I mean we haven't had experience with what they have
14 said they will implement, so we will, you know, wait and
15 see. At this point, I would suggest that we put this
16 closed subject to ROC testing. We would like to see if
17 this can be incorporated into the ROC test.

18 MS. SACILOTTO: Well, I'm not going to agree
19 with that. If -- I don't know what they think is going
20 to be incorporated into the ROC test. If they want to
21 close it subject to general performance pursuant to the
22 performance measures that are already established and
23 whatnot, that's acceptable.

24 MS. DOBERNECK: Just to clarify, can you just
25 point me to the performance measures that this would

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1 Qwest. It's an adjunct to a loop very much like
2 regeneration or multiplexing. It's simply another
3 capability that a loop can be provisioned with.

4 JUDGE RENDAHL: Ms. Liston.

5 MS. LISTON: Qwest disagrees with the
6 representation of our POTS splitters. Our POTS
7 splitters are a hard wired unit that comes -- it's
8 completely hard wired when we receive it. The basis for
9 the access to outboard POTS splitters, there was a
10 decision that was made in Texas regarding ILECs
11 providing access to the outboard splitters. And in that
12 case, the ILEC was providing that service to a retail
13 arm within their organization. It was kind of they had
14 a separate subsidiary, and there was an FCC ruling that
15 said, if you're doing it for yourself, you have to do it
16 for everybody else.

17 Qwest is not in that position. Our POTS
18 splitters are integral, hard wired together. We do not
19 have the outboard splitters that are being discussed and
20 being presented here saying that we do have -- that it's
21 not all hard wired unit. So Qwest is not -- the FCC
22 also went on, and it was actually the Texas order, then
23 they said you -- this only applies to this specific
24 situation, so it's not a generic situation. So Qwest
25 does not believe we are required to provide access to

04560

1 our POTS splitters.

2 JUDGE RENDAHL: Okay, Mr. Steese, I think you
3 also had a comment.

4 MR. STEESE: Just very briefly. In the line
5 sharing order as well as Texas 271, the FCC made plain
6 that this is not required. It specifically rejected
7 AT&T's argument on this point. In addition, now we have
8 decisions in 271 workshops in the seven state process
9 and in Arizona rejecting this argument as well as it
10 relates to line sharing.

11 JUDGE RENDAHL: Okay, any further response by
12 Covad or AT&T, and then we will close out the issue.

13 MS. DOBERNECK: I would simply state for the
14 record that we disagree with Qwest's interpretation of
15 the Texas arbitration decision that Ms. Liston just
16 described. I would also note that the findings of a
17 facilitator in a multistate proceeding where the
18 individual state commissions haven't rendered their
19 decision as well as a decision that may or may not have
20 been rendered in Arizona, I haven't seen it, I don't
21 know if it's recommended or has been adopted by the
22 commission, doesn't dictate what this Commission
23 determines.

24 MR. WILSON: In addition, I would like to
25 point out that it took us four state proceedings to get

1 Qwest to admit that the splitters were not integral to
2 the boards on the DSLAMs, so that in the multistate in
3 Arizona proceedings, they did not have the advantage of
4 that information. So I'm not sure how -- I'm not sure
5 if the decisions would have been the same if they -- if
6 they and we had known what we know now.

7 MS. LISTON: The information was shared in
8 Arizona. The information presented by Qwest in the
9 seven states was that it was an integral unit, it was
10 not an outboard splitter. Qwest still is saying that
11 it's not outboard splitters, it is hard wired. We did
12 say that also on the record in Arizona. We did have
13 that -- the exact same information that's in my current
14 testimony was in Arizona.

15 JUDGE RENDAHL: Very briefly, Mr. Dittemore.

16 MR. DITTEMORE: This is Dave Dittemore for
17 Staff. Since there seem to be different interpretations
18 of what the equipment actually is and how it operates,
19 could I have technical specifications, equipment
20 brochures and things from the equipment manufacturer
21 describing particularly what this equipment is, how it
22 operates. Thank you.

23 JUDGE RENDAHL: Mr. Dittemore, I'm assuming
24 you want that provided from Qwest.

25 MR. DITTEMORE: Yes, since they deal with the

04571

1 she, and so we just need to understand that.

2 JUDGE RENDAHL: Okay. Ms. Hopfenbeck, you're
3 now back in the room, and there's an issue listed as a
4 WorldCom issue under Washington line splitting issue
5 number 1(b), which is at impasse. WorldCom further
6 contends the POTS splitter must be located as close to
7 the MDF as possible.

8 MS. HOPFENBECK: Right, and I will ask
9 Ms. McCall to just address briefly what the basis for
10 this position is.

11 MS. MCCALL: We haven't filed any testimony
12 in this state, but I understand that we filed testimony
13 in other states regarding this issue. It's WorldCom's
14 position that we would like the splitter located as
15 close to the MDF as possible, one of the reasons being
16 that there's the less likelihood of interference.

17 JUDGE RENDAHL: And, Ms. Liston, do you --
18 And welcome, who is joining us on the bridge?

19 MS. DECOOK: Becky DeCook.

20 JUDGE RENDAHL: Welcome, Ms. DeCook, we're
21 back on line splitting now.

22 MR. STEESE: Judge Rendahl, if I can ask one
23 clarifying question before Qwest speaks. Are you
24 talking about a POTS splitter owned by the CLEC or owned
25 by Qwest?

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1 MS. MCCALL: Owned by Qwest.

2 MR. STEESE: Thank you.

3 MS. HOPFENBECK: And I would say basically
4 what happened in Washington, we inadvertently -- I don't
5 know how this happened, but we were supposed to have
6 filed pretty much the same testimony with some additions
7 in Washington as we did in other states, and somehow the
8 line splitting testimony that we have filed in every
9 other state has not been included.

10 We join AT&T. We essentially have the same
11 issues on the terms of the splitter as AT&T does, so we
12 join AT&T on their issues. We do advocate that Qwest
13 should be providing a splitter to the CLECs for the same
14 reasons that AT&T has stated. And on this particular
15 sub issue, which is a sub issue of the first, this just
16 has to do with the ILEC owned splitter should be located
17 as close to the MDF as possible in order to provision
18 service that is of the highest quality possible.

19 JUDGE RENDAHL: Okay, brief response,
20 Ms. Liston.

21 MS. LISTON: Just a qualification. My
22 understanding of this issue has to do with the need to
23 locate our POTS splitters and where we do it. To the
24 extent that right now we're not providing access, Qwest
25 believes that this is not an issue, because we're not

04575

1 think pretty straightforward. Qwest is providing line
2 splitting over UNE-P, and this next issue is to provide
3 the same line splitting over a UNE loop. And I think we
4 have had some progress from Qwest on this, but I guess
5 we would like to see if we have a date by which that
6 will be available.

7 MS. LISTON: The loop splitting is -- there's
8 a deployment date of August the 1st for loop splitting.
9 Qwest will be providing loop splitting.

10 MR. SEKICH: Ms. Liston, Dominick Sekich. If
11 you could briefly for the record, I think it is in your
12 comments, but could you explain the difference between
13 loop splitting and line splitting as Qwest sees it?

14 MS. LISTON: Line splitting is strictly the
15 provisioning of a splitting arrangement using a UNE-P
16 platform. The loop splitting uses the unbundled loop
17 basis. So it would be a CLEC or a DLEC purchases an
18 unbundled loop, and they want to also split that loop
19 and use both voice and data on the one loop.

20 JUDGE RENDAHL: Mr. Zulevic.

21 MS. DOBERNECK: I just wanted --

22 JUDGE RENDAHL: Ms. Doberneck.

23 MS. DOBERNECK: Just to make certain our
24 record is clear here, it's Qwest's position that it is
25 obligated to provide line splitting, which is the UNE-P

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1 product, by the -- pursuant to the FCC's order, but that
2 beyond that, any other product offered by Qwest is a
3 voluntary offering and is not required under the FCC's
4 order, is that correct?

5 MS. LISTON: I believe the way I have
6 described it is that Qwest believes there was some
7 ambiguity in the FCC order, and based on workshop
8 discussions, Qwest agreed to go ahead and provide the
9 loop splitting.

10 MS. DOHERNECK: But I just wanted to confirm
11 Qwest's position, which is Qwest doesn't think it has a
12 direct and unambiguous obligation to provide anything
13 other than line splitting at this point in time; is that
14 correct?

15 MS. LISTON: I think it's almost a moot
16 point. I mean I think we -- our position and what I
17 just finished saying was that the FCC's order in our
18 interpretation was ambiguous in terms of loop splitting.
19 Qwest has agreed to provide it. I don't -- I mean we
20 have said that there's ambiguity in it and we will do
21 it. We did not say that the FCC has specifically
22 ordered loop splitting, if that's the question.

23 MS. DOHERNECK: Right.

24 MS. LISTON: We do not believe there was a
25 direct correlation, we think there was ambiguity, but we

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1 have agreed to do it, and it will be implemented on
2 August 1st.

3 MS. DOBERNECK: And I think with that answer,
4 you clarified for my purposes what we need.

5 JUDGE RENDAHL: Mr. Sekich.

6 MR. SEKICH: Very briefly. Where in the SGAT
7 is your loop splitting offering memorialized?

8 MS. LISTON: It's Section 9.24.

9 MR. SEKICH: Thank you.

10 JUDGE RENDAHL: Okay, so at this point, can
11 we consider this closed or still open pending SGAT
12 language? I mean I'm not sure what the resolution is
13 here.

14 MR. STEESE: The SGAT language has been in
15 for several months now. The parties have discussed the
16 language. The question was really one of what
17 Ms. Doberneck just said, the impasse issue came about
18 whether we thought there was an obligation or not, and
19 so the implementation date is August 1st at this point.

20 JUDGE RENDAHL: Mr. Zulevic.

21 MR. ZULEVIC: Yeah, just briefly, and this
22 may help us move through a couple of the other items
23 that are yet to be discussed, but that is kind of the
24 root of a number of these issues is what is Qwest's
25 actual obligation under the line splitting order. And

1 BEFORE THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF COLORADO

3 Docket No. 971-198T - Workshop 5

4 * * *

5 IN THE MATTER OF THE INVESTIGATION OF US WEST

6 COMMUNICATIONS, INC.'S COMPLIANCE WITH SS 271(c)

7 OF THE TELECOMMUNICATIONS ACT OF 1996.

8 -----

9 Pursuant to continuation, the Technical Workshop

10 was held at 8:35 a.m., May 25, 2001, at 3898 Wadsworth

11 Boulevard, Lakewood, Colorado, before Facilitators

12 Hagood Bellinger and John Schultz.

13 APPEARANCES

14 (As noted in the transcript.)

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25

1 we can tell, speaking to the other ILECs, they are
2 providing mediated access strictly for raw loop data
3 information. And it appears that it sounds very
4 similar to what we have been doing for quite a while.

5 MR. WILSON: Is there any capability in
6 LFACs that Qwest uses to get reports on spare
7 facilities?

8 MR. HUBBARD: I think we talked about
9 that the other day, Ken. And to get spare facilities a
10 user would use another database that LFACs actually
11 feeds into.

12 MR. WILSON: Which is what?

13 MR. HUBBARD: The LEIS, L-E-I-S, and
14 LEAD, L-E-A-D, two other different systems. They are
15 engineering tools only. And LFACs provides feed into
16 it, provides work orders and stuff. That's where the
17 engineers get their accounts, if you will.

18 MR. WILSON: Oh, so, these two databases
19 or systems use the LFACs information to allow an
20 engineer to look at spare facilities. Is that how it
21 works?

22 MR. HUBBARD: That's kind of the way that
23 it works, yeah. LFACs feeds the number of work orders
24 into the system, if you will, by account. So, that
25 where an engineer would go to look.

1 MR. WILSON: So, for instance, if you
2 wanted to see how much integrated digital loop carrier
3 was out there, or how much spare copper was available,
4 in an area where there was IDLC, you can use LEIS or
5 LEAD to do that?

6 MR. HUBBARD: An engineer -- that's an
7 engineering tool that engineers would use. I don't
8 know everything that LFACs has in it. I am sure a lot
9 of information that LFACs -- and all of the information
10 is in the raw loop data tool. And I haven't pulled it,
11 so I don't know what exactly LFACs feeds into; that
12 Jean can address that more, or she already has
13 addressed it several times.

14 MS. LISTON: And I think, Ken, what's
15 important to realize is that the pieces that Jeff is
16 talking about are kind of subsets within the LFACs
17 database, LEIS and LEAD. The information is stored in
18 that whole module. Whether we call it LFACs or whether
19 we call it the subpieces within the LEIS and LEAD, it
20 is the data that's presented and provided, then, into
21 the raw loop data tool.

22 What the upgrade to the raw loop data
23 tool is working through is how to capture the spare
24 facility information and bring it forward, in some
25 fashion or meaningful representation, into the raw loop

1 data tool. I have not seen the specs on how that's
2 going to be accomplished. We have some real concerns,
3 when you look, about how you do it, because, again,
4 we're talking about spare facilities, but it's
5 piece-parts. We're not talking about, you know, we
6 don't necessarily always have finished loops or
7 end-to-end connects.

8 MR. WILSON: And I think this interest
9 from the CLECs stems from an ability to look and see in
10 a neighborhood how much spare facilities there were of
11 what type. So that you could know if you could market
12 either loops, where there's IDLC, or advanced services,
13 where there's digital loop carrier. And maybe one
14 avenue would be to get access to these other two
15 systems, LEIS and LEAD, rather than LFACs, since you
16 have said that LFACs is not immediately usable to make
17 queries about spare facilities.

18 MS. LISTON: I guess what I am trying to
19 say, Ken, in terms of spare facility information, Qwest
20 is going to be incorporating that information into the
21 tools that are available to the CLECs. We're putting
22 raw loop information -- I mean we're putting spare
23 facility information into the raw loop data tools. We
24 have got a platform built to do that. And to go to
25 another avenue for a tool, that's an engineering tool,

1 we don't think is appropriate. It's an engineering
2 database. It's a subset of another database. It's not
3 something that is used just strictly in a query mode.
4 It would require significant changes to make it
5 accessible. And Qwest has already made the commitment
6 that we will be putting spare facilities into the tool
7 that we have already built for the CLECs.

8 MR. WILSON: When will that be?

9 MS. LISTON: I believe I just
10 testified -- I said I do not have the release date.

11 MR. WILSON: Okay. I am sorry. I
12 forgot. So, there's no commitment date yet?

13 MS. LISTON: There's no commitment date.
14 The plans are in the works. We're working to get it as
15 fast as we can. I know they are shooting for this,
16 that it would be in, as soon as we can get it, in
17 another release of IMA. I have not gotten a commitment
18 date. We're working to try to get it in by the third
19 quarter. I don't know if we'll make the third quarter,
20 but that's the goal that we're shooting towards.

21 MR. HUBBARD: And, Ken, the two systems
22 that I did mention, again, are engineering tools that
23 they don't have information in there, per se, that a
24 CLEC would want, like, basically, cable makeup, or
25 whatever, like that. That information does not exist

1 in those engineering tools.

2 MR. WILSON: Where would that information
3 reside?

4 MR. HUBBARD: That, again, is in your raw
5 loop data tool.

6 MR. WILSON: Not for spare facilities
7 yet?

8 MS. LISTON: I guess, Ken, what we're
9 trying to say is, when you look at the overall
10 provisioning of service, there are many systems --
11 there's lots of different databases that -- I mean, I
12 shouldn't say a lot of different databases. The
13 information is stored in different portions of the
14 LFACs database. The tools are built strictly from a
15 provisioning standpoint to provision services in terms
16 of looking for, how do you get from Point A to Point B.
17 They are engineering tools.

18 Qwest still stands on its position that
19 we stated days ago; that the FCC has required us to
20 provide information to you in the same fashion as we
21 have had it available to our people. Our front-end
22 people do not have access to the databases. They do
23 not have access to information. If they want to query
24 information submitted through an order, our engineers
25 do their job and return a response. Qwest provides the

1 same service to the CLECs in the same fashion. You
2 submit the orders, we will do the queries, we will give
3 you the answer. We're doing that within our standard
4 interval, unlike many other ILECs that require you to
5 do that prior to submitting an order. We're doing an
6 engineering job and we're giving you the information.

7 MR. WILSON: Well, I think this issue
8 will still be at impasse. We pointed out, the FCC made
9 no mention that the information access to systems had
10 to be limited to what's available to Qwest retail
11 agents. CLECs also have engineering staff that could
12 utilize those other systems, and the same information
13 Qwest uses when it is looking to see what spare
14 facilities are available, and I think that's the issue.
15 I don't know what number it is by now.

16 MR. BELLINGER: 14A, I think, was the one
17 we were tracking on; that that was LFACs, anyway.

18 MR. WILSON: I think 14A is still
19 disputed.

20 MR. BELLINGER: It's at impasse.

21 MR. WILSON: And at impasse. We
22 appreciate the additional information.

23 MR. BELLINGER: How about 14C? Did we
24 close this with that form that was handed out?

25 MS. DOBERNECK: I would like to ask a few

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

Docket No. 971-198T - Workshop 5

* * *

IN THE MATTER OF THE INVESTIGATION OF US WEST
COMMUNICATIONS, INC.'S COMPLIANCE WITH SS 271(c)
OF THE TELECOMMUNICATIONS ACT OF 1996.

Pursuant to continuation, the Technical Workshop
was held at 8:35 a.m., April 18, 2001, at 3898 S.

Wadsworth, Lakewood, Colorado, before Facilitators
Hagood Bellinger and Martin Skeer.

APPEARANCES

(As noted in the transcript.)

1 since we have that legal obligation, if you look,
2 we have to -- if we have a retail requirement to do
3 something, we have to extend that requirement to the
4 wholesale customer. But in addition to that, and I'm
5 sorry, I don't have the paragraph number, and it comes
6 when they're talking about dark fiber, they say we have
7 no obligation to build. I would basically use that
8 language.

9 But then also I would turn to the
10 Eighth Circuit case--and this particular portion of the
11 Eighth Circuit case is still the law of the land--that
12 we have an obligation to make available to CLECs our
13 existing network, not a, quote, yet unbuilt superior
14 one, close quote.

15 MS. JENNINGS-FADER: Which Eighth
16 Circuit decision?

17 MR. STEESE: The initial one. I'm
18 sorry I don't have that with me and can't give you the
19 citation. '97, '98, I believe.

20 MS. SACILOTTO: 120 F3rd 753. I don't
21 have the jump page but I think it will be like 805 or
22 810.

23 MR. WENDLING: The reason I ask it in
24 that fashion is that in Colorado the state statute only
25 extends to Colorado Commission's authority as POLR as

1 to basic local exchange service. So to that extent
2 high-capacity digital private line, or whatever, is not
3 considered basic service. So we have no jurisdiction.

4 What I was looking to was the FCC's --
5 being this exercise in Section 27 is to ascertain
6 Qwest's compliance with the law and the FCC's rules
7 and regs, that's where I'd like to see -- is this
8 a take-back? Anyway, when you quote, give us some
9 information. That's what we're interested in seeing,
10 is that foundation. I am, anyway.

11 MR. BELLINGER: It's an impasse issue.

12 MS. DeCOOK: I would say as opposed
13 to a take-back this is something to be briefed.

14 I understand that this issue came up to
15 some extent in the UNE workshop and that it strikes me
16 that for unbundled loops on a standalone basis that's
17 an issue in this workshop as well. To the extent it
18 needs to be addressed from a legal standpoint, we'll
19 deal with it in briefs.

20 I do know that there is attached
21 to Ms. Liston's testimony of this workshop a product
22 notification of some sort relating to the issues
23 surrounding what Qwest is proposing it will build
24 and what it won't build for loops.

25 I guess that was my question that I

1 was -- second question I was going to ask, which is,
2 when you say that what you're offering is what you
3 believe your POLR obligation extends to, does that mean
4 that it's the primary basic exchange type of loop that
5 you believe you have an obligation to construct and
6 that's the full extent of it?

7 MS. LISTON: That's correct.

8 MS. DeCOOK: Are you going to discuss
9 that at some point, the notification that you sent out
10 and what the offering is and what it isn't?

11 MS. LISTON: I think we could do that
12 at some point. Trying to remember if it was tied to
13 one of the issues. I'm not sure if it was or not.

14 MR. BELLINGER: There was some language
15 added to the UNE section dealing with that.

16 MS. DeCOOK: It strikes me that it is
17 an issue potentially for discussion in this workshop as
18 well.

19 MR. BELLINGER: As separate from C we
20 just described?

21 MS. DeCOOK: I suppose it could be
22 broadened to include all loops, not just OCN loops,
23 and then OCN loops would be pulled in to it

24 MR. BELLINGER: You may want to look
25 at -- I know there was language added to the general

1 section concerning what you would do and it spells it
2 out fairly clearly what you would do along your POLR
3 obligations. We might want to take a look at that.

4 MR. STEESE: I don't have any objection
5 to the briefing being beyond OCN and being high cap
6 services as something anything other than what our POLR
7 obligations are. No objection to that.

8 MS. BEWICK: I think a point of
9 clarification. On item B, I believe with the new SGAT
10 lite that should be Section 4.24(a), not 4.23(a) on the
11 COIL.

12 MR. STEESE: We corrected that
13 yesterday.

14 MR. BELLINGER: Good catch. We got it.
15 Loop 10.

16 MR. WILSON: Before we go to loop 10,
17 on the take-back for Qwest on the availability of OCN,
18 as part of that issue I would suggest you look at the
19 interface issues for those loops just so we don't make
20 this a seriatim process. In other words, in your
21 private line offerings you offer a rich mixture of
22 interfaces for loops and that should be similar to OCN
23 loops available to CLECs. We had a discussion on this
24 in transport but it's also appropriate to deal with in
25 loops. You should look at the technical publication

1 77346 which has a matrix of interface types available.
2 You've agreed to provide those interfaces for
3 transport, the same issue should apply to loops.

4 MS. JENNINGS-FADER: Which sub part
5 of 9?

6 MR. BELLINGER: That was (a).

7 MR. STEESE: That was part of the
8 take-back to consider.

9 Loop 10A had to do with, should Qwest
10 be permitted to recover loop conditioning charges for
11 loops less than 18,000 feet here in the state of
12 Colorado. We think that the Commission is legally
13 bound to follow the District Court of Colorado's
14 decision which says we can recover. So I'm not sure
15 what the issue is. Maybe others can help us
16 understand.

17 MR. WILSON: AT&T has an issue of
18 double recovery as a start, because it's been my
19 understanding for some years that Qwest counts the
20 costs for taking the conditioning off of loops. In
21 other words, taking local coils and bridge taps off of
22 loops in their maintenance data that's used in the cost
23 case. Since that data is used and has been used in
24 establishing the new price, we believe that the costs
25 for -- the conditioning loops for DSL is already in the

1 price of the loop. So we believe that the loop charge
2 that you're charging for this conditioning is a double
3 charge.

4 MR. STEESE: This issue has been
5 remanded to the Commission to decide an appropriate
6 rate by the District Court.

7 Wouldn't you agree that the right place
8 to handle that is in 577T, the cost docket?

9 MS. DeCOOK: We did in Arizona so I
10 don't why we wouldn't agree to that here.

11 MS. JENNINGS-FADER: Isn't this a 577T
12 issue?

13 MS. DeCOOK: We raised it so it's on
14 the record in this proceeding. But we recognize it's
15 a 577T.

16 MR. STEESE: We can defer this there?

17 MS. DeCOOK: From our perspective.

18 MR. WILSON: I'm not sure if other
19 CLECs have different views.

20 MR. DIXON: WorldCom agrees to defer to
21 this to the cost docket.

22 MR. RILEY: In the case where there is
23 a loaded loop that's not properly loaded, in one case
24 it may have one load coil on it and degrades the voice
25 service, is that also a requirement to pay for the

1 conditioning of that loop? Specifically in the line
2 sharing.

3 MS. LISTON: Clarify the question.

4 MR. RILEY: Say a customer is not
5 properly loaded so there's only one load coil not
6 spaced at the proper interval which really degrade the
7 voice service. Would the CLEC be required to pay for
8 conditioning of that loop?

9 MR. STEESE: Would Qwest be taking that
10 load coil off but for your conditioning request?

11 MR. RILEY: Right. In reality it's
12 also helping the voice service.

13 MR. BELLINGER: In other words, you're
14 saying the loop is improperly loaded and you want to
15 know whether it should be a maintenance expense that
16 would go against general maintenance expense versus
17 a recovery cost: is that your question?

18 MR. RILEY: Yes.

19 MR. STEESE: Would you agree that's a
20 cost docket question, what is the rate should be able
21 to recover, if any, according to AT&T?

22 MR. WENDLING: Staff wouldn't -- I
23 think it's clear the Commission's rule under 4 CCR
24 723-2, Rule 18, what the technical specifications of
25 minimum performance of a voice grade circuit are.

1 A circuit performing below those. Qwest as the provider
2 must bring the circuit into compliance. If there's
3 something beyond that as normal course of business.
4 unless we broaden compliance in the normal course of
5 business, if the requester wants some performance on
6 the circuit above that, in other words conditioning to
7 perform another circuit, then I think it's settled as
8 to whose obligation it is to pay for that. But if a
9 requesting carrier finds that the circuit is below the
10 Commission's standard, it shouldn't have to pay to have
11 what the company should have done in the normal course
12 of business to bring it up to Commission standards.

13 MS. LISTON: That was why I was trying
14 to get a clarifying question on what was being asked.

15 In the scenario where the voice grade
16 doesn't meet technical parameters and we had to do
17 something to make the voice grade work to get it within
18 range, there would be no charges associated with that.
19 When we're in a situation where we have to alter it
20 and put it however we have to make the changes to the
21 circuit because it's something over and above what's
22 needed in the specs or would condition specifically for
23 an xDSL loop, then the conditioning charges apply.

24 MR. RILEY: It's different whether it's
25 a two-wire analog loop or voice versus a line sharing

1 loop?

2 MS. LISTON: I'm not 100 percent sure
3 in terms of how the technical parameters work when we
4 go from a two-wire analog loop into a line sharing
5 situation.

6 If we looked at the basic voice circuit
7 we would have specific parameters that they would have
8 to meet the technical pub standards and we would make
9 sure it meets that with voice grade. When we bring it
10 to a line sharing mode I'm not sure what the change
11 in the technical parameters are for that and how that
12 would then impact what goes on. I know that in a line
13 sharing if we have to deload specifically for line
14 sharing, we're allowed to recover the conditioning
15 charges. So if we have to remove the load. So I was
16 unclear in terms of when you said the voice doesn't
17 work, what happens.

18 MR. RILEY: I just said degrade in
19 service.

20 MS. LISTON: If it still meets within
21 technical parameters, we consider it meets technical
22 parameters.

23 MR. WILSON: I think Warren's question
24 raises an issue perhaps if the SGAT commits Qwest to
25 meet state requirements for the loop.

1 MR. WENDLING: The way staff would
2 interpret it is, just as there's some argument about
3 supremacy of the SGAT and interconnection agreements or
4 whatever, the Commission's rules on quality of service
5 have supremacy over any tech pub that Qwest might have
6 control over.

7 MR. STEESE: When you look -- Ken, I
8 know you're not attempting to whipsaw us here. We had
9 language in our SGAT that said when we provide it to
10 our analog loop we're going to provide it within a
11 certain frequency range. What I'm hearing you say
12 now is that there's no technical standards in what
13 we're going to provide and I thought that was at the
14 CLEC's request to make sure you could get access to
15 everything, and we've consistently said you can use
16 everything available in the loop. Is there something
17 different that you would want in?

18 MR. WILSON: No. It's an issue of
19 meeting state standards for a loop which may be
20 different from what's in your tech pubs and what's
21 committed to in the SGAT.

22 MR. BELLINGER: You're not satisfied
23 with Warren's comment on that, the state commission
24 rules which would have priority, they would have to
25 meet that?

1 MR. WILSON: I would hope that's the
2 case.

3 MS. DeCOOK: I have a question about
4 that for Warren since I've been removed from Colorado
5 for a while.

6 The question I have is, do the rules
7 as they currently exist require Qwest when they're
8 provisioning loops to a wholesale customer as opposed
9 to a retail customer, do they obligate them to meet
10 those state standards?

11 MR. WENDLING: The access line rule
12 refers to -- they're in Rule 2, not Rule 43, 43.
13 I think, that is the carrier -- intercarrier rules.
14 Rule 2 is the carrier to end-user. But under the 271
15 paradigm the parity must exist. So when Qwest sells at
16 resale -- wholesale to a reseller, that would apply at
17 parity.

18 MR. STEESE: That tells me -- if you
19 look at Section 9.2.2.1, it says we're going to provide
20 unbundled loops of substantially the same quality as
21 the loop Qwest uses to provide service to its own
22 end-users. That language should carry that back.

23 MS. DeCOOK: I guess we've gone full
24 circle and we're back to the one loop issue where we're
25 debating parity and what the standard is that applies

1 to the loop, whether it's parity or the retail analog
2 discussion that we had.

3 MR. STEESE: There's two different
4 issues there. One has to do with the quality of the
5 loop we provide, one has to do with the provisioning of
6 the loop. When you're talking about loop provisioning
7 -- ordering and provisioning, that's where the FCC has
8 said there's no retail analog. The loop that's given
9 to you has to have the same quality and the FCC has
10 made that very clear.

11 MS. DeCOOK: When you add the
12 limitation of substantially the same, what do you mean
13 by that? If I hear what Warren is saying, you have to
14 provide us the same standard loop that you provide your
15 retail consumers. The language says substantially the
16 same. So when you put substantially on as a limiter,
17 what does that mean?

18 MR. STEESE: That's the exact FCC
19 verbiage.

20 MS. DeCOOK: What does that mean?
21 I appreciate that you're parroting the FCC.
22 In your mind, how are you going to apply that?

23 MS. LISTON: This is my view of it.
24 If you look at any service, use analog service, there's
25 a range that's considered acceptable. If you looked at

1 each individual loop or circuit or whatever you want
2 to call them, line, they're going to fall within
3 the range. So when I think of it in terms of
4 substantially, it says on one by one customer they may
5 not be identical but they're going to be substantially
6 the same, they're all going to fall within this range.
7 That's my own interpretation of how we're using
8 substantially.

9 Saying it's going to meet the technical
10 parameters and we'll be providing them, basically the
11 same way as we provide our resale service.

12 MS. DeCOOK: I'm confused by what you
13 mean by the range.

14 MR. WENDLING: Let me explain Rule 18.
15 Rule 18 on the various noise loss, power influence,
16 et cetera, et cetera, has defined three ranges of db or
17 whatever. One is recommended, one is acceptable, and
18 one is substandard and amount of noise. If it's too
19 noisy it becomes substandard, rule says they must
20 immediately dispatch for repair. There's an acceptable
21 range, that the --

22 MR. BELLINGER: Standard, and then
23 there's the recommended range which has the maximum
24 amount. So it defines those.

25 MR. WENDLING: What that says is, my

1 circuit may be in the acceptable range, and Mana
2 Jennings-Fader's may be in the recommended. But if
3 Mr. Dixon's falls in the substandard the company must
4 dispatch. That's what we consider the ranges and
5 substantially to mean.

6 I have a question for Qwest while I
7 have the floor. You referred to Section 9.2.2.1 of
8 the SGAT. In subsections .1 and .2 to that we see
9 definitions of the words capable and compatible.

10 We also see the term NC/NCI codes. I am familiar with
11 technical standards as to parameters of the performance
12 or capabilities, if you will, meaning the ability to
13 pass a certain band path. Where previously in the
14 SGAT was NC/NCI codes defined? Would it not also be
15 appropriate perhaps at this subsection that when it
16 refers to relevant technical publication and industry
17 standards that the and are stricken and comma put in
18 and then before the period an applicable standards?
19 Except we don't have NC/NCI codes in the state
20 standards, we have technical standards.

21 MS. LISTON: I'll have to go back
22 and look on whether or not we had previously defined
23 NC/NCI. I think it was an oversight when we put the
24 new language into the SGAT. It was in the testimony
25 but I don't think it made it into the SGAT on that

1 definition. We can go ahead and put in what they
2 stand for.

3 The state standard issue, I'm not sure
4 whether that was in the SGAT or not.

5 MR. WENDLING: Drawing the circle back
6 to where AT&T started this.

7 MR. STEESE: In other words, do we have
8 to follow state standards as it's contained within the
9 SGAT? Is that the question?

10 MR. WENDLING: I lead you there but
11 you went to the comparable discussion. AT&T came back,
12 what does that mean. If you use the state standard,
13 there's a definition of recommended, acceptable, and
14 substandard. That might help put some teeth in
15 "substantially the same."

16 MR. STEESE: We can check on that.
17 If it's anywhere, I think it's in Section 2.2. To be
18 honest with you, don't have 2.2 with me, just have the
19 SGAT lite.

20 MR. DIXON: If you look at Section
21 9.6.6.3, you'll see that NC/NCI codes are defined,
22 at least identify as to what those acronyms mean as
23 network channel codes/network channel interface codes.
24 9.6.6.3, that's an SGAT from another state that should
25 already be imported here. It might need to be moved up

1 in the SGAT as to where you first do that but at least
2 there's a reference to what the acronym means.

3 Are you looking for more than that,
4 Warren?

5 MR. WENDLING: That's what I guessed
6 they were.

7 MR. STEESE: Which in fact they are.

8 MR. WILSON: I think it would be
9 appropriate to add state standards to 9.2.2.1.1 for
10 loops, as long as the state has done this good work,
11 to define what is acceptable quality. I think the CLEC
12 group should certainly fall within those acceptable
13 ranges as well. I think it is appropriate to go there
14 for loops.

15 MR. WENDLING: These are some voice
16 grade loops that meet the definition in basic service.
17 I don't want somehow say that is the entire capability
18 of the loop. These would be technical parameters that
19 a loaded loop would provide for voice grade everywhere.

20 MS. DeCOOK: I would echo Ken's
21 comment, because I'm guessing in most states I know
22 that we are -- as wholesale providers, when we provide
23 services to our retail customers we're going to be hel
24 to the same standard. So it's important for us to get
25 the state level quality standards so that we can meet

1 our obligations.

2 MR. STEESE: I don't recommend we
3 put something in Section 9.2. It is certainly Qwest's
4 intent if there's a technical standard that has to be
5 met, to meet it. If there's a rule -- state rule that
6 applies, I think this is a general terms issue where --
7 I'm looking at 2.2 and it's a very long section.
8 Rather than boring everyone with me looking at this to
9 see if I think it's there, I think we should consider
10 looking at Section 2.2 to make sure that existing rules
11 are complied with.

12 MS. DeCOOK: I guess my concern is that
13 typically the loop is the UNE that is most affected by
14 Commission service quality rules. So I think it's most
15 appropriate to put in the loop section.

16 MS. LISTON: One of the concerns that I
17 have, I want to make sure I understood it correctly, is
18 that the state rules, I think I just heard, apply to
19 voice grade services.

20 I guess one the concerns I would have
21 is that if a CLEC purchases a two-wire nonloaded --
22 two-wire analog loop, we could make an assumption that
23 it's a voice grade service, but Qwest has no control
24 over how that loop is actually used and could be used
25 for other things than voice grade service. I'm not

CONTINUATION

[4]

1 sure how we would balance that.

2 MR. BELLINGER: I think the state rules
3 say you have to meet state rules and if they use it in
4 some other way, as long as it's meeting state rules,
5 that's your obligation.

6 MS. LISTON: I think that's what we
7 move toward.

8 MR. BELLINGER: It would be easy to
9 add. You've got industry standards already in there.
10 It would be easy to add state standards.

11 MR. WILSON: I might remind staff that
12 we kind of addressed this issue in paragraph 9.1.2 in
13 the UNE workshop. There is an impasse issue in 9.1.2
14 where the CLEC said that the last sentence of that
15 paragraph which currently in the SGAT reads, "In
16 addition, Qwest shall comply with all state wholesale
17 service quality requirements." The CLECs wanted that
18 to read "wholesale and retail service quality
19 requirements." That's at impasse.

20 I think that it is important to get
21 this added to the loop section if we can't get Qwest to
22 add it in general in paragraph 9.1.2. I mean, adding
23 it in both places would be what the CLECs would want,
24 but I think at least we need it in the loop section.

25 MR. STEESE: We'll take it as a

1 take-back.

2 MR. DIXON: I want to comment on
3 Section 2.2 for a moment very briefly.

4 The first sentence of that section
5 describes that the agreement in part is based on
6 the existing state of law, rules, regulations and
7 interpretations thereof as of the date of the
8 agreement. It makes no limitation on what those rules
9 are but rather the balance of the paragraph basically
10 identifies what are among existing rules, but I don't
11 suggest that the way that's written that that's meant
12 to be limiting. I think if you review Section 2.2
13 I think that first sentence doesn't except any rules--
14 that is e-x-c-e-p-t--any laws, rules, regulations or
15 interpretations.

16 So I would suggest the way this is
17 written and incorporates state rules but it doesn't
18 specifically state that in Section 2.2 as being listed
19 as among the various existing rules that Qwest is
20 referring to.

21 MS. JENNINGS-FADER: I don't have
22 Section 2.2 of the SGAT in front of me, but you said
23 it reads, subject to existing? Is that time limited?
24 I guess we'll get to that, but is that time limited
25 as of the date the contract is entered into?

1 MR. DIXON: First sentence of
2 Section 2.2.

3 MR. STEESE: It's a very long section
4 and later it says rules may change over time and if so
5 the contract changes with it. It doesn't mean the laws
6 that exist at the time the contract was entered.

7 MR. DIXON: State rules are not
8 specifically identified in 2.2, but the first sentence
9 is so broad that it arguably could include municipal
10 rules.

11 MR. WILSON: I don't think that changes
12 the need.

13 MR. DIXON: I agree. I'm noting what's
14 in 2.2 since we cross-reference it in our discussion,
15 not because I'm trying to suggest, as Mr. Wilson, that
16 this shouldn't be addressed in the section Warren
17 addressed.

18 MR. WILSON: Qwest is taking this back?

19 MR. STEESE: Yes.

20 MR. BELLINGER: Make sure we know what
21 you're taking back.

22 MR. STEESE: We're taking back to look
23 to see whether we think it appropriate to add either
24 9.2 or somewhere in Section 2.2 that will comply with
25 the quality standards required for provisioning of

1 voice grade loops to CLECs as required by Colorado
2 rule.

3 MR. DIXON: What loop issue are we
4 identifying this with?

5 MR. BELLINGER: 10(a).

6 MS. DeCOOK: It probably goes back in
7 loop 3.

8 MR. DIXON: That's what I thought.
9 It would be one of the earlier loop issue issues we
10 addressed because those are where we cited those
11 sections we talked about in -- specific sections
12 we're addressing is in 4.

13 We're reopening 4 and there's a Qwest
14 take-back on this particular section?

15 MR. BELLINGER: Right.

16 MR. STEESE: I thought loop 3 is still
17 open. Loop 3(b)?

18 MS. DeCOOK: It may not necessarily
19 belong in the definitions of compatible or capable
20 because that's not used in every single loop offering,
21 so it may actually belong somewhere in 9.2.2.1.

22 MR. STEESE: We'll put it in loop 3(b).

23 MS. DeCOOK: Just so Qwest is clear on
24 our position, we don't think it should be --

25 MR. BELLINGER: Loop 3(c).

1 MS. JENNINGS-FADER: (b) is the
2 provisioning interval question.

3 MS. DeCOOK: We don't think it should
4 be in the general terms and conditions section.

5 MR. HSIDO: Can we go back to our
6 original issue which was whether -- if an xDSL provider
7 requests conditioning on a loop that would not even
8 meet Qwest's own state obligation for voice grade loop,
9 are we supposed to be paying for the conditioning for
10 that loop?

11 MR. BELLINGER: I thought the answer
12 was no.

13 MR. HSIDO: Can we put that into the
14 SGAT?

15 MS. LISTON: So the voice grade circuit
16 does not meet the voice requirements?

17 MR. HSIDO: Right. But we're placing
18 an order for an xDSL-capable loop.

19 MS. LISTON: I need to understand.
20 Are you placing an order for an xDSL loop or are
21 we talking about line sharing and line splitting?

22 MR. HSIDO: In this context I'm talking
23 about the xDSL-capable.

24 MS. LISTON: You're asking for an
25 xDSL-capable loop and it needs to be -- load removed

1 from it?

2 MR. HSIDO: That's right.

3 MS. LISTON: Then the conditioning
4 charges would apply.

5 MR. BELLINGER: That's not what it
6 says. He answered too clear. I thought what you were
7 saying was you had ordered a loop, xDSL-capable, and it
8 does not meet voice requirements.

9 MS. LISTON: I answered it this way
10 is because when I was answering before, I thought we
11 were talking about some kind of a line sharing, line
12 splitting scenario. If we have a loop being purchased
13 for xDSL services and that loop has loads present on
14 that loop --

15 MR. BELLINGER: But it's improperly
16 loaded so it doesn't meet voice requirements.

17 MS. LISTON: We would not necessarily
18 be looking at that loop as a voice loop. We would be
19 looking at that loop and saying -- I'll step back.

20 We're going to go through the
21 assignment process for an xDSL loop, going to be
22 looking for an available to provision and serve xDSL

23 service. We're going to look for a copper loop and
24 something to provision to that home. When we find a
25 loop that meets, we'll then look at the parameters.

1 If we have one that has no loads on it, that's the one
2 going to be assigned first. If there are loads on that
3 loop and we have to remove the load to provision the
4 xDSL service, we would be charging the conditioning
5 charges to remote load.

6 MS. QUINTANA: The point is that if
7 you were using it for a Qwest retail customer for voice
8 grade service you would also have to deload it because
9 it was degrading the voice service in the normal
10 maintenance process.

11 MR. VIVEROS: If a current customer had
12 voice grade service and it was improperly loaded, to
13 the extent that it was actually causing the end-user to
14 be disrupted--I think it's pretty reasonable to expect
15 the end-user would be reporting trouble on that line--
16 we would take a maintenance report, we would determine
17 what was causing the degradation, and we would do
18 whatever was required to fix it at no cost to the
19 end-user.

20 On the other hand, if there's a load
21 coil on a loop that may be causing some degradation
22 but it's within standards so the end-user is not being
23 impaired to the extent they call and report trouble,
24 we have a working line. It's within the technical
25 parameters for voice grade service. At that point in

1 time if a conversion request came in to convert that to
2 a nonloaded loop, we would have to go out, as part of
3 that conversion request, and deload the loop and the
4 conditioning charge would apply.

5 MR. BELLINGER: I don't think you've
6 answered his question. You're saying it's improperly
7 loaded, it doesn't meet voice standard, what would you
8 do?

9 MR. VIVEROS: The expectation would be
10 that if it doesn't meet voice standards the end-user
11 doesn't have workable service and they've reported
12 trouble and we're fixing it. If it turns out they
13 don't, they haven't, there isn't a --

14 MR. BELLINGER: I don't think the
15 requirement is that they report trouble.

16 MS. JENNINGS-FADER: You fix it if it's
17 reported to you that's not in the rule.

18 MS. QUINTANA: You might not currently
19 have a customer on that loop.

20 MS. LISTON: If we don't have a
21 customer on the loop and there's no service being
22 provided there, there would be -- we wouldn't be

23 looking to provision a voice grade service to do any
24 kind of tests for that because what was ordered was
25 an xDSL loop.

1 So we would be looking for -- this is
2 the scenario where we have no existing customer, we
3 have no existing customer, we're looking for a pair to
4 serve xDSL service. We wouldn't be saying, I found a
5 pair and this pair; if it was voice, would it work?
6 We wouldn't do that step because we're not looking
7 for a voice grade service. We're looking for an xDSL
8 service. The requirements are copper with no loads.

9 MR. BELLINGER: I don't read this
10 terms and conditions of loops 9.2.2.1, says we were
11 discussing meeting certain standards.

12 MS. LISTON: Standards we would be
13 looking at would be the standards associated with what
14 was being purchased which is an xDSL loop, not a voice
15 grade loop. Looking for a two-wire nonloaded.

16 MR. RILEY: Wouldn't the standard also
17 apply to Qwest's own design rules and not loops for
18 the -- how loops were deployed? If you had a loop that
19 didn't meet any Qwest guidelines, it was improperly
20 loaded, you don't have any rules to have a loop that
21 has that, wouldn't you correct that as a maintenance
22 function and not as a conditioning charge, whether the
23 loop was xDSL, POTS or other services?

24 MS. LISTON: Where I'm struggling,
25 when we have spare capacity in our network, when we

1 go to use it that would be the point where we would
2 bring whatever the customer asked for and looking at
3 that facility is bring it to the specs to meet the
4 customer's request. So it wouldn't necessarily make
5 sense to go through a process where we would be getting
6 it groomed or ready with something that we didn't know
7 or expect to happen.

8 The other piece that may go a little
9 towards what you're talking about is the deloading. We
10 did go through a major bulk deloading project where we
11 did remove loads off of loops that were under 18,000
12 feet. That project is nearing completion and we did
13 some mass grooming on loops. If I remember correctly,
14 it was 68 percent of the wire centers that the CLECs
15 are currently serving xDSL service in Colorado were
16 part of that bulk deloading project where we did go
17 in and removing of load coils of loops that are under
18 18,000 feet.

19 The point that I want to make is that
20 what we really wind up doing is, you have the network
21 in place. When you have spare facilities, it's going
22 to be used for whatever the service that comes in.

23 At that point in time we bring it to the technical
24 standards of what the customer orders to provision
25 the service.

1 MR. BELLINGER: If I order an unbundled
2 loop what standards would you provide it at?

3 MS. LISTON: Depends what kind of
4 unbundled loop you order. If you order a two-wire
5 nonloaded loop we would bring it to the standards for
6 the two-wire nonloaded loop.

7 MR. HSIDO: Could you look at it from
8 the CLECs' perspective. In this case we could order an
9 analog loop -- two-wire analog loop which is cheaper
10 than the xDSL.

11 MS. LISTON: Price of an analog loop
12 and xDSL loop are the same.

13 MR. HSIDO: If we order the analog
14 loop, you would do the deloading for free in that case
15 because it would not meet the voice grade standard;
16 is that right?

17 MS. LISTON: If it did not meet voice
18 grade standards we'd do what was necessary to get that
19 loop to meet voice grade standards.

20 MR. HSIDO: If it's xDSL provider
21 and ordered the exact same loop but order it under a
22 different product type which is xDSL-capable and we're

23 going to take the conditioning.

24 MR. STEESE: The difference is, when
25 are we supposed to test to determine whether it meets

1 your standards? We don't test the loop and say we're
2 going to condition it. We see there's loads on it and
3 we know what you've ordered, a nonloaded loop can't
4 work with the loads. So we're not testing, going in,
5 getting the loop, and then unloading. What we're doing
6 is unloading and then making sure it meets the specs.
7 There's no point in that continuum, unlike line
8 sharing, where we already have a voice grade customer
9 there and they can report some problem with their loop.
10 We're not testing to see if it meets a spec because
11 we're not providing a voice grade loop, we're not
12 providing an analog loop any longer.

13 MR. BELLINGER: Rhythms could test it
14 and say it doesn't meet voice standards.

15 MR. STEESE: But it will already be
16 unloaded.

17 MR. BELLINGER: I don't know that it
18 would be.

19 MR. STEESE: If they order a unloaded
20 loop, you unload it. Once you hand it to them it's
21 unloaded. There's no point at which you're testing.
22 It's theoretically an interesting issue. It doesn't
23 work process-wise.

24 MR. NICHOLS: What I'm hearing is, I
25 think, a discussion from Qwest about the practical way

1 ones, and I was just looking to see what the witness
2 could do. The answer on the -- that you understand,
3 that's Qwest's position, that's fine and it is helpful
4 with regard to Covad and other things. So I'm not
5 meaning that in a personal way.

6 It's just that this is an important
7 question for us, we're trying to get an answer to it
8 and I'm going the answer back about facts from a -- and
9 you sure don't believe facts that I say. I'm not
10 sworn. And that's why I'm still pressing for Qwest in
11 general to give that information.

12 MR. BELLINGER: Do you have any more
13 or -- I think it's a short answer to the question you
14 asked.

15 MR. NICHOLS: Yeah.

16 MR. BELLINGER: What does the retail rep
17 have available? I think that's a fairly short answer.

18 MS. LISTON: The -- the retail -- the
19 retail representative would have access to a Megabit
20 qualification tool to qualify a loop. They would
21 basically go in and they put in the telephone number
22 and get a response back that says whether or not the
23 loop qualifies for Megabit.

24 If it does not qualify for Megabit, they
25 are not allowed to sell the DSL service. They do not

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1 go to any other databases to check for spare
2 facilities. And they do not go and look -- they don't
3 go look for -- I shouldn't say spare facilities, but
4 they don't go look for alternative ways of providing
5 Megabit or look to see if it can be conditioned or
6 anything else. If the tool comes back and says that
7 Megabit could not be provisioned, they do not sell
8 Megabit.

9 That's how the -- on the retail side of
10 the house they would do it. So they are not accessing
11 other databases.

12 MR. NICHOLS: I do hear two parts to that
13 answer though. One of the answers is, what information
14 or database they have available to them; and that's the
15 Megabit qual tool, I gather.

16 MS. LISTON: Right.

17 MR. NICHOLS: And the second has to do
18 with a process that Qwest has decided that with regard
19 to this --

20 MS. LISTON: Right.

21 MR. NICHOLS: -- particular product;
22 we're not going to instruct our -- the representatives
23 to go beyond. But it is that that is the limitation on
24 their access to information, not technically they don't
25 have the capacity to find that information; is that

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1 MR. WILSON: You mean you haven't given
2 the CLECs the ability to do that. Qwest has the
3 ability to do that. You can do MLT on any loop
4 connected to the switch; isn't that true?

5 MS. LISTON: That's true.

6 MR. WILSON: Okay.

7 MR. BELLINGER: I think it would depend
8 on whose customer it was. It would be MLT -- I think
9 you would want to keep customer specific. So Qwest
10 would be able to MLT test their customers, but I think
11 you would want the same privilege and you would not
12 want Qwest doing MLT test on your customers.

13 MR. WILSON: They have the ability to do

14 MLT on any customer.

15 MR. BELLINGER: Um, for resale or UNE --

16 UNE-P they could.

17 MR. WILSON: They could.

18 MR. BELLINGER: Not for unbundled loop.

19 MR. WILSON: They have the physical

20 ability to do it for any -- that's true. I said if

21 it's connected to their switch.

22 MR. BELLINGER: Okay.

23 MR. WILSON: I said that.

24 MR. BELLINGER: So that's --

25 MR. WILSON: Yeah.

1 accurate. It's a way to do some confirmation and
2 what's there.

3 MR. STEESE: But my question is still,
4 this information in the raw loop data tool is based on
5 that very MLT. And I just listed all the information.

6 MR. WILSON: We're not sure of that and I
7 doubt that's true. I think some of it is old data
8 based on field studies, and it may be out of date. I
9 don't believe you run MLT with all the options on all
10 loops on any kind of regular basis.

11 MS. LISTON: Let me clarify the record.
12 In the -- the raw loop data tool, the
13 loop makeup information is based on our LFACS database.
14 We also provide an MLT distance in the raw loop data
15 tool. So the piece of information that's in the raw
16 loop data tool associated with MLT is MLT distance.
17 That was provided to give another check, so to speak,
18 for the CLECs.

19 We provide actual loop length by segment,
20 and then the MLT distance is another way of saying,
21 tell me some other information around that loop and
22 what's the length if I did an MLT -- if I ran an MLT
23 test on it? What's the distance that way? And that's
24 the piece of information that's in the raw loop data
25 tool?

1 BEFORE THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF COLORADO

3 Docket No. 97I-198T - Workshop 5

4 * * *

5 IN THE MATTER OF THE INVESTIGATION OF US WEST

6 COMMUNICATIONS, INC.'S COMPLIANCE WITH SS 271(e)

7 OF THE TELECOMMUNICATIONS ACT OF 1996.

8 -----

9 Pursuant to continuation, the Technical Workshop
10 was held at 8:35 a.m., May 23, 2001, at 3898 Wadsworth
11 Boulevard, Lakewood, Colorado, before Facilitators
12 Hagood Bellinger and John Schultz.

13

14

15 APPEARANCES

16 (As noted in the transcript.)

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1 that happens or not?

2 MS. LISTON: And this -- I am kind of
3 drawing a blank on it, but, to the extent that it meets
4 Qwest's technical parameters for ISDN, we are in a
5 situation in ISDN where there is customer equipment
6 required at the other end. So, to the extent that it's
7 not Qwest's loop that's -- I mean, Qwest will test the
8 loop, that it is ISDN-capable, and that it meets its
9 technical parameters of ISDN. To the extent that CPE
10 equipment does not work correctly, and they cannot get
11 the ISDN service to work, that may not be something
12 that's a Qwest issue, because the ISDN equipment is
13 CPE.

14 MR. BELLINGER: Let's go back to our
15 original decision. Since this is Rhythms' issue,
16 Robert talked about, if they have a problem, they will
17 come back. Let's go to 12 -- 14A.

18 MS. LISTON: 14A, let me just
19 double-check before I start. For 14, we had quite a
20 bit of discussion regarding the LFACs database and
21 access to the LFACs database. That was one part of
22 this whole issue. Since we have been here in Colorado,
23 I have verified that the Qwest retail service team does
24 not have access to LFACs. So our sales team does not
25 have access to LFACs. It is not one of the tools they

1 have.

2 Our sales team has access to the address
3 database, which is PREMIS, and the corollary in IMA,
4 would be address validation. So we have a parity issue
5 there. Our retail sales team also has access to
6 facility check. And there is an IMA functionality
7 called -- I think it's called, "check facilities," or
8 "facility availability," and that matches what Qwest
9 retail has.

10 The facility check availability and IMA
11 is included in the CLEC's access to determine whether
12 there are spare facilities available, and it is in
13 parity with what we do on the retail side of the house.
14 We do not provide LFACs data directly to our sales
15 team.

16 MR. WILSON: And this is something that
17 the CLECs need access to, I think. Last time we went
18 into lengthy discussions about that, and I think I
19 would just like to point out that the FCC did not refer
20 to CLECs getting access to information that the ILECs'
21 retail service or retail agents had access to. It was
22 ILEC personnel much more generally. And Qwest
23 personnel do have access to this information. It would
24 help the CLECs in determining where they can market
25 services, and exactly what's going on with the various

1 loops. So, we think it's needed.

2 MS. LISTON: The LFACs database is an
3 assignment process. It is used for assigning
4 facilities. That is the purpose of the LFACs database.
5 My understanding of the FCC is the FCC ordered that we
6 provide loop makeup information. We are in compliance
7 with providing loop makeup information, and we use
8 several tools. We have added all of the tools into the
9 SGAT to define the various ways that the CLEC can get
10 information on the loop makeup information.

11 The FCC also did say that we have to
12 provide information in the same manner to the CLECs as
13 we do to ourselves, and the manner in which we do it to
14 ourselves is when we submit an order, it goes to our
15 assignment group that uses LFACs to determine if there
16 are available pairs to meet that service request. That
17 process is the same for Qwest retail as it is for Qwest
18 wholesale. The FCC did not say we have to make
19 available all of our network information in any kind of
20 a mechanized fashion. They said we have to make it
21 available in the same fashion that we do internally.
22 And by -- once the service order is entered, whether
23 it's a Qwest retail or Qwest wholesale order, it goes
24 to the assignment team. The assignment team accesses
25 LFACs. They have the same requirements to turn the

1 data around, to look for pairs, and to look for
2 available assignment. They do it in a mechanized
3 fashion, in terms of looking for that information. It
4 is -- it does not have any indication whether it's
5 wholesale or retail in terms of the assignment. It
6 will flow through the same process in the same manner
7 on both wholesale and retail. We have an eleven-step
8 process to look for facilities, and, again, that
9 mirrors retail and wholesale.

10 So, our understanding from the FCC is
11 that we treat the information the same way, retail and
12 wholesale, and we are doing that. The LFACs data is
13 strictly an assignment process. When you access the
14 LFACs database, and you ask for facilities or an
15 assigned pair, it literally assigns a pair. It is not
16 a search tool. It is not a, can you find me the pieces
17 to put together. It is strictly an assignment process
18 where you are looking for the ability to make an
19 end-to-end connection for a customer.

20 MS. BEWICK: Jean, one of the other
21 takebacks I think that Qwest had was to identify in
22 LFACs what the proprietary data fields were in it.
23 Could you explain that if Qwest, or any other CLEC was
24 in LFACs looking at a telephone number, or whatever,
25 for instance a New Edge customer, what kind of

1 information is available that may be proprietary
2 information or just what information is available?

3 MS. LISTON: Well, the LFACs database
4 contains all of the data associated with facility
5 assignments. So, to the extent that there would be a
6 New Edge pair in there, it would give you cable and
7 pair information. It would provide the data showing
8 the circuit I.D., and all of the piece-parts associated
9 with that. There the information is stored in terms of
10 who the customer is, and what pairs they are using, and
11 what the assignment is within the Central Office. So
12 if we gave access to LFACs database, then everybody
13 would have access to the information for themselves,
14 their competitors, and --

15 MS. BEWICK: Does it include information
16 such as, like what other services a particular customer
17 may have as well?

18 MS. LISTON: It would show what the
19 assignments are for that. It would show the specific
20 kinds of assignment or service that you are purchasing.

21 MS. BEWICK: If there was access to
22 LFACs, you know, let's say that New Edge had access to
23 LFACs, they would have access to, say, for instance,
24 Covad's customer base, and all of the information
25 associated with that, correct?

1 We -- I just lost my train of thought.
2 The MLT functionality is not -- like I said, is not on
3 a preorder. And there was depiction that other ILECs
4 have allowed MLT testing on a preorder basis. Based on
5 Qwest's investigation, we have found that other ILECs
6 do offer MLT but not in the same fashion as Qwest
7 offers it and that is on a repair basis.

8 The MLT is in conjunction with switched
9 services from the Qwest switch. And for the purposes
10 of doing a preorder test, we would then be giving the
11 ability to check or to test facilities that do not
12 quote belong to the CLEC at the time when they would be
13 doing the preorder testing.

14 It doesn't apply to an unbundled loop, an
15 MLT test, because MLT is a switched based service and
16 it needs to be connected to the Qwest switch in order
17 to perform the MLT test. So when you have an unbundled
18 loop, you do not have it connected to the Qwest switch.

19 MR. ZULEVIC: This is Mike Zulevic with
20 Covad.

21 I don't recall representing that it was
22 used by any other ILEC on a prequal basis. I did say
23 that other ILECs do provide access to it which you
24 found that they do.

25 What I'm suggesting is that this may be a

1 way of helping solve a very serious problem having to
2 do with our inability to get good prequal information
3 on loops. I recognize that it can't be used for a UNE
4 application because it is a switch based test, but it
5 very well could be used to test an existing voice line
6 served out of that switch to determine what the loop
7 makeup is and whether or not it would qualify.

8 So I guess it's just a -- something that
9 is a possible tool to be used to help take care of the
10 prequal problem that we have been experiencing.

11 MS. LISTON: The MLT, in terms of loop
12 length, Qwest has made an MLT loop length information
13 available via the loop qualification database, the loop
14 qual tool. That information has been prepopulated into
15 the database.

16 We have had significant discussion on
17 this both in this jurisdiction and others. We've
18 already reached impasse on this issue. And there
19 really is no other new information at this time.

20 MR. WILSON: Well --

21 MR. BELLINGER: Okay.

22 MR. WILSON: -- I think I have a little
23 new information.

24 Reading out of the Verizon Massachusetts
25 271 order, paragraph 58, Verizon also provides a manual

1 processing orders, how it gets handled, that part of
2 the OSS test.

3 MS. JENNINGS-FADER: Okay.

4 MR. SCHULTZ: And when you brought up the
5 issue before break initially the whole thing was
6 derived from reference to 5-Qwest-60, that second
7 bullet.

8 MS. DOBERNECK: Right.

9 MR. SCHULTZ: So that's where Hagood gets
10 back to the fact that it's an operational issue that
11 will be tested for within the master plan as referenced
12 5-Qwest-60, the second bullet.

13 MR. BELLINGER: Okay. Any more?

14 Then I think we should go to 14-B.

15 MS. LISTON: 14-B had to do with a
16 preorder MLT process. As we testified before, Qwest
17 does not offer MLT on a preorder basis. The MLT
18 process is a repair -- repair process.

19 It is not available to Qwest retail on a
20 preorder basis, it is strictly a -- it is a repair
21 tool. It is -- it does perform a test on the
22 facilities. That is an invasive test, it will bring
23 down the service while it's being performed. And Qwest
24 is of the -- of the belief that it is not appropriate
25 to make MLT available on a preorder basis.

QWEST COLORADO xDSL LOOP FOC TRIAL

Summary of Trial Proposal

Qwest hereby proposes that the parties to the Colorado 271 docket join in a Colorado trial to test the efficacy and benefits of changing Qwest's Firm Order Confirmation (FOC) processes with regard to 2/4 Wire Nonloaded Loops, ADSL Compatible Loops, ISDN Capable Loops and xDSL-I Capable Loops (collectively referred to as xDSL Loops). In particular, Qwest proposes to trial a xDSL Loop FOC for these loops instead of the current 24 hour FOC. The xDSL FOC entails Qwest doing additional work not included in the 24 hour FOC; specifically (1) to confirm the availability of the requested loop by issuing the FOC after the design is complete, (2) confirming the due date and (3) issuing the FOC within 72 hours of the application date and time, (APP)¹. The proposed process mirrors the Qwest process for retail design and access services. Thus, the trial holds out the prospect for significant benefits to CLECs and competition, and Qwest encourages the Colorado parties to participate in it.

Reasons for Trial

From a legal perspective, because this process may vary from current contractual obligations and does vary from the PID negotiated between Qwest and CLECs in the Regional Oversight Committee (ROC) process, Qwest requests permission from the Colorado parties to employ it. Additionally, during the trial these xDSL orders will be eliminated from the Colorado PO-5 measure.

CLECs' Duties

¹ For purposes of this document the Application Date and Time will simply be referred to as the APP

Qwest asks that CLECs agree to trial this new process for a period of 2 months, starting March 1, 2001. Qwest also asks CLECs to meet with Qwest to discuss the benefits of the process and ways to improve it. In addition, if the trial is a success, Qwest asks that the CLECs take the following steps:

1. Recommend in writing the new process to other Colorado CLECs, and
2. Jointly recommend with Qwest that we amend the PID for measure PO-5 (FOCs On Time) with regard to xDSL Loops

Description of Process

The following describes the xDSL FOC Trial:

1. Pre-order, CLEC should use the IMA Raw Loop Data Tool (RLDT) to determine whether an appropriate loop is available or conditioning is necessary. This will provide the CLEC with a preliminary indication of the need for conditioning and the 15 day interval.
2. CLEC then places an order using the LSR. On that order, depending on the information uncovered in RLDT, CLEC shall elect one of two options:
 - No Conditioning Approval and the standard service interval (i.e. 5 days), or
 - Conditioning Pre-Approved and the standard service interval (i.e. 5 days). For purposes of the trial Qwest, will accept the orders with a 5 day interval. However if the trial demonstrates that the loop make-up tools provide the CLECs with accurate information to make this determination, then the process will be changed so that the CLEC will request the 15 day interval when the LSR is issued.

- 3 Once Qwest receives a complete and accurate LSR, it will access LFACS to attempt to assign pairs not in need of conditioning and create a design of the loop²
- If the facilities exists and a valid design is created, then
 - ✓ A FOC will be returned within 72 hours of the APP providing for a 5-day interval measured from the APP.
- 4 If facilities do not exist to create a valid design, Qwest will employ other methods, described in the attached 11 Step Process, to attempt to find an appropriate pair not in need of conditioning or, if no such pair exists, an appropriate pair that requires conditioning. The issues and question in the 11 Step Process will be reviewed each time, however not every step will apply to every situation.
- If appropriate pairs and a design can be completed without the need for conditioning, then
 - ✓ A FOC will be returned within 72 hours of the APP providing for a 5-day interval measured from the APP.
 - If this process locates appropriate pairs in need of conditioning, then
 - ✓ If no pre-approval for conditioning was included on the LSR, Qwest will contact CLEC, according to CLEC specifications, and inform CLEC of the need for conditioning. If CLEC wishes to avail itself of conditioning, it must then submit a supplemental LSR with a "Y" in the SCA field, within 48 hours.
 - A FOC reflecting the new due date will be returned when the design is

² Qwest takes this step for CLECs because LFACS may reveal information not available through the RLDT, especially with regard to loops not already connected to a switch. The RLDT provides information from the Loop Qualification Database (LQDB), which in turn is derived from LFACS and other sources. But the LQDB covers only loops connected to a switch. LFACS, on the other hand, contains information for all facilities, even those not connected to a switch, but does not contain some of the information

complete and within 72 hours of the APP of the Supplemental LSR. The new DD will be 15 days from the APP date of the Supplemental LSR. Absent submission of a Supplemental LSR, Qwest will reject the order through a rejection notice sent to CLEC

- ✓ If conditioning was pre-approved, Qwest will return a FOC within 72 hours of APP with a due date consistent with the 15 business day interval measured from the APP.
- If no appropriate pairs were found at all, then
 - ✓ If the steps taken reveal that a facility build that would satisfy CLEC's order is scheduled, then a FOC will be issued when a "ready for service" date for the facility build is received.
 - ✓ If the steps taken reveal that there is no facility build scheduled that would satisfy CLEC's order, then Qwest will reject the order through a rejection notice sent to CLEC. This scenario also includes requests for copper loops but only pair gain is available.

Trial Tracking

- 1 Qwest will track the trial as follows:
 - The percent of FOCs returned in 72 hours. This tracking will mirror the PO-5 measurement except the interval will be 72 hours not 24 hours.
 - The percent of Due Dates met. This tracking will mirror OP-3 and DD met will mean that the DD returned on the FOC matches the Completion Date.

available through the RLDT, such as the results of the MLT. Qwest does not perform this step for Megabit orders

The OP-3 exclusions will apply. Additionally Qwest will report the reasons that the DD was missed by the following categories:

1. Customer reasons
 2. Conditioning being identified after the FOC
 3. Other Qwest facility reasons
 4. Other Qwest non-facility reasons
- The Installation Interval. This tracking will mirror OP-4, except it will separate conditioned and non-conditioned loops. The OP-4 exclusions will apply
 - The percent of orders that the Raw Loop Data tool correctly identified as needing to be conditioned. For the trial Qwest employees will access the IMA Raw Loop Data Tool for every Colorado xDSL order and using the data supplied determine if conditioning is required. The need for conditioning information will be stored for measurement purposes. Then upon completion the actual need for conditioning will be tracked in three categories: was the need to condition identified prior to the FOC, after the FOC but before the DD, or on the DD on test and turn-up.
 - The percent of orders that result in a cancellation notice rather than an FOC.
 - Data under these temporary metrics will be reported a monthly basis to all participating CLECs.
2. The Trial will be deemed a success if 90% of the FOCs accurately reflect a 5 day or 15 day interval.

Qwest will request that one hour be set aside during the Colorado Workshop scheduled for the week of February 19 to discuss the details of the proposed trial and to answer any questions that your company may have about the trial. We sincerely hope to obtain 100% participation in the trial, which will yield performance data in advance of the 271 loop workshop. Unless a CLEC opts out of the trial they will be included. To opt out of the trial the CLEC must inform Qwest in writing through the formal workshop process. Based on past experience, the best success is obtained when uniform processes apply to all CLECs. Then all parties can use their experience from the trial to determine whether the FOC changes proposed by Qwest are sufficient or whether additional changes are necessary to meet competitive demands.

1 BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

2 Case No. USW-T-00-3

3 In the Matter of US WEST Communications, Inc.'s Motion
4 for an Alternative Procedure to Manage the Section 271
5 Process.

6 STATE OF IOWA
7 DEPARTMENT OF COMMERCE
8 UTILITIES BOARD

9 Docket No. INU-00-2

10 IN RE: US WEST COMMUNICATIONS, INC.

11 DEPARTMENT OF PUBLIC SERVICE REGULATION
12 BEFORE THE PUBLIC SERVICE COMMISSION
13 OF THE STATE OF MONTANA

14 Docket No. D2000.5.70

15 IN THE MATTER OF the Investigation Into US West
16 Communications, Inc.'s, Compliance with Section 271
17 of the Telecommunications Act of 1996.

18 STATE OF NORTH DAKOTA
19 PUBLIC SERVICE COMMISSION
20 Case No. PU-314-97-193
21 US West Communications, Inc., Section 271 Compliance
22 Investigation.

23 BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

24 Docket NO. 00-049-08

25 In the Matter of the Application of US West
26 Communications, Inc., for Approval of Compliance with

23 47 U.S.C. ss 271(d)(2)(B).

24 -----

25

1 BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

2 Docket No. 70000-TA-00-599

3 In the Matter of the Application of US West Corporation
4 Regarding 271 of the Federal Telecommunications Act of
5 1996, Wyoming's Participation in a Multi-State Section
6 271 Process, and Approval of Its Statement of Generally
7 Available.

6 -----

7 BEFORE THE NEW MEXICO REGULATION COMMISSION

8 Utility Case No. 3269

9 IN THE MATTER OF Qwest Corporation's Section 271
10 Application and Motion for Alternative Procedure to
11 Manage the Section 271 Process

11 -----

12 Pursuant to notice to all parties of interest,
13 Seven-State Collaborative Process, General Terms and
14 Conditions, Forecasting and BFR Process, was held at
15 8:35 a.m., June 5, 2001, at 7801 Orchard Road,
16 Englewood, Colorado, before Facilitator John Antonuk.

17 APPEARANCES

18 (As noted in the transcript.)

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1 MR. ANTONUK: Any other questions from
2 any source? Mr. Finnegan.

3 MR. FINNEGAN: John Finnegan with AT&T.
4 Did the TAG ever formally approve any of the specific
5 Qwest standard intervals contained in the Qwest Service
6 Interval Guide?

7 MS. ANDERSON: Not to my knowledge, other
8 than these three specific ones that happen to be in the
9 Standard Interval Guide, but were related to OP-4.

10 MR. FINNEGAN: Well, the --

11 MS. ANDERSON: Not that I know of any of.

12 MR. FINNEGAN: The OP-4-related numbers,
13 would you characterize those as benchmark or standard
14 intervals?

15 MS. ANDERSON: Well, in the PID
16 application, they would be benchmarks. But I think, in
17 this situation, they also happen to be the standard
18 interval.

19 MR. FINNEGAN: Well, isn't it true that
20 the benchmarks in the ROC PID is expressed as an
21 average?

22 MS. ANDERSON: Yes. That's what OP-4
23 measures, the average installation.

24 MR. FINNEGAN: Is it true, then, that the
25 standard interval is an average in the Qwest Standard

1 absolute. You either make it or you don't. Stare and
2 compare, it's been characterized.

3 MR. ANTONUK: Thanks. I am sorry. I
4 just -- I missed your first part there. I got off on a
5 totally different track. Thanks for bringing it back.

6 MR. FINNEGAN: In either the TAG
7 discussions or the workshops on performance
8 measurements, workshops related to the OSS test, did
9 Qwest ever introduce their Standard Interval Guide and
10 the specific Qwest standard intervals for TAG approval?

11 MS. ANDERSON: Not to my knowledge. I
12 think I would remember that if it was done. I could
13 follow-up and check on all my notes and things and
14 check the Website, but I don't believe so.

15 MR. FINNEGAN: Do you believe that the
16 ROC TAG controls the specific intervals in the Qwest
17 Service Interval Guide?

18 MS. ANDERSON: The ROC TAG?

19 MR. FINNEGAN: Yes.

20 MS. ANDERSON: I don't believe so, no;
21 however, to the extent that there is something like
22 these three loop types, where we -- there happens to
23 be -- no, the parties couldn't agree on retail analogue
24 in the PIDs. It's coincidental, I guess, that we also
25 have an average interval shown as a benchmark.

1 MS. LISTON: That was my understanding.

2 MS. LUBAMERSKY: It was a compromise in
3 order to get closure on six days. Qwest agreed to
4 change the Service Interval Guide. There wasn't an --
5 it had to be done because we made the compromise, but
6 in order to get the CLEC agreement, we decreased the
7 interval for all two-wire nonloaded loops.

8 MR. FINNEGAN: One more question. The
9 last statement in the minutes talk about, "This item
10 will be open on the future discussion topic list." Has
11 that ever been discussed?

12 MS. ANDERSON: I think, if I remember
13 correctly, that it talks about doing it after the
14 second quarter of 2001, which is kind of where we're at
15 right now.

16 MR. FINNEGAN: Final question. Do you
17 think CLECs --

18 MS. ANDERSON: Here we are revisiting it,
19 so we're right on schedule.

20 MR. FINNEGAN: Good segue. Do you
21 believe the CLECs are precluded from talking about
22 standard intervals in any forum, other than the ROC OSS
23 test?

24 MS. ANDERSON: Do I believe the CLECs are
25 precluded?

1 MR. FINNEGAN: Precluded from discussing
2 the standard intervals for these three loop types in
3 any forum other than the ROC OSS test?

4 MS. ANDERSON: No, I don't believe that.

5 MR. STEESE: Can I ask some questions
6 now?

7 MS. ANDERSON: I don't think they are
8 precluded from discussing it in the ROC OSS test
9 either, by the way.

10 MR. STEESE: Ms. Anderson, Chuck Steese
11 for Qwest. You said that the ROC workshops started
12 sometime towards the latter part of 1999, correct?

13 MS. ANDERSON: Yes. December for
14 performance measures or testing.

15 MR. STEESE: For performance measures,
16 correct.

17 MS. ANDERSON: First performance measure
18 was in January 19 through 21st.

19 MR. STEESE: Of what year?

20 MS. ANDERSON: 2000.

21 MR. STEESE: So, in early 2000. So, at
22 that point, the FCC had already issued its order
23 approving the Verizon New York 271 application,
24 correct?

25 MS. ANDERSON: Yes.

1 for those loop types. Would you say that agreement
2 included an agreement on what the standard interval
3 should be for those three loop types for all of the
4 quantities of services ordered?

5 MS. ANDERSON: No. I think it pertained
6 mainly to 9 to 16.

7 MR. FINNEGAN: So, are you saying that
8 agreement was on what the benchmark should be, and what
9 the standard interval should be for 9 to 16 loops of
10 those various loop types?

11 MS. ANDERSON: I think it was a package
12 deal. That's my understanding and recollection. Yeah.
13 It was -- the group was setting benchmarks, but in this
14 case, to get the benchmarks set, I believe Qwest had to
15 agree to a shorter interval on 9 to 16, and they did,
16 to be able to close. That's my understanding. And I
17 never heard anything any different from anyone else.

18 MR. FINNEGAN: If a party wanted to
19 change to the 9-to-16 standard interval -- 9-to-16
20 loops standard interval, would it matter if it were in
21 the ROC or in, say, in the unbundled loop workshop, in
22 a future multi-state cooperative?

23 MS. ANDERSON: From my perspective, it
24 would not matter. What would matter is if it was
25 changed, and if someone brought to the ROC a proposal

1 up in the TAG, would you agree that specific situation
2 will be a case of the benchmark following a change in
3 the standard interval?

4 MS. ANDERSON: If the change was made for
5 the benchmark, yes.

6 MR. FINNEGAN: You had referenced the ROC
7 TAG meeting minutes from the conference call on June
8 15th, 2000, and read a portion of the meeting minutes
9 on this specific issue. I would like to read the
10 entirety of the meeting minutes on this issue, then ask
11 a specific question to your interpretation of the one
12 statement. This is Issue No. 109:.

13 "Agreement was reached on this issue and it is now closed. OP-3 will use 90
percent as the benchmark and OP-4 will use mid-range six day for high density, and
seven day for low density, subject to changes in the interval guide."

14 Then the rest of the statement is the
15 same as you had read:

16 "Once data is available in Q2, 2001, the intervals will be adjusted. This item
will be open on the future discussion topic list."

17 Now, that statement: Six day for high
18 density and seven day for low density, subject to
19 changes in the interval guide." What's your
20 interpretation of what the phrase, "subject to changes
21 in the interval guide" means with respect to the
22 benchmarks?

23 MS. ANDERSON: I think the benchmarks --
24 I think the intervals in the interval guides for those
25 loop types were higher prior to reaching an agreement

1 particular PID. Is that what was agreed to?

2 MS. ANDERSON: Yes. That PID measure is
3 average installation intervals. So, it was a benchmark
4 for average, correct.

5 MS. DeCOOK: What wasn't agreed to is
6 what particular service interval Qwest would be
7 required to -- or a CLEC could put down on the LSR, and
8 Qwest would commit to providing to the CLEC; is that
9 fair?

10 MS. ANDERSON: Are you talking about for
11 those three loop types?

12 MS. DeCOOK: Right. Have you seen the
13 Service Interval Guide for those three loop types?

14 MS. ANDERSON: Yes.

15 MS. DeCOOK: Isn't it true, for those
16 three loop types, there are shorter and longer service
17 intervals than the PID benchmarks?

18 MS. ANDERSON: I don't know. I don't
19 think so. At the same quantity of loops. I would have
20 to look at that. Just a moment. Okay. Two-wire
21 analogue. For 9 to 16 lines is six business days.
22 They jive.

23 MS. DeCOOK: What about 1 to 8?

24 MS. ANDERSON: Well, 1 to 8 is five,
25 but --

1 MS. DeCOOK: Right.

2 MS. ANDERSON: What my point was, if you
3 remember, I mentioned the 9 to 16 when we were going
4 through the compromise. And in all of the discussions
5 and negotiations, we usually focussed in on the 9 to 16
6 to talk about things, until it got resolved. That's my
7 only point.

8 MS. DeCOOK: I appreciate that. But
9 there are, for different quantity of loops, there are
10 different service intervals than the average PID that's
11 reflected in OP-3?

12 MS. ANDERSON: Correct.

13 MS. LUBAMERSKY: I think it's important
14 to remember the note that Ms. Anderson made, that the
15 convention of the TAG was we did the mid-point range.
16 We all had lengthy discussions that there was five days
17 for 1 to 8, six days for 9 to 16. And we captured six
18 days in OP-4. But in no way did that discount the
19 commitment as defined in the SIG of what a standard
20 interval was, and in no way did it take anything away
21 from Qwest's commitment to make the five-day interval
22 for 1 to 8 loops, six days for 9 to 16, et cetera.

23 MR. FINNEGAN: John Finnegan. On that
24 Issue 109 agreement, I think we can all agree that
25 there was agreement on what the benchmarks should be

1 MR. ANTONUK: Any other questions?

2 MR. LaFRANCE: I'm David LaFrance from
3 XO. I just have a question or two I would like to ask
4 Ms. Anderson.

5 Inasmuch as XO did not have the resources
6 to participate to any great degree in the development
7 of the PID process, my question, Ms. Anderson, goes to
8 how extensively performance measurement of
9 special-access circuits was discussed during the PID
10 development process; and why, in your judgment -- as
11 that process winds down today, why are we left with no
12 real performance measurement of special-access
13 circuits?

14 MS. ANDERSON: If we don't have a
15 performance measure of special-access circuits that
16 meets your needs, it's because a collaborative of
17 participating folks didn't think one was needed or
18 didn't have emphasis there. You know, it -- we never
19 limited what -- as I -- as I kind of indicated, we
20 didn't limit what kind of performance measures could be
21 proposed.

22 We've currently got one that's gone to
23 impasse on release -- software release quality. That's
24 a recent item that has been proposed by parties. Qwest
25 has declined to develop it at this time and is going to

1 affirmative.)

2 MS. ANDERSON: So, Qwest has done that
3 twice, that I know of. One case the interval was
4 reduced, and the other case, it was increased, but
5 because the increase was based on an increase for
6 retail, and it was retail parity, you know, it was
7 being increased to a longer interval.

8 MR. FINNEGAN: When Qwest put out the
9 letter increasing the interval on the DS1, did they
10 submit that change for TAG approval?

11 MS. ANDERSON: No. Penny Bewick from New
12 Edge brought that to my attention, and we were to track
13 down the copy. It was sent, if I remember correctly,
14 from New Edge's account manager directly to New Edge.
15 We found out about it and we did discuss it at the TAG.
16 And that's when we had the explanation from Qwest,
17 regarding the fact that they changed their retail. And

18 so for this to be at parity, wholesale needed to change
19 as well.

20 MR. FINNEGAN: Would you say that the
21 discussion was more so for informational purposes, and
22 that the TAG didn't specifically approve the change in
23 the standard interval from whatever it was, up to nine
24 days?

25 MS. ANDERSON: It was informational only.

1 There was no approval asked or granted. If anything,
2 there was grumbling.

3 MR. FINNEGAN: In your opinion, what
4 would happen if the standard interval, through whatever
5 means, got reduced for those three loop types in the
6 Qwest Standard Interval Guide? In your opinion, what
7 effect, if any, would that have on the ROC OSS test?

8 MS. ANDERSON: Well, now that you bring
9 that up, I probably should mention, on November 30th,
10 in the meeting minutes, where it was -- or was it
11 November? Let me check my notes here.

12 MR. FINNEGAN: When you are checking, can
13 you identify the year as well.

14 MS. ANDERSON: Yes, I will. There are so
15 many years, so little time. Let's see.

16 MR. ANTONUK: Lot of November 30ths on
17 this job?

18 MS. ANDERSON: Two. Okay. Back --

19 MR. FINNEGAN: Perhaps three.

20 MS. ANDERSON: Back to the June 15th TAG.
21 June 15th of 2000 TAG. This is where we agreed on the
22 benchmarks for OP-4. And they were the six and seven
23 day respective for those three loop types proposed by
24 Qwest on the 8th of June, 2000. It was agreed that
25 once data was available in the second quarter of 2001,

1 intervals will be readjusted -- or will be adjusted,
2 not readjusted. The intervals will be adjusted. So, I
3 meant to mention that earlier. It appears, in the
4 minutes, that we agreed that, at some point, there was
5 some expectation that this would be revisited. That's
6 a side issue to your question. Ask me your question
7 again? I just forgot to mention that.

8 MR. FINNEGAN: I do believe I forgot my
9 question. Can the reporter read it back?

10 (Whereupon the question was read back.)

11 MS. ANDERSON: It's a multi-parter, I
12 think. If the Standard Interval Guide were changed,
13 for those three loop types, then the PIDs would have to
14 be updated for those, so that they reflected whatever
15 the agreement was.

16 Now, in terms of the OSS test, we pretty
17 much have set our benchmarks and our PIDs for all of
18 the ones that are involved in testing. We're into the
19 testing process now. So, unless something like that
20 was changed in the very near future, I would say it
21 would have no bearing whatsoever, because, probably if
22 it was changed -- I am just talking out loud here -- if
23 it was changed, let's say tomorrow, you know, we
24 already have our PIDs that have been set pretty much
25 for the test. We're already taking measurements and

1 things. It would be -- it would probably be best not
2 to change the intervals for the test, but that would
3 create quite a clamor, and I am sure that, you know, we
4 would have to have some debate about it. And it may
5 end up going to impasse and be settled by the steering
6 committee. I am just talking out loud because it's
7 what -- nothing is quite as simple as --

8 MR. FINNEGAN: Can you explain the basis
9 for your conclusion that if the aspirational standard
10 intervals changes, that the average benchmarks in the
11 PIDs would automatically have to change?

12 MS. ANDERSON: Well, because the CLECs
13 would propose that. If they went down, if the
14 intervals got shorter, I am sure that the parties would
15 propose that the benchmarks be lowered to match.

16 MR. FINNEGAN: What if Qwest raised them?

17 MS. ANDERSON: Qwest would then argue
18 that they should go up, probably.

19 MR. FINNEGAN: If a party wished to
20 change the standard intervals, other than Qwest, would
21 you -- in what forum do you believe that should occur?
22 Is that something where the benchmarks follow the
23 standards intervals or the standard intervals follow
24 the benchmarks?

25 MS. ANDERSON: I think it's never cut a

ROC TAG Meeting – Conference Call

June 15, 2000

1:00 pm MDT

Purpose of Call

To address the agenda distributed on June 13, 2000

The agenda for this call included:

1. Update on Vendor contract negotiations
2. Initial approach to PMA workspace
3. HP clarification statement
4. Update on Streamlined P-CLEC processes for certification and interconnection agreement approval
5. Changes to TRD since RFP

Hit List Items

6. Issue #109 on bench marks for OP-3/OP-4 for 2w non loaded ADSL qualified and analog loop types agreed? This needs to be finalized or go to impasse. Clay from Covad will be on the call.
7. Issue #19 Benchmark for loop qual pre-order transactions on PO-1 – John Finnegan update on offline discussions with CLECs on experience with response times for both TN and St. Address parameters.

Other Topics

8. TAG Issue Log (Update attached) – review other issues not addressed on above hit list.
9. Other Topics?

Summary of Points Discussed

1. All LOA's have been signed by the vendors and U S WEST. Commissioner Garvey will be the signator for the ROC. He is out of town till the week of June 19. Contracts have been through several iterations to date. There was a two day workshop in Denver attended by HP and KPMG to discuss the process design for testing and the division of responsibilities. It was an excellent session resulting in a draft design including inputs/outputs and descriptions. KPMG is compiling the combined HP and KPMG inputs for the draft work plan workshop on June 21 and 22. Liberty stated that they were making progress with U S WEST getting baseline documents. They will be in Denver all next week and will conduct interviews with U S WEST.

ROC TAG – Conference Call
June 15, 2000

2. Lynn Notorianni has offered Liberty the use of some locked offices U S WEST has in their rented space downtown. Liberty stated that all data received from U S WEST would be left behind and data they developed would leave with them. There was concern about U S WEST having access to information Liberty received from the CLECs. Liberty indicated that they would purchase file cabinets that they would keep locked.
3. There was much discussion between the CLECs and HP regarding what they would be reusing from the Arizona test. A decision was made to have a separate call to discuss this further. HP, U S WEST, AT&T and McLeod will participate.
4. The P-CLEC will obtain certification and interconnection agreement approval in each state. A streamlined approach will be taken along the lines previously discussed in the TAG. A contact in each state will be identified and will serve to facilitate the regulatory side of certification and IA approval. The U S WEST side of the process will remain as close to business as usual as possible with only the contract administration contact sighted. The majority of states have agreed to support the approach and a document will be sent out the week of June 19.
5. Denise sent an email to the vendors on June 12 explaining 4 changes to the TRD that resulted from TAG issue resolution agreements. Rod Cox indicated that one change regarding CMS observation appeared to be omitted. Denise confirmed that it was her error and will send a correction to the vendors to reflect the agreement on issue #132.
6. Issue #109 – Agreement was reached on this issue and it is now closed. OP-3 will use 90% as the benchmark and OP-4 will use mid-range , 6 day for high density and 7 day for low density subject to changes in the interval guide. Once data is available in 2Q2001, the intervals will be adjusted. This item will be open on the Future Discussion Topic list.
7. Issue #19 – John Finnegan gave status on the feedback from the CLECs on the criteria they used to arrive at their interval numbers. Charlis indicated that tests conducted by U S WEST arrived at an average of 17 seconds. There was a proposal made for the interval to be 20 seconds. As of June 19 U S WEST has accepted the proposal of 20 seconds.
8. Issue Log Update:
 - A. Issue #8 – this was identified as a change to the TRD. This issue is now closed.
 - B. Issue #10 - Bob and Marie are working on this document. Marie is summarizing all of the comments from AT&T, U S WEST and Covad into one document and will distribute the week of June 19.

- C. Issue #16 - John Finnegan stated that BANY took steps to provide confidence that they were keeping track of orders. U S WEST said they would create daily reports on the way to resolution of the lost order measure. Charlis sent out an email regarding this issue. AT&T will review. Update on 6/22.
- D. Issue #18 – nothing to report. If there is no news by next week, Frank will call the FCC.
- E. Issue #20 – This has not been addressed by the Steering Committee yet. Update on June 22.
- F. Issue #22 – coordination is in progress. Update on 6/22
- G. Issue #25 – the item has been added to the matrix. This issue is closed as of June 15. Mike Williams will send Bob Center and John Finnegan the matrix as he now sees it. There was discussion about whether trucks will be rolled as part of the testing. It was decided to have further discussion on this after the TA develops the test mix.
- H. Issue #115 – this was identified as a change to the TRD. This issue is now closed.
- I. Issue #124 – progress is being made on this issue. The two measures are agreed and now discussion centers on the expectations. John Finnegan proposed a meeting to discuss the week of June 19. This item will be on the hit list for the June 22 call.
- J. Issue #214 – a meeting between U S WEST and WorldCom resulted in a proposal to set up a sub-group to plan call through testing. Minutes from the meeting will be distributed by Charlis and discussed next week.

9. No other topics were brought up.

The next call will be June 22, 2000 at 1pm MDT

1 BEFORE THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF COLORADO
3 Docket No. 97I-198T - Workshop 3

4 * * *

5 IN THE MATTER OF THE INVESTIGATION OF US WEST
6 COMMUNICATIONS, INC.'S, COMPLIANCE WITH SS 271(c)
7 OF THE TELECOMMUNICATIONS ACT OF 1996.)

8 -----

9 Pursuant to continuation, the Technical Workshop
10 was held at 8:30 a.m., April 20, 2001, at 3898 S.
11 Wadsworth, Lakewood, Colorado, before Facilitators
12 Hagood Bellinger and Martin Skeer.

13 APPEARANCES

14 (As noted in the transcript.)

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1 five o'clock today.

2 MS. WAYS DORF: We're comfortable with
3 deferring that to general terms and conditions, which I
4 gather is the consensus of the group.

5 MR. BELLINGER: Seems to be.

6 MS. QUINTANA: What happens with 28?

7 MR. BELLINGER: I don't believe --

8 MS. STEWART: 28.

9 MS. WAYS DORF: We're still hoping to get
10 Karen to restate their proposal on 28.

11 MR. DIXON: Did we close 28?

12 MS. STEWART: Well, we closed 28.

13 MR. BELLINGER: No, we didn't.

14 MS. STEWART: Because, in fairness to the
15 group, I don't think it's appropriate to do that.

16 MS. WAYS DORF: If you wouldn't mind
17 restating your position on 28, because I kind of lost
18 it.

19 MS. STEWART: Okay. SB-28. Qwest will
20 not take an analysis of stranded investment into
21 account when providing a dark fiber subloop to a CLEC.
22 And I think we're, with the understanding that there's
23 full cost recovery of the feeder loop as contemplated
24 in Exhibit A, and I believe we may be closed or and
25 deferred that to the cost docket. The second element

1 is as it relates to interoffice.

2 MR. BELLINGER: What did you defer?

3 MS. STEWART: We deferred that whole cost
4 aspect -- and this is the possible issues that Becky
5 addressed -- to the cost docket.

6 MR. BELLINGER: Okay.

7 MS. STEWART: So it's fair game for
8 anyone to go over there and express their concerns.
9 Now, take the exact same statement and move it down.
10 Well, we agreed to make the commitment to interoffice
11 facilities, and we are not, at this time, in a position
12 to make that offer, so Qwest will not agree to make
13 sections of IOF available at this time.

14 MR. WILSON: Just one comment on that. I
15 don't see that this is really an issue, because the way
16 facilities are laid, you have a fiber between two
17 offices. It runs past buildings. Qwest uses that
18 fiber for both loop and interoffice facilities. So, if
19 a CLEC orders subloop, you don't know where facilities
20 are, it doesn't really matter. So I am not sure this
21 is a real issue.

22 MS. STEWART: We're not sure either, Ken,
23 but we haven't been able to confirm that we would offer
24 splicing in IOF, because subloop is literally getting
25 portions of a loop. Subloop is not getting portions of

1 interoffice facilities. You are asking us to commit to
2 including our interoffice facilities into a subloop
3 context, and we're not willing to do that. And,
4 basically, it's at impasse, to get to the bottom line.

5 MR. BELLINGER: What's at impasse?

6 MS. WAYSDORF: Wait, wait, wait.

7 MS. JENNINGS-FADER: If it's an issue,
8 it's at impasse.

9 MS. WAYSDORF: It's not an issue that
10 Yipes has raised. We're comfortable.

11 MS. STEWART: Are you going to raise it?

12 MR. BELLINGER: I don't think anybody has
13 raised that condition.

14 MR. WENDLING: Well --

15 MR. BELLINGER: I am giving them a chance
16 to raise it, if they want.

17 MR. WENDLING: The broad language of what
18 you are saying is in Conflict with what Ken said; that
19 there are some routes where it is quite possible that,
20 in that same route, there's both interoffice facility
21 and distribution or feeder, whatever, in that same
22 route if not in the same sheath. For example, from
23 Ridgeway to Rico, you got distribution and the
24 interoffice facility to Rico in the same sheath of
25 fiber. So, denying someone access to that distribution

1 loop feeder, however unlikely it would occur in
2 Ridgeway, right, because the Rico interoffice
3 facilities are in the same sheath sounds overly broad.

4 MS. STEWART: No. We're not going to
5 deny it because it's the same sheath. I want to be
6 clear. And to the extent I misspoke, I am looking back
7 to my technical people. Typically Qwest has -- and I
8 don't know if -- "assigned" is not the correct word,
9 maybe, to use in the context of dark fiber, but some
10 fiber is -- its intended use is for interoffice
11 facilities.

12 MR. BELLINGER: What is spliced through
13 for interoffice use.

14 MS. STEWART: Spliced through for
15 interoffice use.

16 MR. BELLINGER: Right.

17 MS. STEWART: Some, at that same
18 location, is intended to be part of plant facilities
19 and to be available on the loop kind of basis. To the
20 extent that there is dark fiber -- dark fiber that has
21 been spliced through with the anticipation of being
22 interoffice facilities, we are not agreeing to make
23 that piece available on a subloop component. And
24 that's really what it comes down to. If the dark fiber
25 is inventoried, put into our system, spliced through

1 with the expectation of being used for interoffice
2 facilities, we will not extend our subloop obligations
3 to that fiber.

4 MR. WILSON: I don't think you can do
5 that.

6 MS. STEWART: Then we can put it at
7 impasse, Ken.

8 MR. WILSON: Because what you are doing
9 is reserving capacity for yourself, essentially, by
10 doing that. In other words, on the route that Warren
11 just mentioned, you could designate all of the
12 available dark fiber in that as interoffice not
13 available for CLECs use as loops, even though you have
14 used some of it in the past for loops yourself. I
15 don't think that is either consistent with the SGAT or
16 with the intent of the language in the orders before
17 the FCC, the FCC orders or the act. I think it's we do
18 it if you do. It's an impasse issue.

19 MS. STEWART: I am not sure, from a track
20 standpoint, how often or if this is going to occur, and
21 we're more than happy to put it at impasse. I would
22 just note, for the record, we're not reserving it for

23 our use. We're reserving it for the use of anyone. A
24 CLEC could come right behind, and I am using Yipes as
25 an example, and say I need some interoffice facilities

1 between Central Office A and B. They are going to get
2 that same -- Ken, we're not reserving it for us. We're
3 just saying that, in the design and control around
4 allocation of our network, that's been spliced through
5 for interoffice use by anyone who wants to obtain
6 access to that spare dark fiber. But we're not going
7 to extend our subloop unbundling requirements into our
8 interoffice facilities. I will let you know that's
9 true whether it's dark fiber or whether it's OCN level
10 loops. We're not going to start busting our
11 interoffice into segments. We can send that to
12 impasse.

13 MR. BELLINGER: Well, Mana.

14 MS. JENNINGS-FADER: I am unclear as to
15 how would -- how does one know how -- does Qwest know
16 when to start busting. When, in your -- when, in the
17 example, dark fiber is spliced through with the
18 anticipation that it will be used for interoffice
19 facilities, is there an -- is it inventoried somewhere
20 in a system? How does one know?

21 MS. STEWART: Yes. My understanding is
22 that it's inventoried into a system, so that when you
23 went into TIRKS and said, is there a route from here to
24 here, it would show up in that route.

25 MS. WAYS DORF: It would show up as --

1 MS. STEWART: Interoffice.

2 MS. WAYS DORF: Inter?

3 MS. STEWART: Correct. That's my
4 understanding, subject to check by my technical person.
5 who is out of the room.

6 MS. JENNINGS-FADER: Who is checking.

7 MS. STEWART: He knows the answer to that
8 one I am sure.

9 MR. BELLINGER: Assuming we can identify
10 it, does the group want to take that to impasse?

11 MR. WILSON: Yes.

12 MR. SEKICH: Just want to make a
13 clarification.

14 MR. BELLINGER: I have that identified as
15 SB-30.

16 MR. BECK: Isn't that really -- isn't
17 that really a subpart of SB-25, 26 and 28? Does it --
18 has it not been designated?

19 MR. BELLINGER: I don't think -- I have
20 it as IOC dark fiber is not available to subloop. I
21 didn't miss your point.

22 MR. BECK: You are missing my point.

23 MR. BELLINGER: I didn't miss your point.

24 MR. BECK: I was talking to Karen. I am
25 sorry.

Owest Process for Hairpinning an Unbundled Loop that is Provided Over Integrated Digital Loop Carrier

- The Network Tactical Planner/Engineer makes the determination that the method for unbundling this loop will be hairpinning out of the switch.
- The Engineer writes an additional design service order (Common Planning Document – Job). This order includes the identification of and assigns the OE (switch office equipment), the Line Designation, the D4 bank, and the ICDF termination location (from the service order)
- The engineering order goes to the Design Service Center for handling
- The Design Service Center contacts the Complex Translations person for that office with the service order information.
- Complex Translations provides the input to the switch, populating the switch tables with the appropriate information
- The Design Services Center then issues a WORD document and orders any required plug in equipment. The WORD document then goes to the appropriate Central Office Technician who is responsible for working the order.
- The COT works the order per the instructions from the Design Services Center, wires the circuit out of the D4 bank connecting the OE to the Line Designation. The COT also rewires the circuit on the Main Distribution Frame for the line to be presented to the CLEC at the ICDF (Interconnection Distribution Frame)
- The order then continues through the normal testing and completion processes.

PUC DOCKET NO. 22315

PETITION OF SOUTHWESTERN
BELL TELEPHONE COMPANY FOR
ARBITRATION WITH AT&T
COMMUNICATIONS OF TEXAS, L.P.,
TCG DALLAS, AND TELEPORT
COMMUNICATIONS, INC.
PURSUANT TO SECTION 252(b)(1)
OF THE FEDERAL
TELECOMMUNICATIONS ACT OF
1996

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PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER APPROVING REVISED ARBITRATION AWARD

This Order approves the Revised Arbitration Award¹ (Revised Award) with the attached decision point list (DPL) issued in this proceeding on September 27, 2000, and incorporates both herein for all purposes. Further, this Order approves the clarifications and modifications made to the Revised Award by the Commission at its February 8, 2001, Open Meeting.

Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996 (FTA)² and P.U.C. Procedural Rule § 22.305, Southwestern Bell Telephone Company (SWBT) filed a petition requesting that the Public Utility Commission of Texas (Commission) arbitrate the unresolved issues in the successor Interconnection Agreement (IA) between SWBT and AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. (collectively AT&T). The Commission finds that the Revised Award, including the clarifications and modifications discussed in greater detail in the sections that follow, is consistent with the requirements of § 252 of the FTA.

¹ The Arbitrators issued an initial Arbitration Award on September 13, 2000. The Revised Arbitration Award supersedes the initial Arbitration Award.

² Telecommunications Act of 1996, Pub. L. No. 104-104, 100 Stat. 56, codified at 47 U.S.C. §§ 251, et seq.

I. Procedural History

On March 23, 2000, SWBT filed its petition to resolve outstanding issues related to the jointly-filed IA with AT&T. On July 31 and August 1, 2000, the Arbitrators conducted a hearing on the merits. On September 13, 2000, the Arbitrators issued their initial Award and DPL. The Arbitrators deferred the decision on Physical Network Interconnection Issues One and Four until after the Commission issued an order in the SWBT/MCI Worldcom Arbitration.³ The Revised Award issued on September 27, 2000 addresses those two issues.⁴ On December 12, 2000, AT&T and SWBT filed their comments regarding the Revised Award. On December 21, 2000, the Arbitrators issued Order No. 6 outlining additional issues yet to be addressed in this proceeding; however, as part of a procedural schedule filed jointly by SWBT and AT&T on January 4, 2001, the parties requested that, if the parties were unable to settle these matters, they would instead file a separate petition later. Consequently, none of these issues were presented for consideration in this docket. On January 19 and February 1, 2001, the Arbitrators filed their comments and provided recommendations relating to the issues that continue to be contested by the parties. The Commission considered the Revised Award at its Open Meeting on February 8, 2001.

II. Modifications to the Revised Arbitration Award

A. Points of Interconnection

An investigation into points of interconnection (POIs) is an essential part of the analysis of the issue of interconnection. Section 252(c)(2) of the FTA states that incumbent local exchange carriers (ILECs) must provide interconnection within their networks at "any technically feasible point." In its recent *MCIW Order*, the Commission

³ *Petition of Southwestern Bell Telephone Company for Arbitration with MCI Worldcom, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, Docket No. 21791 (September 20, 2000) (*MCIW Order*).

⁴ Issue No. One is addressed in the text of the Revised Arbitration Award, while Issue No. 4 is addressed in the DPL.

agreed with the FCC that " a competitive LEC has the option to interconnect at only one technically feasible point in each LATA" and that "the incumbent LEC is relieved of its obligation to provide interconnection at a particular point in its network only if it proves to the state public utility commission that interconnection at that point is technically infeasible."⁵ The Revised Award is consistent with the FCC Orders and the *MCIW Order* in that it concludes that technical feasibility is the basis for determining whether a particular POI is appropriate. Accordingly, this Order affirms the Arbitrators' decision with respect to the requirement of technical feasibility. Further, the Commission is also compelled to address SWBT's concerns regarding cost recovery and the definition of local traffic.

As part of its analysis in the *MCIW Order*, the Commission also reviewed issues related to network integrity, consistent with FCC precedent. As noted in the *MCIW Order* "the *First Report and Order* also recognizes that states may go beyond national rules and 'impose additional pro-competitive interconnection requirements, as long as such requirements are otherwise consistent with the 1996 Act and the FCC's regulations.'"⁶ In particular, the Commission determined that it was reasonable to require additional points of interconnection (POIs) to avoid network or tandem exhaust.⁷ The Parties are therefore encouraged to negotiate additional POIs when a *de minimis* traffic threshold is reached.⁸

Despite SWBT's concern regarding the impact of the Arbitrators' POI decision on the definition of local traffic⁹, the Commission affirms its previous definition of local

⁵ *MCIW Order* at 4, fn. 16.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.* at 6. The Commission required MCIW and SWBT to negotiate additional POIs when MCIW's traffic usage exceeds a traffic level equal to twenty-four DS1s. Similarly, the parties in this proceeding are encouraged to negotiate the level of *de minimis* traffic threshold or arbitrate the issue in a future proceeding.

⁹ SWBT Comments at 22-24.

traffic as established in Docket No. 21982.¹⁰ In that docket, for the purposes of the application of reciprocal compensation, the PUC defined local traffic as "calls that originate from and terminate to an end-user within a mandatory single or multi-exchange local calling area, including the mandatory EAS/ELCS areas comprised of SWBT exchanges and the mandatory EAS/ELCS areas comprised of SWBT exchanges and exchanges of independent ILECs."¹¹ In Docket No. 21982, the Commission specifically found that CLECs were not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.¹²

While costs are not an appropriate consideration in the provisioning of POIs, the costs may be taken into account after technical feasibility is established (i.e. in determining the amount the CLEC will have to pay for its proposed interconnection plan).¹³ The Commission finds, therefore, that costs related to POIs may be taken into consideration in this docket, given that technical feasibility has been established. Again, the Commission notes that section 252(c)(2) of the FTA requires ILECs to provide interconnection within their networks at "any technically feasible point at "rates, terms, and conditions that are just, reasonable, and nondiscriminatory." In providing interconnection, a company incurs transport costs. In the context of reciprocal compensation rates or the interconnection rates for local calls, of which local transport rates are a component, the rate is based upon a 14-mile estimate for interoffice transport.¹⁴

But where the assumption of 14 miles as a standard distance for local transport does not reflect the actual (longer) distance of local transport, the reciprocal

¹⁰ *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Docket No. 21982, Revised Arbitration Award at 18 (August 31, 2000) (Docket No. 21982).

¹¹ *Id.* The local traffic definition is based on an ILEC's exchanges. Because the parties arbitrating the issue of reciprocal compensation in Docket No. 21982 consisted of SWBT and interconnecting CLECs, the definition of local traffic in question is based on the exchange(s) comprising the SWBT local calling area.

¹² *Id.*

¹³ Arbitrators' Comments at 14 (Jan. 19, 2001).

¹⁴ Docket No. 21982 at 40, fn. 153.

compensation rates may not be just, reasonable and non-discriminatory, as required by FTA §251(e)(2)(D). In general, the costs incurred by SWBT to build facilities to the POI are recovered, in part,¹⁵ through the reciprocal compensation rates charged to AT&T for local calls that terminate to SWBT customers. Similarly, AT&T charges SWBT reciprocal compensation rates for calls terminated to AT&T customers. For a call that originates and terminates within the local calling area (a local call) but that is transported across the local calling area boundary to a POI designated by AT&T¹⁶ in the LATA, local transport may extend beyond 14 miles. Consequently, the transport costs associated with transport to the AT&T designated POI may not properly compensate SWBT for each and every call.

In concluding that it was appropriate for a CLEC to select the POI in an ILEC's network, the FCC reasoned that because CLECs usually must compensate ILECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about where to interconnect.¹⁷ The Commission concurs with this determination and acknowledges the importance of sending the appropriate price signals to ensure that CLECs make economically efficient decisions about where to interconnect.¹⁸

The Commission finds that the reciprocal compensation rates using 14 miles as the general rule for local transport is appropriate, but that an alternate compensation mechanism must be established to address local traffic sent to a distant POI beyond the 14-mile limit. However, the Commission finds that a *de minimis* threshold for local transport must be reached before a new rate is established. Consequently, the Commission concludes that until the *de minimis* traffic threshold is reached, reciprocal compensation rates will apply to all calls regardless of whether the local call was

¹⁵ Portions of the facilities costs are also recovered through SWBT's retail local rates.

¹⁶ AT&T Comments at 23-24.

¹⁷ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-96, First Report and Order, FCC No. 96-325 at ¶ 209.

¹⁸ Open Meeting Tr. at 138 (February 8, 2001).

transported within the local calling area boundary or was transported across the local calling area boundary to the POI designated by AT&T. However, after the *de minimis* traffic threshold is reached, cost recovery and compensation mechanisms will vary depending on whether the local call crossed local calling area boundaries.

The reciprocal compensation rates established in Docket No. 21982 shall continue to apply to all local calls that are transported within the local calling area. For calls that originate and terminate within the local calling area but that are transported across the local calling area boundary, the reciprocal compensation rates, specifically the local transport rates, will apply to the last 14 miles of the call on the terminating end of the call, regardless of whether SWBT or AT&T terminates the call. In addition, each carrier will be responsible for the transport costs for the first 14 miles of a local call originated by its own end use customer. The remaining additional transport costs, beyond the 14 miles, incurred by both SWBT and AT&T in hauling the traffic to the AT&T designated POI in the LATA will be borne by AT&T, the cost causer.

The Commission determines that the interconnection rates to be paid by AT&T to recover the additional costs incurred by SWBT in transporting the call to the AT&T designated POI should be cost-based. In the event the parties cannot reach an agreement, such rates should be addressed in a subsequent arbitration proceeding. The Commission believes that this compensation mechanism strikes a reasonable balance between a CLEC's right to designate the point of interconnection on the ILEC's network and the need to provide the appropriate incentives to the CLEC to make economically efficient decisions about where to interconnect. The Commission finds that requiring the cost causer to absorb additional costs incurred as a result of the siting of a POI, after a reasonable minimum traffic threshold is reached, is sound public policy and is consistent with the FCC's *First Report and Order* and § FTA 251. In addition, both parties shall negotiate the architecture in each location that will seek to mutually minimize and

equalize investment.¹⁹ Parties are therefore encouraged to facilitate agreements that are also "economically feasible" once technical feasibility has been established.

B. Line Splitting

The Commission affirms the Revised Award and finds it appropriate to conclude that the splitter is to be included in the definition of the local loop. The Revised Award is premised upon "AT&T purchasing all capabilities of the loop including the low and high frequency spectrum portion of the loop when it purchases the unbundled loop in combination with the switch port or the unbundled network element platform (UNE-P)."²⁰ The Arbitrators found that "line splitting was necessary to gain access to the high frequency portion of the loop in order to allow AT&T to take advantage of the full functions, features, and capabilities of the loop."²¹ Consequently, the Revised Award states that "excluding the splitter from the definition of the loop would limit its functionality."²²

The Commission agrees with the Arbitrators' conclusion that, "there is no technical distinction between line sharing and line splitting, as the splitter provides access to the same functionality of the loop in both contexts."²³ Consequently, the Commission finds that it is discriminatory for SWBT to provide access to the splitter in a line sharing context while not providing the splitter in a line splitting context.²⁴ The Commission also determines that it is discriminatory for SWBT to disallow pre-wiring.

SWBT's proposal requiring CLECs to collocate in order to line split, significantly prohibits UNE-P providers from achieving commercial volume, not only because

¹⁹ *MCIW Order* at 5.

²⁰ Revised Award at 18.

²¹ *Id.* at 20.

²² *Id.*

²³ *Id.* at 21.

²⁴ See *Id.*

collocation is required but also because SWBT does not propose to prewire, or allow the CLEC to prewire, from the intermediate distribution frame (IDF) to the CLEC's splitter.²⁵

After the issuance of the Revised Award and the subsequent comments of the parties, the FCC issued a decision addressing line splitting.²⁶ The decision clarified that "existing [FCC] rules support the availability of line splitting."²⁷ The FCC determined that "independent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*,²⁸ incumbent LECs must allow competing carriers [individually or in combination] to offer both voice and data service over a single unbundled loop."²⁹ However, the FCC denied AT&T's "request that the Commission clarify that ILECs must continue to provide xDSL services in the event customers choose to obtain voice service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement."³⁰

Consequently, the FCC determined that an ILEC has an "obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter."³¹ The FCC notes that this arrangement was contemplated in both the *Texas 271 Order* and the *Line Sharing Order*.³² However, the FCC noted that the issues of "splitter ownership" and

²⁵ *Id.* at 22.

²⁶ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC No. 01-26, CC Docket No. 98-147, CC Docket No. 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in Docket No. 96-98 (rel. Jan. 19, 2001).

²⁷ *Id.* at ¶ 16.

²⁸ *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in Docket No. 96-98, 14 FCC Rcd 20912 (1999) (*Line Sharing Order*).

²⁹ FCC Line Splitting Order at ¶ 18.

³⁰ *Id.* at ¶ 16.

³¹ *Id.* at ¶ 19.

³² *Id.* at fn. 13.

whether or not the splitter should be included in the definition of the loop are deferred to upcoming proceedings due to the complexity of the issue.³³

The Commission finds sufficient evidence in the record to conclude it appropriate to consider the splitter a part of the loop. The Commission clarifies that this finding applies only to "stand-alone" splitters, as requested by AT&T in this docket.³⁴ This does not apply to a splitter that has been incorporated into a DSLAM. Further, because the parties did not address the cost of a loop that includes a splitter,³⁵ a separate rate must be established for a loop that includes the use of the splitter.³⁶ Therefore, the Commission determines that it is appropriate for the parties to address this issue in a subsequent arbitration proceeding if an agreement cannot be reached between the parties as to the appropriate compensation mechanism.

C. Third Party Intellectual Property Rights

The Revised Award concludes that AT&T does not have the obligation to indemnify SWBT against damages resulting from claims that AT&T has violated the intellectual property (IP) rights of third parties for the use of those rights. Further, the Commission agrees with the Arbitrators that the language proposed by SWBT requiring AT&T to indemnify SWBT for uses of IP rights should be rejected as overly broad. However, the Commission determines that, consistent with the FCC's *Third Party*

³³ *Deployment of Wireline Services Offering Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration, CC Docket No. 98-147; Fourth Report and Order on Reconsideration, CC Docket No. 96-94; Third Further Notice of Proposed Rulemaking, CC Docket No. 98-147; Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-94 at ¶ 19 (Jan. 19, 2001).

³⁴ AT&T Comments at 4.

³⁵ Open Meeting Tr. at 142 (February 8, 2001).

³⁶ See *Pension of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loop Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, et al. Award and Appendix D at 35 (Nov. 8, 1996) (First Mega-Arbitration Award) (in which the splitter was not included as a cost model input); and See also *Pension of MFS Communications Company, Inc. for Arbitration of Pricing of Unbundled Loops Agreement Between MFS Communications Company, Inc. and Southwestern Bell Telephone Company*, Docket No. 16189, et al. Award and Appendix B (Dec. 19, 1997) (Second Mega-Arbitration Award) (proceeding did not to include rates for splitter while approving rates for LNEs and services necessary for interconnection).

Intellectual Property Rights Order,³⁷ AT&T is required to indemnify SWBT for the use of rights beyond the coextensive rights obtained by SWBT. As such, the language should provide:

OTC Section 7.3.6. AT&T agrees to release, indemnify and hold SWBT harmless from and against all Damages arising out of, caused by, or relating to any Claim that AT&T's interconnection with SWBT's network, or AT&T's use of SWBT's network elements, or unbundling and/or combining of SWBT's network elements (including combining with AT&T's network elements) or AT&T's use of other functions, facilities, products or services furnished under this Agreement violates or infringes upon any third party IP rights or constitutes a breach of contract rights of third parties, to the extent AT&T's use of said IP rights are beyond the coextensive rights obtained by SWBT on behalf of AT&T.

III. Commission Findings

1. The Commission's approval and review of the Revised Arbitration Award is consistent with FTA § 252(b). Section 252(b)(1) provides that if an incumbent local exchange carrier (ILEC) and competitive local exchange carriers (CLECs) cannot successfully negotiate rates, terms and conditions in an interconnection agreement, either of the negotiating parties "may petition a State commission to arbitrate any open issues."
2. The Commission is the state regulatory body responsible for arbitrating interconnection agreements approved pursuant to the FTA.

³⁷ *In the Matter of Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate Licenses or Right-to-Use Agreements Before Purchasing Unbundled Elements and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, FCC No. 00-139, CCBPol. 97-4 and CC Docket No. 96-98 (rel. Apr. 27, 2000) (*Third Party Intellectual Property Rights Order*).

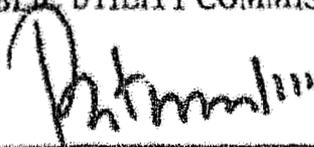
3. The Commission has reviewed the Revised Arbitration Award and the pleadings and comments filed by SWBT, AT&T, and the Arbitrators.
4. The Commission finds the Revised Arbitration Award, as modified herein, is consistent with the requirements of § 252 of the FTA.
5. The Commission finds the Revised Arbitration Award and its modifications are consistent with Subchapter Q of the Commission's procedural rules.

IV. Ordering Paragraphs

1. The Revised Award and specific language in the parties' Interconnection Agreements implementing the Award are approved, as modified and clarified by this Order and consistent with the Arbitrators' comments as identified in Staff's memorandum of February 5, 2001.
2. The Commission, for good cause, waives the 20 day filing requirement under P.U.C. Proc. R. 21.313, and orders all parties to file revised, signed interconnection agreements that have been modified in accordance with the rulings in this Order within ten (10) days from the date of this Order. Additionally, all parties shall file affidavits attesting that the amended agreements comply with this Order and with the Revised Arbitration Award as clarified and modified by the Commission.

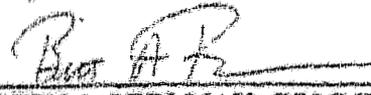
SIGNED AT AUSTIN, TEXAS the 14th day of March 2001.

PUBLIC UTILITY COMMISSION OF TEXAS



PAT WOOD, III, CHAIRMAN

JUDY WALSH, COMMISSIONER



BRETT A. PERLMAN, COMMISSIONER

DOCKET NO. 22315

PETITION OF SOUTHWESTERN BELL	§	PUBLIC UTILITY COMMISSION
TELEPHONE COMPANY FOR	§	
ARBITRATION WITH AT&T	§	OF
COMMUNICATIONS OF TEXAS, L.P.	§	
TCO DALLAS, AND TELEPORT	§	
COMMUNICATIONS, INC.	§	TEXAS
PURSUANT TO SECTION 252(B)(1)	§	
OF THE FEDERAL COMMUNICATIONS	§	
ACT OF 1996	§	

REVISED ARBITRATION AWARD

I. SUMMARY OF PROCEEDINGS

A. Procedural History

On March 23, 2000, Southwestern Bell Telephone Company (SWBT) filed a Petition for Arbitration with AT&T Communications of Texas, L.P., TCO Dallas and Teleport Communications, Inc. (collectively AT&T) pursuant to Section 252(b)(1) of the federal Telecommunications Act of 1996 (FTA) and P.U.C. PROC. R. 22.305. The hearing on the merits was held on July 31 and August 1, 2000.

This arbitration proceeding has been conducted in accordance with the Commission's rules and FTA Section 252(c). On May 31, 2000, the parties filed a joint decision point list (DPL), which was amended by agreement on August 4, 2000.¹ The scope of the issues addressed in this arbitration proceeding is limited to those issues identified in the DPL. By agreement, the parties extended the deadline for issuance of this Award until September 13, 2000.

The initial Arbitration Award was issued on September 13, 2000. The Arbitrators deferred the decision on Physical Network Interconnection Issues One and Four until after the

¹ Docket No. 14, 2, Revised Decision Point List.

CONTINUATION

[5]

III. DSL ISSUES

DPL Issue Nos. 1-4, 6 and 7

1. (SWBT's version) Should SWBT be required to provide access to the HFS portion of the loop as part of the UNE platform, even though SWBT is not the voice provider in such circumstances?
1. (AT&T's version) Should SWBT be required to provide access to the HFS portion of the loop to a UNE-P voice provider?
4. (SWBT's version) Should SWBT be obligated to support AT&T's transactions with other carriers to provide voice and data over a single loop?
4. (AT&T's version) Should SWBT be obligated to interact with AT&T's authorized agents as if they were AT&T?
6. (SWBT's version) What should happen in the event an end user disconnects service on a loop over which SWBT and an advanced services provider are currently providing voice and data services, and AT&T seeks to acquire the loop?
6. (AT&T's version) Where a customer wants to drop SBC voice and continue with voice & data, how may AT&T convert a SWBT retail voice customer (POTS) to AT&T-provided voice service and DSL service using a single unbundled loop/switch port combination leased from SWBT?
7. (SWBT's version) Should SWBT or AT&T own the splitter needed for line sharing, and where should it be located?
7. (AT&T's version) Should SWBT be required to own the splitter needed for line splitting and where should it be located?

SWBT's Position

Relying upon the FCC's *Line Sharing Order*,⁷⁹ SWBT asserts that it is not obligated to provide line sharing "to requesting carriers that are purchasing a combination of network elements known as the platform."⁸⁰ SWBT adds that in the FCC's *Line Sharing Order*, the FCC specifically stated that line sharing was not required where the incumbent LEC was not the voice provider, and gave as an example, the UNE platform.⁸¹ SWBT states that, as AT&T defines it,

⁷⁹ Deployment of Wireline Services Offering Advanced Telecommunications Capability, *Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, CC Docket 98-147* (Rel. Dec. 9, 1999) ("*Line Sharing Order*").

⁸⁰ SWBT Post Hearing Brief at 37, *Line Sharing Order* at para. 72.

⁸¹ SWBT Post Hearing Brief at 37.

UNE-P is the SWBT-combined loop and switch.⁸² Therefore, SWBT states that, by definition, it is impossible to offer both voice and data services over UNE-P, inasmuch as the switch and loop must be disconnected, and reconnected through a splitter, in order to access both the voice and the high frequency portion of the loop.⁸³

SWBT describes how AT&T can access the high frequency portion of the loop: first, after arranging for collocation space for the splitter and DSLAM, AT&T would connect this equipment to collocation cabling arrangements; second, AT&T would need to access loop makeup information; third, AT&T would order an unbundled xDSL-capable loop, and any necessary unbundled switching and shared transport from SWBT to be connected to its collocation arrangement; and fourth, AT&T would combine the unbundled xDSL-capable loop with a collocated splitter of integrated splitter and DSLAM.⁸⁴ After these steps are completed, AT&T would then disconnect its UNE-P.⁸⁵

SWBT opposes AT&T's proposal that SWBT own the splitter because it imposes upon SWBT significant additional obligations that are not necessary for AT&T to use UNES to provide service to its customers.⁸⁶ SWBT further explains its concerns:

[A]lthough AT&T can share the use of a single UNE loop with a data provider under terms offered by SWBT, AT&T wants to shift to SWBT the burden of coordinating the shared use of a loop even though AT&T can perform this function for itself. AT&T's proposals would require SWBT to coordinate the activities of three carriers, SWBT, AT&T, and the data provider. This proposal would also put SWBT in the role of coordinating maintenance issues with two other carriers. In addition, AT&T's proposal requires SWBT to separate currently combined UNES and recombine these UNES with other facilities that are not UNES, i.e., SWBT-owned splitter as discussed below.⁸⁷

⁸² SWBT Ex. No. 10, Direct Testimony of Carol Chapman at 5.

⁸³ SWBT's Post-Hearing Reply Brief at 20.

⁸⁴ SWBT Ex. No. 10, Direct Testimony of Carol Chapman at 6.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 6-7.

SWBT acknowledges that it has agreed to provide the splitter in the case of line sharing, but SWBT argues that it makes no sense for SWBT to provide the splitter when SWBT is not the voice provider.⁸⁸

From a legal standpoint, SWBT asserts that the FCC's *Line Sharing Order* and the *SWBT Texas 271 Order* support SWBT's position. SWBT avers that in the *Line Sharing Order*, the FCC held that CLECs are not entitled to access the high frequency portion of the loop unless the ILEC remains the voice provider to that customer.⁸⁹ SWBT further asserts that the FCC maintained its position in the *SWBT Texas 271 Order*.⁹⁰

We reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain their voice service from a competitor that is using the UNE-P carrier loop. Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop. In the *Line Sharing Order*, the Commission unbundled the high frequency portion of the loop when the incumbent LEC provides voice service, but did not unbundle the low frequency portion of the loop and did not obligate incumbent LECs to provide xDSL service under the circumstances AT&T describes.⁹¹

AT&T's Position

AT&T complains that it is discriminatory for SWBT to provide the splitter to data CLECs who are content to let SWBT continue providing the customer with voice service while not also providing it to UNE-P providers who keep the voice customer.⁹² AT&T states that SWBT's position will seriously constrain competition for both voice and data services in Texas:

SWBT's control over the local loop and unique ability to offer voice/DSL packages has already propelled it to a dominant market position, with 9 out of 10

⁸⁸ *Id.* at 7.

⁸⁹ SWBT's Post-Hearing Brief at 37. The FCC stated in part: "Accordingly, we conclude that incumbent LECs must make available to competitive carriers only the high frequency portion of the loop network element on loops on which the incumbent LEC is also providing analog voice service. . . . Similarly, incumbent carriers are not required to provide line sharing to requesting carriers that are purchasing a combination of network elements known as the platform." *Line Sharing Order* at para. 72.

⁹⁰ SWBT's Post-Hearing Brief at 37.

⁹¹ *SWBT Texas 271 Order* at para. 330.

⁹² Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 43.

DSL customers in Texas receiving service from SBC, and with projections of 300,000 customers by years end. *See Turner Direct*, at 29-30. SBC's policy of denying CLECs the ability to offer a competing voice/DSL package to residential customers using the UNE-platform will secure that dominant position indefinitely, because UNE-P is the only vehicle that AT&T and others CLECs currently have to offer voice services for residential customers on a scale that could provide meaningful competition with SWBT and other ILECs.⁹³

AT&T maintains, and SWBT admits,⁹⁴ that it is technically feasible for SWBT to condition UNE-P loops by adding a splitter, which would allow a UNE-P provider to offer both voice and data services.⁹⁵ Given that it is technically feasible, AT&T further maintains that SWBT is obliged by law to add a splitter.⁹⁶ AT&T argues that the splitter is part of the unbundled loop element and is subject to the unbundling requirements of prior FCC orders. AT&T notes that the FTA defines "network element" to include the "features, functions and capabilities that are provided by means of such facility or equipment."⁹⁷ AT&T asserts that the *Line Sharing Order* defined the high frequency portion of the loop as a capability of the loop.⁹⁸

In addition, AT&T asserts that the "impair" standard is met on this record, because CLECs would be severely impaired in their ability to provide both voice and data services if this Commission were to accept SWBT's view that it is not legally required to provide splitter-equipped loops with UNE-P.⁹⁹ Relying on the *UNE Remand Order*,¹⁰⁰ AT&T alleges that the Commission need not reach the "impair" analysis. AT&T asserts that the splitter is properly considered part of the loop because it constitutes "attached electronics" necessary to allow

⁹³ *Id.* at 44.

⁹⁴ Arbitration Hearing Tr. at 293-94 (Aug. 1, 2000).

⁹⁵ AT&T Ex. No. 11, Direct Testimony of Steven E. Turner at 8, 10-11

⁹⁶ *Id.* at 45.

⁹⁷ *Id.* at 48 (quoting 47 U.S.C. § 153(29)); AT&T Ex. No. 11, Direct Testimony of Steven E. Turner at 9

⁹⁸ Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 48.

⁹⁹ *Id.* at 46.

¹⁰⁰ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98 (Rel. Nov. 5, 1999) ("*UNE Remand Order*").

CLECs to take advantage of the full functions, features, and capabilities of the loop.¹⁰¹ AT&T further maintains that adding a splitter to the loop is analogous in relevant technical respects to adding or removing loop electronics, such as bridge taps, load coils or conditioners.¹⁰² In fact, splitters and load coils are composed of the same type of electronics: inductors.¹⁰³ AT&T further analogizes to SWBT's willingness to condition an 8db loop to a 5db loop: "This 'enhancement' of the loop is accomplished by SWBT disconnecting the cross-connect between the loop and the switch-port, and cross-connecting over to a conditioner. Similarly, adding a splitter is necessary to provide voice service when a customer also requests advanced data service over the same line. . . ."¹⁰⁴

AT&T argues that there are significant disadvantages to SWBT's "disconnect UNE-P approach."¹⁰⁵ In order to add DSL for an existing UNE-P customer, AT&T would be required to dismantle the customer's existing loop/switch connection and order an unbundled DSL-capable loop and an unbundled switch port combined with shared transport, which will be connected to its collocation arrangement.¹⁰⁶ AT&T urges that SWBT's proposal would greatly increase the risk that CLEC customers would experience loss of voice service while switching to the CLEC voice/DSL service.

Arbitrators' Decision

The Arbitrators agree with AT&T that it is purchasing all capabilities of the loop including the low and high frequency spectrum portion of the loop when it purchases the unbundled loop in combination with the switch port or the unbundled network element platform (UNE-P).¹⁰⁷ As noted by AT&T, in the FCC's *Line Sharing Order* the FCC defined the high

¹⁰¹ Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 46.

¹⁰² AT&T Ex. No. 11, Direct Testimony of Steven E. Turner at 16 (June 16, 2000); AT&T Ex. No. 12, Rebuttal Testimony of Steven E. Turner at 7.

¹⁰³ Arbitration Hearing Tr. at 330 (Aug. 1, 2000).

¹⁰⁴ Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 47 (citing to Arbitration Hearing Tr. at 330)

¹⁰⁵ Initial Post-Hearing Brief of AT&T Communications of Texas, L.P., TCG Dallas and Teleport Communications of Houston, Inc. at 52-55.

¹⁰⁶ *Id.* at 52.

¹⁰⁷ A SWBT-combined UNE-P has an existing cross-connect jumper wire between SWBT's cable pair and the central office equipment. Arbitration Hearing Tr at 255 (Aug. 1, 2000).

frequency portion of the loop as a capability of the loop.¹⁰⁸ In order to gain access to the high frequency portion of the UNE loop, line splitting is required.¹⁰⁹ Such line splitting is accomplished by means of passive electronic equipment referred to as splitters.¹¹⁰ A splitter is a device that splits the low and high frequency portion of the loop.¹¹¹

Although, as noted by SWBT, the FCC has to date, not required ILECs to provide the splitter in either a line sharing or line splitting context, the Arbitrators believe this Commission has the authority to do so on this record. The FCC has clearly stated that its requirements are the minimum necessary, and that state commissions are free to establish additional requirements, beyond those established by the FCC, where consistent.¹¹² Indeed, in the *SWBT Texas 271 Order*, the FCC acknowledged that line splitting, a recent development, would be subject to potential arbitration before the Texas Commission.¹¹³ The Arbitrators, therefore, believe on this record that it is sound public policy to require SWBT to provide AT&T with a UNE loop that is fully capable of supporting any xDSL service.

AT&T has opted into Attachment 6 of the T2A; the Arbitrators note that Attachment 6 allows AT&T to use one or more Network Elements to provide any technically feasible feature, function, or capability of such Network Element. Attachment 6 of the T2A further allows AT&T access to the loop. The FCC has previously stated that an ILEC must provide a requesting telecommunications carrier access to UNEs, along with all of the UNE's features, functions, and capabilities, "in a manner that allow the requesting telecommunications carrier to provide any telecommunications service that can be offered by means of that network element."¹¹⁴ The FCC has held on numerous occasions that this duty applies to a CLECs' use of unbundled loops to provide DSL services.¹¹⁵ The FCC reiterated in the *UNE Remand Order* that the loop includes

¹⁰⁸ *Line Sharing Order* at para. 17, Arbitration Hearing Tr. at 257 (Aug. 1, 2000).

¹⁰⁹ Arbitration Hearing Tr. at 349, 359-60 (Aug. 1, 2000).

¹¹⁰ *Id.* at 328.

¹¹¹ *Id.* at 257-58.

¹¹² *UNE Remand Order* at paras. 154-60; *Line Sharing Order* at paras. 223-25

¹¹³ *SWBT Texas 271 Order* at para. 329.

¹¹⁴ 47 C.F.R. § 51.307 (emphasis added).

¹¹⁵ See, e.g., *First Report and Order* at paras. 380, 382; *UNE Remand Order* at paras. 166-67

"attached electronics" if such electronics are necessary to fully access the loops features, functions and capabilities in order to provide service to end users.¹¹⁶

The Arbitrators find that line splitting is necessary to gain access to the high frequency portion of the loop in order to allow AT&T to take advantage of the full functions, features, and capabilities of the loop. The Arbitrators find, consistent with the *UNE Remand Order*, that excluding the splitter from the definition of the loop would limit its functionality.¹¹⁷ The Arbitrators further find that it is technically feasible for SWBT to furnish and install splitters to gain access to the high frequency portion of the UNE loop when purchased in combination with the switch port.

The Arbitrators recognize that the FCC specifically rejected DSLAMs as part of the "attached electronics" of the loop because of its determination that DSLAMs are used solely to provide advanced services.¹¹⁸ Accordingly, the Arbitrators believe it would be inaccurate from a technical standpoint to analogize splitters to DSLAMs.¹¹⁹ As noted above, a splitter is a passive device necessary to access both the voice and data portions of the loop in order to provide an end use customer with both voice and xDSL service. By contrast, a DSLAM is used primarily for the routing and packetizing of data.¹²⁰ The Arbitrators note that adding a splitter to the UNE-loop is no different than adding a circuit-enhancing device to the loop at the central office. As AT&T stated in the hearing, when SWBT is conditioning a loop to minimize loss, i.e., 8 db to 5 db, SWBT disconnects the cross-connect between the loop and port and inserts an enhancer, similar to a splitter.¹²¹ As AT&T witness Steven Turner testified:

It is indisputable that bridge taps are routinely installed in the ILEC's loop plant, and that the FCC has expressly recognized the right of a purchaser of a loop element to insist that bridged taps be removed, even where the ILEC does not

¹¹⁶ *UNE Remand Order* at para. 175.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ The FCC is currently addressing the issue of whether equipment that is multifunctional (i.e. used for both voice and data) should be included in the definition of a loop. Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket NO. 96-98*, at para. 122, CC Docket No. 98-147 and CC Docket No. 96098 (Rel. Aug. 10, 2000).

¹²⁰ *UNE Remand Order* at paras. 303-04.

¹²¹ Arbitration Hearing Tr. at 334-35 (Aug. 1, 2000).

ordinarily perform such removals for itself, because it is not providing advanced services to those customers. It is likewise indisputable that load coils – which in fact are nothing but low-pass filters – may be part of a loop, and the FCC has expressly recognized the right of a purchaser of a loop element to insist that load coils be removed.¹²²

In Texas, SWBT has voluntarily agreed to provide data CLECs with a splitter when SWBT is the voice provider,¹²³ a situation known as line sharing.¹²⁴ A data CLEC is, therefore, not required to collocate in order to access a splitter,¹²⁵ although a data CLEC would need to collocate its DSLAM on SWBT's premises.¹²⁶ Instead, SWBT places the splitter in a common area constructed by SWBT.¹²⁷ The data CLEC can access the common area to do tests.¹²⁸

The Arbitrators find that based upon the evidence in this record there is no technical distinction between line sharing and line splitting, as the splitter provides access to the same functionality of the loop in both contexts. The Arbitrators agree with AT&T that it is discriminatory for SWBT to provide the splitter in a line sharing context while not providing the splitter in a line splitting context. The Arbitrators believe that SWBT's policy will have the effect of severely limiting the number of data CLECs with which a UNE-P provider can partner in order to offer advanced services. Many data CLECs are relying upon SWBT to provide the splitter.¹²⁹ Although SWBT indicated in the hearing that some data CLECs are providing their own splitters, SWBT could not substantiate the number or percentage of data CLECs providing their own splitters.¹³⁰ Given the demand for advanced services, this could prove to be crippling

¹²² AT&T Ex. 11, Direct Testimony of Steven E. Turner at 16.

¹²³ Arbitration Hearing Tr. at 286 (Aug. 1, 2000).

¹²⁴ *Id.* at 253-54. See also, *Petition of IP Communications Corporation to Establish Expedited Public Utility Commission of Texas Oversight Concerning Line Sharing Issues*, Docket No. 22168 and *Petition of Covad Communications Company and Rhythms Links, Inc. Against Southwestern Bell Telephone Company and GTE Southwest Inc. for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing*, Docket No. 22469, Interim Arbitration Award (June 6, 2000).

¹²⁵ Arbitration Hearing Tr. at 350 (Aug. 1, 2000).

¹²⁶ *Id.*

¹²⁷ *Id.* at 354.

¹²⁸ *Id.* at 354-55.

¹²⁹ *Id.* at 352-53.

¹³⁰ *Id.* at 351-52.

from a competitive standpoint, especially if ASI, SWBT's DSL affiliate, has no obligation to continue providing advanced services to a customer who is using AT&T as its voice provider.

As noted above, the Arbitrators in this case find that SWBT is required to provide the splitter in order to allow AT&T to access the full functionality of the loop. Although not dispositive in this case, the Arbitrators also believe that this decision will promote more rapid deployment of advanced services to a broader cross section of customers, as required by Section 706 of the FTA. The evidence in this case shows that SWBT's proposal requiring UNE-P CLECs to collocate in order to gain access to the high frequency portion of the loop, (1) unnecessarily increases the degree of coordination and manual work and accordingly increases both the likelihood and duration of service interruptions; (2) introduces unnecessary delays for space application, collocation construction, and splitter installation; and (3) unnecessarily wastes central office and frame space.¹³¹ Thus, the Arbitrators believe that SWBT's proposal significantly prohibits UNE-P providers from achieving commercial volume, not only because collocation is required but also because SWBT does not propose to prewire, or allow the CLEC to prewire, from the intermediate distribution frame (IDF) to the CLEC's splitter. Arbitrators presented with a scenario where the CLEC is not required to collocate and the ILEC is offering to prewire (or allow the CLEC to prewire) from the IDF to the CLEC splitter may very well reach a different conclusion than the Arbitrators reached in this case.

The Arbitrators further note that data CLECs that are exempt from 911 obligations under the Texas commission's waiver granted during certification will be required to maintain cross-connects for the voice portion if SWBT's proposal requiring the UNE-P provider to collocate its splitters at DLEC's collocation cage is adopted. From a public policy standpoint, the Arbitrators find this outcome problematic.

¹³¹ AT&T Ex. 11, Direct Testimony of Steven E. Turner at 22.

SIGNED AT AUSTIN, TEXAS THE 27th day of September 2000.

PUBLIC UTILITY COMMISSION OF TEXAS

DONNA L. NELSON
ARBITRATOR

NARA V. SRINIVASA
ARBITRATOR

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Docket No. 971-198T - Workshop

* * *

IN THE MATTER OF THE INVESTIGATION OF US WEST
COMMUNICATIONS, INC.'S COMPLIANCE WITH SS 271001
OF THE TELECOMMUNICATIONS ACT OF 1994

Technical Workshop 5 was held at 8:40 a.m., May 21,
2001, at 3898 Wadsworth Boulevard, Lakewood, Colorado,
before Facilitators Hagood Bellinger and John Schultz.

APPEARANCES

(As noted in the transcript.)

1 MR. BELLINGER: All right. Any comments
2 by CLECs?

3 MR. WILSON: Two comments from AT&T.
4 AT&T feels that Qwest should provide line-at-a-time
5 splitters when Qwest provides splitters to itself that
6 are not integrated with the DSLAM. And I understand,
7 now, from more discussion on the particular splitters
8 and DSLAMs that Qwest uses, that while the splitters
9 are not built onto the same board as the DSLAM, they
10 are hard-wired to the DSLAM in Qwest's implementation.
11 at least that was the representation that Mr. Orrel
12 made in Arizona.

13 But, be that as it may, AT&T still feels
14 that the SGAT should allow CLECs to order splitters a
15 line at a time when splitters are provisioned by Qwest
16 such that they would need to do jumpering themselves in
17 order to access the splitters.

18 MR. HUBBARD: I can respond to that. On
19 our D-SLAMs and our splitters, they are
20 amphenol-connected to each other, on the back plain of
21 both the DSLAM and the splitters. There is no wire
22 connection. I went out and looked at a bunch of them
23 since we have been in Arizona. So, there is absolutely
24 no means to access those. They are all
25 amphenol-connected. They are not hard-wired, as

1 Mr. Orrel -- or wire-wrapped, as we talked about.

2 MR. WILSON: Okay. So it's
3 connecterized.

4 MR. HUBBARD: Connectorized.

5 MR. WILSON: There would be like a shelf.
6 Splitters would be connecterized to the DSLAM. Is that
7 what you are saying?

8 MR. HUBBARD: Yes. On a one-to-one
9 basis, yes.

10 MR. WILSON: Like, you mean, like a shelf
11 of splitters to a DSLAM or individual splitters?

12 MR. HUBBARD: No. Shelf.

13 MR. WILSON: Shelf. So, do you know how
14 many splitters are on the shelf?

15 MR. HUBBARD: I didn't count them when I
16 was out there. I don't -- no, I don't. My
17 understanding is they are on a one-to-one basis for
18 one -- basically one port of this DSLAM, there's one
19 splitter assigned. There's no extra ones.

20 MR. BELLINGER: Covad, do you have any
21 comments on that?

22 MR. ZULEVIC: I have a question about

23 your proposed architecture for remote deployment of
24 DSLAMs.

25 MR. BELLINGER: Is that part of this?

1 on.

2 MR. WILSON: I have one more --

3 MR. BELLINGER: Okay.

4 MR. WILSON: -- technical comment. I

5 guess, again, my new understanding of how the Qwest

6 splitters and DSLAMs are configured, it would be my

7 opinion that they are indeed outboard from the DSLAM.

8 The fact that they are connecterized is not a technical

9 impediment. It will be easy to break out the splitters

10 by merely attaching an amphenol plug to the splitter

11 shelf, and running it to the cross-connect, and

12 breaking it out, making splitters available line at a

13 time.

14 MR. BELLINGER: Okay.

15 MR. ZULEVIC: If I can just also briefly

16 add to this. I totally agree with what Ken just said.

17 It's my understanding of the Cisco 6100 platform, it

18 gives you that flexibility in that you can offer

19 different flavors of DSL off of that same basic

20 equipment, depending on what types of cards, and so

21 forth, you put in. And that if you're offering the

22 aDSL type of product, then you would order enough of

23 the shelves of the splitters to be able to accommodate

24 what you are offering.

25 So, I would also like to say that the

1 splitters that we currently have in place, upon a
2 virtual basis, with Qwest, are also connecterized using
3 the same type of amphenol connector that you just
4 characterized your splitters as requiring. So, I would
5 totally agree that that would definitely look like an
6 outboard splitter application, even though you may
7 dedicate those on port -- on amphenol at a time, or
8 shelf at a time, directly to your DSL products.

9 MR. BELLINGER: Okay. I think we've got
10 it on record.

11 MS. QUINTANA: Just a question. There
12 seems to be a second part of this Line-Splitting-1
13 issue on the COIL; that's the location of the splitter
14 in relation to the MDF was raised by WorldCom, it says.
15 Should we make that a separate issue? It doesn't seem
16 to be part of this impasse issue, and is it still an
17 issue?

18 MR. DIXON: Yes. That's part of the
19 testimony. This is Tom Dixon. That's part of the
20 testimony to which I was referring. And I don't
21 believe we're alone. I just think --

22 MR. BELLINGER: Want to make that a
23 separate --

24 MR. DIXON: I don't know. I don't care
25 if it's separate or not. I would be happy to, for your

1 MR. ZULEVIC: Well, it is, in that we're
2 talking about splitters, and whether or not they should
3 be provided on a port-at-a-time basis. Do those
4 splitters that you will be deploying, are they outboard
5 type of splitters? Are they also, as you represented,
6 your CO-based DSLAM, an integrated type or hard-wired
7 splitter?

8 MR. HUBBARD: Mike, I haven't seen any of
9 the actual installs in the field. The pictures I have
10 seen, and the drawings I have seen, they are
11 amphenol-connected together, the same as in the Central
12 Office. That's my understanding of it. There's no
13 actual appearance of wires.

14 MR. ZULEVIC: Now, I would just like to
15 add that, to the extent that Qwest does deploy outboard
16 type of splitters, we would agree with the AT&T
17 position that we should be able to have access to those
18 on a port-at-a-time basis, whether they be located in
19 the Central Office or whether they are at the remote

20 terminal.

21 MR. BELLINGER: But the issue is -- let
22 me clarify this issue. You don't provide outboard
23 splitters, am I right?

24 MR. HUBBARD: Yes. That is our
25 contention. We do not provide outboard splitters. All

1 of the splitters are on a one-to-one basis. One port
2 DSLAM for one splitter. We don't have extras in there.

3 MR. BELLINGER: Okay.

4 MR. ZULEVIC: Well, so we're saying that
5 you don't have the ability to provide them technically
6 on a one-at-a-time basis because of the way it's
7 configured.

8 MR. HUBBARD: That is correct.

9 MR. WILSON: But theoretically you could
10 provide a shelf at a time if it's connectorized.

11 MR. HUBBARD: You could do anything
12 theoretically. I mean --

13 MR. WILSON: Well, I mean practically. I
14 mean, you could lease the existing splitters you have a
15 shelf at a time if the CLEC had a connector of the same
16 type.

17 MR. HUBBARD: Theoretically, you would
18 strand any availability out of the DSLAM to provide
19 service if you did that.

20 MR. WILSON: Well, if you provision a
21 shelf more than you would -- I mean, it's just --
22 that's just a provisioning question. In other words,
23 if you don't order more shelves of DSLAMs, then that's
24 true. If you order another shelf of splitters, that's
25 not true.

1 MR. HUBBARD: I guess that's a true
2 statement, Ken. I don't know. Do you have a question
3 in there?

4 MR. WILSON: No. I was just, given that
5 we initially -- my initial understanding was that the
6 splitter was built onto the same board. Now, that's
7 not true. We have come to where the splitters are on
8 one shelf and DSLAMs on another shelf, and they are
9 connecterized between the two. It leads to maybe not a
10 port at a time, but a shelf at a time, such that if a
11 CLEC had enough volume -- say if there are 24 splitters
12 on a shelf, if you are running 24 orders a day, for
13 instance, it would be a shelf of splitters a day.

14 MR. BELLINGER: Okay. I think we are
15 pretty much at impasse. I don't know if there's
16 anything to add.

17 MS. DOBERNECK: Actually, I just -- I
18 don't have a question. I had one thing to add.
19 Getting back to this outboard splitter, the
20 unintegrated DSLAM splitter. And the reason it
21 matters, from our perspective, is that there is a
22 recent order that came out of the Texas PUC, in the
23 SWBT/AT&T arbitration, in which the commission made
24 clear that where you have a standalone splitter or
25 splitter that is not integrated with the DSLAM, that

DROP AND BLOCK WIRE—DISCONTINUANCE OF SERVICE

1. GENERAL

1.01 This section outlines methods for disposing of drop wire at customer building and pole on discontinuance of service.

2. STATION PROTECTOR OR CONNECTING BLOCK LEFT IN PLACE

2.01 Where station protector or connecting block is not to be removed, do not disconnect the outside drop at the customer building.

3. STATION PROTECTOR OR CONNECTING BLOCK REMOVED AND DROP WIRE LEFT IN PLACE

3.01 Where drop loop terminates on station protector or connecting block inside the subscriber building, disconnect the drop at station protector or connecting block and pull it out of the building entrance hole. Secure wire as shown in Fig. 1.

3.02 Where drop wire is terminated in a station protector located on outside of building proceed as follows:

- (1) Disconnect drop, ground, and station wires at the protector.
- (2) Tape and secure wire as shown in (Fig. 2).

3.03 Where station protector or connecting block is used as a bridging point for two or more party-line stations and one station is to be disconnected, disconnect only the associated station wiring at the bridging point. Secure the free end of wire in one of the following ways:

- (a) Lay free end of wire back on itself about the nearest ring and secure to supporting wire with friction tape.
- (b) Tape the free end of wire with friction tape and secure with inside wiring nails or staples. If all the party-line stations are to be disconnected

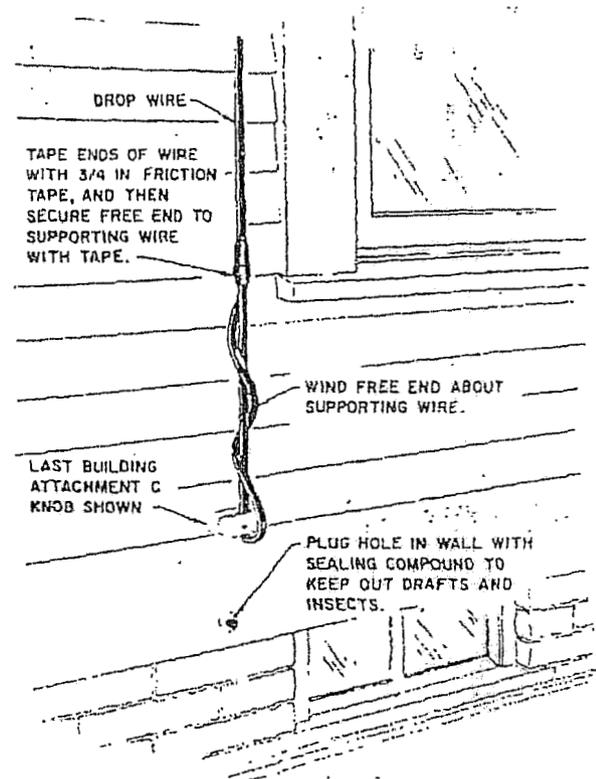


Fig. 1—Terminating Drop Wire When Protector is Removed

at the same time, dispose of the drop loop in the manner outlined in 3.01 and 3.02 for single station installations.

4. STATION EQUIPMENT TO BE REMOVED BUT NO ACCESS TO STATION PROTECTOR OR CONNECTING BLOCK

4.01 Cut drop wire at entrance hole. Serve and tape the free end as shown in Fig. 1.

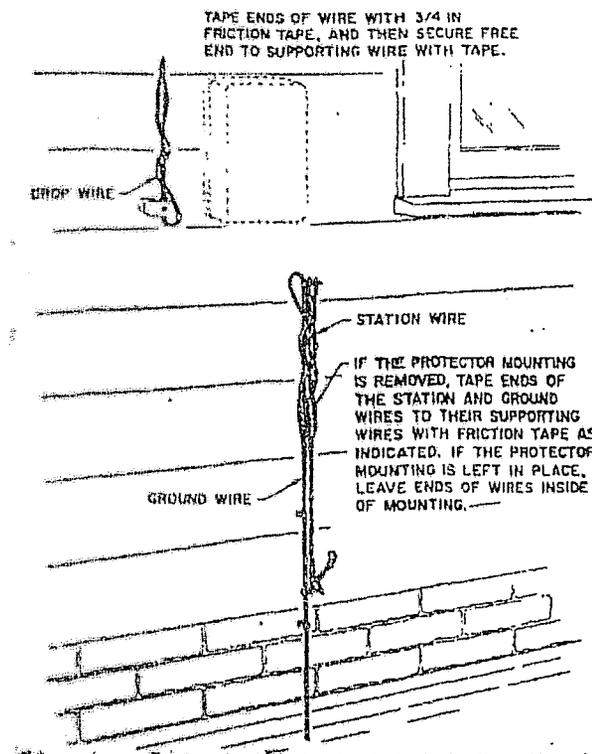


Fig. 2—Terminating Drop and Station Wiring When Protector is Removed

5. DROP AND BLOCK WIRE DISCONNECTS AT POLE

5.01 Suitable tags, locally provided, are wrapped around the ends of disconnected drops as a means of identifying each drop in connection with plant orders to restore service. The tag should indicate the address of the customer served and other pertinent information as determined by local service practices.

5.02 The top nuts of the binding posts which are vacated by disconnected drops, should be turned down fingertight.

5.03 Where a cable pair becomes spare on disconnecting a drop and it appears in a cross connecting terminal in the cable run, the related cross connection should be removed in accordance with local instructions.

6. PLACING B DROP WIRE CAP ON END OF DISCONNECTED DROP WIRE

6.01 Fig. 3 shows the procedure for placing the B Drop Wire Cap.

7. DISCONNECTING DROP WIRE AT DISTRIBUTION CABLE TERMINALS

7.01 *Pole Mounted Terminals:* Dispose of connected drop as follows:

- (1) Pull the free end of wire out of the terminal.
- (2) Lay wire back on itself at the first ring below the terminal, tag and cap the free end and then secure the free end to the supporting part of the wire (Fig. 4).

7.02 *Strand and Sheath Mounted Terminals:* Dispose of disconnected wire at 49-, N-, and T-type terminals as follows:

- (1) Pull free end of wire out of the terminal.
- (2) Lay wire back on itself at the wiring ring, which will allow the free end to fall outside the terminal wiring rings.
- (3) Tag and cap the wire end and secure it to the supporting part of the wire as shown in Fig. 5.

7.03 *Wall Mounted Terminals:*

- (a) Vertically Mounted Terminals: Dispose of disconnected drop in the manner described in 7.01 for pole-mounted terminals.
- (b) Horizontally Mounted Terminals: Dispose of disconnected drops in the manner described in 7.02 for strand mounted terminals. The completed operation is shown in Fig. 6.

8. DISCONNECTING DROP WIRE AT WIRE TERMINALS

8.01 *Party Line Taps in Drop Wire Runs Along a Lead:* Pull the free end of wire out of the wire terminal, tag and cap it and secure to the supporting part of the drop as shown in Fig. 7. If the party line extending beyond the wire terminal pole is disconnected, treat its free end at

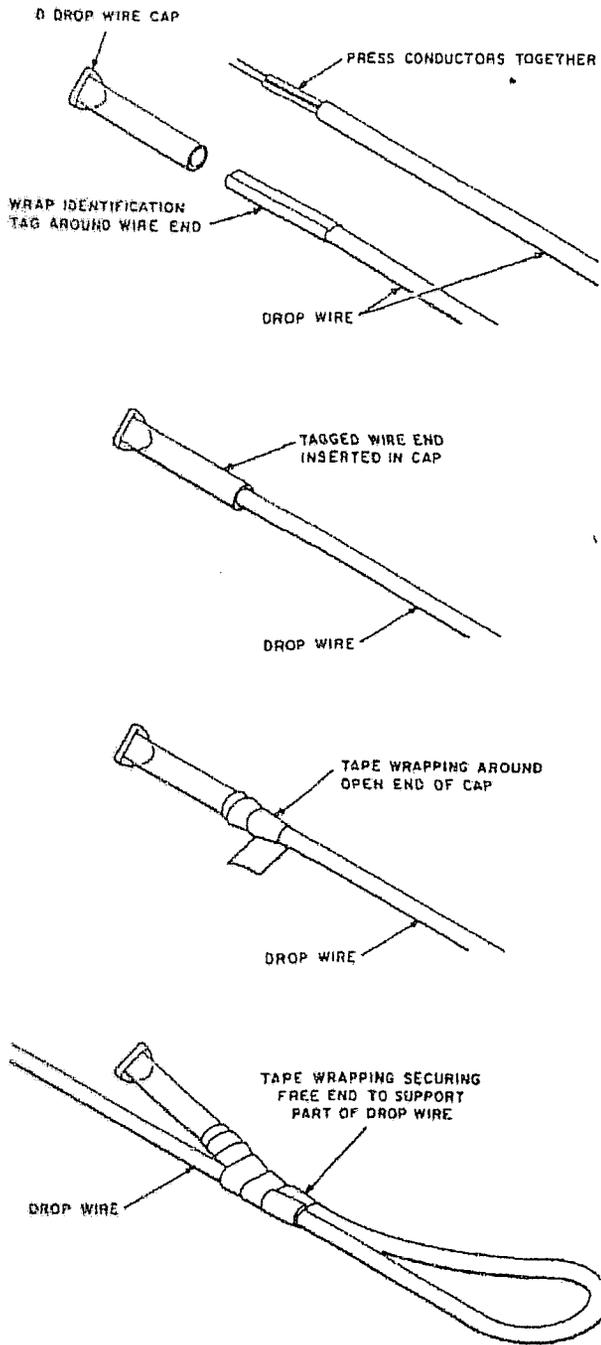


Fig. 3—Disposition of Disconnected Drop Wire

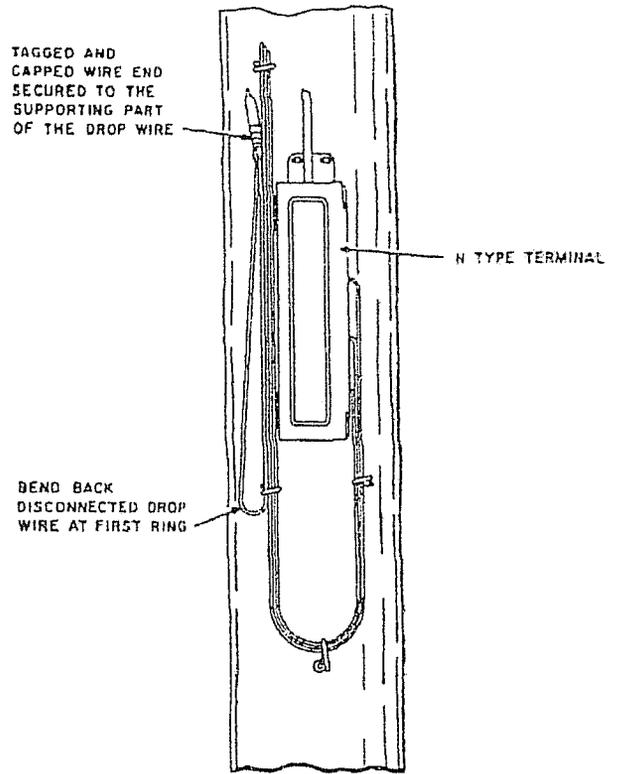


Fig. 4—N-Type Terminal, Pole Mounted

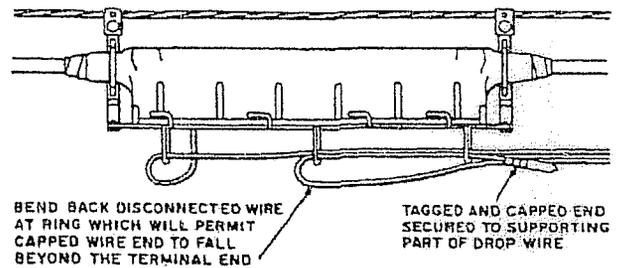


Fig. 5—49-Type Terminal, Strand Mounted

this point the same as for the intermediate party line.

8.02 *Drops from Open Wire Lines:* Pull disconnected drop from the wire terminal mounted on the crossarm or pole. Lay wire back on itself at drive ring located below the wire terminal, tag and cap the free end and secure it

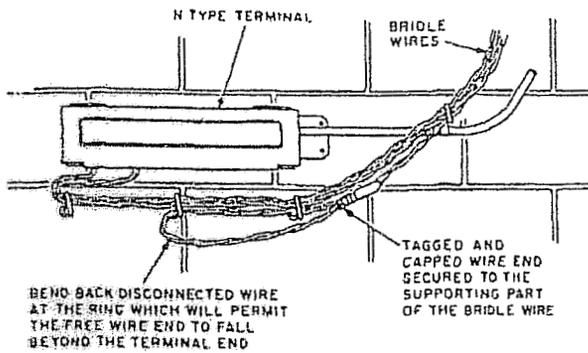


Fig. 6—N-Type Terminal Wall Mounted

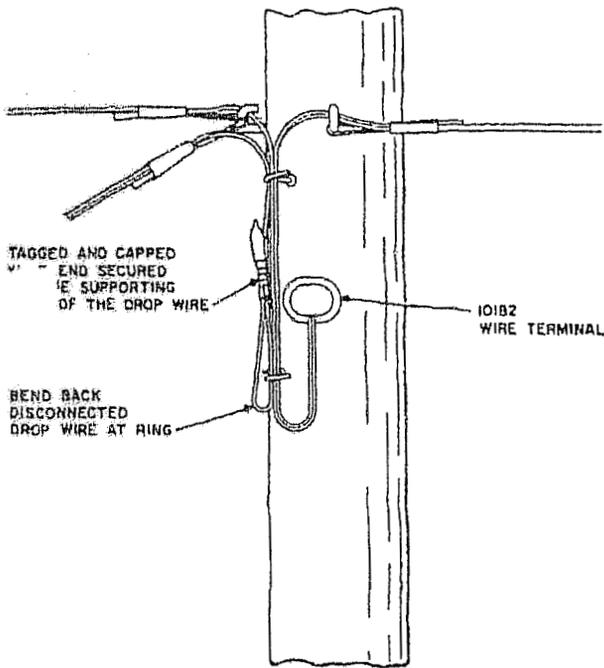


Fig. 7—101-Type Wire Terminal, Pole Mounted

to the supporting part of the drop as shown in Fig 8.

9. DISCONNECTING DROP WIRE AT 116-TYPE PROTECTOR

9.01 Where, for purposes of protection, a drop wire is connected *through* a 116-type protector to a cable distribution terminal, disconnect the

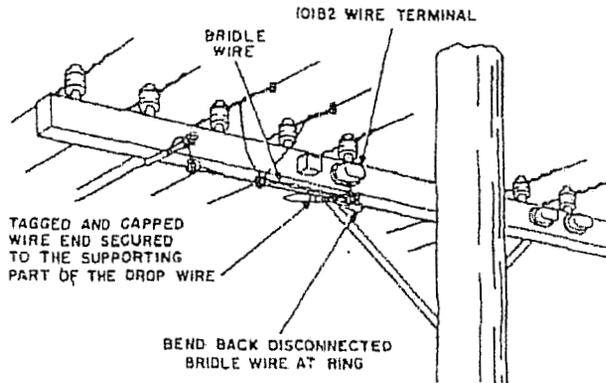


Fig. 8—Wire Terminal Mounted on Crossarm

bridle cross connection wire at the cable terminal. Pull the free end of the bridle wire out of the terminal and tag, cap, and support it as described in Part 7.

10. DISCONNECTING DROP WIRE AT CROSS CONNECTING TERMINALS

10.01 Disconnect the drop wire and tag and cap the end. Bend the wire back on itself and secure the free end *inside* the terminal.

11. TAPING END OF DISCONNECTED DROP WIRE

11.01 Where B drop wire caps are not available, wire ends may be taped with friction tape.

National Electrical Safety Code®

Secretariat

Institute of Electrical and Electronics Engineers, Inc.

Approved 15 March 1996

Institute of Electrical and Electronics Engineers, Inc.

Approved 6 June 1996

American National Standards Institute

1997 Edition

Abstract: This standard covers basic provisions for safeguarding of persons from hazards arising from the installation, operation, or maintenance of 1) conductors and equipment in electric supply stations, and 2) overhead and underground electric supply and communication lines. It also includes work rules for the construction, maintenance, and operation of electric supply and communication lines and equipment.

The standard is applicable to the systems and equipment operated by utilities, or similar systems and equipment, of an industrial establishment or complex under the control of qualified persons.

This standard consists of the introduction, definitions, grounding rules, list of referenced and bibliographic documents, and Parts 1, 2, 3, and 4 of the 1997 Edition of the National Electrical Safety Code.

Keywords: communications industry safety; construction of communication lines; construction of electric supply lines; electric supply stations; electric utility stations; electrical safety; high-voltage safety; operation of communications systems; operation of electric supply systems; power station equipment; power station safety; public utility safety; safety work rules; underground communication line safety; underground electric line safety

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Public authorities are granted permission to republish the material herein in laws, regulations, administrative orders, ordinances or similar documents. No other party may reproduce in any form, in an electronic retrieval system or otherwise, any portion of this document, without the prior written permission of the publisher.

B. Conductive Parts to Be Grounded

Cable sheaths and shields (except conductor shields), equipment frames and cases (including pad-mounted devices), and conductive lighting poles shall be effectively grounded. Conductive-material ducts and riser guards that enclose electric supply lines shall be effectively grounded.

EXCEPTION: This rule does not apply to parts that are 2.45 m (8 ft) or more above readily accessible surfaces or are otherwise isolated or guarded.

C. Circuits

1. Neutrals

Primary neutrals, secondary and service neutrals, and common neutrals shall be effectively grounded as specified in Rule 314A.

EXCEPTION: Circuits designed for ground-fault detection and impedance current-limiting devices.

2. Other Conductors

Conductors, other than neutral conductors, that are intentionally grounded, shall be effectively grounded as specified in Rule 314A.

3. Surge Arresters

Surge arresters shall be effectively grounded as specified in Rule 314A.

4. Use of Earth as Part of Circuit

- a. Supply circuits shall not be designed to use the earth normally as the sole conductor for any part of the circuit.
- b. Monopolar operation of a bipolar HVDC system is permissible for emergencies and limited periods for maintenance.

315. Communications Protective Requirements

A. Where Required

Where communications apparatus is handled by other than qualified persons, it shall be protected by one or more of the means listed in Rule 315B if such apparatus is permanently connected to lines subject to any of the following:

1. Lightning
2. Contact with supply conductors whose voltage exceeds 300 V
3. Transient rise in ground potential exceeding 300 V
4. Steady-state induced voltage of a level that may cause personal injury

NOTE: When communication cables will be in the vicinity of supply stations where large ground currents may flow, the effect of these currents on communication circuits should be evaluated.

B. Means of Protection

Where communications apparatus is required to be protected under Rule 315A, protective means adequate to withstand the voltage expected to be impressed shall be provided by insulation, protected where necessary by surge arresters. Severe conditions may require the use of additional devices such as auxiliary arresters, drainage coils, neutralizing transformers, or isolating devices.

316. Induced Voltage

Rules covering supply-line influence and communication-line susceptibility have not been detailed in this code. Cooperative procedures are recommended to minimize steady-state voltages induced from proximate facilities. Therefore, reasonable advance notice should be given to owners or operators of other known proximate facilities that may be adversely affected by new construction or changes in existing facilities.

National Electrical Code®**1999 Edition**

This edition of NFPA 70, *National Electrical Code*, was prepared by the National Electrical Code Committee and acted on by the National Fire Protection Association, Inc., at its Annual Meeting held May 18-21, 1998, in Cincinnati, OH. It was issued by the Standards Council on July 16, 1998, with an effective date of August 5, 1998, and supersedes all previous editions.

This edition of NFPA 70 was approved as an American National Standard on August 6, 1998.

History and Development of the *National Electrical Code*

The National Fire Protection Association has acted as sponsor of the *National Electrical Code* since 1911. The original *Code* document was developed in 1897 as a result of the united efforts of various insurance, electrical, architectural, and allied interests.

In accordance with the provisions of the NFPA Regulations Governing Committee Projects, a National Electrical Code Committee Report on Proposals containing proposed amendments to the 1996 *National Electrical Code* was published by the NFPA in June 1997. This report recorded the actions of the various Code-Making Panels and the Correlating Committee of the National Electrical Code Committee on each proposal that had been made to revise the 1996 *Code*. The report was circulated to all members of the National Electrical Code Committee and was made available to other interested NFPA members and to the public for review and comment. Following the close of the public comment period, the Code-Making Panels met, acted on each comment, and reported their action to the Correlating Committee. The NFPA published the National Electrical Code Committee Report on Comments in April 1998, which recorded the actions of the Code-Making Panels and the Correlating Committee on each public comment to the National Electrical Code Committee Report on Proposals. The National Electrical Code Committee Report on Proposals and the National Electrical Code Committee Report on Comments were presented to the 1998 NFPA Annual Meeting for adoption.

NFPA has an Electrical Section that provides particular opportunity for NFPA members interested in electrical safety to become better informed and to contribute to the development of the *National Electrical Code* and other NFPA electrical standards. Each of the Code-Making Panels and the Chairman of the Correlating Committee reported their recommendations to meetings of the Electrical Section at the 1998 NFPA Annual Meeting. The Electrical Section thus had opportunity to discuss and review the report of the National Electrical Code Committee prior to the adoption of this edition of the *Code* by the Association.

This 1999 edition supersedes all other previous editions, supplements, and printings dated 1897, 1899, 1901, 1903, 1904, 1905, 1907, 1909, 1911, 1913, 1915, 1918, 1920, 1923, 1925, 1926, 1928, 1930, 1931, 1933, 1935, 1937, 1940, 1942, 1943, 1947, 1949, 1951, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1962, 1965, 1968, 1971, 1975, 1978, 1981, 1984, 1987, 1990, 1993, and 1996.

Changes in this 1999 edition of the *National Electrical Code* (as compared with the 1996 edition) are indicated by vertical lines in the margin.

The location (in the 1996 edition) of material not appearing in the 1999 edition, and not identified as a change by a vertical line, is identified by a bullet (*) in the margin. Changes in section and table numbers are not identified.

Material identified by the superscript letter "x" includes text extracted from other NFPA documents as identified in Appendix A.

This *Code* is purely advisory as far as NFPA and ANSI are concerned, but is offered for use in law and for regulatory purposes in the interest of life and property protection. Anyone noticing any errors should notify the Secretary of the National Electrical Code Committee at the NFPA Executive Office.

as provided in Section 800-30(a)(1), or (4) meet the requirements of Section 800-12(a) and are used to extend circuits to a building from a cable having a grounded metallic sheath. Raceways or bushings shall slope upward from the outside or, where this cannot be done, drip loops shall be formed in the communications wires and cables immediately before they enter the building.

Raceways shall be equipped with an approved service head. More than one communications wire and cable shall be permitted to enter through a single raceway or bushing. Conduits or other metal raceways located ahead of the primary protector shall be grounded.

800-13. Lightning Conductors. Where practicable, a separation of at least 6 ft (1.83 m) shall be maintained between communications wires and cables on buildings and lightning conductors.

C. Protection

800-30. Protective Devices.

(a) **Application.** A listed primary protector shall be provided on each circuit run partly or entirely in aerial wire or aerial cable not confined within a block. Also, a listed primary protector shall be provided on each circuit, aerial or underground, located within the block containing the building served so as to be exposed to accidental contact with electric light or power conductors operating at over 300 volts to ground. In addition, where there exists a lightning exposure, each interbuilding circuit on a premises shall be protected by a listed primary protector at each end of the interbuilding circuit. Installation of primary protectors shall also comply with Section 110-3(b).

FPN No. 1. On a circuit not exposed to accidental contact with power conductors, providing a listed primary protector in accordance with this article will help protect against other hazards, such as lightning and above-normal voltages induced by fault currents on power circuits in proximity to the communications circuit.

FPN No. 2. Interbuilding circuits are considered to have a lightning exposure unless one or more of the following conditions exist.

- (1) Circuits in large metropolitan areas where buildings are close together and sufficiently high to intercept lightning.
- (2) Interbuilding cable runs of 140 ft (42.7 m) or less directly buried or in underground conduit, where a continuous metallic cable shield or a continuous metallic conduit containing the cable is bonded to each building grounding electrode system.
- (3) Areas having an average of five or fewer thunderstorm days per year and earth resistivity of less than 100 ohm-meters. Such areas are found along the Pacific coast.

(1) **Fuseless Primary Protectors.** Fuseless primary protectors shall be permitted under any of the conditions:

- (a) Where conductors enter a building through grounded metallic sheath member(s) and if fuses in the cable safely fuse on all currents greater than the current-carrying capacity of the primary protector grounding conductor.
- (b) Where insulated conductors in accordance with Section 800-12(a) are used to extend circuits to a building from a cable with an effectively grounded metallic sheath member(s) and if the conductors in the cable safely fuse, or the connections between the insulated conductors and the exposed plant, safely fuse on all currents greater than the current-carrying capacity of the primary protector, or the associated insulated conductors.
- (c) Where insulated conductors in accordance with Section 800-12(a) or (b) are used to extend circuits from other than a cable with a metallic sheath if (1) the primary protector is listed for this use and (2) the connections of the insulated conductors to the exposed plant or the conductors of the exposed plant safely fuse on all currents greater than the current-carrying capacity of the primary protector, or the insulated conductors and of the primary protector grounding conductor.
- (d) Where insulated conductors in accordance with Section 800-12(a) are used to extend circuits aerially from an unexposed buried or underground cable.
- (e) Where insulated conductors in accordance with Section 800-12(a) are used to extend circuits to a building from a cable with an effectively grounded metallic sheath member(s) and if (1) the combination of the primary protector and insulated conductors is listed for this use and (2) the insulated conductors safely fuse on all currents greater than the current-carrying capacity of the primary protector and of the primary protector grounding conductor.

(2) **Fused Primary Protectors.** Where they are listed under Sections 800-30(a)(1)(a) through (1)(e), fused-type primary protectors shall be used. Primary protectors shall consist of an arrester between each line conductor and ground, and an appropriate arrangement. Primary protector terminals shall be used to indicate line, instrument, and ground, as follows:

(b) **Location.** The primary protector shall be installed on, or immediately adjacent to the structure served and as close as practicable to the point where exposed conductors enter or attach.

Qwest Release Notification Form

Log # PCRN051601-1Status: New - To be Industry ReviewedSubmitted By: Lorna DuboseDate Submitted: 5/15/01Contact Information: Lorna Dubose, LNP Product Manager, ldubose@qwest.com, 303-896-5238 or Susie Bliss, Service Delivery Director; sbliiss@qwest.com

Name, title, email, phone #

Title of Notification:Local Number Portability Process Changes**Area of Release Notification:** Please check mark as appropriate and fill out the appropriate section below

X System X Product X Process

Communicated To:Date Communicated: 5/16/01Please check mark as appropriate

- | | | |
|--|---|--|
| <input type="checkbox"/> Co-Provider Industry Team | <input type="checkbox"/> IMA EDI current users or with an agreed upon project work plan | <input type="checkbox"/> IMA CD Disclosure Document Recipients |
| <input type="checkbox"/> Public | <input type="checkbox"/> IMA GUI current and potential new users | |

Type of Notification: Please check mark as appropriate

- | | |
|---|--|
| X Target Release Date May 15, 2001 and June 2001 | <input type="checkbox"/> Disclosure Document Addendum |
| <input type="checkbox"/> Target Release Life Cycle | <input type="checkbox"/> Training Schedule |
| <input type="checkbox"/> Co-Provider Change Request Options for a Release | <input type="checkbox"/> Release Notes Description |
| <input type="checkbox"/> Release Baseline Candidates with Descriptions | <input type="checkbox"/> Release Notes |
| <input type="checkbox"/> Draft Developer Worksheets | <input type="checkbox"/> Point Release Notes Description |
| <input type="checkbox"/> Disclosure Document | <input type="checkbox"/> Point Release Notes |
| <input type="checkbox"/> Recertification Notices | <input type="checkbox"/> System Available Times |
| <input type="checkbox"/> New Product | <input type="checkbox"/> Product Retirement |
| X Product Enhancement | |
| <input type="checkbox"/> Other | |

Please describe

Description of Notification: (e.g., mode/method of message and timing of delivery)**Local Number Portability - Change in Offering****Product Offering**

The Local Number Portability product has implemented changes to the following:

- LNP Service Intervals
- Delay Disconnects
- LSR Reject Reasons

Effective DateNew LNP Service Intervals are effective **May 15, 2001**Delay Disconnects and LSR Reject Reasons process changes are effective **June 1, 2001****Process Description****Standard Due Date Intervals:****Change From:**

Service Intervals for LNP are described below. Orders received after 3:00 p.m. (Mountain Time) are considered the next business day. The following service intervals have been established for Local Number Portability:

<u>Product Type</u>	<u>Quantity</u>	<u>Interval</u>
(IFR/IFB)	1-20 lines	4 business days
	21-50 lines	5 business days
	51 or more	ICB
Complex (PBX) Trunks/ISDN	1-8 lines	5 business days
	9-16 lines	6 business days
	17-24 lines	7 business days
	25 or more lines/trunks	ICB
Centrex	1-10 lines	5 business days
	11-20 lines	10 business days
	21 or more lines or trunks	ICB

Change To:

Service Intervals for LNP are described below. These intervals include the time for Firm Order Confirmation (FOC). Orders received after 3:00 p.m. (Mountain Time) are considered the next business day. The following service intervals have been established for Local Number Portability

<u>Product Type</u>	<u>Quantity of Telephone Numbers to Port</u>	<u>Interval*</u>
Simple (IFR/IFB)	1-5	3 Business days (includes FOC 24 hr. interval)
	51 or more	4 business days (includes FOC 24 hr. interval Project Basis)
Complex (PBX, trunks ISDN, Centrex)	1-25	5 business days (includes FOC 24 hr. interval)
	26 or more	Project Basis

** Intervals for LNP without unbundled loops*

(Standard Due Date Intervals: cont.)

For the Standard Interval Guide, please see the guidelines on the wholesale web site located at:
<http://www.qwest.com/wholesale/guides/sig/index.html>

In addition, you will find due date interval guidelines within the LNP Product Catalog found on the wholesale web site at:

<http://www.qwest.com/wholesale>

Navigation path:

- Products and Services
- Interconnection
- Select a Product
- Local Number Portability
- Ordering
- Due Dates Intervals

Delay Disconnects:**Local Number Portability (LNP) Switch Disconnect Timing**

Effective June 1, 2001, Qwest will delay the disconnect of the end user customer's switch translations and unconditional 10 digit trigger to 11:59 p.m. of the business day (Monday – Friday) after the Due Date.

This will allow additional time for the Co-Provider to notify Qwest when delays have been experienced (e.g., the customer is not home).

The Co-Provider should still notify Qwest as soon as possible (within 30-60 minutes) of Due Date changes and cancellations, per the normal notification procedures. For late in the day customer appointments, the Co-Provider should notify Qwest of Due Date changes and cancellations on the Due Date, if it is during the business hours or no later than noon (MT) of the day after the Due Date. Late notifications will require workback procedures for Qwest on the customer's service order which will have already processed through the internal Qwest systems as completed on the due date.

To mitigate the workback activities, Qwest will also be developing the capability to hold both the LNP disconnect service order and the disconnection of the customer's switch translations to the day after the due date. However, this capacity will not be available in the initial phase of the mechanized change.

A phased approach will be used to make the necessary system changes to delay the LNP disconnects to the day after the due date, as follows:

<u>Phase</u>	<u>Process Improvement</u>	<u>Targeted Timeframe</u>
Phase 1	Interim solution will cause April system to Delay the actual disconnect in the switch to 11:59pm of the day after the Due Date.	June 1, 2001
Phase 2	To augment service order systems front end and billing to allow a delayed completion of the disconnect service order following the TN port activity by 24 hours from the original requested due date/frame due time.	August 31, 2001

Local Service Request (LSR) – Service Request Rejection Process

The following outlines the process change Qwest will use for rejection of LNP pending orders.

Qwest will:

Continue to Reject orders that meet the follow criteria:

- Account not in Qwest local exchange territory
- No Valid Interconnection Agreement or tariff
- Customer Carrier Name Abbreviation (CCNA) missing or invalid.
- End User Authorization information missing
- Required forms missing or incomplete
- Wrong forms submitted
- Entries on forms illegible
- Non OBF forms

Cancel the pending Qwest order and process the LSR if the:

- Last name on the account matches the CSR and the address is the same we start processing the LSR.
- CSR has two numbers and LSR ports one of the two numbers and the second number is not addressed. We will make second number BTN.
- Port request fails to address all telephone numbers on account, partial port
- Disconnecting the lines involved and the DDD is before and after the pending order DD
- Changing the line(s) involved and the DDD is before the pending DD
- Number change on the line(s) involved before the pending order DD

Ignore the pending Qwest order and process the LSR if the:

- Disconnecting line(s) not involved and the DDD is after the pending order DD
- Number change on the line(s) not involved, same CSR.

Ignore the pending Qwest order, recap changes that will occur as a result of the pending order and issue port order if the:

- Disconnect line(s) not involved and the DDD is before the pending order DD
- Changing the line(s) involved and the DDD is after the pending order DD.
- Adding a line involved after the pending order DD
- Number change on the line(s) not involved, same CSR after the pending order due date.

Call the co-provider and jointly determine resolution within 4 hours:

- The Last name on the account doesn't match the CSR.
- Some or all telephone numbers on LSR not associated with Account Telephone Number on LSR
- The LSR involves multiple Account Telephone numbers
- The CSR has five numbers and LSR ports main number and the other numbers are not addressed (assigning new BTN). Future IMA edit will not let Co-provider submit LSR without populating NAN field
- Adding a line and the DDD on the LSR is before the pending order DD
- The Number change on the line(s) involved and the DDD is after the pending order DD.
- The Port request fails to address all telephone numbers on account, full disconnect
- T&F of the lines involved both before and after the pending order DD.

Additional Information: (e.g., web sites)

System Release Notification Section

Interfaces Impacted: Please check mark as appropriate

- | | | | |
|--------------------------------|---|--|---|
| <input type="checkbox"/> CTAS | <input checked="" type="checkbox"/> IMA EDI | <input type="checkbox"/> MEDIACC | <input type="checkbox"/> TELIS |
| <input type="checkbox"/> EXACT | <input checked="" type="checkbox"/> IMA GUI | <input checked="" type="checkbox"/> Product Database | <input type="checkbox"/> Wholesale Billing Interfaces |
| <input type="checkbox"/> HEET | <input checked="" type="checkbox"/> X SIG | | |
| | Other _____ | | |

Please describe _____

Product Release Notification Section

Products Impacted: Please check mark all that apply (If "Other" please describe further)

- | | | | | |
|--|--------------------------------------|---|---|---------------------------------|
| <input type="checkbox"/> LIS/Interconnection | <input type="checkbox"/> Collocation | <input type="checkbox"/> UNE | <input type="checkbox"/> Ancillary | <input type="checkbox"/> Resale |
| <input type="checkbox"/> EICT | <input type="checkbox"/> Physical | <input type="checkbox"/> Switching | <input type="checkbox"/> AIN | |
| <input type="checkbox"/> Tandem Trans./TST | <input type="checkbox"/> Virtual | <input type="checkbox"/> Transport (incl EUDIT) | <input type="checkbox"/> DA | |
| <input type="checkbox"/> DTT/Dedicated Transport | <input type="checkbox"/> Adjacent | <input type="checkbox"/> Loop | <input type="checkbox"/> Operation Services | |
| <input type="checkbox"/> Tandem Switching | <input type="checkbox"/> ICDF Collo. | <input type="checkbox"/> UNE -- P | <input checked="" type="checkbox"/> INP/LNP | |
| <input type="checkbox"/> Local Switching | <input type="checkbox"/> Other _____ | <input type="checkbox"/> EEL (UNE-C) | <input type="checkbox"/> Other _____ | |
| <input type="checkbox"/> Other _____ | | <input type="checkbox"/> UDF | | |
| | | <input type="checkbox"/> Other _____ | | |

Process Release Notification Section

Area Impacted: Please check mark all that apply

- Pre-Ordering
- Ordering
- Billing
- Repair
- Other _____

Please Describe _____

Products Impacted: Please check mark as appropriate and list specific products within product group, if applicable

- | | | | |
|---|-------|--|-------|
| <input type="checkbox"/> Centrex | _____ | <input type="checkbox"/> Resale | _____ |
| <input type="checkbox"/> Collocation | _____ | <input type="checkbox"/> SS7 | _____ |
| <input type="checkbox"/> EEL (UNE-C) | _____ | <input type="checkbox"/> Switched Services | _____ |
| <input type="checkbox"/> Enterprise Data Services | _____ | <input type="checkbox"/> UDIT | _____ |

<input type="checkbox"/> LIDB	_____	<input type="checkbox"/> Unbundled Loop	_____
<input type="checkbox"/> LIS	_____	<input type="checkbox"/> UNE-P	_____
X LNP	_____	<input type="checkbox"/> Wireless	_____
<input type="checkbox"/> Private Line	_____	<input type="checkbox"/> Other	_____
Please describe	Please describe		Please describe

This Section to be Completed by Qwest CICMP Manager

Status, Evaluation and Implementation Comments:

5/15/01 – RN received from Lorna Dubose
 5/15/01 – Status changed to New – To be Validated
 5/16/01 – Status changed to New – To be Industry Reviewed
 5/16/01 – Updated RN sent to the CICMP Team

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

MAR 19 2002

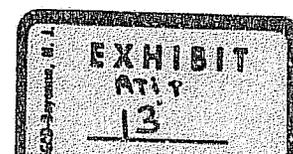
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC 01-165

AFFIDAVIT
OF
KENNETH L. WILSON
REGARDING
CHECKLIST ITEM 3 - RIGHTS-OF-WAY AND
CHECKLIST ITEM 7 - 911/E911
ON BEHALF OF
AT&T

March 18, 2002



A. INTRODUCTION AND QUALIFICATIONS

My name is Kenneth L. Wilson, and I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am submitting this affidavit on behalf of AT&T.

My education and relevant work experience are as follows. I received a Bachelors of Science in Electrical Engineering from the University of Illinois in 1972, and I received a Masters of Science in Electrical Engineering in 1974. In addition, I have completed all the course work required to obtain my Ph.D. in Electrical Engineering from the University of Illinois. The course work was completed in 1976.

For 15 years before coming to Denver, I worked at Bell Labs in New Jersey in a variety of positions. From 1980 through 1982, I worked as a member of the network architecture and network planning team at Bell Labs for AT&T's long distance service. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1986 through 1992, I led a Bell Labs group responsible for network performance planning and assurance for AT&T Business Markets. From 1992 through 1994, I was a team lead on a project to reduce AT&T's capital budget for network infrastructure.

From 1995 through the spring of 1998, I worked in AT&T's Local Services Organization as the Business Management Director, leading one of the groups responsible for getting AT&T into the local market in U S WEST's 14-state territory. I was the senior technical manager in Denver working on planning AT&T's local network, OSS interface architectures and the associated negotiations for AT&T to accomplish these goals. In this position, I was the lead negotiator for AT&T in establishing interconnection contracts with U S WEST (now Qwest) in its 14 states.

Since Spring of 1998, as a consultant and expert, I have evaluated technical issues for a number of companies in complaints, anti-trust cases and § 271 compliance proceedings. I have represented AT&T on all fourteen § 271 checklist items in five different cases, including all of the § 271 cases in Qwest's region that have been considered to date. This representation involved attending over 40 workshops and hearing sessions to address various § 271 checklist issues. A copy of my curriculum vitae is incorporated into this document as Attachment A. This attachment also includes a list of testimony and expert reports I have submitted as well as my depositions and court appearances during last 10 years.

B. PURPOSE OF AFFIDAVIT

Because of my technical background, my experience in bringing AT&T into the local markets in Qwest's region, and my experience in other § 271 proceedings in Qwest's region relating to these non-OSS and other § 271 checklist items, AT&T has asked me to review the relevant documents in this case and assist it in assessing Qwest's compliance with the § 271 checklist obligations and present AT&T's concerns regarding Qwest's compliance. To that end, I have reviewed the Qwest SGAT and testimony submitted in this case. In addition to reviewing these documents, I have reviewed materials submitted by AT&T and Qwest in other jurisdictions regarding these same issues and I have conducted interviews with AT&T operations personnel.

Based upon my review of this material, I have identified two non-OSS checklist items where Qwest is deficient. Specifically, Qwest does not meet its obligations for access to poles, ducts, conduits and rights-of-way (Checklist Item 3) and access to 911 and E911 (Checklist Item 7). The following paragraphs give detailed explanations of the basis for this conclusion.

C. POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY

1. The Act and FCC Rulings.

Section 271(c)(2)(B)(iii) requires BOCs to provide "nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of § 224."¹

In the *Local Competition Order* and *Order on Reconsideration*, the FCC interpreted § 251(b)(4) as requiring nondiscriminatory access to incumbent local exchange carriers' ("LECs") poles, ducts, conduits and rights-of-way for competing providers of telecommunications services in accordance with the requirements of § 224.²

In its *Bell South Second Louisiana* decision, the FCC concluded that BellSouth demonstrated that it was providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms and conditions by demonstrating that it has established nondiscriminatory procedures for: (1) evaluating facilities requests pursuant to § 224 of the Act and the *Local Competition Order*; (2) granting competitors nondiscriminatory access to information on facilities availability; (3) permitting competitors to use non-BellSouth workers to complete site preparation; and (4) compliance with state and federal rates.

The Commission also concluded that:

Consistent with the Commission's regulations implementing § 224, we conclude that BellSouth must provide competing telecommunications carriers with access to its poles, ducts, conduits, and rights-of-way on reasonable terms and conditions comparable to those which it provides itself and within reasonable time frames. Procedures for an attachment application should ensure expeditious processing so that "no [BOC] can use its control of the enumerated facilities and property to

¹ *Application of BellSouth Corporation pursuant to § 271 of the Communications Act of 1934, as amended, to provide in region-inter LATA services in Louisiana*, CC Docket No. 98-121, FCC 98-271, released October 13, 1998, ¶ 171 ("*BellSouth Second Louisiana 271 Order*").

² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 99-325 (released Aug. 8, 1996) ("*Local Competition Order*"); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Order on Reconsideration, FCC 99-266 (released Oct. 26, 1999) ("*Order on Reconsideration*").

impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."³ Pursuant to the Commission's rules, BellSouth must deny a request for access within 45 days of receiving such a request or it will otherwise be deemed granted. If BellSouth denies such a request, it must do so in writing and must enumerate the reasons access is denied, citing one of the permissible grounds for denial discussed above.⁴

A lack of capacity on a particular facility does not entitle an RBOC to deny a request for access. Sections 224(f)(1) and 224(f)(2) require an RBOC to take all reasonable steps to accommodate access in these situations. If a telecommunications carrier's request for access cannot be accommodated due to a lack of available space, an RBOC must modify the facility to increase capacity under the principle of nondiscrimination.⁵

2. Issues Regarding Qwest's Compliance.

There are two primary areas of concern with Qwest's compliance with its obligation to provide nondiscriminatory access to poles, ducts, conduit and rights-of-way (collectively referred to herein as "ROW"). First, Qwest has imposed barriers to the CLECs ability to access ROW, including access to multiple tenant environments (MTEs) by attempting to impose time consuming, onerous and costly conditions on the CLEC's access to documents that would allow the CLEC and the Commission to determine Qwest's ownership and control of the ROW. Second, Qwest has attempted to alter the FCC-mandated 45-day response time for CLEC requests to access Qwest ROW by adding a provision that allows Qwest to appeal to a state commission if it needs more time to respond. The FCC has created no exception to this requirement. Because of these problems, Qwest does not currently comply with Checklist Item 3.

³ *Local Competition Order*, ¶ 1123.

⁴ *BellSouth Second Louisiana Order*, ¶ 176.

⁵ *Local Competition Order*, ¶ 1224.

a. Access to ROW Agreements.

One of the issues in dispute in other § 271 workshops related to Qwest's providing agreement language that assured CLEC that Qwest is legally bound to provide access to all ROW that it "owns or controls." While Qwest has addressed this concern to some extent with revisions to Sections 10.8.1.1 and 10.8.1.2 of its SGAT, Qwest has not clarified its obligation by including language that demonstrates that CLECs will be afforded the means to determine those rights, e.g., by providing CLECs with the very ROW agreements that would permit the CLEC to assess Qwest's ownership or control, unencumbered by unnecessary and burdensome conditions.

Based upon AT&T's experience in acquiring rights in property and with building owners, Qwest may exercise control over property or the building owner that does not rise to the level of ownership. Likely as a consequence of its incumbent status, Qwest may benefit from the property owner's or building owner's deference to Qwest as the "phone company" in matters related to control of ducts and conduits. Qwest's control or influence means that for all intents and purposes, Qwest is in ultimate control of access to such poles, ducts, conduits and rights-of-way. In these circumstances, it is important to gain access to the underlying documents between Qwest and the third party property or building owner to determine the Qwest's rights under the agreement.

In the Colorado workshop on this checklist item, Qwest asserted that it does not have any interest that is assignable to CLECs pursuant to its obligations under § 251(b)(4) of the Act in these agreements.⁶ Qwest acknowledged that it has to provide access to any ROW that it owns or controls, but claimed that non-recorded agreements

⁶ Colorado Transcript, 06/29/00, pp. 157-159 (Exhibit K LW-1).

that it has with property owners do not allow Qwest to assign its interest and, as a result, that is the end of the inquiry. Alternatively, Qwest has argued that if Qwest had ROW that it will provide CLECs access to it, but it claims these non-recorded agreements it has entered into with private landowners, at least in the multiple tenant environment (“MTE”) context, do not convey ROW and, therefore, Qwest has no obligation to provide access to these agreements.⁷ Qwest offered no evidence to substantiate these claims. CLECs have disputed these claims.

Section 271(c)(2)(B)(iii) requires BOCs to provide “nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of § 224.”⁸ Whether these private agreements allow Qwest to assign or convey its interest or a ROW is irrelevant. What is relevant is: Does Qwest own or control the ROW? As a result of these discussions in workshops in other states, it became obvious that access to these agreements with private landowners/property owners is vital to ascertaining what ROW Qwest owns or controls and the terms and conditions upon which Qwest has been afforded access. Without access to such agreements, CLECs and, ultimately, Commissions cannot ascertain the scope of Qwest’s obligation under § 251(b)(4) and the intended applicability of this section of the Act would be largely gutted.

Ultimately, Qwest agreed to provide access to all publicly recorded ROW agreements. The debate, however, continued regarding non-recorded agreements with third parties. In the course of the Colorado workshop, Qwest, AT&T and the Colorado Office of Consumer Counsel engaged in offline discussions to determine if the parties

⁷ Oregon Transcript, 08/09/00, pp. 25-26 (Exhibit KLW-2).

⁸ *BellSouth Second Louisiana 271 Order*, ¶ 171.

could come up with a compromise regarding CLEC access to these agreements with private landowners/property owners. During the course of these discussions, it was agreed that CLECs would execute an Access Agreement, although as will be detailed below, the precise content of the Access Agreement could not be resolved.

For ROW agreements that are not recorded, rather than freely making these agreements available to CLECs, Qwest has proposed terms and conditions for access to these agreements that would require CLECs to go through the unnecessary and burdensome effort of gaining 1) the landowner's consent to such access before access to the agreements will be afforded, or 2) enter into a separate indemnification agreement with Qwest. These obligations are set forth in § 10.8.2.27 and Exhibit D to the SGAT and its attachments.⁹

Qwest's basis for these onerous provisions is some purported "expectation" of the landowner that these "dealings are private." Qwest has never presented any evidence to support this contention in any workshop in any other state. In fact, when AT&T requested discovery on this very point in Minnesota, Qwest objected to AT&T's discovery, claiming that Qwest could not speculate on what the expectations of third parties might be. *See* Attachment B. Qwest also refused to produce any ROW agreements in response to AT&T's discovery request in Minnesota, hiding behind its assertion that it could not produce contracts that have confidentiality provisions. It made this same assertion in the § 271 workshop in Washington and the parties agreed that Qwest would produce sample agreements with certain information that would render the agreement identifiable redacted (pricing, name, addresses, etc.). Even then, in

⁹ *See* SGAT, Exhibit D, § 2.1: Attachment 4 to Exhibit D.

Washington, Qwest could not produce a single ROW agreement that had a confidentiality provision that ran to the benefit of a third-party. The sample agreements produced by Qwest had no confidentiality provision running to the benefit of the property owner.¹⁰ The only confidentiality provision in the Qwest standard form agreement protected Qwest information from disclosure by the third party. Accordingly Qwest has never established any basis for the consent or indemnification obligation it seeks to impose on CLECs.

Focusing on the consent requirements, Qwest proposes that it will provide a copy of any ROW agreement in its possession that has not been recorded only after a CLEC has obtained a formally executed, properly notarized "Consent" to the disclosure of the ROW agreement.

Qwest's extensive new consent requirement is not required of Qwest itself, or its affiliates and, therefore, are discriminatory in violation of both state and federal law. In addition, the consent requirement would significantly delay the CLEC's access to Qwest ROW, contrary to FCC orders. The Act gives Qwest no authority to impose a "consent" requirement as a condition of access to Qwest's ROW. To the contrary, the FCC has stated that Qwest must establish nondiscriminatory processes to expedite access to ROWs, stating that such "procedures for an attachment application should ensure expeditious processing so that no [BOC] can use its control of the enumerated facilities and property to impede, inadvertently or otherwise, the installation and maintenance of telecommunications . . . equipment by those seeking to compete in those fields."¹¹ In

¹⁰ See Exhibit KLW-3, Sample Telephone License Agreement and Exhibit KLW-4, Agreement for New Multi-Tenant Residential Properties.

¹¹ *BellSouth Second Louisiana 271 Order*, ¶ 176.

addition, the FCC has required RBOCs to provide access to its maps, plats and *other relevant data* to avoid "the need for costly discovery in pursuing a claim of improper denial of access."¹² Qwest's consent procedure impedes the CLEC's access to Qwest's ROW.

The consent requirement that Qwest seeks to impose would create unreasonable costs and impose significant delays on CLEC access to ROW and provisioning of service using such ROW, which would constitute a significant barrier to offering the tenants or other customers a competitive alternative.

Essentially, Qwest's proposal creates a presumption that all non-recorded ROW agreements are confidential and subject to a prohibition (which is presumably absolute) against disclosure. Such a presumption is inappropriate, particularly in view of Qwest's inability to produce any evidence to substantiate this presumption, and imposes a needless burden on CLECs to obtain disclosure.

Alternatively, the SGAT provides that Qwest will produce its non-recorded agreements if the CLEC agrees to enter into a separate indemnification agreement with Qwest. This was not a provision initially proposed by Qwest, but was language developed by Qwest to comply with the Facilitator's Report in the Multistate workshop on these issues. While the Facilitator acknowledged that CLECs should have access to these non-recorded ROW agreements, he ordered that if a CLEC wants access to an agreement without obtaining the landowner's consent, the CLEC, not Qwest, should bear the risk of any landowner assertion of a legal claim against Qwest by agreeing to indemnify Qwest against such claims. If the CLEC chooses not to indemnify Qwest, they must obtain the landowner's consent.

¹² *Local Competition Order*, ¶1223 (emphasis added).

AT&T has objected to the Facilitator's compromising approach for several reasons. He developed this compromise without finding that Qwest had demonstrated that its agreements contained a confidentiality provision. The Facilitator would have CLECs negotiating indemnification agreements with Qwest even where none would be needed. The simple fact remains that in the absence of an express provision restricting disclosure of a ROW agreement, there is no duty to not disclose the agreement, and CLEC's indemnification of Qwest is meaningless. In short, there is no risk, and because there is no risk, CLEC's agreement to indemnify is pointless.

In addition, an indemnification obligation creates unnecessary barriers to competition by requiring CLECs to negotiate a separate agreement with Qwest, and significantly raises the cost of entry for CLECs by requiring the CLECs to bear the burden of frivolous litigation that is brought by landowners who have no expectation of privacy.

The Facilitator also failed to address future ROW agreements between Qwest and property owners. On an ongoing basis, Qwest is in a position to conclusively eliminate the risks of potential disclosure by seeking a definitive right to disclose its ROW agreements to third parties in future ROW agreements. All of these problems are now reflected in the SGAT. These provisions are discriminatory, anticompetitive and unnecessary. As a result, Qwest is not providing nondiscriminatory access to ROW covered by these non-recorded agreements.

b. Time to Respond to Requests for Access to Rights-of-Way.

Under the FCC's rules, Qwest is required to grant or deny all requests for access to poles, ducts and rights-of-way within 45 days. Qwest's SGAT does not properly reflect this requirement.

This issue has been debated extensively in other § 271 workshops. The SGAT reflects a confused array of timing requirements, all of which when reviewed together provide Qwest with the discretion to respond beyond the 45 day time frame.

As background, the SGAT sets forth two steps in the process for submitting a request for access to ROW. The first step is the inquiry review, which is described in § 10.8.4.1 of the SGAT. The second step is the field verification, which is described in § 10.8.4.2 of the SGAT. Under normal circumstances, the inquiry review response is provided in 10 days and the field verification response is due in 35 days, adding up to the 45-day response time required by the FCC. However, Qwest attempts to alter this response time for larger orders by including the following language in the last paragraph of § 2.2 of Exhibit D to the SGAT:

Qwest is required to respond to each Attachment I.B. submitted by CLEC within 35 days of receiving the Attachment I.B. In the event that Qwest believes that circumstances require a longer duration to undertake the activities reasonably required to deny or approve a request, it may petition for relief before the Commission or under the escalation and dispute resolution procedures generally applicable under the interconnection agreement, if any, between Qwest and CLEC.

Under the Act and relevant orders of the FCC, there is no basis for distinguishing large requests from any other request for access to poles, ducts, conduit or ROW. Qwest

is required to respond to all requests for access to poles, ducts or ROW within 45 days.

§ 47 CFR 1.1403(b) provides in pertinent part:

Requests for access to a utility's poles, ducts, conduits or rights-of-way by a telecommunications carrier or cable operator must be in writing. If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day. The utility's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.

The FCC's rule and orders on this issue are unequivocal. Rule 1.1403(b) contains no exception based on the size of the order.

In addition, in the *Local Competition Reconsideration Order*, the FCC reiterated that "because *time is of the essence in access requests*, a utility must respond to a written request for access within 45 days. If access is not granted within 45 days of the request, the utility must confirm the denial in writing by the 45th day."¹³ The FCC further held in its *Local Competition Reconsideration Order* that:

Under the procedures adopted in the order, a utility must grant or deny a request for access within 45 days of a written request. If the utility denies the request, it must do so in writing, the reasons given for the denial must relate to the permissible grounds for denying access (e.g., lack of capacity, safety, reliability, or engineering concerns).¹⁴

Again, this statement provides further affirmation of the 45-day limit.

In a subsequent proceeding, the FCC was asked to address the numerous delays a particular company had encountered in obtaining the utility's approval to attach to its poles. See, *In the Matter of Cavalier Telephone, LLC v. Virginia Electric and Power Company*; 15 FCC Rcd. 9563, June 7, 2000. In answer to the electric utility's claim that

¹³ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order on Reconsideration*, CC Docket No. 96-98, FCC 99-266, ¶ 117 (released October 26, 1999).

¹⁴ *Id.*, ¶ 17.

Rule 1.1403 only required it to respond within 45 days if it were going to deny the application, the FCC concluded that under its rules, the responding utility must grant or deny all requests for access to poles within 45 days. The FCC then directed the electric utility to provide immediate access to all poles for which permit applications had been pending for greater than 45 days.

The FCC's interpretation of its rules in the *Cavalier* case is controlling here. Because Qwest's SGAT would improperly extend the time it has to respond to large orders beyond the 45-day response time permitted by the FCC's Rules, it is not in compliance with § 251 and 271 of the Act and, therefore, Checklist Item No. 3 has not been fully satisfied.

3. **Other ROW Language Concerns.**

In addition, I note the following language in §§10.8.2.1 and 10.8.2.27 of the SGAT are problematic:

1. The reference to multiple dwelling unit in §10.8.2.27 is not defined and is not the appropriate terminology. The FCC's terminology is multiple tenant environments.
2. Qwest must produce ROW agreements that grant Qwest ownership or control, not just access to, duct/conduit or ROW.
3. There is nothing in §10.8.2.27 that states when Qwest will provide the CLEC with the Agreements.
4. Section 10.8.2.27.2 is confusing. It is unclear what Qwest intends when it references the granting of limited waiver of any confidentiality right.
5. Section 10.8.2.27.2 improperly requires the CLEC to obtain the landowner's consent to disclosure of the ROW agreement just to determine Qwest' ownership or control of the ROW. Alternatively, this section requires the CLEC to comply with the indemnification requirements in §10.8.4.1.3. This section requires the CLEC to enter into a new stand-alone indemnification agreement with Qwest, which would purportedly indemnify Qwest for any loss it

suffers if a landowner objects to Qwest's disclosure of the ROW agreement to the CLEC.

6. Section 10.8.2.27.4 describes the CLECs use of the agreement. This section is unduly restrictive. It fails to list several important uses. For example, to determine the extent of the landowners property interest, the term of the agreement, to determine the parties to the agreement, to determine any use restrictions, etc. In addition, it improperly limits who has access to the ROW agreements.

As for Exhibit D to the SGAT, I note the following sections are problematic:

1. Section 2.1, paragraph 3 and 4, it is unclear what the difference in these two sections is.
2. Section 2.1 does not state that Qwest will provide the publicly recorded agreements to the CLEC.
3. Section 2.1, paragraph 5 contains the offensive consent to disclosure and indemnification requirements.
4. Section 2.2, paragraph 2 does not state that Qwest will provide CLECs with the non-recorded ROW agreements.
5. Section 2.2, paragraph 2 requires CLEC to determine the current owner of the property and get their signature and consent on the Access Agreement. This burdensome and unnecessary.
6. Section 2.2, paragraph 2 requires CLEC to record the Access Agreement. Again this is burdensome and unnecessary.
7. The indemnification language in Attachment B, Exhibit D is burdensome and duplicative of the indemnification provisions that already exist in the general terms and conditions section of the interconnection agreement.
8. The Consent to Disclosure form is unnecessary and objectionable.

This review is by no means exhaustive, but merely meant to highlight some of the problems with Qwest's ROW contract language.

D. 911/E911

1. The Act and FCC Rulings.

Section 271(c)(2)(B)(vii)(I) of the competitive checklist requires Ameritech to provide "nondiscriminatory access to . . . 911 and E911 services."¹⁵ In the *Local Competition Order*, the FCC interpreted the word "nondiscriminatory" to include a comparison between the level of service the incumbent LEC provides competitors and the level of service it provides to itself.¹⁶ In the *Ameritech Michigan 271 Order*, the FCC interpreted the term "nondiscriminatory" for the purposes of § 271 in an identical fashion and found that § 271 requires a BOC to provide competitors access to its 911 and E911 services in the same manner that a BOC obtains such access, *i.e.*, at parity.¹⁷ Specifically, the FCC found that, pursuant to this requirement, RBOCs must maintain the 911 database entries for competing LECs with the same accuracy and reliability that it maintains the database entries for its own customers.¹⁸ This duty includes populating the 911 database with competitors' end user data and performing error correction for competitors on a nondiscriminatory basis.¹⁹ For facilities-based carriers, nondiscriminatory access to 911 and E911 services also includes the provision of unbundled access to the RBOCs 911 database and 911 interconnection, including the provision of dedicated trunks from the requesting carrier's switching facilities to the 911 control office at parity with what the RBOC provides to itself.²⁰

¹⁵ 47 U.S.C. § 272(c)(2)(B)(vii)(I). Enhanced 911 or "E911" service enables emergency service personnel to identify the approximate location of the party calling 911.

¹⁶ *Local Competition Order*, 11 FCC Rcd at 15612.

¹⁷ *Application of Ameritech Michigan Pursuant to § 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released August 19, 1997), ¶ 256 ("Ameritech Michigan 271 Order").

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

2. Issues Regarding Qwest's Compliance.

There are three areas of concern regarding Qwest's provisioning and maintenance of 911 services and capabilities for CLECs. First, Qwest has failed to offer PS/ALI, an important 911 feature, to CLECs and their customers. Second, Qwest is causing numerous delays in unlocking the E911 database for AT&T and its customers. Finally, Qwest has disconnected AT&T 911 trunks and left them disconnected for a lengthy period of time. I will review these issues in the next few paragraphs.

a. PS/ALI.

Having personally negotiated interconnection contracts with Qwest over the past five years, I was surprised to learn four months ago that Qwest offers a 911 service to retail customers that is not offered to CLECs. Private Switch/Automatic Location Identification (PS/ALI) is a service used to provide Private Branch Exchanges (PBX) and some Centrex/Centron end users with the location features that are available to single line phones. Normally, when an office worker in a high rise dials 911, the E911 PSAP will only know that the call is coming from the particular building. PBX and Centrex switches are typically configured in a manner that does not provide the PSAP with information regarding a particular phone. If a PBX serves a campus of several buildings, the PSAP may not even know which building they should direct emergency help to. This could lead to serious, life threatening consequences.

Qwest offers a solution to its retail customers, but has not offered this solution to CLECs and their customers. When I learned of this, I questioned Qwest and was told flatly by Qwest employees that PS/ALI would not be offered to CLECs. More recently, it appears Qwest may be altering its position because PS/ALI is now referenced in the

Qwest Product Catalogue (PCAT), documentation that describes services available to CLECs. However, AT&T is currently experiencing trouble in ordering and provisioning this service to its retail customers.

Importantly for this proceeding, however, the SGAT does not offer this E911 feature, a provision that Qwest has conceded in testimony filed in Minnesota should be in the SGAT. The SGAT discusses trunks from the CLEC end office to the Qwest 911 tandem.²¹ It does not discuss, or seem to allow, trunks from the end user PBX to the Qwest 911 tandem. Such trunks are necessary for the PS/ALI feature to work. Qwest also has no general statement in the SGAT that would allow CLECs to have access to any feature or function of 911/E911 that Qwest retail customers enjoy. The Qwest language merely states that the "E911 functions provided to CLEC shall be at the same level of accuracy and reliability as for such support and services that Qwest provides to its end users for such similar functionality."²² This statement does not guarantee that all functions and features will be made available. This statement is insufficient to ensure the nondiscriminatory access required by the Act and the FCC.

b. Delays in Unlocking the E911 Database.

Qwest has been failing to send the unlock message for the 911 database on many customers who migrate to AT&T in Minnesota and other states. Most customers, when changing local service providers from Qwest to AT&T, elect to keep their old telephone number. Part of the Local Number Portability (LNP) process requires Qwest to send an unlock message to Intrado, the company that manages the 911 database. If Qwest does

²¹ SGAT Sections 10.3.7.1 and subsections.

²² SGAT § 10.3.2.1.

not send the unlock message to Intrado, AT&T and other CLECs will not be able to change the customer information in the 911 database.

AT&T has encountered over 11,000 locked records problems over the past year, with the majority of the problem attributable to Qwest. Qwest did a reconciliation and clean up in October, 2001 to fix thousands of orders that had not been unlocked. However, since then AT&T still had large numbers of telephone numbers that have been ported to AT&T where Qwest has not sent the unlock message for the 911 database on a timely basis. Qwest should be unlocking the 911 database as part of the Local Number Portability (LNP) process.

There is risk to the end user when the 911 database is not unlocked. When this happens, AT&T is not able to update the database if the customer's information, such as street address, changes. So if the customer moved locations, the street number changed, or other information in the 911 database were not updated, emergency operators will have outdated information. If this happens, it could cause a life-threatening situation. The PSAP 911 operator would not know that the information in the database that they view when the customer calls is incorrect. They would act on incorrect information, sending emergency vehicles to the wrong location.

Qwest must fix the process problems that are causing delays in sending the unlock message to the 911 database when customers migrate to AT&T and to other CLECs. Qwest claims that it has adopted a new process that would allow Intrado to clean up the unlock problems that Qwest is creating. This "solution" would have Intrado query each number where there was an unlock conflict with the NPAC database to see if the number had been ported to the requesting party. To do this Intrado would need to create a list of

potential unlock rejects and then query each number against the NPAC database. In theory this could be made to work. There are, however, several serious problems with this "solution." First, it does not get to the root of the problem, which is the fact that Qwest is failing to send the unlock message at the appropriate time. Qwest has an obligation to provide access to 911 service and Qwest's failure to properly send the unlock message in a timely fashion is a breach of that obligation.

Second, Intrado has no legal obligation to perform this function under the SGAT under FCC provisions, or under the Act. Intrado is not a party to the SGAT between Qwest and the CLECs. Finally, Intrado is not bound by any of the requirements set forth in the Act and implementing FCC rules and orders. The obligation runs to Qwest.

Third, the process Qwest has described would require additional time, adding to delays in the update of the 911 database that Qwest does not experience when it updates the 911 database for its retail customers.

In addition, the delays Qwest is causing in updating the 911 database should be captured by the PID DB-1A- Time To Update Databases. However, it is obvious from the results that Qwest presents on this metric for Minnesota and AT&T's experience with long delays in updating the 911 database for many of its customers, that either Qwest is not accurately reporting the results of its performance or DB-1A is not fully capturing Qwest's performance for database updates. It now appears to AT&T that, through its use of terminology in the definition of DB-1A, Qwest may only be comparing its retail results to its performance for CLECs ordering resold services. This effectively eliminates the results for facilities-based CLECs, such as AT&T. If this is the case, none of AT&T's unlock problems are being measured and reported under this PID.

Qwest has claimed that its processes for E911 database updates are "Parity by Design." I must disagree with this claim on several counts. First, there may be parity by design for CLECs doing resale, but certainly not for facilities based CLECs. Qwest can fail to send an unlock message and dramatically delay the CLECs ability to update the 911 database. Second, based upon what the PID measures and the problems identified by AT&T, Qwest is not assessing the complete 911 database process and Qwest is excluding from the PID results time-to complete results for facilities-based CLECs. Even though facility based CLECs send their database changes directly to Intrado, Qwest's transmission of an unlock message to Intrado is part of the process. When Qwest's unlock message is not sent in a timely manner, Intrado will not accept the CLEC database change. So there is neither parity in the update process, nor is there parity in the measurement process.

Qwest must fix the PID DB-1A or a new PID must be created that measures Qwest's time to complete for facilities-based CLECs and that compares Qwest's wholesale performance with its retail experience. In addition, a new measure must be added to DB-2 to capture errors in processing 911 database updates. Qwest must be required to demonstrate that it is performing under the revised or new PIDs. Only then can it be determined whether Qwest is providing nondiscriminatory access to 911.

In sum, once again, the SGAT does not reflect the necessary contractual obligations regarding access to all features, functions and services associated with 911/E911. In addition, Qwest's new "solution" is nothing more than a paper promise.

which the FCC has concluded is not sufficient to satisfy §271.²³ Qwest's solution is untested and Qwest has not, and cannot at this point, provide any assurances that this solution will, in fact, correct the unlock problems that AT&T has encountered. Until Qwest's SGAT reflects: 1) the appropriate contractual obligations, the new solution is actually implemented; 2) revision of DB-1A and DB-2 or a new PID is adopted; and 3) there is sufficient CLEC experience to demonstrate that the solution corrects the problem. Qwest cannot satisfy Checklist Item 7.

c. Disconnection of AT&T's 911 Trunks.

AT&T and its customers have experienced an additional, serious problem caused by Qwest with 911 service. This issue occurred in Minnesota but it highlights that there is a problem in Qwest's administration of 911 circuits.

Specifically, Qwest took AT&T 911 facilities out of service for an extended period of time, causing blocking of 911 calls, during September and October, 2001.

As background, Qwest specially marks its own 911/E911 facilities in the central office to assure that technicians do not accidentally disconnect service. On tours of Qwest facilities, I have seen these special tags on Qwest's 911 and other high priority circuits. Qwest purportedly tags CLEC 911 circuits with the same circuit identification and protection for E911 trunk circuits that it provides for its own E911 circuits.²⁴ Qwest has confirmed in workshops in other jurisdictions that it does this. However, AT&T's recent problem with Qwest's handling of 911 trunking in Minnesota raises concern regarding Qwest's commitment to implement the same care for CLEC circuits.

²³ See, e.g., *Application of Ameritech Michigan Pursuant to §271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (released August 19, 1997), ¶ 55.

²⁴ SGAT § 10.3.7.1

As background, AT&T Local Network Services (LNS) converted its primary 911 route from Centralized Automatic Message Accounting (CAMA) to Signaling System 7 (SS7) on September 19, 2001. Testing at cutover indicated that the conversion was successful. On October 11, 2001, AT&T technicians began the process of connecting to the LNS switch to provide 911 connectivity for additional AT&T switches. They discovered that every other call (50%) failed. Subsequent testing by AT&T LNS determined that one of two facilities that carry 911 traffic had been disconnected in the Qwest office. A trouble ticket was issued by Qwest and Qwest reported that the trunks had been accidentally disconnected and that service would be restored. On October 11th, after AT&T worked with Qwest for several hours to convince them there was a problem, a trouble ticket was finally opened by Qwest and completed approximately 4 hours later, on the same date. On October 12, when testing by AT&T CORE resumed, the same trouble was encountered. Qwest was contacted and stated that "someone" had again disconnected the same trunks. Again, after several hours of initial discussion, a trouble ticket was issued by Qwest and completed some hours later, restoring the service. It is unknown how long the facility was out between September 19 and October 11.

During the time the facility was out of service, half of all 911 calls would have were not completing to the 911 operator. Qwest should have prevented this problem in the first place. There should have been special markings on the facilities that would have indicated that they were 911 circuits and should not be disconnected. In addition, Qwest technicians are supposed to check with a special coordinator before disconnecting 911 circuits. If they had done this in the case of the AT&T circuits, they would have discovered that the circuits were carrying live 911 traffic. We do not know why this

process failed on two separate occasions for AT&T circuits in Minnesota. In any case, the representations made by Qwest in its testimony and in the SGAT do not appear to have been carried out for AT&T's 911 circuits in Minnesota.

Qwest must augment its processes to ensure that CLEC 911 circuits receive the same protection as Qwest 911 circuits. As the FCC has said on many occasions, paper promises are insufficient to demonstrate compliance with the Act.²⁵ That, apparently, is all Qwest has done here. Qwest's promises are not being carried out by its field personnel. Qwest must provide evidence that its technicians have been trained to properly handle CLEC 911 circuits. Qwest should also contact the CLEC before it tampers with any CLEC 911 circuits. Qwest must demonstrate in this proceeding that it has taken steps to cure this problem and that those steps have, in fact, resolved this problem. Until Qwest does so, it has not fulfilled its obligations with respect to 911/E911.

E. CONCLUSIONS REGARDING ISSUES RAISED

In reviewing the data and information that has been made available in this case, I conclude that Qwest has not met its obligations for Checklist Item 3, access to poles, ducts, conduits, and rights-of-way, and for Checklist Item 7, access to 911 and E911. For Checklist Item 3, Qwest has erected barriers to information necessary for the CLECs to access ROW, and has created an ambiguous time interval for access to poles and utility holes. For Checklist Item 7, Access to 911 and E911, Qwest is not providing access to 911 and E911 on a nondiscriminatory basis. Qwest has not provided the PS/ALI feature to CLECs, denying CLEC customers with PBXs the ability to send floor and office information in emergency situations.

²⁵ See, e.g., *Ameritech Michigan 271 Order*, ¶ 55.

Further, Qwest has failed to unlock the 911 database in a timely manner for many AT&T customer telephone numbers. Qwest also allowed some of AT&T's 911 circuits to be disconnected for an extended period of time.

For the reasons stated above, Qwest has not met the conditions for § 271 approval for these two checklist items. Qwest must amend its SGAT to allow nondiscriminatory access to poles, ducts, conduits and rights-of-way. Qwest must provide CLECs with access to all 911/E911 features that Qwest retail customers enjoy. Qwest must fix its faulty processes that are failing to unlock the 911 database for AT&T customers. Qwest must revise its SGAT to add the appropriate contractual obligations, DB-1A must be revised or a new PID adopted, and there must be sufficient CLEC experience to demonstrate that the solution Qwest proposes will correct the problem. Finally, Qwest must review and refine its processes for protecting CLEC 911 circuits to assure that the problems AT&T has had will not occur in the future.

FURTHER AFFIANT SAYETH NOT.

1 BEFORE THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF COLORADO

3 Docket No. 971-198T

4 -----

5 REPORTER'S TRANSCRIPT, JUNE 29, 2000

6 -----

7 IN THE MATTER OF THE INVESTIGATION INTO U S WEST

8 COMMUNICATIONS, INC.'S COMPLIANCE WITH SECTION 271(C)

9 OF THE TELECOMMUNICATIONS ACT OF 1996.

10 -----

11

12 PURSUANT TO NOTICE to all parties of

13 interest, the above-entitled workshop came on for hearing

14 on June 29, 2000, at 8:50 a.m., at 1580 Logan, Suite 610.

15 Denver, Colorado, 80203, before Facilitators Hagood

16 Bellinger and Phillip Doherty; said proceedings having

17 been reported in shorthand by James L. Midyett and Harriet

18 S. Weisenthal, Certified Shorthand Reporters in and for

19 the state of Colorado.

20 Whereupon, the following proceedings were

21 had:

22

1 competitive environment.

2 MR. BELLINGER: I think the issue is --

3 Mana. Wait a minute.

4 MR. BECK: I am sorry.

5 MS. FADER: Mana Jennings-Fader for the
6 commission. Steve, when the qualifier that you put on the
7 statement with which you -- which I believe you represent
8 as part of the statute if -- or sort of to the extent that
9 it exists, is -- I am sorry. Let me start again. The
10 ownership or control question is not, for you all, the
11 issue. The issue is whether or not the document or
12 other -- well, the document which creates the right-of-way
13 or easement contains the explicit statement that the
14 easement or right-of-way ceded may, at U S West's option,
15 be provided by U S West to third parties. Is that -- I
16 mean, is that almost the degree of specificity that you
17 think would need to be in the agreement, or is that the
18 concept you think would need to be stated in the
19 agreement?

20 MR. BECK: It is my understanding -- and I
21 am not an easement lawyer. I am going off the briefing
22 that I have had with the easements lawyers, Mana. It is
23 my understanding that and it's not U S West's position,
24 it's my understanding that the law is such --

25 MS. FADER: I am sorry. Sure.

1 MR. BECK: That, and if I am wrong, I
2 apologize, and I hope to be corrected, but my
3 understanding is that the law is such that easements
4 without -- if they are silent on the issue, they are not
5 assignable. If they are not silent on the issue, and we
6 don't require magic words as far as I know. It's really
7 kind of funky that way. If it actually did relatively
8 clearly, in whatever words, say we can convey that to
9 third parties, I think that would be the right-of-way that
10 the statute is talking about.

11 And just by way of clarification, I was just
12 looking at the statute and I realize that lots of this
13 state law issue about what is easement, whether you can
14 convey it or not, was brought up by the FCC in its first
15 report and order, as well the order on recon. It doesn't
16 come out quite as clearly in 224. I admit it.

17 MS. FADER: Could I ask a follow-up
18 question?

19 MR. BELLINGER: Sure.

20 MS. FADER: So, from U S West's perspective,
21 according to the briefing that you have received, and
22 because the easements, at least that you all are aware of,
23 do not contain express conveyance -- expressly give to
24 U S West the right to convey some or portion of the
25 easements to the third party, that that, from a state law

1 perspective, really ends the discussion; that is to say,
2 there's no indirect sort of overlying understood ability
3 to convey to a third person?

4 MR. BECK: The answer for that is really
5 "yes" and "no".

6 MR. BELLINGER: Okay.

7 MS. FADER: Okay.

8 MR. BECK: From a right-of-way perspective,
9 game's over. We don't have the ability. But if we have
10 facilities there that are spare, then the CLEC can use
11 those.

12 MR. BELLINGER: Facilities meaning --

13 MR. BECK: Poles or ducts.

14 MS. FADER: Okay.

15 MR. BECK: So, like I said, it's not a "yes"
16 or "no". It's a "yes" and a "no." And does that answer
17 your question?

18 MS. FADER: It helps. Thanks.

19 MR. STEESE: Let me add one more thing here,
20 too. If you look at Section 10.8.1.3 on page 172 of the
21 modified SGAT, I think that we need to put this in the
22 context of what AT&T is asking for. It says that where we
23 have ownership or control to do so, we're going to provide
24 access to available rights-of-way. What AT&T wants is it
25 wants to obtain product from us and gain an unfair

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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 823

In the Matter of the Investigation into the)
Entry of Qwest Corporation into In-Region)
InterLATA Services under Section 271 of the)
Telecommunications Act of 1996.)

WORKSHOP

August 9, 2000

Public Utility Commission
Small Hearing Room, 2nd Floor
550 Capitol Street N.E. - Suite 215
Salem, OR 97301-2551

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(503) 294-0346

1 their land. And that's the reason that we have real
2 property in 10.8.1.5.
3 It's possible what we ought to do is break
4 it up and say for purposes of right-of-way you only need
5 the ability to convey real property as opposed to poles and
6 ducts. Maybe it's just ability to convey access. On the
7 other hand, poles and ducts are probably real property once
8 they're pertinent to the actual land
9 so --

10 MR. SEKICH: If I might maybe ask a couple
11 questions to help clarify this, because I think we are
12 getting very close to an issue that Mr. Beck alluded to
13 which, I think, provides perhaps a kernel of the dispute.
14 I'm not sure if in testimony but I'm not sure in Oregon if
15 we presented certain documents that we presented in our
16 forums which were, I think, for ease of reference called
17 MDU agreements, multiple dwelling unit agreements. Those
18 provided other things U.S. West/Qwest's right of access,
19 right of entry, right-of-way, if you will, to premises to
20 install various equipment, do various things.

21 It's AT&T's belief that, in fact, those
22 agreements establish a right-of-way that CLECs, such as
23 AT&T, can have access to as a matter of law under the Act
24 and the FCC rules. We have heard various things in
25 different jurisdictions from Qwest about whether, in fact,

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1 they believe these create a right-of-way or some sort of
2 right.

3 MR. BECK: Objection. We've always been
4 consistent on that, Dcm. You know that.

5 MR. SEKICH: Well, that's fine. Maybe we
6 can -- for the purpose of this record then, perhaps you can
7 eliminate the record here and tell us what that position
8 is, because I think it does have an impact on our position
9 here.

10 MR. BECK: We have always stated that if -
11 Qwest has always stated that if we had right-of-way we
12 would convey it to you, but it is our position after
13 looking at your briefs that have no law cited on this point
14 that they do not convey right-of-way, that they are private
15 agreements between the land owner and us for the purpose of
16 providing telecommunications service.

17 JUDGE ARLOW: Do you have language that you
18 have utilized in other regions that have dealt with this
19 issue, or is this uniquely being dealt with out here for
20 the first time? I wouldn't imagine that that would be the
21 case.

22 MR. SEKICH: Yeah. This is an issue that
23 is not of great age; although it has been, you know, raised
24 in other jurisdictions. I have to tell you: There is
25 probably not a uniform position on all RBOC, for example.

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(503) 294-0346

Retrofit Agreement

TELEPHONE LICENSE AGREEMENT

This License Agreement for Telephone Services and Systems ("Agreement") entered into between _____, a Oregon L.L.C., ("Owner"), whose address is _____ Avenue, Portland, OR 97201, and GTE Northwest Incorporated, a Washington corporation ("Company") whose address is 1800 41st Street, Everett, Washington 98201, dated as of this _____ day of _____ 1997.

WITNESSETH:

Owner is operating a multi-family apartment project that contains approximately 200 units known as _____ located at _____ Road, Clackamas, OR, on land more particularly described on Exhibit "A" attached hereto (the land and the improvements now or hereafter located thereon are collectively referred to as the "Property");

Company is a provider of local telephone service with additional added value features such as call waiting, call forwarding, three way calling, etc., and provides nondiscriminatory access to long distance telephone services and other telecommunications services;

Owner wants to retain Company to operate and to maintain the cabling, wiring and associated equipment needed to provide telecommunications service to the Property and all occupants thereof, from the point of demarcation of the public switched telephone network to the telephone jacks in each occupant's apartment (hereafter, the "Telephone System") for the benefit of the residential occupants of the Property ("Residents") and Owner;

Company wants to operate and maintain the Telephone System and provide Telephone Services to Residents and Owner upon the terms and conditions set forth in this Agreement.

AGREEMENT

Company and Owner agree as follows:

TELEPHONE LICENSE AGREEMENT

1. Company shall make all repairs at no cost to Owner unless the problem was caused by Owner, its agents, employees, or contractors. In the event of a dispute concerning the cause of any problem between the Owner and Company, dispute resolution procedures shall be followed.

2. Company's obligation to operate, maintain, restore and repair the System does not include the following:

a. Owner-requested or Subscriber-requested additions, changes (including those requiring the installation or movement of wiring within an individual apartment, agreeing however that all such wiring must be concealed to the fullest extent possible, but bearing in mind that Company is not obligated to install or relocate wiring within the existing walls), relocations, removal, or additional equipment, subject to Owner's written approval, which shall be charged to the requesting party at Company's then prevailing rates.

b. Loss or recovery of Owner or Resident electronically generated or stored data. Owner and Residents are responsible for providing adequate back-up for data and for restoring data to repaired equipment.

D. Subscriber Rates: Any Subscriber who contracts for Services may elect to subscribe to one or more of the additional features then being offered as part of the Services. The rates for Services are subject to change during the term of this Agreement at the option of the Company or as necessary to comply with applicable tariffs or regulations.

E. System Revenues: Revenues shall be billed and collected as follows:

1. Company shall be entitled to the total revenues collected or arising from the Services or the operation of the System. The term "Total Revenues" means all amounts charged or received by Company for the provision of the System and associated Telephone Services including, but not limited to, the monthly charges for all Services, including long distance Services, installation charges and fees charged for service calls, etc.

2. Company shall be responsible for billing and, in strict accordance with applicable laws, the collection of all revenues arising from the Services and the operation of the System - Owner shall have no responsibility therefore. In no event shall Company utilize collection methods in violation of law. Company shall indemnify, defend and hold Owner, its agents, partners, employees, officers, directors, and the manager of the Property harmless from cost, liability, expense, loss and damage arising out of or in connection with all collection activities. Company shall bill each Subscriber individually.

F. Compensation to Owner: Company shall compensate Owner on a quarterly basis during the term of this Agreement as described in Exhibits "D" and "E" attached to this Agreement. Payment to Owner by Company shall be made within thirty (30) working days following the end of the quarter in which compensation is earned by Owner.

G. Control, Safeguard and Updates of the Systems:

1. Control: Company has the right of control over the Telephone System in order to operate and maintain it. At no time during the term of this Agreement may Owner or any third party use the Telephone System for any purpose other than as specified in this Agreement except with the prior consent of Company. Company shall give its consent to use of portions of the Telephone System which are not owned by Company unless Owner's use will interfere with Company's ability to provide the telephone services.

TELEPHONE LICENSE AGREEMENT

2. **Ownership of Fixtures:** All wiring and cabling that is part of the telephone System and is owned by Company on the date of this Agreement is and shall remain property of Company. All wiring and cabling that is property of Owner on the date of this Agreement, as well as all hardware installed in individual apartment units (collectively, the Fixtures), is and shall remain property of Owner. Company has only the right to control for purposes of executing its obligations under this Agreement.

3. **Ownership of Equipment:** Title to the Equipment described in Exhibit "C" remains vested in Company. Company has the right to control it for purposes of executing its obligations under this Agreement.

4. **Upgrades:** Company shall keep the Telephone System and Telephone Services current and competitive with those of the local serving area. Company shall use its best efforts to update or upgrade the Telephone System and Telephone Services to accommodate competitive changes as soon as reasonably possible. However, Owner acknowledges that Company did not install the Telephone System, and it may not be designed and built to the standards Company uses in building similar systems for Owner. Consequently, Owner agrees that Company has no obligation to replace the complete Telephone System upon assuming responsibility for it. Owner and Company agree to consult as necessary to ensure the Telephone System remains competitive. Additionally, Owner is aware that future upgrades to ensure the Telephone System remains competitive may require placing facilities in visible locations. Such upgrades will be undertaken only upon Owner approval.

5. **Initial Inspection:** Company entered the Property and conducted a thorough inspection to determine the specifications and condition of the Telephone System on the Property, including the Fixtures and Equipment. Company's findings are appended to this Agreement as Exhibit "J".

H. **Compliance With Laws:** Company shall operate the System and Services in accordance with all federal, state, and local laws, codes and ordinances, if any, which may be applicable thereto.

I. **Subcontracts:** Any portion of the Services not performed by Company shall be performed under subcontracts with subcontractors reasonably acceptable to Owner. All subcontracts shall conform to the requirements of this Agreement, with respect to the respective Service, or part thereof, supplied by the subcontractor, but the ultimate Service obligations hereunder shall remain the responsibility of the Company.

PART II Owner's Obligations

A. **Grant of License:** Owner acknowledges that Company will expend substantial time, resources and money in meeting its obligations under this Agreement, and that Company may only recoup its investment by providing Services to the Property throughout the term of this Agreement and by collecting revenues from Subscribers. As a result thereof, Owner grants to Company the following rights, subject to termination as provided herein:

1. The right to provide the Telephone Services to Residents, except as limited by law or regulation, subject to the rights of Residents to obtain calling plans and services.

2. The right to solicit Residents of the Property at all reasonable times to subscribe to its Services; provided that on-site solicitation shall be conducted only with the prior approval of the on-site manager of the Property and within the information/clubhouse building and, as approved by Owner in its sole discretion, in other common areas, neither Company nor its representatives may solicit business door-to-door.

TELEPHONE LICENSE AGREEMENT

3. Owner agrees that Owner shall not, during the term of this Agreement, grant any other service provider the right or license to provide or solicit the Telephone Services to the Property except as required by law or regulation. Owner shall also not directly or indirectly provide any such Service to the Property or Residents, except as noted above.

B. Property Access:

1. During the term of this Agreement, Owner grants to Company the right of access to the physical components of the System, subject to Residents' privacy rights and rights under their lease with respect to access to their apartments, within the Property for accomplishment of the obligations of Company under this Agreement twenty-four (24) hours a day, seven (7) days a week. This right extends following termination of this Agreement for any period of time the Company continues to provide service to subscribers for purposes of satisfying ongoing obligations.

2. If requested by a Resident, and with written authorization from the Resident, Owner will provide access to that Resident's apartment unit for installation or repair of inside wiring, associated hardware or the System by Company or its agents.

3. In addition, Owner shall:

a. Provide, at its own expense, facilities space for the interconnection to the public switched network and maintenance of the system pursuant to system requirement documents approved by both Owner and Company;

b. Cooperate with Company's and its agent's requests for maintenance testing or installation of new services to subscribers;

c. Designate and identify to Company an individual to serve as a primary contact for Owner for the term of this Agreement, subject to change upon notice;

d. Not alter the System in any way without the prior written consent of Company.

C. Information/Cooperation: Owner shall (subject to Company providing an adequate supply of materials, where required):

1. Provide to each Resident a copy of the information most recently provided by Company outlining the Telephone Services provided by Company;

2. Cause its on-site Property management and leasing personnel to cooperate fully with Company in all reasonable respects, including, without limitation, providing Company's promotional materials to Residents of the Property promptly upon execution of leases;

3. Receive the application of any Resident who desires to initiate Telephone Services and fax it to Company at a designated telephone number; and

4. When any Resident terminates Services and moves out of the Property, notify Company of such fact.

D. Lender's Consent: Owner shall use reasonable efforts to obtain and deliver to Company a "Lender's Consent," in the form set forth in Exhibit "F" attached hereto, duly executed by all lenders holding

TELEPHONE LICENSE AGREEMENT

a security title or lien upon the Property. If Owner does not provide any Lender's Consent within sixty (60) days after execution of this Agreement, Company may, as its sole and exclusive remedy, terminate this Agreement within thirty (30) days after the end of the sixty (60) day period. If Company elects to so terminate the Agreement, Owner shall pay to Company the Company's out-of-pocket costs. If Owner obtains additional or permanent or restructured financing during the term of this Agreement, Owner shall obtain a Lender's Consent form from the additional lenders, provided that if Owner is unable to obtain such consent, then Company shall have the right to terminate this Agreement within thirty (30) days after Owner notifies Company that it has been unable to obtain such consent.

E. **Subordination of Agreement:** This Agreement is at all times secondary, subordinate, and inferior to the lien or security interest of any construction or permanent lender now or hereafter placed upon the Property. Company shall, at any time, execute all documents necessary to evidence or confirm this subordination.

F. **Utility Interruption:** Owner is not responsible for or liable to Company for any fluctuation, peaking, slow-down, interruption or reduction in electrical power to the Systems or to the Control areas, unless the problem is caused solely by Owner, its agents, employees, or contractors.

PART III Administration

A. **Indemnity:**

1. Company shall, subject to paragraph III(C), indemnify, defend, and hold harmless Owner and its property manager and their respective officers, directors, partners, and employees from all losses, claims, death, bodily injury, and damage to person or property arising directly or indirectly out of Company's installation, operation or maintenance of the System or provision of the Services, to the extent proximately caused by the negligence of Company's employees, subcontractors or agents in performing services under this Agreement. This indemnity does not extend to any portion of the injury, death or damage caused by either the sole or contributing negligence of Owner or third parties not affiliated with Company. Company's obligation with respect to damage to the Systems is limited to repair or replacement, at Company's option, of the damaged items.

2. Owner shall, subject to paragraph III(C), indemnify, defend, and hold harmless Company and its officers, directors, and employees from all losses, claims, death, bodily injury, or damage to person or property arising out of, directly or indirectly, Owner's operation of the Property to the extent proximately caused by the negligence of Owner, its employees or agents, except to the extent due to Company's operation, or maintenance of the Systems or provision of the Services or to the negligence of Company, its agents, employees, or contractors.

3. These indemnities do not apply unless the Party to be indemnified gives written notice to the indemnifying Party within fifteen (15) days of receipt of notice of any claim, and informs indemnifying Party in writing of any subsequent written communications regarding the claim, and fully cooperates with indemnifying Party in the defense of the claim. Indemnifying Party shall have sole control of the defense of the claim and of all negotiations for its settlement or compromise.

4. These obligations survive the termination of the Agreement.

TELEPHONE LICENSE AGREEMENT

B. **Insurance:** Company, at its own cost and expense, shall maintain and cause its contractors and subcontractors that perform any obligations of Company under this Agreement to maintain in full force and effect for the term of this Agreement the following policies of insurance:

1. Workers' Compensation Insurance in compliance with the laws of the state of Oregon.
2. Commercial General Liability insurance on an "occurrence" basis against all claims for Personal Injury, Bodily Injury and Property Damage Liability in a combined single limit of not less than \$2,000,000.
3. Automobile Liability Insurance on all owned, non-owned, or hired vehicles and equipment used in performance of the work provided for in this Agreement in amounts not less than \$1,000,000 single limit, each accident, for bodily injury liability and property damage combined.
4. All employees of Company and employees of agents performing the Services shall be covered by a Fidelity Bond or crime insurance with limits not less than \$100,000.
5. Company may also carry, at its own expense, such other insurance as it may desire for its own protection.
6. Company shall provide to Owner upon request a certificate of insurance attesting to Company's coverage required herein, providing that such policies shall not be canceled without thirty (30) days prior written notice to Owner. Company shall deliver new certificates to Owner no later than thirty (30) days prior to the end of the term of each required policy.

C. **Limitation of Liability:** Under no circumstances shall Company or Owner be liable for incidental, consequential, or special damages, notwithstanding their foreseeability or disclosure by Owner to Company or vice versa, including, but not limited to, damages arising from delay, loss of data, profits or goodwill. Company shall bear no liability for use of the System or Services in connection with the support systems or devices. Company may from time to time provide advice, make recommendations or supply other analysis related to the System and Services provided under this Agreement, and, while Company shall use reasonable efforts in this regard, Owner acknowledges and agrees that this limitation of liability shall apply to provision of such advice, recommendations and analysis. Company makes no warranty for use of the System as a component in life support devices or systems.

D. **Hazardous Substances:** Except as disclosed to and acknowledged in writing by Company, Owner certifies that it is not aware of the presence of any asbestos or other hazardous substance (as defined by any applicable state, federal or local hazardous waste or environmental law or regulation) other than normal household and janitorial supplies and chemicals and consumer amounts of normal household petroleum products at any location on the Property where Company is to perform Services under this Agreement. If, during its performance, Company employees or agents encounter any hazardous substance, Company shall give prompt notice of the discovery to Owner and Company may suspend performance under this Agreement until the removal or containment has been completed and approved by the appropriate governmental agency and Company. Performance obligations under this Agreement shall be extended for the delay caused by the cleanup or removal. Owner's failure to remove or contain hazardous substances shall entitle Company to terminate this Agreement without further liability by giving notice to Owner no later than ten (10) days after the date Owner notifies Company of its decision not to remove or contain. If Company terminates the Agreement under this provision, Owner shall reimburse Company for expenses incurred in removing its Equipment and terminating its Services to Subscribers and Owner. Company agrees to

TELEPHONE LICENSE AGREEMENT

Indemnify Owner for any loss resulting from any hazardous materials or substances introduced into the Property by Company or its subcontractors pursuant to the terms of this Agreement.

E. **Memorandum:** Concurrent with the execution of this Agreement, Company and Owner shall execute and acknowledge a Memorandum of Agreement in the form set forth as ~~Exhibit B~~ attached hereto and incorporated herein by reference. Owner agrees that the Memorandum of Agreement may be recorded in the appropriate real estate recording office(s) of the county in which the Property is located. Upon termination of this Agreement, Company and Owner shall execute and cause to be recorded a release of the Memorandum of Agreement previously recorded. Further, Company agrees to abide in perpetuity under the terms of this Agreement on a going-forward basis.

F. **Advertising:** Company and Owner may not use each other's name or the name of any affiliated company or the name of the apartment complex or use any photographs or likenesses of the Property or of Company property, personnel or assets in each other's advertising without each other's prior written consent.

G. Consistency with Other Obligations:

1. Company and Owner each represent and warrant to the other that:

a. This Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligations enforceable in accordance with its terms;

b. No consent or approval of any other person or entity is the execution, delivery or performance of this Agreement is required; and

c. Neither the execution of this Agreement nor the performance of its obligations by it will conflict with or result in a breach of the terms, conditions or provisions of or constitute a default under any document to which it is a Party.

2. Owner additionally represents and warrants to Company that:

a. There is no pending or threatened litigation known to Owner affecting Owner's title to the Property;

b. Owner has entered into no other Telephone Service contracts covering the Property.

PART IV Term

A. **Term:** Subject to earlier termination for default, mutual consent, or failure of Landlord's Consent, this Agreement shall remain in full force and effect for SEVEN (7) years from the date of CTE record conversion to LinkIN designation for the last apartment building on the Property, and shall automatically renew for successive periods of (1) year unless either Party gives written notice of intent to terminate the Agreement at least sixty (60) days before the end of the original term of the Agreement or during any extension period.

B. **Default:** The following are "Events of Default" under this Agreement:

1. Owner or Company fails to meet, comply with, or perform any term, condition, covenant, agreement or obligation under this Agreement within the time limits and in the manner required in this

TELEPHONE LICENSE AGREEMENT

Agreement and, unless otherwise provided for in this Agreement, after written notice from the non-defaulting Party the default remains uncured for a period of thirty (30) days; provided, however, that if either Party is diligently attempting to cure the alleged default which is not reasonably able of being cured within such thirty (30) day period, the Party shall have a reasonable time to cure the default, and, for a default by Company, so long as Company is also using its best efforts to temporarily and permanently provide any failed Services to the Property, the Subscribers, and Owner,

2. The filing of a petition, case or other proceeding against a Party as a debtor under any applicable bankruptcy, reorganization or other similar laws which is not permanently dismissed or discharged within one hundred-twenty (120) days following the date of filing; or

3. Owner or Company is adjudged insolvent, makes a transfer in fraud of creditors, or makes an assignment for the benefit of the creditors.

C. Termination: This Agreement terminates upon the first to occur of the following:

1. Proper written notice by either Party of intent to terminate at the end of the original SEVEN (7) year period or any successive extension period;

2. The mutual written consent of the Parties hereto; or

3. An Event of Default by a Party occurs, when the other Party may terminate this Agreement by giving written notice to the defaulting Party.

D. Termination Liability: Owner acknowledges that Company will expend substantial time, resources and money in meeting its obligations under this Agreement, and that Company may only recoup its investment by providing the System and Services to the Property throughout the term of this Agreement and by collecting revenues from Subscribers. Company acknowledges that Owner's reputation with its Residents will be damaged by failure of Company to perform in accordance with the terms of this Agreement. Accordingly, the Parties agree to the following structure of termination liabilities:

1. If Company terminates this Agreement due to an Event of Default by Owner and Company is not in default during the first SEVEN (7) years of this Agreement, Owner's early termination liability will be as described in Exhibit "I". This right of Company is cumulative and does not preclude Company from seeking any other remedy available at law, including a suit for breach of contract.

2. If Owner terminates this Agreement due to an Event of Default by Company and Owner is not in default, Owner shall own the Intrabuilding System outright without any additional payment made or owed by Owner to Company. This right of Owner is cumulative and does not preclude Owner from seeking any other remedy available at law, including a suit for breach of contract.

3. The termination liabilities agreed to in this Section are not penalties, but constitute reasonable damages in the event of improper termination because damages would likely be significant and difficult to calculate with certainty.

E. Disposition Upon Termination:

1. Upon termination of this Agreement at the end of the term of the Agreement, or at the end of any extension period, Company will cooperate with Owner for a period of forty-five (45) days after such

TELEPHONE LICENSE AGREEMENT

expiration or termination. Company shall use Owner's contractor to connect the Owner and Residents (whether or not Subscribers) to the successor service provider at Owner's cost.

2. At the termination of the Agreement at the end of the SEVEN (7) year term or at the end of any period of extension, all subcontracts entered into by Company which have not previously terminated shall, at Owner's option, be assigned to Owner and assumed by Owner, and if assigned and assumed by Owner, the subcontractor shall recognize Owner as its new contracting Party, provided, Owner shall not be responsible for any liabilities or obligations of the Company arising prior to the date of such assignment and assumption. Unless assigned to and assumed by Owner, any subcontract shall terminate upon the termination of this Agreement.

F. Survival of Payment Obligations: Any payment obligation or any amount of indebtedness which has accrued prior to the date of termination and which is payable by one Party to the other shall survive the termination of this Agreement.

PART V Miscellaneous Provisions

A. Delayed Performance: If performance under this Agreement is interfered with by acts of God, war, riot, embargo, acts of the Government in its sovereign capacity, changes requested by Owner, or any other circumstances beyond the reasonable control and without the fault of the Party affected, the affected Party, upon giving prompt notice to the other Party, shall be excused from such performance to the extent of such interference (and the other Party shall likewise be excused from its performance), provided that the Party so affected shall use reasonable efforts to remove such causes of nonperformance and both parties shall proceed whenever such causes are removed or cease.

B. Dispute Resolution:

1. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

2. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery and production, which shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations are not so exempted and may, if otherwise admissible, be admitted in evidence in the arbitration or lawsuit.

3. If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the Parties shall submit the dispute to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that

TELEPHONE LICENSE AGREEMENT

limitation, reasonable attorneys' fees for services before trial, at trial and on any appeal therefrom, incurred by the prevailing Party. This Agreement includes any arbitration under the provisions of Section VB.

J. **Time of Essence:** Time is of the essence with respect to all obligations to be performed by either Party pursuant to this Agreement.

K. **Terminology:** All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, female or neuter, as the context or sense of this Agreement or any portion thereof may require, as if such words had been fully and properly written in the appropriate number and gender.

L. **Notices:** All notices, demands, requests and other communications required or permitted under this Agreement shall be in writing, and shall be deemed to be delivered when actually received or, if earlier, one (1) business day after delivery to a nationally recognized overnight courier service, or five (5) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, postage fully prepaid, addressed to the addressee at its address set forth below or at such other address as such Party may have specified therefore by notice delivered in accordance with this Section and actually received by addressee. All notices shall be sent to the following addresses unless modified in writing:

Owner:

Company: GTE Northwest Incorporated
1800 41st Street, MS - 2PM
Everett, Washington 98201
Attention: Regional Mgr, CMA

M. **Run With Land:** The terms and provisions of this Agreement shall run with the land until such time as it expires or is terminated.

N. **Governing Law:** This Agreement shall be governed by Washington law, and venue shall be in Snohomish County, Washington. The Parties consent to jurisdiction in the courts of Washington.

O. **Construction of Agreement:** All regulated services are provided in accordance with applicable laws, tariffs and regulations, and this Agreement shall at all times be construed to be consistent with those laws, tariffs and regulations. In the event this Agreement or any of the provisions hereof, or the operations contemplated, are found to be inconsistent with or contrary to any such law, tariff or regulation, that law, tariff or regulation shall be deemed to control and, if commercially practicable, this Agreement shall be regarded as modified accordingly and shall continue in full force and effect as so modified. If such modified Agreement is not commercially practicable in the opinion of either Party in its sole discretion, the Parties agree to meet promptly and discuss any necessary amendments or modifications to this Agreement. If the parties are unable to agree on necessary amendments or modifications in order to comply with the law, tariff or regulation, then either Party may terminate this Agreement by giving written notice to the other Party.

P. **Independent Contractor:** Company is an independent contractor and is not an agent or employee of, or a joint venturer or partner with, Owner.

TELEPHONE LICENSE AGREEMENT

IN WITNESS WHEREOF, and intending to be bound hereby, the Parties hereto have executed this Agreement to be effective as of the date first set out above.

OWNER:

gon limited liability corporation



By: Paul Labby
Its: Member and Authorized Signatory

Date: 12/23/97

COMPANY:

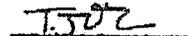
GTE Northwest Incorporated, a Washington corporation



By: Eileen O'Neill Odum
Its: President

Date: 1/9/98

FORM APPROVED



Attorney

Date: 1/8/97

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AGREEMENT FOR NEW MULTI-TENANT RESIDENTIAL PROPERTIES

This Agreement is made by and between U S WEST Communications, Inc. (U S WEST), *aka Oregon*
Village LLC ("Property Owner/Developer"), with offices for transaction of business located at *12121 Canyon Rd*
Portland, Or. 97266

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, U S WEST and Property Owner/Developer agree as follows:

1. TERM. This Agreement shall commence on *Feb 1, 2000* (the "Effective Date"), and continue for *10* years unless earlier terminated pursuant to this Agreement

"2. SCOPE OF AGREEMENT. Property Owner/Developer agrees to: 1) enforce and promote U S WEST as the preferred supplier of local telecommunications services including internet access (U S WEST.net), and 2) the provisioning of certain U S WEST products and services for use at the property ("the Property"). In return U S WEST will provide Property Owner/Developer with certain services under terms and conditions specified in this Agreement. U S WEST's variety of services is intended to enhance the value of the Property. The tenants ("Tenants") will reside at the Property specified in Attachment 1, which by this reference is incorporated and made part of this Agreement. Attachment 1 will include the following: 1) the location of the Property(ies) covered by this Agreement, and 2) the total number of individual residential units per Property."

3. U S WEST OBLIGATIONS.

3.1. U S WEST agrees to provide the following:

- a. Management and maintenance of the U S WEST facilities specified in Attachment 1.
- b. Marketing and promotional support such as Caller ID, Call Waiting, U S WEST.net Service, and Voice Messaging, including: 1) Product and service collateral materials and displays, 2) U S WEST signage, and 3) Notice of special promotions and offers.
- c. Preprovisioning (soft dial tone) capability in new construction (subject to network availability).
- d. An assigned U S WEST account team.
- e. Remittance of payment to Property Owner/Developer for costs associated with the preparation of the property ("Property"). Such payment will be in the amount of \$ *1,000*, *plus* (including tax) per eligible unit as specified in Attachment 1.
- f. OneStepSM Program will be included as specified in Attachment 2, which by this reference is incorporated and made part of this Agreement.

3.2. In addition, U S WEST will provide the following other services under this Agreement as indicated by check-mark below:

Check below	Property Owner/Developer selects:
<input type="checkbox"/>	Price discounts on or promotions of Business Voice Messaging Service as described in Attachment 1.
<input type="checkbox"/>	Price discounts on or promotions of Enhanced FAX Services as described in Attachment 1.
<input type="checkbox"/>	U S WEST will waive nonrecurring installation charge of U S WEST.net Service installed at Property/Owner Developer's leasing office(s).
<input type="checkbox"/>	Property Owner/Developers will receive a discount of 50% off the then retail rate on U S WEST

CONTINUATION

[6.]

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to revenue sharing agreements during the term of this Agreement; provided however, Property Owner/Developer shall not preclude Tenants from selecting a service provider other than U S WEST.

4.4. To purchase for its own use U S WEST local access service and intraLATA long distance service from U S WEST during the term of this Agreement.

4.5. To provide all the necessary and adequate termination space and reusable supporting structures for telephone cable/wire within the building and on their private property as required in state and local tariffs

4.6. Build facilities from its Demarcation Point at its expense. This Agreement will cover one-hundred (100%) percent of Property Owner/Developer's building(s) units at the locations identified in Attachment 1. Property Owner/Developer will commit a minimum number of _____ units. Construction of this minimum number of facilities shall commence within twelve (12) months of the Effective Date of this Agreement in accordance with U S WEST specifications as indicated in Attachment 1.

4.7. As soon as possible, before any Tenants move in, provide specific street addresses for each building at the Property location, the range of unit numbers in each building, the opening date of the Property leasing office, the first anticipated or scheduled Tenant move in date, the construction schedule including when each building opens or comes online, required telephone service dates, and red-lines or one-line drawings of the Property site.

5. **REVIEW AND ACCEPTANCE.** U S WEST may review services performed by Property Owner/Developer. U S WEST shall notify Property Owner/Developer in writing if the services do not conform to this Agreement. Property Owner/Developer shall correct such nonconforming services within thirty (30) days under this Agreement and within fifteen (15) days for services under Attachment 2, from such notification. U S WEST shall not waive any rights and remedies which U S WEST has or may have under this Agreement or under law.

6. **OWNERSHIP AND PROVISIONING OF SERVICE.** Title to and ownership of all U S WEST supplied equipment and facilities used up to the Property Owner/Developer's Demarcation Point, is and remains with U S WEST. U S WEST will provision and supply the Services described in this Agreement in any manner and by means of any equipment, software, and facilities U S WEST chooses. The method of provisioning of the Services is a matter within U S WEST's sole discretion.

7. CHARGES AND BILLING.

7.1. U S WEST shall pay charges due Property Owner/Developer pursuant to this Agreement according to the payment terms specified in Section 8, below.

8. **PAYMENT TERMS.** U S WEST's payment to Property Owner/Developer for the \$ 300.00 per unit fee at the location(s) specified in Attachment 1 shall be made in two (2) installments, according to the following schedule:

8.1. A payment of 50% of the price agreed to (per each location specified in Attachment 1) will be made upon commencement of construction at the location. Property Owner/Developer will notify U S WEST of such date and provide proof of such commencement as determined by U S WEST, and U S WEST shall have thirty (30) days from the receipt of such notification in which to tender said payment.

8.2. The final payment of 50% of the price (per location specified in Attachment 1) will be made upon final acceptance by U S WEST. U S WEST's acceptance shall be based upon the location's readiness for Tenant occupancy. U S WEST shall have thirty (30) days from said acceptance to tender the final payment.

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9. ADVERTISING; PUBLICITY.

9.1. Property Owner/Developer acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and U S WEST respectively, and that nothing contained in this Agreement is intended as an assignment or grant to Property Owner/Developer of any right, title or interest in the Marks. Other than U S WEST supplied material pursuant to Section 4, above, reference to or use of U S WEST's name, logo, or "Marks" in any advertising, promotional efforts or publicity ("Promotional Material") by Property Owner/Developer will be granted by U S WEST only under the following conditions:

- a. Property Owner/Developer must first submit the Promotional Material to U S WEST and receive U S WEST's prior written approval.
- b. The Promotional Material shall not be used in connection with any goods or services other than U S WEST services.
- c. Upon termination of this Agreement, all permission to use the Promotional Material shall cease to exist and Property Owner/Developer shall either promptly return Promotional Material to U S WEST or destroy it.

9.2. Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any copyrighted material, logo, trademark, trade name, or any other intellectual property right now or hereafter. U S WEST makes no warranties regarding its ownership of any rights in or the validity of the Marks.

10. CANCELLATION OF AGREEMENT FOR DEFAULT.

10.1. Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within such thirty (30) day period. If U S WEST terminates this Agreement for cause prior to the expiration of the term of this Agreement, Property Owner/Developer shall remit to U S WEST a termination charge of Forty Dollars (\$40.00) per unit for each year remaining in the term of this Agreement. If Property Owner/Developer terminates this Agreement without cause, or if U S WEST terminates this Agreement for cause, prior to beginning construction of the minimum number of units as specified in Section 4.6, Property Owner/Developer shall remit to U S WEST all payments received from U S WEST. Cause is any material breach of the terms of this Agreement.

10.2. This Agreement may be terminated by either party giving notice to the other at any time after the occurrence of the following events: (a) a receiver, trustee, or liquidator of the other party is appointed for any of its properties or assets; (b) the other party makes a general assignment for the benefit of creditors; (c) the other party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the other party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; and (e) the other party ceases doing business, commences dissolution or liquidation.

11. LIMITATION OF LIABILITY.

11.1. NEITHER PARTY IS LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING COMMERCIAL LOSS, HOWEVER CAUSED AND REGARDLESS OF LEGAL THEORY OR FORESEEABILITY, WHICH DIRECTLY OR INDIRECTLY ARISES FROM THE SERVICES OR EQUIPMENT PROVIDED BY U S WEST.

11.2. EACH PARTY IS RESPONSIBLE TO THE OTHER FOR ACTUAL, PHYSICAL DAMAGES DIRECTLY CAUSED IN THE COURSE OF ITS PERFORMANCE UNDER THE AGREEMENT, BUT LIMITED TO DAMAGES FOR PERSONAL INJURY OR DEATH, OR TO TANGIBLE PROPERTY ARISING IN EACH CASE FROM ITS NEGLIGENT ACTS OR OMISSIONS.

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12. **UNCONTROLLABLE CIRCUMSTANCES.** Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

13. **CONFIDENTIAL INFORMATION.** Property Owner/Developer may receive or have access to records and information, whether written or oral, which U S WEST considers to be confidential and proprietary, including technical information such as specifications, drawings, and technical guidelines. Such information shall be designated by U S WEST as confidential and/or proprietary, and Property Owner/Developer shall hold such confidential or proprietary information, including this Agreement, in trust and confidence for U S WEST, shall use it only for the purposes permitted hereunder, and shall deliver to U S WEST all such records and information, in written or graphic form, upon expiration or termination of this Agreement. Nothing in this section shall be construed to limit the use of or dissemination by Property Owner/Developer of such information as is previously known to Property Owner/Developer or is publicly disclosed by U S WEST either prior or subsequent to Property Owner/Developer's receipt of such information from U S WEST.

14. **DISPUTE RESOLUTION.**

14.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the parties or between one of the parties to this Agreement and the employees, agents or affiliated businesses of the other party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about telecommunications law shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA").

14.2. All expedited procedures prescribed by the AAA shall apply. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

14.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

14.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

15. **LAWFULNESS.** This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where the Property is located.

16. **SEVERABILITY.** In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, and the terminated provision is not material in implementing the intentions of the parties hereto, the remainder of this Agreement shall continue in effect.

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17. GENERAL PROVISIONS.

17.1. Failure or delay by either party to exercise any right, power, or privilege hereunder, shall not operate as a waiver hereto.

17.2. In the event Property Owner/Developer transfers the Property, Property Owner/Developer shall provide U S WEST with notice of the transfer of property, as well as the name, address, and telephone number of the successor-in-interest, at least thirty (30) days prior to the transfer. Property Owner/Developer shall ensure that this Agreement is assigned to its successor-in-interest. However, if Property Owner/Developer attempts to assign this Agreement to a telecommunications company, or any parent, subsidiary, or affiliate thereof, U S WEST may terminate this Agreement, and Property Owner/Developer shall remit to U S WEST a termination charge under the formula set forth in Section 10 above. This Agreement may not be assigned to a telecommunications reseller or telecommunications carrier under any circumstances.

17.3. This Agreement constitutes the entire understanding between Property Owner/Developer and U S WEST with respect to service provided herein and supersedes any prior agreements or understandings.

17.4 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same agreement.

18. EXECUTION. The parties hereby execute and authorize this Agreement including any Attachment(s), Addenda or Supplements hereto, as of the latest date shown below: .

U S WEST Communications, Inc.

Signature

Signature

Name Typed or Printed

Name Typed or Printed

Title

Title

Date

Date

Address for Notices:

Address for Notices:

U S WEST Communications, Inc.
Community Developer Group
Attn: Matthew Terry
5090 N 40th St., Room 270
Phoenix, AZ 85018

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ATTACHMENT 1

This Attachment to the Agreement pertains to the Service(s) described below. Where terms or conditions of this Attachment 1 conflict with terms or conditions of the Agreement, the terms and conditions of this Attachment 1 shall take precedence. The Agreement covers Property Owner/Developer's Property at the following locations and numbers of units: Such Property location must be within U S WEST's serving area.

<u>Property Locations (s)</u>	<u># of Units</u>	<u>Construction Start Date</u>
Total Number of Units		

Business Voice Messaging Service offer:

Property Owner/Developers selecting this offer will receive one (1) mailbox at no charge per Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region). Property Owner/Developer will also receive optional features selected at no charge, as shown below

<u>Service</u>	<u>Regular Price</u>		<u>Special Offer</u>
	<u>Monthly</u>	<u>Installation</u>	
Mailbox	\$12.75	\$10.00	NO CHARGE
Extension Mailbox Feature	\$5.00	\$10.00	NO CHARGE*
Message Notification Feature	\$3.00	\$10.00	NO CHARGE*
Scheduled Greeting Feature	\$3.00	\$10.00	NO CHARGE*

*NOTE: Extension Mailbox Feature and Scheduled Greeting feature are not available on the same line.

Enhanced FAX Service offer:

Property Owner/Developers selecting this offer will receive U S WEST Enhanced FAX Services at no charge for nonrecurring and monthly recurring charges per Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region). Except as noted below, applicable usage charges will apply. Usage credit available through this Special Offer will be applied and any remaining credit balance from the Special Offer will be carried forward.

<u>Service</u>	<u>Regular Price</u>		<u>Special Offer</u>
	<u>Monthly</u>	<u>Installation</u>	
Broadcast FAX or FAX Mail Plus	\$12.95 \$15.95	\$25.00	NO CHARGE one-time \$20.00 usage credit towards first broadcast
FAX Request Price Plans B & C	\$12.95	\$25.00	NO CHARGE one-time \$20.00 usage credit towards per-page charge
FAX Request Price Plans D & E	\$25.00	\$25.00	NO CHARGE one-time \$20.00 usage credit towards per-page charge
Never-Busy FAX	\$12.95	\$10.00	NO CHARGE

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Super Savings Calling Plan for Business offer:

Property Owner/Developers selecting this offer will receive the U S WEST Super Savings Calling Plan for all local long distance calls for the Property management office(s) at the locations listed above and at its headquarters location (if located within the U S WEST region).

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January 25, 2000

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ATTACHMENT 2

This Attachment 2 to the Agreement pertains to the service(s) described below. In addition to those stated herein, all terms and conditions of the Agreement shall apply. Where terms or conditions of this Attachment 2 conflict with terms or conditions of the Agreement, the terms and conditions of this Attachment 2 shall take precedence.

PROPERTY OWNER/DEVELOPER MARKETING SALES THROUGH ONESTEPSM PROGRAM

In consideration of the promises, mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, U S WEST and Property Owner/Developer agree as follows:

- 1. SCOPE OF AGREEMENT.** U S WEST is a provider of telecommunications service ("Services"). Property Owner/Developer is in a business that allows it to take orders for U S WEST Services from Tenants moving into the Property covered by this Attachment 2 using the U S WEST OneStepSM Program ("OneStepSM" or "Program"). The Program allows the Tenants to request U S WEST Services through the Property Owner/Developer without a call to the U S WEST business office. Property Owner/Developer will not promote, sell or offer Services identified in this Agreement that are supplied by a provider of such service other than U S WEST. The locations of the Properties covered by this Attachment 2 are as specified in Exhibit 1. In return for each completed sale through the OneStepSM Program, U S WEST will compensate Property Owner/Developer according to the compensation schedule specified in Exhibit 1, incorporated and made part of this Attachment 2 by this reference. This Attachment 2 sets forth the parties obligations relating to the OneStepSM Program and such additional terms and conditions as may apply and the parties performance relating to this Attachment 2.
- 2. APPOINTMENT OF PROPERTY OWNER/DEVELOPER.** U S WEST hereby appoints Property Owner/Developer as its non-exclusive limited agent to sell U S WEST Services and perform responsibilities specified herein under the terms and conditions contained in this Attachment 2. During the term of this Attachment 2 and thereafter, U S WEST reserves the right, without obligation or liability to Property Owner/Developer, to market its Services, whether through its own representatives, other agents, or by any other means. Property Owner/Developer hereby accepts such appointment and certifies that, except as specifically provided for herein, it is capable of performing all of its obligations under this Attachment 2. Property Owner/Developer shall perform the duties specified herein only in relation to Services covered by this Attachment 2 and set forth in Exhibit 1. U S WEST may, from time to time, modify Exhibit 1 by providing thirty (30) days written notice. Property Owner/Developer is authorized to perform the responsibilities covered by this Attachment only at the locations specified herein. It is expressly understood and agreed that the agency created herein is a limited agency, and that Property Owner/Developer shall have only those rights and responsibilities specifically described in this Attachment 2 for Default. U S WEST may, at its sole discretion, with fifteen (15) days prior written notice, suspend or terminate this Attachment 2 if Property Owner/Developer's activities do not satisfy U S WEST's professional or ethical standards, or if U S WEST has reasonable suspicion that Property Owner/Developer or any of Property Owner/Developer's leasing personnel have not fully complied with performance required under this Attachment 2.
- 3. COMPENSATION.** Compensation for the services performed by Property Owner/Developer hereunder shall be as specified in Exhibit 1. The compensation agreed to herein shall be the total compensation due to Property Owner/Developer under this Attachment 2 and will be paid only in accordance with the terms of this Attachment 2. U S WEST will provide, within twenty (20) business days after the end of each month, a list of the Completed Orders ("Completed Orders"), as defined herein, and the products sold on those orders, as well as the total compensation for all orders and products. U S WEST will render no more than one (1) compensation check to Property Owner/Developer each month, regardless of the number of Properties listed under this Attachment 2 or managed by the Property Owner/Developer.

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4. PROPERTY OWNER/DEVELOPER OBLIGATIONS.

4.1. Property Owner/Developer shall market, promote, solicit, and take orders for U S WEST Services for their new Tenants on behalf of U S WEST. Property Owner/Developer shall be available and responsive to questions regarding U S WEST Services from its Tenants during its normal business hours.

4.2. Property Owner/Developer shall display signage indicating availability of U S WEST Services through the OneStepSM process. In addition, Property Owner/Developer will, at its own expense, provide, own, and maintain a fax machine to send OneStepSM service orders directly to the U S WEST Client Service Center and maintain a sufficient supply of forms, collateral materials, price lists, etc. Property Owner/Developer shall provide U S WEST at least three (3) weeks lead time in order to replenish supplies its orders for such forms and collateral. For all Properties covered under this Attachment, U S WEST will mail all such forms and collateral to Property Owner/Developer at the following address:

4.3. Prior to taking orders for Services, Property Owner/Developer shall attend the training necessary to use U S WEST order forms. Property Owner/Developer will ensure that it will train its leasing staff and provide any updates to training on a timely basis. Property Owner/Developer shall ensure that all service orders sent to the U S WEST Client Service Center facsimile number are substantially error free. For Tenant questions that Property Owner/Developer personnel cannot answer and for information on the services of U S WEST that are not included in Exhibit 1, Property Owner/Developer shall assist the Tenant in contacting U S WEST's offices.

4.4. Property Owner/Developer shall ensure that orders for Services taken by its personnel are solely at the OneStepSM prices and terms specified by U S WEST. Such prices, terms, and conditions are subject to change at the sole discretion of U S WEST and are effective upon written notice to Property Owner/Developer. Property Owner/Developer shall ensure that its personnel use the most current U S WEST prices, terms, and forms when taking orders for network services. Property Owner/Developer is not authorized to alter, orally or in writing, any U S WEST price, term, or condition on any U S WEST form. Property Owner/Developer shall not make any representations or warranties concerning this Program or network services, or impose any conditions, directly or indirectly, other than those expressly authorized by U S WEST.

4.5. U S WEST, at its sole discretion, can accept or reject any order. No order shall be final until U S WEST accepts such orders. Property Owner/Developer shall have no authority to approve or accept any orders on behalf of U S WEST. All orders obtained by Property Owner/Developer shall be promptly forwarded to U S WEST for acceptance, rejection, or comment. U S WEST reserves the right to cancel or terminate any order, or to permit the Tenant to cancel or terminate any order, in whole or in part, at U S WEST's sole discretion.

4.6. U S WEST has sole authority to determine which U S WEST products or services are offered through the OneStepSM process. U S WEST reserves the right to add, delete, or change any portion of U S WEST's Services offered through OneStepSM.

4.7. For Property specified in this Attachment 2, Property Owner/Developer will not act as an agent for, or enter into another agency agreement with, any other local or intraLATA telecommunications provider or reseller, including but not limited to revenue sharing agreements during the term of this Agreement; provided however, Property Owner/Developer shall not preclude Tenants from selecting a service provider other than U S WEST.

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any of its properties or assets; (b) the other party makes a general assignment for the benefit of creditors; (c) the other party is adjudicated as bankrupt or insolvent; (d) a petition for the reorganization of the other party or an arrangement with its creditors, or readjustment of its debt, or its dissolution or liquidation is filed under any law or statute; and (e) the other party ceases doing business, commences dissolution or liquidation.

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EXHIBIT 1

Property Location(s):

U S WEST OneStep™ Compensation Schedule. U S WEST will compensate the Property Owner/Developer according to the following schedule for Completed Orders:

<u>COMPLETED ORDERS:</u>	<u>COMPENSATION PER LINE</u>	<u>MINIMUM # OF MONTHS IN SERVICE</u>
New Connect and T Orders	\$9.00	3
Packages:		
CustomChoice™ (Compensation includes \$8.00 per order compensation)	\$29.00	3
ValueChoice (Compensation includes \$9.00 per order compensation)	\$24.00	3
Features:		
U S WEST Call Waiting	\$8.00	3
U S WEST Caller ID	\$8.00	3
U S WEST Caller ID with Privacy +	\$8.00	3
U S WEST No Solicitation	\$8.00	3
U S WEST Voice Messaging	\$8.00	3
U S WEST Custom Ringing	\$4.00	3
U S WEST Three Way Calling	\$4.00	3
U S WEST Call Forwarding	\$4.00	3
U S WEST Continuous Redial	\$4.00	3
U S WEST Last Call Return	\$4.00	3
U S WEST Call Rejection	\$4.00	3
U S WEST Priority Call	\$4.00	3
U S WEST Additional Line	\$15.00	3
U S WEST Speed Dialing	\$4.00	3
U S WEST Listings	\$2.00	N/A
U S WEST LineBacker Services	\$2.00	3
U S WEST Calling Card	\$1.00	N/A
U S WEST Paging	\$8.00	3
U S WEST.net Internet Access (where available)	\$8.00	3
U S WEST Local Long Distance Calling Plans (where available)	\$8.00	3

Compensation will be paid one (1) month in arrears of U S WEST Service provisioning. Compensation will also be paid for features sold to existing U S WEST customers. However, no other compensation (i.e., order fee) will be included in these instances. U S WEST will check the product and service retention at the end of ninety (90) days to determine the number of features dropped. Any lines or features not in place ninety (90) days after Service was ordered will be deducted from the current month's compensation calculation. Upon termination or expiration of this Attachment 2 by either party, U S WEST will withhold compensation for one hundred twenty (120) days to allow for a "truing up" period. Final compensation payments will be rendered upon completion of the one hundred twenty (120) day period.

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RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

MAR 19 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S)
COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

Docket No. TC 01-165

AT&T'S VERIFIED COMMENTS ON
DISPUTED ISSUES RELATING TO
EMERGING SERVICES

MARCH 18, 2002



AT&T Communications of the Midwest ("AT&T") hereby submits its verified comments addressing issues relating to emerging services issues in South Dakota.

I. INTRODUCTION

As articulated by the FCC's UNE Remand Order,¹ there are expanded standards and framework on ILEC (including Qwest) unbundling obligations pursuant to § 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996.² These obligations encompass, among others, the "emerging services" issues including subloops,³ dark fiber,⁴ packet switching⁵ and line sharing.⁶

Specifically, the FCC indicated that "(f)or effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services they seek to offer."⁷ As established below, AT&T does not have the effective access necessary to provide competitive telecommunications services utilizing the "emerging services."

Qwest's entrance into the in-region interLATA long distance market is directly related to Qwest's compliance with 47 U.S.C. § 271. To be in compliance, Qwest must

¹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, "Third Report and Order and Fourth Further Notice of Rulemaking, CC Docket No. 96-98 (rel. November 5, 1999) ("UNE Remand Order").

² *Id.* at ¶4.

³ *Id.* at ¶202 *et seq.*

⁴ *Id.* at ¶196 *et seq.*

⁵ *Id.* at ¶301 *et seq.*

⁶ The obligations listed above are analogous for line sharing. See *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) at ¶13.

⁷ *Id.* at ¶13.

"support its application with actual evidence demonstrating its present compliance with statutory conditions for entry."⁸

As the FCC looks to the South Dakota Public Utilities Commission (the "Commission") to ensure that the state's local telecommunication market is open to competition, AT&T requests extensive scrutiny of Qwest's present compliance with emerging service issues. It is only through this scrutiny and Orders that comply with FCC and legal mandate that AT&T will be able to compete in South Dakota. To that end, AT&T further articulates its positions on subloop, dark fiber, packet switching and line sharing.

II. SUBLOOP DISPUTED ISSUES

A. ~~WHETHER THE SGAT'S PROVISIONS FOR ACCESS TO SUBLOOP ELEMENTS AT THE MTE TERMINALS IS CONSISTENT WITH THE FCC'S DEFINITION OF, AND RULES REGARDING ACCESS TO, UNBUNDLED NID (sic.) (INCLUDING ISSUES REGARDING QWEST'S STANDARD MTE ACCESS PROTOCOL AND ACCESS PROVISIONS ARE TOO RESTRICTIVE IN REGARDS TO MTE ACCESS) (Issue No. 65)~~

1. The Issue

Under the Federal Communication Commission's ("FCC's") UNE ~~Remand~~ Order, incumbent LECs such as Qwest are required to provide ~~competitive carriers with~~ access to subloops through any accessible terminal including ~~but not exclusively the~~ Network Interface Device ("NID"). In particular, AT&T has attempted to seek access to the on-premises wiring, essentially a piece of (usually) copper twisted wire pair that extends in a multi-tenant environment ("MTE") from the NID to the individual units. It is essential that AT&T obtains this access because AT&T provides competitive telephony

⁸ Application by Bell Atlantic New York for Authorization Under § 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶ 37 ("BANY Order").

service to end user customers and has deployed its own loop facilities in Qwest's 14-state region.⁹ In most cases, AT&T runs its own network all the way to the customer premises and merely needs access to the on-premises wiring, sometimes owned by Qwest.¹⁰ This wiring is difficult, if not impossible for AT&T to duplicate. In sum, if AT&T does not obtain FCC mandated quick, efficient and cost effective access in order to capture on-premises wiring, AT&T cannot compete to provide local telephone service.

Historically, Qwest's other impediments have also included insisting that NID access required collocation, requiring a 90-day provisioning period for access. Qwest did away with the collocation requirement after the Washington Utilities and Trade Commission (WUTC) ruled "(g)iven the FCC's orders and rules on the issue, Qwest must allow cross-connection at Multi-Tenant Environments...and may not require collocation for such access." See Eleventh Supplemental Order; Initial Order Finding Non-Compliance on Collocation Issues, Docket No. UT-003022 and Docket No. UT-003040. Qwest also stealthfully included in its SGAT that CLECs must follow a Qwest drafted "access protocol" which limits CLEC access to the on-premises wiring, especially in an "Option 3" situation where Qwest claims ownership or control of the on-premises wiring. Addressed in separate sections below, in an "Option 3" situation, Qwest is still also requiring an LSR (local service request) for each inside wire that AT&T is capturing, requiring the CLEC to "inventory" every NID that it accesses (Qwest would then charge the CLEC for that inventory). In fact, there are so many nuances relating to how CLECs

⁹ Exhibit 1037 at p. 2.

¹⁰ See AT&T Proposal §9.3.3. Such wiring has also been referred to, variously, as "inside wire," "intra-building wire," or "campus wiring." AT&T notes that none of these terms has any settled meaning, although "inside wire" has been discussed by the FCC in numerous orders. See, e.g. 47 CFR 51.319(a)(2)(A). Nonetheless, AT&T's reference to on-premises wiring is deliberately broad and encompasses all wire or cabling of Qwest located on or within a customer premises. As will be discussed in more detail below, Qwest does not dispute that AT&T may obtain access to on-premises wiring, regardless of Qwest's terminology, but impermissibly mischaracterizes such wiring.

are supposed to access and record their access to on-premises wiring, the Qwest proposed SGAT has become virtually unreadable.

Qwest's attempt to put up these access roadblocks should be no surprise; the FCC made a clear determination that incumbent LECs such as Qwest have used the MTE chokepoint as a means to severely inhibit competition.¹¹ In its MTE Order, the FCC found that "incumbent LECs are using their control over on-premises wiring to frustrate competitive access in multitenant buildings."¹² Further, the FCC found "that incumbent LECs possess market power to the extent their facilities are important to the provision of local telecommunications services in MTEs."¹³ Finally, the FCC recognized that "[i]n the absence of effective regulation, (the "ILECs") therefore have the ability and incentive to deny reasonable access to these facilities to competing carriers."¹⁴

For these reasons, AT&T believes the South Dakota Public Utilities Commission's insight, including reinforcement of FCC guidelines and its own orders, will assist AT&T in seeking its required inexpensive, efficient, and expeditious access. AT&T is confident that the Commission will determine that Qwest's SGAT is not consistent with the Act and the rules thereunder.

2. Qwest Ignores the FCC Definition of the NID

AT&T has reason to be concerned that Qwest has ignored important distinctions contained in FCC's rulings regarding access to NIDs and MTEs as described below placing substantial doubt on whether Qwest's SGAT generally complies with the FCC's

¹¹ *Id.*

¹² Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366, ¶ 6 (Rel. Oct. 25, 2000) ("MTE Order").

¹³ *MTE Order* at ¶ 11.

¹⁴ *Id.*

rules regarding access to NIDs. Qwest has argued that the NID is always the demarcation point, i.e. where Qwest's ownership ends. Thus, under Qwest's logic, if Qwest owns the on-premises wiring, CLECs would not be accessing at the NID but at what Qwest considers to be the MTE terminal.¹⁵ In doing so, Qwest completely ignores both the definition and the relevancy of the access to the NID in its current SGAT language as discussed in the various workshops.¹⁶ As explained below, because the FCC has placed particular importance to CLEC NID access in order to capture on-premises wiring, this Commission should correct Qwest's misrepresentations located throughout the SGAT, the result thereof which limits CLEC access when Qwest asserts ownership of the on-premises wiring.

¹⁵ See e.g. Qwest SGAT 9.3.1.1.1.1

¹⁶ See e.g. Washington Transcript (Attached as Exhibit A) at pp. 4524-4525.

a. The FCC and AT&T's Definition of the NID

In greater detail, before the UNE Remand Order, the FCC considered the NID to be a "cross-connect device used to connect loop facilities to inside wiring."¹⁷ In the UNE Remand Order, the FCC redefined the NID to "include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism."¹⁸ The FCC specifically redefined the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.¹⁹

The importance is substantial, until the FCC redefined the NID in its UNE Remand Order, the local loop element ended at the NID located at the retail customer's premises.²⁰ In the UNE Remand Order, the FCC redefined the loop to extend from a distribution frame in the incumbent LEC central office to the demarcation point at the customer's premises. The demarcation point is where control of wiring shifts from the carrier to the subscriber or premises owner. Accordingly, the NID is not necessarily the demarcation point.²¹ Instead, it is precisely where AT&T requires unencumbered access, a readily identifiable

¹⁷ *UNE Remand Order* at ¶ 230.

¹⁸ *Id.* at ¶ 233.

¹⁹ *Id.*

²⁰ *UNE Remand Order* at ¶ 167.

²¹ The FCC defined the demarcation point to mean "the point on the loop where the telephone company's control of the wiring ceases, and the subscriber's control (or in the case of some multi-unit premises, the landlord's control) of wire begins." Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. November 5, 1999) (hereafter "UNE Remand Order") at ¶ 230. Thus the demarcation point is defined by control; it is not a fixed location on the network, but rather a point where an incumbent's and property owner's responsibilities meet."

cross-connection point because it is the first cross-connection point after the incumbent LEC distribution plant crosses the property line of the building owner.

The FCC's UNE Remand Order also specifically contradicts Qwest's determination that the NID is the demarcation point, indicating that the demarcation point, "(d)epending on the specific architecture...**might** be at the pedestal, the NID, the MPOE, or any other accessible terminal."²² The FCC further indicated that the NID had nothing to do with where the loop ends, as "the loop may terminate at the NID, before the NID or beyond the NID."²³

b. Why the NID Definition is So Important

In the UNE Remand Order, the FCC created a separate distinct section regarding access to the NID.²⁴ In doing so, the FCC made clear that unencumbered access to the NID is technically feasible and particularly important because denial of access "would materially diminish a competitor's ability to provide the services it seeks to offer,"²⁵ and "would materially raise entry costs, delay broad facilities-based entry and materially limit the scope of the competitor's service offerings."²⁶ Accordingly, the FCC indicated that "an incumbent LEC must permit a requesting carrier to connect its own loop facilities to the inside wire of the premises through the incumbent LEC's NID, or any other technically feasible point, to access the inside wire subloop element."²⁷

²² *UNE Remand Order* at ¶ 216, fnote. 417.

²³ *Id.* at ¶ 433, fnote. 457.

²⁴ *Compare Id.* at ¶ 202 *et. seq.* with *Id.* at 230 *et. seq.*

²⁵ *Id.* at ¶ 237.

²⁶ *Id.*

²⁷ *Id.*

Qwest serves MTEs primarily through one of two means – Option 1 or Option 3 wiring. In the case of Option 1 wiring, the building owner owns and controls the on-premises wire and, as a result, there is no question that Qwest may not legally deny a competitor access to wiring at the premises. This is true because there are no Qwest-owned or controlled facilities used when the competitor directly connects to the building wire. Because there are no unbundled network elements involved, there is nothing to be negotiated with Qwest.

In the case of Option 3 wiring, Qwest asserts control, if not ownership, of at least a portion of the wiring on the premises that may be used by the connecting carrier. Because Qwest controls a portion of the facilities, the connecting carrier may in turn use some Qwest-controlled assets that there is no dispute must be unbundled as subloop unbundled network elements. However, in light of the FCC definition of NID discussed above, pursuant to the 1996 Telecommunications Act, AT&T's access should not be encumbered just because Qwest owns the on-premises wiring.

3. How the Qwest SGAT has Encumbered Access

To paraphrase the FCC, in the absence of effective regulation, Qwest has the ability and incentive to deny reasonable access to various CLEC's attempts to capture the on-premises wiring.²⁸ By impeding access to Option 3 properties (i.e., when Qwest does own the internal customer premises wiring) through requirements of an LSR, an "inventory," other SGAT limiting provisions and non-technical access limitation language located in a Qwest required "access protocol", Qwest is utilizing its

²⁸ *MTE Order* at ¶11.

“ownership” of on-premises wiring to impede access to on-premises wiring through rate elements and terms that are not “just, reasonable and non-discriminatory.”²⁹

AT&T’s issues regarding the LSR and Inventory are paraphrased by QSI Consulting as Issue No. 66-67 respectively. The remaining issues are found in SGAT § 9.3.5.4.5. referring to an access protocol.

In sworn testimony, a Qwest witness has indicated that the purpose of the access protocol was to provide CLEC technicians with some sort of guide to obtaining access to the Qwest MTE terminal.³⁰ AT&T is extremely concerned about the access protocol, and such protocol becomes relevant for 271 purposes because Qwest has, by reference, incorporated the access protocol into the SGAT in § 9.3.5.4.5.1.³¹ Furthermore, Qwest has taken great pains to distinguish its access protocol for “Option 1” situations where the CLEC is trying to access the “NID” vs. “Option 1 situations where the CLEC is trying to access an “MTE Building Terminal.”³² As there is no physical nor technical difference between an Option 1 NID (or under Qwest nomenclature, “building terminal”) and an Option 3 NID, the only difference between the two is if Qwest owns the on-premises wiring, there should be absolutely no distinction on what AT&T needs to do to access that wiring. In fact, according to the FCC, all that CLEC’s access needs to be is technically feasible.³³ Of course, AT&T also has no issue with following the National Electronic Code (NEC) and National Safety Code (NEC) requirements to the extent that they are relevant, as suggested in the access protocol. Finally, AT&T has no issue with

²⁹ See 47 U.S.C. 251(c)(3).

³⁰ See Exhibit A at p. 5468, ll. 1-15.

³¹ *Id.* at p. 5468, l.25 - 5470, l. 20.

³² See e.g. Exhibit A at p. 5489, l.6 - 5490, l.24.

³³ UNE Remand Order at ¶ 220.

paying a reasonable per line per month recurring charge for use of the Qwest owned on-premises wiring that AT&T utilizes.

Qwest's artificial distinction between Option 1 and Option 3 wiring is readily apparent in the access protocol.³⁴ Unless there is a protector field issue,³⁵ there appears to be no significant limitations as to access in at least the identified terminal Option 1 settings.³⁶ The same should hold true for Option 3 wiring. Instead, relating to Option 3, the access protocol becomes a great deal more significant.³⁷ First, there is an unsubstantiated presumption that Option 3 buildings are "hard wired," requiring a splice in the protector field. If a CLEC does have to splice in, a technically feasible method of access. Qwest would then have the option of "retrofitting" the terminal "with a terminal containing a proper cross-connect field and clear demarcation points for test access."³⁸ AT&T would then have to pay for the retrofitting that it did not ask for through some sort of undefined recurring charge.³⁹ In sum, there should not be a presumption of relative inaccessibility and CLEC borne "retrofitting" costs just because Qwest owns the internal customer premises wiring. Indeed, it appears Qwest intends to use CLEC requested access as a means to pay for upgrading its antiquated network.⁴⁰

Yet another issue in the "access protocol" is that CLEC access to the protector field is only being given in twenty-five pair increments.⁴¹ Qwest indicated in the Washington workshop, that this is to avoid waste.⁴² Thus, if AT&T wished to access

³⁴ See Exhibit B attached.

³⁵ AT&T does not believe that it will need access to the protector field except for rare circumstances.

³⁶ *Id.* at p.8.

³⁷ See *Id.* at p.9.

³⁸ *Id.* (Note that this provision is located exclusively in the access protocol and not the SGAT.)

³⁹ See Exhibit A at pp. 5528, 1.19-5532, 1.18. See also, SGAT § 9.3.6.1.1.

⁴⁰ See Exhibit A at pp. 5493-5494 (July 31, 2001) and at pp. 5529-5530 (August 1, 2001).

⁴¹ See Exhibit KAS-ES-3 at p. 8, 9, 10,

⁴² See Exhibit A at p. 5475, 1.22- p. 5476, 1.16.

only two tie down terminals in the protector field, it would not be able to unless it accessed twenty-five. Likewise, if there were only room for two tie down terminals in the protective field, but no room to the required twenty-five, Qwest could deny access. This makes no sense from a technical perspective, and even worse is discriminatory to the CLECs, prohibiting access when there is space available. Colorado Commissioner

Finally, the access protocol should be limited to technical parameters, avoiding terms and conditions that affect legal rights and obligations which are appropriate exclusively in the SGAT. Such sections include the following:

- 1) Preconditions to Access located on p.5 of the access protocol.
- 2) LSR Requirements located on p. 7 of the access protocol.
- 3) Definition of a NID on p.8 of the access protocol.
- 4) Definition of an ICB on p. 4, 8, 9 of the access protocol.
- 5) Qwest's Unilateral Ability to Place a Single Point of Interconnection (SPOI) on p. 14.

AT&T is also puzzled why the Access Protocol that Qwest proffered in South Dakota completely ignores the changes mandated by Chairperson Gifford of the Colorado Commission.⁴³ As Chairperson Gifford addressed many of AT&T's issues related to the access protocol, an adoption of his required language would be appropriate.

The issues with the access protocol help accentuate the broader issues regarding Qwest's attempt to skirt its obligation to provide technically appropriate unencumbered access to the NID in order for CLECs to capture the on-premises wiring. The impasse issues that follow address barriers that Qwest has implemented which will have the effect of denying CLEC access to such on premises wiring.

⁴³ See *Order Regarding Subloop Issues SB-16 and SB-21, In the Matter of the Investigation into U.S. West Communications, Inc.'s Compliance with §271(C) of the Telecommunications Act of 1996*, Decision No. R01-1095-1, Docket No. 971-198T (rel. October 26, 2001) (Attached as Exhibit C).

B. WHETHER CLECS MUST SUBMIT AN LSR TO CAPTURE ON-PREMISES WIRING (Issue No. 66)

As discussed above, Qwest is required to provide CLECs with nondiscriminatory access to UNEs, including subloops.⁴⁴ Qwest's requirement that a CLEC submit a local service request ("LSR") before capturing the on-premises wiring is a discriminatory practice not permitted by the Act because it creates a materially more burdensome means of access than Qwest affords itself.⁴⁵ Before Qwest established a product for access to subloops, it is not clear that Qwest even bothered to keep a record of on-premises wiring that it owned, let alone applied stringent recording and access protocols.⁴⁶

Simplicity is appropriate for access to on-premises wiring. As discussed above, the FCC has indicated that the only parameters relating to CLEC access to capture the internal customer premises wiring should be technical feasibility. The FCC further found that access via the NID was technically feasible. In fact, Qwest has been unable to dispute that AT&T's methods of capturing the on-premises wiring have not been technically feasible. The same would hold true with AT&T's proposed methods of notifying Qwest of AT&T's capturing the on-premises wiring.⁴⁷ Specifically, AT&T believes that it is appropriate that a CLEC submit to Qwest a monthly statement specifying the cable and pairs employed by the CLEC and the addresses of the MTEs in which AT&T has obtained access.⁴⁸

⁴⁴ Qwest SGAT §§ 9.3.5.1, 9.3.5.4.4.

⁴⁵ *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, et al.*, CC Docket No. 00-65, Memorandum Opinion and Order (re: June 30, 2000) at ¶ 99.

⁴⁶ This is presumably why Qwest needs up to ten days to determine if it owns the on-premises wiring. See Qwest SGAT § 9.3.5.4.1.

⁴⁷ See SGAT §. 9.3.8.10.

⁴⁸ *Id.* at § 9.3.8.10.2.

Qwest has indicated on the record that it is necessary for AT&T to issue an LSR for non-ported numbers for cost recovery, maintenance, and record keeping purposes.⁴⁹ To clarify, through long established processes, AT&T has been issuing automated LSRs for ported numbers. An LSR for ported numbers makes sense because the customer wishes to port its telephone number to AT&T, and specific coordination is required with Qwest and the third party number porting database provider-NPAC. None of these requirements are present when there is new AT&T service or the former Qwest customer switches to AT&T without porting its number. In fact, AT&T has been accessing on-premises wiring for months, without any Qwest need for an LSR process. Indeed, throughout this period of time, Qwest has indicated on the record that it has yet to formalize any sort of working LSR process that AT&T would utilize in order to order the inside wire subloop UNE.⁵⁰

To demonstrate the appropriateness of Qwest's requirement that an LSR be issued each and every time a CLEC orders the inside wire subloop UNE, it is useful to examine Qwest's previously stated reasons for requiring an LSR. In Colorado, Qwest testified on the record that it would need an LSR so that Qwest could have the heads up "so it could make the decision around whether or not (Qwest is) going to observe (AT&T) doing the work."⁵¹ As Qwest has now adopted SGAT language with an access protocol allowing access at the time or even after AT&T notifies Qwest, this reason becomes mere subterfuge.

Qwest next indicated it needed an LSR "to be in a position to update Qwest's systems and be ready to meet (Qwest's) maintenance and repair obligations effectively

⁴⁹ Exhibit A at p. 4703, l. 25 – p. 4704, l.5.

⁵⁰ See Exhibit D (Oregon Transcript) at p. 166, l. 11- 19.

⁵¹ See Exhibit E (Colorado Transcript) at p. 173, l. 18-23.

with (AT&T's) access to the UNE."⁵² However, Qwest then conceded that the on-premises wiring was not a high maintenance item.⁵³ Furthermore, the repair obligation, while it exists if Qwest owns the on-premises wiring, logically would be instigated by the CLEC providing service to the end-user customer, as any service problems should be. The customer would contact the CLEC, who would then contact Qwest, if required. Likewise, nothing would be gained by Qwest's LSR requirement if problems occurred with a non-CLEC Qwest customer. Qwest would have the records for that non-CLEC customer and the LSR would provide no useful information. It is also important to note that pursuant to other SGAT requirements, such as the notification requirement found in SGAT § 9.3.5.4.1, Qwest will have notice that the CLEC has accessed the particular NID/building terminal. Thus, they do not have to be notified of that fact via an LSR.

Qwest further indicated that it needed an LSR "to create a circuit I.D. for Qwest to inventory into its systems."⁵⁴ As Qwest is now allowing/mandating for AT&T to create the inventory,⁵⁵ there is no need for the LSR to create the inventory. Furthermore, Qwest has explicitly testified in Oregon "inventory does not need to be completed before the CLEC gains access to the subloop element."⁵⁶ Thus, the immediate need for Qwest to have an inventory through the LSR process is no longer a concern for Qwest.

Furthermore, Qwest has always asserted that it needs an LSR to create an automated process. In previous workshops, when asked about a manual system, such as an e-mail or fax notification, Qwest witness Karen Stewart testified "the only way that information is going to be fed into our system is the equivalent of LSR. I mean, what

⁵² *Id.*

⁵³ *Id.* at p.174, l.19-p.175, 8.

⁵⁴ *See* Exhibit E at p. 150, l.3-14.

⁵⁵ *See* Exhibit A at p. 5522, l.21-5523, l.6.

⁵⁶ *See* Exhibit D at p. 171, l.10-13.

else are we going to do with the E-mail information? I mean, put it in somebody's desk drawer?"⁵⁷

Accordingly, much to AT&T's surprise, when the basic details of a non-ported LSR process was articulated by Qwest in the August 1, 2001 workshop, a **manual process** was contemplated.⁵⁸ In fact, Qwest contemplates that for **every** on-premises wire subloop UNE that AT&T wished to order, they would need to manually type in the Remark Section of the LSR, "this is an Intra building cable" and whether the CLEC wants "Qwest to Dispatch a technician to run the jumper or if the CLEC will run the jumper." The only other information required for Qwest's contemplated LSR a vast majority of the time is the Intra building Cable NC/NCI codes the address.⁵⁹ Also, contrary to Qwest witness Karen Stewart's issues at the time, Qwest now contemplates that the LSR would be faxed or issued through IMA-GUI.

The ramifications of the Qwest contemplated LSR process as it relates to competition are tremendous. Once Qwest gets around to finalizing what that process would entail, AT&T would have to expend substantial funds to create systems and provide personnel to inform Qwest on a wire by wire basis that AT&T: 1) ordered the wire at a certain address and 2) AT&T would be running the jumper.

Furthermore, AT&T incurs a systems cost for each LSR that AT&T submits. The charges for subloop access at a NID terminal will be very small⁶⁰ and will hardly warrant the expense of issuing an LSR.⁶¹ To make matters worse, Qwest then intends to forward

⁵⁷ See Exhibit E at p. 164, 1.7-12.

⁵⁸ See Exhibit A at p. 5567, 1.7-8.

⁵⁹ *Id.* At the workshop, Qwest indicated that it would "take back" the issue of whether AT&T there could be a "default" that the CLEC was going to run the jumper. See Washington Transcript at p. 5568, 1.17-22. Off line Qwest indicated to AT&T that such requirement would not be waived.

⁶⁰ See Exhibit A at p. 4700.

⁶¹ *Id.*

that information to its "service delivery center" to be "converted" (i.e. typed in),⁶² which makes this hardly an automated, efficient, or even necessary process. To initiate substantial processes for such a simple element is unreasonable and contrary to the requirements of the Act.

AT&T acknowledges that Qwest should be supplied the information necessary to be compensated for a CLEC's access and to effectively monitor, repair and maintain Qwest's facilities. However, in accordance with the non-discrimination requirements of the 1996 Telecommunications Act,⁶³ such access must be provided in the most cost efficient manner possible.

In summary, under the Telecommunications Act, there is no reason why access to on-premises wiring should be substantially more arduous and costly to the CLECs than it is for Qwest. It is only through this Commission's intervention that appropriate and non-discriminatory accountings for access to internal wiring can take place.

C. IS IT APPROPRIATE TO CREATE AN INVENTORY OF CLEC FACILITIES, AND IF SO, SHOULD CLEC PAY THE NON-RECURRING CHARGES PROPOSED BY QWEST?

Pursuant to the Qwest submitted access protocol,⁶⁴ AT&T is required to "build an inventory" of the CLEC terminations.⁶⁵ As the Qwest SGAT § 9.3 language is written, there are inconsistencies related to if the CLEC would then gain immediate access to the MTE pursuant to SGAT § 9.3.1.3.2 (allowing for "subloop unbundling...during or after an inventory an inventory of CLEC's terminations have been created, and the CLEC has constructed a cross-connect field at the building terminal") or would have to wait five

⁶² See Exhibit A at p. 5574, 1.8-20.

⁶³ See FCC Texas Order at ¶ 44.

⁶⁴ See Exhibit B at p.5.

⁶⁵ See Qwest October 24, 2001 SGAT at § 9.3.3.5.

days for Qwest to input the information in its systems pursuant to SGAT § 9.3.3.5 (which contains very convoluted language indicating that Qwest shall have five calendar days “to input inventory of CLEC’s terminations” before “subloop orders are provisioned” but that “if a CLEC submits a subloop order before the input is completed, Qwest shall process the order in accord with § 9.3.5.4.1.” (relating to the requirement that a CLEC must notify Qwest in writing for on-premises wiring determination)).

First, Qwest must clarify its language to conform with Qwest's agreement “that a CLEC can access subloop elements during the creation of the inventory of the CLEC’s terminations.”⁶⁶ This should be in the form of a clarification in SGAT § 9.3.3.5. that there shall be no five-day inventory requirement under any circumstance.

Second, it is prejudicial to have AT&T create an inventory of its cable pairs for Qwest. Qwest has indicated that an inventory is “simply a cable count...for (Qwest) Legacy systems to be able to track so that when (Qwest) does get a repair call, (it) can send the technician to the right location and secondarily so (Qwest) can bill appropriately for that subloop system.”⁶⁷ Accordingly, AT&T is building an inventory for Qwest to update its systems. AT&T is unsure how many customers it will access at a given time and/or where it would connect those customers before the fact. Thus it appears inappropriate for AT&T to take on that task.

Third, AT&T should not have to pay any sort of inventory fee such as the one found in Qwest SGAT § 9.3.6.4.1. (indicating “CLEC will be charged a non-recurring charge for Qwest to complete the inventory of CLEC’s facilities within the MTE such that Subloop orders can be submitted and processed.”) Qwest has conceded that issue in

⁶⁶ See Exhibit A at p.5455, 1.15-17.

⁶⁷ *Id.* at p. 4730, 1.9 – p.4731, 1.7.

other jurisdictions including Arizona after the Arizona Staff Issued a Report on July 9, 2001 suggesting that such a proposal should be stricken, as well as in Washington. Furthermore, Qwest has indicated that if the charge is not applied in Arizona, it will not apply in Washington.⁶⁸ Finally, in a status conference in two other WUTC dockets,⁶⁹ Qwest indicated that it would not seek an implementation of the inventorying charge. Thus, it only is an issue in this docket in South Dakota because Qwest has not removed the charge from the relevant SGAT. Regardless of Qwest's inconsistent positions, Qwest is not even performing the inventory, thus the charge is unsubstantiated and completely inappropriate.

In summary, both the inventory of CLEC terminations and the charges for such inventory are inappropriate and the relevant sections should be stricken from the SGAT in South Dakota.

D. AT&T HAS REQUESTED A WEBSITE TO IDENTIFY MTE LOCATIONS WHERE QWEST OWNS INTRABUILDING CABLE WIRING

Both in its SGAT language and in the workshops in other jurisdictions, Qwest has indicated that it needs time intervals of up to ten days to determine if it owns the on-premises wiring at a MTE.⁷⁰ This fact in tandem with the fact that there are numerous locations where AT&T will continue to capture on-premises wiring in order to provide competitive telecommunications services, there should be no reason why Qwest cannot post its ownership of various MTE on-premises wiring once it is determined by Qwest.

⁶⁸ See Exhibit A at p. 5463, 1.8-9.

⁶⁹ WUTC Docket No. UT-003013 (involving costs) and Docket No. UT-003120 (involving Qwest Denying on-premises wire access in MDU setting to AT&T).

⁷⁰ See e.g. *Id.* at 4762, 1.3-4764, 1.10; SGAT § 9.3.5.4.1.

As articulated in the workshops, such posting will assist CLECs in determining when they have to notify Qwest for payment and repair, when they can access without notifying Qwest, and perform other functions in compliance with the provisions of the SGAT.⁷¹

The other alternative is to have every CLEC build its own database or rely on Qwest for a continuous building by building inquiry. This is inefficient and unnecessary. Furthermore, it will not be as accurate as Qwest's database, as Qwest is the keeper of this information, and CLECs have no means of communication between databases. Accordingly, Qwest should be required to post data of MTE on-premises wiring that it has determined through the SGAT procedure that it owns.

III. DARK FIBER DISPUTED ISSUES

A. QWEST IMPERMISSIBLY APPLIES AN EEL STANDARD TO UNBUNDLED DARK FIBER.

In § 9.7.2.9 of its SGAT, Qwest restricts the use of dark fiber by applying a usage test that was issued by the FCC with regard to Enhanced Extended Links ("EELs") Qwest limits a CLEC's use of dark fiber as a replacement of special access services. Not only is that test as applied to dark fiber impermissible under the language of the FCC UNE Remand Order and the FCC's rules, but it is also technically infeasible.⁷² Accordingly, AT&T requests that the restriction included by Qwest in SGAT § 9.7.2.9 be eliminated.

Technically, the test set forth in § 9.7.2.9 cannot apply to unbundled dark fiber. The FCC developed a test for the EEL, that is reflected in this section of Qwest's SGAT, to determine how much of the EEL was to be used for local traffic. The test is designed

⁷¹ See Exhibit A at p.5550, l.6-p.5551, l.17.

⁷² Exhibit A at pp. 5172-5175.

to apply to a single end user. Dark fiber, however, is typically used for multiple end users.⁷³ The FCC's test cannot be applied to dark fiber and, by implicating such test, Qwest's language is nonsensical. How will the usage restriction be applied to determine when a purported transport dark fiber facility would run afoul of this restriction? Without this clarification, no CLEC can be assured how this usage restriction will be applied. A CLEC's obvious concern is to make sure that the restriction is not being applied to limit the CLEC's lawful use.⁷⁴

B. IS QWEST CORPORATION THE ONLY ENTITY THAT HAS BOC RESPONSIBILITIES?

Qwest's SGAT violates the Act because it fails to permit CLECs to lease the in-region facilities of Qwest Corp.'s affiliates pursuant to Sections 251 and 252 of the Act. In moving for approval of the merger of Qwest Communications International, Inc. ("QCI") and U S WEST, Inc., ("U S WEST") the parent corporations of Qwest Communications Corporation ("QCC"), LCI International Telecom Corp., USLD Communications, Inc., and U S WEST Communications, Inc., now known as Qwest Corp. ("USWC"), QCI and U S WEST represented to the Commission that the proposed merger would create a stronger competitor and provide significant value for shareholders, employees, and customers because, among other things:

- The combination of QCI and U S WEST would enable them to achieve gross revenue synergies of more than \$12 billion and net financial and

⁷³ *Id.*

⁷⁴ The Washington Utilities and Transportation Commission recently reaffirmed the appropriateness of AT&T's position in its Twenty-Eighth Supplemental Order. See *Commission's Order Addressing Workshop Four Issues: Checklist Item No. 4 (Loops), Emerging Services, General Terms and Conditions, Public Interest, Track A, and § 272, In the Matter of the Investigation into U.S. West Communication Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Docket No. UT-003022, *In the Matter of U.S. West Communications, Inc.'s Statement of Generally Available Terms Pursuant to § 252(f) of the Telecommunications Act of 1996*, Docket No. UT-003040 (rel. March 2002) at p.15.

operational synergies of approximately \$10.5 billion to \$11 billion. They expected the synergies to be comprised of (1) incremental revenues as the combined company expands its local, data, Internet Protocol and long-distance service; (2) operating cost savings in areas such as network operations and maintenance, sales and marketing, billing and customer and back office support; and (3) capital savings through elimination of duplication in the companies' planned network build outs and in other infrastructure and back-office areas.

- The combination would accelerate strategic development and enable them to grow faster than each could grow alone and would increase revenues and profits faster than each would accomplish alone. In particular, they expected it to accelerate the delivery of Internet-based broadband communications services provided by QCI to the large customer base of U S WEST and bring together complimentary assets, resources and expertise and the network infra-structure, applications, services and customer distribution channels of their companies and the combination of customer bases, assets, resources and expertise in a timely manner will permit each to compete more effectively in their rapidly consolidating industries.
- They believe worldwide broadband end-to-end infrastructure, expanded range of products and services, access to each other's customers, people and process and combined use of distribution and operating systems will create growth for the combined company and that, as a large company

with global scale and scope, multiple capabilities, end-to-end broadband connectivity, and a full suite of data, voice and video products and services, they can successfully compete in the telecommunications industry in the long term.⁷⁵

In this proceeding, as in others, Qwest maintains that it has no obligation to unbundle the dark fiber facilities owned by the companies affiliated with Qwest. Qwest's witness in Washington denied that QCI ever owned or controlled a local exchange company other than the USWC surviving company.⁷⁶ However, Qwest Communications Corporation, formerly Southern Pacific Telecommunications, was registered as a CLEC by the Washington Commission in Docket No. UT-940120, and received its competitive classification in Docket No. UT-950150. Since QCI does have a subsidiary, other than USWC, that is certified as a CLEC in this state, contrary to Qwest's testimony, that affiliate, along with any other affiliate which has assets which are used to provide local interexchange service in the Qwest region must make those facilities available to CLECs, consistent with sections 251 and 252.

Section 251(c)(3) obligates incumbent local exchange carriers ("ILECs") to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Section 252(d)(1) additionally requires ILEC rates for unbundled network elements to be based on cost, to be nondiscriminatory and to include a reasonable profit.

Section 251(h) defines an incumbent local exchange carrier as,

⁷⁵ *Id.*, Verified Joint Application, dated August 19, 1999.

⁷⁶ Exhibit A at p. 5510.

[W]ith respect to an area, the local exchange carrier that (A) on February 8, 1996, provided telephone exchange service in such area and (B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to § 69.601(b)); or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

Qwest and its affiliates are “successors and assigns” of USWC and are therefore “ILECs” as defined by the Act.⁷⁷

Undoubtedly, Qwest will argue that its parent and its affiliates are not “successors and assigns” as those terms are used in the Act. The Commission must reject this argument.

In the SBC/Merger docket, the FCC determined that under § 251(h), an entity may become an incumbent LEC by being a successor or assign of a LEC that, as of February 8, 1996, was providing local exchange service in a particular area and was a member of NECA, even if that entity was not itself providing local exchange service in the area or a member of NECA as of that date. The FCC held, “this interpretation of ‘successor and assign’ is not only more consistent with the goals of § 251, but conforms more closely to the traditional notion of ‘successor or assign.’”⁷⁸ Thus, Qwest cannot legitimately argue that it is not a “successor or assign” because neither Qwest International nor its subsidiaries were providing local service in former USWC exchanges or were members of NECA on the date the Act was enacted.

⁷⁷ Although this issue is briefed specifically as an impasse issue with regard to Qwest’s SGAT provisions relating to dark fiber, this argument applies to all SGAT provisions that Qwest intends to use to satisfy its ILEC obligations under the Act.

⁷⁸ *In Re Applications of Ameritech Corp. and SBC Communications, Inc. for the Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (Released October 8, 1999)(SBC/Ameritech Merger Order) at ¶¶ 446 - 448.

Moreover, in approving the QCI/U S WEST merger, the FCC determined that QCI and its affiliates were “successors and assigns” as used in § 251(h) of the Act.⁷⁹ In that proceeding, McLeodUSA asked the FCC to reject the merger application because, among other things, the merged entity “will have the ability to divert favored, high-volume customers to the affiliated [competitive] LEC, which can become the provider of new, innovative services, while the [incumbent] LEC’s traditional local services are degraded and serve only residential users and other [competitive] LECs.”⁸⁰ McLeodUSA further argued that, after the merger, U S WEST will be able to use Qwest and its affiliates as competitive LECs “to attempt to avoid the [incumbent] LEC obligations under § 251(c)(4) of the Act to offer for resale, at wholesale rates, any services the [incumbent] LEC offers at retail.” The FCC rejected McLeod’s argument, reasoning,

Such an affiliate of U S WEST would be considered a “successor or assign” of U S WEST for the purposes of the obligations imposed by § 251(c)(4). Therefore, the competitive LEC hypothesized by McLeod would be treated as an incumbent LEC under § 251(c)(4).⁸¹

This conclusion is supported, too, by the analysis of the United States Court of Appeals for the District of Columbia in a recent case involving an appeal of the SBC/Ameritech merger approval.⁸² There, the Court interpreted “successors and assigns” broadly to include affiliates of the ILEC that provide telecommunications services.

In *ASCENT*, the Court reviewed the FCC’s decision to permit the merged entity to offer advanced services through a separate affiliate and, by doing so, avoid § 251(c)’s duties. Although as mentioned above, in the U S WEST/QCI merger docket, the FCC

⁷⁹ *In the Matter of Qwest Communications International Inc. and U S WEST, Inc. Application for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 99-272, FCC 00-91 (Released March 10, 2000) at ¶ 45.

⁸⁰ *Id.* at note 131.

⁸¹ *Id.* at ¶ 45 (footnotes omitted).

⁸² *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

matter of factly concluded that QCI and its affiliated CLECs would be successors and assigns of U S WEST for purposes of the Act, in the SBC/Ameritech merger, the FCC painstakingly concluded that although the Act extends an ILEC's market-opening obligations to an ILEC's "successor and assign," the advanced services affiliate was not such a successor and assign so long as it complied with various structural and transactional safeguards.⁸³ The D.C. Circuit rejected this analysis, finding that allowing an ILEC to "sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly owned affiliate seems to us a circumvention of the statutory scheme." The Court further found that the FCC's narrow interpretation of "successor and assign" in that context to be paradoxical:

[T]he Commission is using language designed by Congress as an added limitation on an ILEC's ability to offer telecommunications services as a statutory device to ameliorate §251(c)'s restriction. We do not think that in the absence of the successor and assign limitation an ILEC would be permitted to circumvent §251(c)'s obligations merely by setting up an affiliate to offer telecommunications services. The Commission is thus using the successor and assign limitation as a form of legal jujitsu to justify its relations of §251's restrictions.⁸⁴

Although the *ASCENT* decision involved an advanced services affiliate of an ILEC, the reasoning of the D.C. Circuit in that case applies equally here. Interpreting the statute to *not* require QCI and its affiliates to be subject to the unbundling obligations of the Act would be to encourage the merged entity to "sideslip" §251's requirements by offering telecommunications services and investing in future network infrastructure through its wholly owned affiliates. In its merger application in Colorado, QCI stated that it intended to combine the two corporations' assets, operations and network infrastructure and to plan build outs jointly to achieve synergies that would benefit the

⁸³ *Id.* at 665; *SBC/Ameritech Merger Order* at ¶¶ 444 - 476.

⁸⁴ *Id.* at 667.

public interest and the merged entity's shareholders. This combined operation is a successor and assign of an ILEC, USWC. For these reasons, the Commission should require Qwest to add language to its SGAT that clarifies that QCI and its affiliates are obligated to unbundled their in-region facilities, including dark fiber. This requirement is consistent with the goals of the Telecommunications Act and is necessary to prevent Qwest, through its affiliates, from usurping its obligations under § 251(c).

C. MUST QWEST PROVIDE DARK FIBER ACCESS TO CLECS IN A JOINT BUILD SITUATION?

Qwest is required under the Act and the FCC Orders to allow CLECs to lease dark fiber that exists in "joint build arrangements" with third parties. "Joint Build Arrangement" means any arrangement between Qwest and another party to jointly or separately construct, install and/or maintain conduit, innerduct or fiber across a single route or routes. This arrangement will permit either or both Qwest and the third party to use the other's conduit, innerduct or fiber for transport of telecommunications traffic over such route or routes. This type of arrangement includes, among other things, meet point arrangements with third parties. Qwest has testified that it will make available dark fiber that exists in these arrangements up to Qwest's side of the meet point. However, it refuses to permit CLECs to obtain access to any rights that Qwest has to the use of the facilities of the third party.⁸⁵ AT&T disagrees with this position.

Section 251(c) and 47 C.F.R. §§51.307 and 309 require Qwest to provide nondiscriminatory access to unbundled network elements in Qwest's ownership or control. In addition, Qwest is obligated under §§251(b)(4) and 224 to afford CLECs nondiscriminatory access to poles, ducts and rights of way. To the extent these joint

⁸⁵ Exhibit A at p. 5177.

build arrangements give Qwest control and/or provide Qwest a right of way on a third party's network, for the provision of Qwest's telecommunications services, Qwest must permit CLECs the same access to those rights of way. Without this access, CLECs are impaired in their ability to compete with Qwest in communities of the state where these joint build arrangements exist. In the rural areas in particular, CLECs may not even be able to reach particular communities that Qwest can reach through its joint build arrangement with a third party.

Checklist item number 3 in § 271 also addresses Qwest's rights of way obligations. Qwest must demonstrate that it is providing nondiscriminatory access to its poles, ducts and rights-of-way at just and reasonable rates, terms and conditions.⁸⁶ This checklist item is satisfied if Qwest has nondiscriminatory procedures for the evaluation of facilities requests by competitors, granting competitors nondiscriminatory access to information about its facilities; permitting competitors to use non-Qwest workers to complete site preparation; and compliance with applicable rates.⁸⁷

Qwest's SGAT fails to include even the basic right of nondiscriminatory access to its control and/or rights-of-way that exist in joint build arrangements. Qwest has testified that it is not aware of any such arrangements in Washington.⁸⁸ In discovery, AT&T requested samples of the arrangements that exist between Qwest and third parties in the state of Colorado. Qwest objected to responding to this data request. A review of such arrangements would indicate the nature of Qwest's ownership or control over this network element. If such network element is in the nature of a right of way, § 10.2 of the

⁸⁶ *BANY Order* at ¶ 263.

⁸⁷ *In the Matter of the BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121 (October 13, 1998) ("Louisiana II Order") at ¶¶ 174 - 83.

⁸⁸ Exhibit A at pp. 5177-5178.

SGAT should be effective to provide access to CLEC. If such network element is in the nature of a leased facility, such as leased dark fiber, § 9.7.1 should afford CLECs access to the facility. Alternatively, the agreements would indicate if such facility is some other arrangement—not a right of way or leased facility—over which Qwest has ownership or control. To the extent that those agreements provide Qwest rights to use the third party's facilities, including the dark fiber available on that particular route, Qwest must permit CLECs equal access to those facilities at just and reasonable rates and terms. Otherwise, Qwest fails its § 271 obligations.

For these reasons, the Commission should require Qwest to include terms in its SGAT that allow CLECs nondiscriminatory access to Qwest's rights to use third party property consistent with those that Qwest enjoys in any joint build arrangement to which Qwest is a party in South Dakota.

IV. PACKET SWITCHING DISPUTED ISSUES

A. SECTION 9.20.2.1.3 SHOULD BE AMENDED TO REQUIRE PACKET SWITCHING TO BE UNBUNDLED WHEN IT IS ECONOMICALLY INFEASIBLE FOR A CLEC TO REMOTELY DEPLOY DSLAMS.

Qwest requires that a CLEC's request for collocation of a DSLAM at a remote terminal be denied by Qwest before it is allowed to order packet switching or when collocating a remote DSLAM does not allow the CLEC to provide services at parity with those offered by Qwest.⁸⁹ AT&T asks the Commission to modify Qwest's proposal to allow packet switching to be unbundled when it is economically infeasible for a CLEC to remotely deploy DSLAMs. There is little prospect that remote collocation could provide a practical competitive alternative for CLECs.

⁸⁹ See SD SGAT, § 9, 07/24/01.

The economic reality is that remote deployment of transmission equipment and DSLAM functionality by service providers seeking to access copper subloops is unlikely to occur in most areas. First, collocation of remote DSLAMs would entail significant costs and lead times (*e.g.*, rights of way acquisition, construction of facilities). Second, deployment is only economically viable if the appropriate economies of scale can be realized. In most cases, it will be extremely difficult for CLECs to realize the necessary economies of scale because each remote terminal or FDI only serves a small number of customers, of which the CLEC will only capture a small percentage.⁹⁰ Remote terminals, and to an even greater extent FDIs, serve a limited number of customers. In general terms, a central office is progressively broken down into smaller and smaller geographical areas for the purposes of local outside plant design. A "Distribution Area" is generally the smallest component, comprised of about 100 to 400 living units with two distribution pairs typically assigned to each unit. A copper cable of appropriate size connects these living units to the FDI where cross connections are made to a larger branch feeder cable. The branch feeder cable is either a sub-cable within the main feeder cable that connects each distribution pair directly to the central office or it is the connecting facility to a remote terminal.

At the remote terminal, the copper distribution facilities from multiple FDIs are connected to a shared feeder facility that connects to the central office. Transmission equipment (generally referred to as Digital Loop Carrier or DLC) housed within the remote terminal multiplexes the traffic and, in some instances, performs electrical to optical (and vice versa) signal conversion, which permits an even greater degree of

⁹⁰ To obtain the necessary economies of scale, the CLEC would need to be willing and able to undertake replication of a substantial portion of the ILEC's outside plant.

multiplexing and/or a higher transmission rate. In some instances the DLC, particularly newly deployed DLC, will provide enhanced transmission capabilities such as line splitting and DSLAM functionality. The DLC provides efficiencies because it allows one feeder facility to the central office to be shared among multiple subscribers while it also permits the facility between the customer premises and the central office to meet pre-established minimum electrical parameters.

The remote terminals may be pole mounted, placed on concrete slabs in the form of cabinets or huts, or placed in underground vaults. The actual size of the physical enclosure will depend on the amount and size of the equipment deployed by the ILEC. For example, a pole mounted remote terminal will generally house a small DLC with capacities of 24 or 96 lines. A cabinet or vault deployed DLC will typically be larger, with capacity to serve a few thousand customers lines when fully equipped. Deployment of DLC involves a relatively high fixed cost for site preparation and common equipment, with additional costs associated with plug-in circuit packs for individual lines or groups of lines. Thus, for a DLC to be practical and economic, it must be nearly fully utilized by the carrier who has deployed it. The ILEC can realize these necessary economies of scale because it has designed its remote terminals to efficiently serve most of or the entire base of customers assigned to the remote terminal.

In contrast, an individual CLEC will never capture 100% of those customers for its advanced services. Accordingly, even taking into account the lost efficiency for the ILEC caused by competition from CLECs, the CLEC's ability to be cost-competitive is highly unlikely given the high fixed costs associated with deploying the necessary

electronics and the small size of the addressable customer base serviced by a remote terminal.

Thus, to the extent that collocation at a remote terminal or other interconnection point is not possible because such deployment is cost-prohibitive (both in terms of time and money), competition for customers who are served by remote terminals (or their equivalents) simply will not develop (except in specific market niches). The only way to ensure that competition develops is for CLECs to have access to unbundled packet switching capabilities.

In the report of the Arbitration Award of the Public Utilities Commission of Texas ("Texas Arbitration Award")⁹¹, the arbitrators considered arguments that are very similar, if not identical to those presented here. In Texas, the arbitrators were not persuaded by the evidence that there are spare copper loops capable of supporting xDSL services the CLECs seek to offer. In some places the arbitrators recognized that spare copper will be available. In others, the rollout of the ILEC's facilities might free up additional copper plant. However, the arbitrators believed that the evidence in the record supports the finding that without access to packet switching, CLECs will be impaired.⁹² Critical to the Texas arbitrator's decision was the fact that where spare copper is in fact available, the quality of service generally between the different distribution methods is somewhat disparate, especially in distance sensitive applications such as line sharing.⁹³

⁹¹ *Petition of IP Communications Corporation to Establish Expedited Public Utility Commission Of Texas Oversight Concerning Line Sharing Issues, Arbitration Award, Docket 22168, Petition Of Covad Communications Company And Rhythms Links, Inc. Against Southwestern Bell Telephone Company For Post-Interconnection Dispute Resolution And Arbitration Under The Telecommunications Act Of 1996 Regarding Rates, Terms, Conditions And Related Arrangements For Line Sharing, Arbitration Award Docket 22469, Public Utilities Commission of Texas (Rel. June 13, 2001) (the "Texas Arbitration Award") (Exhibit F).*

⁹² *Id* at 71.

⁹³ *Id* at pp. 71-71.

This disparity does not meet the condition that spare copper loops should be able to “offer the same level of quality for advanced services.”

CLECs posited the same arguments here, and requested that the Commission consider this new and persuasive authority.⁹⁴

To address this concern, AT&T proposes the following language to be added to Qwest’s proposal for § 9.20.2.1.3:

Qwest has placed a DSLAM for its own use in a remote Qwest Premises but: *(i) Qwest has not permitted CLEC to collocate its own DSLAM at the same remote Qwest Premises, or (ii) from CLEC’s perspective it would be uneconomical for CLEC to collocate its own DSLAM at the same Qwest Premises, or (iii) collocating a CLEC’s DSLAM at the same Qwest Premises will not be capable of supporting xDSL service at parity with the service that can be offered through Qwest’s Unbundled Packet Switching.*

AT&T asks the Commission to adopt its language proposal and reject that of Qwest. AT&T’s language enables a CLEC to compete with Qwest for customers when it is uneconomical for the CLEC to collocate a DSLAM in a remote terminal. Adopting AT&T’s proposed language is consistent with the goal of the Act to encourage the development of competition – Qwest’s is not.

Qwest maintains that it complies with its packet switching unbundling obligation by using this language because it is consistent with the language of 47 C.F.R. §51.319(c)(5). The Commission should not allow the language to stand based on this argument. As stated above, this limitation on the availability of packet switching impairs CLECs’ abilities to compete with Qwest in the provision of advanced services, particularly in the residential and small business DSL markets, where competition has been slow to develop. Qwest currently boasts of its dominance in these markets. Moreover, the FCC is reexamining its current limitations on unbundled packet switching

⁹⁴ Exhibit A at pp. 5438 – 5443.

in its Advanced Services proceeding in light of the unreasonable advantage that ILECs currently possess.⁹⁵

AT&T's proposed language is consistent with the goals of the Act and is not prohibited by any FCC rule or order. It enables competition. Even if the Commission agrees with Qwest's argument, that the proposed language expands the definition of unbundled packet switching provided by the *UNE Remand Order*, the Commission is not prohibited from adopting AT&T's proposed language. Both the Act and the *UNE Remand Order* allow state commissions to expand FCC unbundling obligations definitions, "as long as they meet the requirements of § 251 and the national policy framework instituted in this Order."⁹⁶

Requiring Qwest to unbundle packet switching when it makes no economic sense for a CLEC to remotely collocate a DSLAM meets the requirements of § 251 and the national policy framework established in the *UNE Remand Order*. Without this ability, the CLEC will be effectively prohibited from providing service to the customers in that particular geographic area. Qwest, on the other hand, is able to provide them with service. Qwest presented no technical reason to deny unbundled packet switching in this circumstance, it only argued that as a policy matter, it decided to limit its unbundling to those circumstances outlined in the FCC Rule. Qwest is not harmed by this Commission requiring it to unbundle packet switching when it is uneconomical for a CLEC to collocate a remote DSLAM. Qwest is only faced with competition for customers it would not otherwise face. Accordingly, this Commission should require Qwest to unbundle packet switching.

⁹⁵ *Line Sharing Reconsideration Order* at ¶ 64.

⁹⁶ *UNE Remand Order* at ¶¶ 153 - 161; 47 U.S.C. §251(d)(3).

B. SECTION 9.20.2.1.2 SHOULD BE AMENDED TO REQUIRE PACKET SWITCHING TO BE UNBUNDLED WHEN QWEST'S SPARE COPPER LOOPS ARE INSUFFICIENT TO ENABLE A CLEC TO PROVIDE THE DSL SERVICE THAT IT INTENDS TO OFFER.

In the *UNE Remand Order*, the FCC concluded that one of the four prerequisites to the unbundling of packet switching capability is the lack of spare copper facilities that are "capable of supporting the xDSL services the requesting carrier seeks to offer," and that permit the CLEC to offer "the same level of quality of advanced services" as that offered by the ILEC (or its data affiliate).⁹⁷

When a CLEC seeks to offer DSL service in competition with an ILEC (or its data affiliate) that has deployed its DSLAM functionality at the remote terminal,⁹⁸ the CLEC will invariably be unable to provide a DSL service that operates with "the same level of quality" (e.g., data rates) as that provided by the ILEC or its data affiliate if the data CLEC must rely on "home run" copper. In such cases, the CLEC's copper loop will extend all the way from the serving office to the customer's premises while the ILEC or its data affiliate can provide service using remotely deployed electronics and shorter copper subloops that reach only from the customer's premises to the remote terminal. The laws of physics dictate that maximum attainable data rates *decrease* as the length of the copper facility that is used *increases*. For example, ADSL can reasonably provide network-to-subscriber data transfer rates as a function of the length of the copper facility employed (assuming 24 AWG, no load coils and without bridge taps) as follows:

⁹⁷ *Id.*

⁹⁸ Such deployment could either be a stand-alone DSLAM or the deployment of Next Generation DLC (NGDLC) that accept plug-in electronics capable of delivering equivalent functionality.

Data Rate	Distance
1.544 Mbps	18,000 ft.
2.048 Mbps	16,000 ft.
6.312 Mbps	12,000 ft.
8.448 Mbps	9,000 ft.

Source: www.adsl.com (*General Tutorial: General Introduction to Copper Access Technologies*).

As the above chart aptly shows, a 9,000 ft. copper loop allows for the transmission of data at a rate more than *five times faster* than an 18,000 ft. copper loop. Indeed, very high data rate Digital Subscriber Line (VDSL) technology has the potential to offer upstream data rates in excess of 1.5 Mbps and downstream data rates of 12.96 Mbps when the copper segment is shorter than 4,500 feet. Accordingly, a shorter copper loop will allow the incumbent (or its affiliate) to offer its DSL customers not only a significantly faster data rate, but also emerging services that require very high transmission rates, such as video. Although VDSL has not yet been deployed in South Dakota, Qwest is committed to this deployment and the parties must consider this proposal. Needless to say, any CLEC that must use home run copper to compete with an ILEC or ILEC data affiliate that has access to shorter copper subloops at a remote terminal will be at a significant competitive disadvantage. Thus, absent the ability to collocate DSLAM functionality at the remote terminal, or to access the ILEC's unbundled packet switching capability in the form of an equipped loop, the CLEC cannot offer a service of the same level of quality as the ILEC's.

The arbitrators in the Texas Arbitration Award found that the existence of spare copper was not dispositive of whether to unbundled packet switching both out of concern for lack of sufficient capacity and service quality concerns. The arbitrators found that

"CLECs have no guarantee that the spare copper will remain," and that "while 'home-run' copper alternatives may be present in some situations, the Arbitrators are not convinced that these provide the same level of service."⁹⁹

Condition 2 of Qwest's proposed language limits the situations for the unbundling of packet switching to those where "no" spare copper loop is available. To account for the times where there is not enough existing spare copper loops to satisfy potential demand and where existing copper loops may not adequately provide for the capabilities that CLECs desire, AT&T suggests two simple changes to this requirement. AT&T asks that the word "no" be replaced with "insufficient" and the word "adequately" be inserted between "capable of" and "supporting."¹⁰⁰ Thus, AT&T's proposed language reads:

9.20.2.1.2 There are *insufficient* copper loops available capable of *adequately* supporting the xDSL services the requesting carrier seeks to offer.

AT&T's proposed language minimizes the impairment that CLECs experience by limitations on the availability of packet switching. This cures the problem that results when insufficient spare copper exists in a neighborhood so as to preclude a CLEC from making a general business offering of DSL service to that neighborhood. And, it does so in a way that only slightly changes Qwest's proposed language. For all of these reasons, the Commission should adopt AT&T's proposed language and reject Qwest's.

⁹⁹ Exhibit F at p. 72.

¹⁰⁰ Exhibit A at pp. 4655-4661.

V. LINE SHARING DISPUTED ISSUES

A. QWEST SHOULD BE REQUIRED TO PROVIDE ACCESS TO OUTBOARD SPLITTERS ON A LINE-AT-A-TIME, OR SHELF-AT-A-TIME BASIS.

The parties have traditionally agreed that this issue is the same issue for line splitting. The factual and legal arguments on this issue for Line Sharing are the same as those for Line Splitting. Therefore, please refer to the "Affidavit of Kenneth L. Wilson Regarding Checklist Item 4—Unbundled Loops and Checklist Item 11 Local Number Portability on Behalf of AT&T" at p. 47 for this issue.

B. QWEST IMPROPERLY LIMITS LINE SHARING TO COPPER LOOPS. (ISSUE NO. 59).

The FCC made clear in the *Line Sharing Reconsideration Order* that "the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal)."¹⁰¹ Thus, despite its use of the word "copper" in the *Line Sharing Order*, the FCC made clear that "use of the word 'copper' in § 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services."¹⁰² As the FCC explained, this clarification was necessary in order to prevent incumbent LECs from closing off competition by migrating its service to fiber:

In the absence of this clarification, a competitive LEC might undertake to collocate a DSLAM in an incumbent's central office to provide line-shared xDSL services to customers, only to be told by the incumbent that it was migrating those customers to fiber-fed facilities and the competitor would now have to collocate another DSLAM at a remote terminal in

¹⁰¹ *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, CC Docket No. 98-147, FCC 99-355, ¶ 10 (released December 9, 1999) ("*Line Sharing Order*").

¹⁰² *Id.*

order to continue providing line-shared services to those same customers. If our conclusion in the Line Sharing Order that incumbents must provide access to the high frequency portion of the loop at the remote terminals as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location.¹⁰³

True to the FCC's concern, Qwest expressly limits line sharing to the "copper portion of the loop." SGAT § 9.4.1.1. Qwest claims that its "copper only" definition of line sharing is consistent with the *Line Sharing Reconsideration Order*, arguing that paragraph 12 "qualifies" the unambiguous language of the earlier paragraphs, and thus permits the limitation to line sharing over the copper loop. Qwest's argument is without merit and should be rejected.

Moreover, nowhere has Qwest provided any evidence that line sharing over a fiber fed loop is not technically feasible. To the contrary, line sharing over a fiber fed loop – such as via a "plug and play" card – is presumptively feasible and thus should be ordered by this Commission.¹⁰⁴

This Commission has the authority, under the Act¹⁰⁵ and FCC rules¹⁰⁶, to expand Qwest's unbundling obligations beyond those required by the FCC and "to impose additional, pro-competitive requirements consistent with the national framework established in this order."¹⁰⁷ Therefore, it is clear that the FCC welcomes this Commission's efforts to enact additional regulations that it finds warranted to promote competition and the deployment of advanced services.

¹⁰³ *Id.*, ¶ 11.

¹⁰⁴ Qwest will undoubtedly argue that such an approach is not proper because it is more of a packet switching issue than a line sharing issue. Acceptance of such an argument elevates form over substance. To the extent that a particular type of packet switching technology provides a technically feasible and cost-efficient method of line sharing over fiber, that technology should be included in – or at least not specifically excluded by -- the SGAT.

¹⁰⁵ 47 U.S.C § 251(d)(3).

¹⁰⁶ 47 C.F.R § 51.317(d).

¹⁰⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd. 20912, at ¶ 159 (1999) ("*Line Sharing Order*").

VI. CONCLUSION

Qwest is not providing nondiscriminatory access to subloops, dark fiber, packet switching and line sharing in the manner required by the Act and FCC Orders.

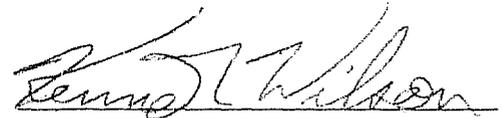
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE INVESTIGATION)
INTO QWEST CORPORATION'S) Docket No. TC 01-165
COMPLIANCE WITH SECTION 271(C) OF)
THE TELECOMMUNICATIONS ACT OF 1996)

VERIFICATION OF KENNETH L. WILSON

I, Kenneth L. Wilson, being duly sworn, hereby state that I am a Senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC and have been retained by AT&T Communications of the Midwest, Inc. to provide expertise on technical matters in this proceeding. I hereby verify the factual assertions in AT&T's Verified Comments on Disputed Issues Relating To Emerging Services are true and correct statements to the best of my knowledge and belief.

Dated this 15^x day of March 2002.



Kenneth L. Wilson

STATE OF COLORADO)
CITY AND COUNTY OF BOULDER) ss

SUBSCRIBED AND SWORN TO before me on this 15^x day of March 2002 by Kenneth L. Wilson, who certifies that the foregoing is true and correct to the best of his knowledge and belief.

Witness my hand and official seal.



Notary Public

My commission expires:

8/26/04

SGAT/271 WORKSHOP IV, 7/31/01

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1 BEFORE THE WASHINGTON UTILITIES AND
 2 TRANSPORTATION COMMISSION
 3
 4 In the Matter of the) Docket No. UT-003022
 5 Investigation Into US WEST) Volume XXXVI
 6 Communications, Inc.'s) Pages 5333-5502
 7 Compliance with Section 271 of)
 8 the Telecommunications Act of)
 9 1996.)
 10 In the Matter of US WEST) Docket No. UT-003040
 11 Communications, Inc.'s)
 12 Statement of Generally)
 13 Available Terms Pursuant to)
 14 Section 252(f) of the)
 15 Telecommunications Act of 1996.)

12 A workshop in the above matter was
 13 held on July 31, 2001, at 10:11 a.m., at 900 Fourth
 14 Avenue, Suite 2400, Seattle, Washington, before
 15 Administrative Law Judge ANN RENDAHL.

16 The parties were present as
 17 follows:
 18 AT&T, by Rebecca DeCook, Steven
 19 Weigler, Sarah Kilgore, and Letty S.D. Friesen (via
 20 teleconference bridge), Attorneys at Law, 1875
 21 Lawrence Street, Suite 1575, Denver, Colorado, 80202.
 22 QWEST, by Lisa Anderl, Attorney at
 23 Law, 1600 Seventh Avenue, Room 3206, Seattle,
 24 Washington, 98191, Andrew Crain and Charles W. Steese
 25 (via teleconference bridge), Attorneys at Law, 1801
 California Street, 49th Floor, Denver, Colorado,
 80202, and Kara Sacilotto (via teleconference
 bridge), Attorney at Law, Perkins Coie, LLP, 607 14th
 Street, N.W., Washington, D.C. 20005.
 Barbara L. Nelson, CCR
 Court Reporter

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1 WORLDCOM, by Ann Hopfenbeck,
 2 Attorney at Law, 707 17th Street, Suite 3600, Denver,
 3 Colorado, 80202.
 4 XO WASHINGTON, INC., and ELL, by
 5 Gregory J. Kopta, Attorney at Law, Davis, Wright,
 6 Tremaine, LLP, 2600 Century Square, 1501 Fourth
 7 Avenue, Seattle, Washington, 98101.
 8 WAISP and YIPES, by Richard J.
 9 Busch, Attorney at Law, Miller Nash, 4400 Two Union
 10 Square, 601 Union Street, Seattle, Washington, 98101.
 11 SPRINT, by Barb Young, Group
 12 Regulatory Manager, 902 Wasco Street, Hood River,
 13 Oregon 97031.
 14 PUBLIC COUNSEL, by Robert
 15 Cromwell, Assistant Attorney General, 900 Fourth
 16 Avenue, Suite 2000, Seattle, Washington, 98164.
 17 COVAD, by Megan Doberneck,
 18 Attorney at Law, 7901 Lowry Boulevard, Denver,
 19 Colorado 80230.
 20 TRACER, by Arthur A. Butler (via
 21 teleconference bridge), Attorney at Law, Ater Wynne,
 22 601 Union Street, Suite 5450, Seattle, Washington
 23 98101.

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INDEX OF EXHIBITS

EXHIBIT:	MARKED:	OFFERED:	ADMITTED:
4 Exhibit 813	5426	--	5430
5 Exhibit 942	5441	--	--
6 Exhibit 1020	5453	--	--
7 Exhibit 1021	5453	--	--
8 Exhibit 1164	5453	--	--
9 Exhibit 1165	5464	--	--

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1 JUDGE RENDAHL: Okay. Let's be back on the
 2 record. Let's be on the record. We haven't started
 3 yet. This is the investigation into US West
 4 Communications' compliance with Section 271 of the
 5 Telecommunications Act of 1996, and US West's
 6 Statement of Generally Available Terms pursuant to
 7 Section 252(f) of the Telecommunications Act of 1996,
 8 in Dockets Number UT-003022 and UT-003040, before the
 9 Washington Utilities and Transportation Commission.
 10 Good morning, everyone. We're here for a
 11 prehearing conference in this proceeding on the
 12 morning of July 31st. And my name is Ann Rendahl.
 13 I'm an Administrative Law Judge in this proceeding.
 14 Let's go around the table, starting at my left, and
 15 take appearances from the parties. It appears that
 16 everyone here has already made an appearance, so if
 17 you'd just state your name and who you represent and
 18 if you have any witnesses with you, identify those,
 19 as well, starting with Ms. DeCook. Welcome.
 20 MS. DeCOOK: Thank you, Judge. Rebecca
 21 DeCook, AT&T, and with me is Kenneth Wilson, as a
 22 witness.
 23 JUDGE RENDAHL: Thank you.
 24 MS. DOBERNECK: Megan Doberneck, Covad

23 considered. The first issue is change management,
 24 which is something that came up in the last general
 25 terms and conditions workshop. The way the change

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 1 management process worked is it was part of general
 2 terms and conditions, because it's referred to in
 3 Section 12 of the SGAT, which relates to OSS.

4 We have a change management process and
 5 have had one that has been operating for a couple of
 6 years now, and based our testimony upon that process.
 7 The CLECs then filed responsive testimony with
 8 numerous suggestions in terms of how we can improve
 9 that process. I sat down with our change management
 10 people and we went through the testimony and I said,
 11 Well, can we do this, and they said yes; can we do
 12 that, and they said yes.

13 But the problem was that we got to the
 14 point where we realized that while we're willing to
 15 make a lot of concessions there and work to meet the
 16 CLECs' needs, we can't work in the workshop to do
 17 that. We can't actually make agreements in these
 18 workshops in terms -- about how CICMP should be
 19 handled, because -- CICMP is our name for change
 20 management -- because the change management process
 21 itself needs to make those decisions, and all of the
 22 CLECs participating in the change management process
 23 need to be part of those discussions.

24 As a result, we have taken those
 25 discussions and made a proposal to the change

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 1 management process, the change management body, about
 2 how to revamp the change management process, and we
 3 have started engaging in negotiations with the CLECs
 4 regarding how to change our change management
 5 process, and we're meeting with them for two days
 6 every other week, and then we might have some side
 7 calls, as well, but a lot of work is being done. I
 8 anticipate that we will be able to satisfy The CLECs'
 9 needs in those discussions.

10 My suggestion about how to handle the
 11 remaining change management issue is that when we're
 12 done with those negotiations and we have that process
 13 completed, we file with this Commission the revised
 14 change management governing documents. Other parties
 15 can -- and then have a process where other parties
 16 can comment upon those documents.

17 The change management process itself is
 18 being evaluated in the ROC OSS test. There's
 19 actually a whole separate test within the master test
 20 plan that is dedicated just to change management,
 21 where the vendors are going to be reporting on the

22 adequacy of our procedures, the adequacy of how we
 23 follow them, the completeness of the change
 24 management process. Basically, they are going to be
 25 evaluating the change management process from

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 1 beginning to end, so I don't feel like it's necessary
 2 that further proceedings happen regarding change
 3 management, but what I would suggest is that when
 4 we're through with these negotiations, we will file
 5 with this Commission revised change management
 6 documents and we could have a comment period of the
 7 parties.

8 The three remaining issues, then, after
 9 that, I think can be handled in pretty much the same
 10 way. Well, the same way among themselves. The first
 11 is the Performance Assurance Plan, the QPAP. That is
 12 currently being discussed in these -- what is it now
 13 -- nine state workshops being run by Mr. Antonuk from
 14 Liberty Consulting. All issues regarding the QPAP
 15 have already been publicly addressed in workshops run
 16 by the ROC. They are now going to be publicly
 17 addressed in the nine-state proceeding, and all
 18 issues will be dealt with there.

19 Once Mr. Antonuk's report comes out, which
 20 is scheduled to be October 12, we would suggest that
 21 there be a two-week period for people to file
 22 comments. All parties file comments at the same
 23 time, Qwest included, and that about approximately
 24 seven days thereafter, the Commission hold a -- what
 25 is sometimes called a legislative-style hearing,

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 1 where the Commissioners hear presentations by all of
 2 the parties regarding the adequacy of Qwest's
 3 Performance Assurance Plan, and the Commissioners
 4 have an opportunity to question people making those
 5 presentations. And we would anticipate that that
 6 hearing would take approximately half a day.

7 The next issue we have to decide is the --
 8 we have been producing our data results on a monthly
 9 basis. We went through a long, excruciating process
 10 where we negotiated a complete set of performance
 11 indicators, performance measures, and there are
 12 approximately -- it depends how you count them.

13 There are either 50 or 400 or about 2,000, depending
 14 on how you count. But it is as complete a set of
 15 performance measures as any RBOC has in the country.

16 We are producing our results and posting
 17 them publicly on our Web site every month. What we
 18 would suggest regarding those results going forward
 19 is that Qwest will start filing in this proceeding a
 20 summary of its results and parties could then have an

19 MR. CRAIN: They have already done many
20 interviews and taken a lot of evidence regarding the
21 current process, and I believe in the ROC we've
22 already gotten at least one observation or exception
23 on the process. The KPMG has made very clear all
24 along that as we change these kinds of processes or
25 procedures, they will go back and re-review the new

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1 process. So my anticipation is that they will also
2 review the new process, as well.

3 JUDGE RENDAHL: And if they review the new
4 process following your discussions in September, do
5 you have a time frame for when -- how long do you
6 expect it will take KPMG to conduct the testing and
7 obtain results on that?

8 MR. CRAIN: You know, I don't know. I'd
9 have to look at the project schedule, although I
10 don't even know if that would be giving us that much
11 information. I would think that KPMG could do that
12 fairly quickly. I don't know if it's a matter of a
13 couple of weeks or if it would take a month, but I
14 don't think it would take an extended period of time.

15 JUDGE RENDAHL: Okay. You mentioned that
16 it's now a nine-state multi-state process. Besides
17 the state of Washington, what other state do you know
18 has joined?

19 MR. REYNOLDS: Nebraska.

20 MS. YOUNG: Nebraska.

21 JUDGE RENDAHL: Thank you.

22 MR. CRAIN: Nebraska. Thanks.

23 JUDGE RENDAHL: If your time frames that
24 you're suggesting, if the Commission were to -- if
25 the OSS testing were to be done and the final report

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1 issued by October 12th, which, as you've said, may be
2 optimistic, if the October, mid-October suggestion
3 for all of these reports to be done and information
4 to be available and then comments filed in two weeks
5 with the legislative-style hearing seven days later,
6 that, although I don't have a calendar in front of
7 me, that looks like it's early -- you know, the first
8 week of November type of hearing.

9 What sort of process, then, from the
10 Commission would you suggest? Some type of interim
11 order, like the Commission has issued on the other --
12 on the checklist items? You know, when I say order,
13 it's the Commission's recommendations to the FCC that
14 have been done in piecemeal, or do you then consider
15 the process to be complete, that the Commission can
16 then put together a complete recommendation with all
17 of the checklist items?

18 MR. CRAIN: I would anticipate that the
19 process would be complete at that point. The
20 Commission has been issuing -- I forget if they're
21 called interim recommendations, whatever.
22 Essentially, they're piecemeal recommendations
23 considering each checklist item as we complete the
24 workshop.

25 The reason that those interim

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1 recommendations are valuable is that Qwest can then
2 -- the Commission is addressing disputed issues in
3 those proceedings, and Qwest can then respond to
4 those disputed issues and make sure that it meets the
5 requirements the Commission sets forth.

6 With the final report and with the data and
7 things like that, the Commission wouldn't be then
8 ruling upon these kind of disputed issues. The only
9 issue then is what will the Commission's
10 recommendation be to the FCC. And my suggestion
11 would be that there is no need for any further report
12 at that point. What would happen then is when Qwest
13 files at the FCC, the Commission then files its
14 report, I believe, 20 days thereafter. So I don't
15 see any need or anticipate any need for reports on
16 these three proceedings.

17 JUDGE RENDAHL: Does Qwest have a
18 projection for when it is thinking of filing with the
19 FCC at this point?

20 MR. CRAIN: We will file with the FCC as
21 soon as we can after the test is finished. In other
22 words, if it finishes on October 12, we'll be filing
23 as soon as we can thereafter. If it finishes -- if
24 the test is extended for any reason, then we would
25 file as soon as we can after the new date.

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1 JUDGE RENDAHL: Okay. Thank you, Mr.
2 Crain. Let's turn now to AT&T. Ms. DeCook, if you
3 can discuss, similar to Mr. Crain, what you believe
4 to be the remaining issues that need to be discussed
5 and any proposed time frame for how the Commission
6 should resolve that, I'd appreciate it.

7 MS. DeCOOK: Okay. What I'd like to do is
8 make a couple preliminary comments on what Mr. Crain
9 said, and then ask Letty to address the CICMP
10 process, and since she's more familiar with that, I
11 think she can respond to your inquiries about that,
12 and then I'll pick up on QPAP and performance issues
13 after that.

14 JUDGE RENDAHL: Okay.

15 MS. DeCOOK: Just to start out with some
16 background, similar to what Mr. Crain did, I think

15 brings that back, will we be ready to comment on the
 16 process. I don't think it makes any sense to comment
 17 on a promise of a process in writing and then give
 18 that to the Commission when the Commission will not
 19 know whether, in fact, Qwest has actually implemented
 20 the process, whether, in fact, the process, as
 21 designed, actually works, whether or not, in fact,
 22 the CLECs and those that participate, depending upon
 23 how many do during the CICMP process, have actually
 24 been able to participate in the very confined and
 25 abbreviated time frame that Qwest is suggesting

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2 That is, to get that thing done by
 3 September, I think, is going to make it very
 4 difficult for some CLECs to participate in the CICMP
 5 process, and that's what I was hearing as I sat on
 6 the initial CICMP organization call; that when Qwest
 7 was trying to schedule CICMP meetings just about
 8 every single week, that it was making it very
 9 difficult for certain CLECs to participate.

10 So I would suggest the CICMP process needs
 11 to take sufficient time such that it can get adequate
 12 CLEC participation, I think that's going to last
 13 beyond September, and then I think Qwest should have
 14 to implement the CICMP process and that ROC should
 15 have to test the implemented process to assure the
 16 thing is working, and then we should file comments
 17 and be heard on the issue.

18 So I would suggest that it's farther out
 19 than September, and probably November, at some point.

20 JUDGE RENDAHL: Thank you, Ms. Friesen. I
 21 have a question for you. You mentioned a reference
 22 to the Southwest Bell Telephone Texas case. Do you
 23 have a citation for that?

24 MS. FRIESEN: It's paragraph 10B.

25 JUDGE RENDAHL: Thank you. Okay. Ms.

1 DeCook. SGAT/271 WORKSHOP IV, 7/31/01 5358

2 MS. DeCOOK: Let me touch briefly on QPAP.
 3 And I think it falls in a similar procedural quagmire
 4 as the CICMP process, because it is being dealt with
 5 in a forum where the Washington Commission is not
 6 intimate -- they're participating, but there is no
 7 record that's being created specifically for
 8 Washington and no investigation for Washington, in
 9 particular.

10 My understanding is that there were some
 11 occasion collaborative discussions on QPAP and that at
 12 some point, after several months, Qwest put its final
 13 offer on the table and then walked away and said,

14 We're not going to collaborate and negotiate anymore.
 15 My understanding is that there are fairly
 16 -- a fairly extensive number of critical issues
 17 remaining that are instrumental to the effectiveness
 18 of a QPAP-type of program being an effective
 19 backsliding remedy, and so I think it's critical that
 20 the Commission hear what remaining disputes exist and
 21 make their own decisions about how those should be
 22 resolved, and I think that should be done through a
 23 workshop process and, rather than a legislative
 24 process, because I don't think you get to fully flesh
 25 out the positions of the parties and the nuances of

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 1 the parties' positions through a legislative type
 2 format.

3 And I have to admit that I don't know
 4 enough about how the ROC process is going to work to
 5 understand when that's going to be complete. I guess
 6 my suggestion for all of these things is rather than
 7 deal with them seriatim, that you had originally
 8 contemplated that you would have another workshop at
 9 some point down the road, and maybe we ought to just
 10 take all of these matters up in that workshop, rather
 11 than to schedule them separately on their own.

12 Let me deal with the performance and OSS
 13 testing together, because that's how you've dealt
 14 with them to date. We have had, probably at AT&T's
 15 behest, extensive discussions on performance and how
 16 that was going to be dealt with in Washington
 17 previously. We started, I believe last June, in the
 18 first set of workshops and the prehearing conference,
 19 and at that time there were significant discussions
 20 on how we were going to proceed. And I recall Qwest
 21 was getting ready to introduce some performance data
 22 into the record, and we had some discussions on the
 23 record and off the record as to how to deal with
 24 performance. And in particular, I recall Mr. Owens,
 25 from Qwest, agreeing that Qwest would put its

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 1 performance data in the record, but that parties
 2 could confront that data, including whatever comes
 3 out of the OSS test, at the conclusion of the OSS
 4 test.

5 And he was asked by Mr. Wallis, by Judge
 6 Wallis at one point when it would be appropriate for
 7 the issue of performance, including the ROC test, to
 8 be addressed, and he said, At the conclusion of the
 9 ROC test. And that's in transcripts here in
 10 Washington.

11 Orders were issued, Qwest filed a request
 12 for clarification, and as a result of that filing,

11 JUDGE RENDAHL: Okay, thank you. I have a
 12 few questions for you, as well. In your discussion
 13 of the QPAP, you said that there's no opportunity to
 14 create a record in Washington. My understanding of
 15 the multi-state process is that the parties file
 16 documents in the individual state that they're also
 17 filing in the multi-state. For example, we've
 18 received all of AT&T's and WorldCom's and Covad's and
 19 Qwest, other parties' comments so far to Qwest's PAP.
 20 And my understanding is those comments need to be --
 21 I mean, there is a record here in Washington that
 22 those comments will be made a part of the entire 271
 23 record, and to the extent that there are exhibits
 24 that are admitted in the multi-state process, when
 25 the time comes to review that here in Washington, my

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1 understanding is those would likely become exhibits
 2 in Washington's docket. Would that be your
 3 understanding?

4 MS. DeCOOK: I don't know. I think they
 5 could, I don't see any reason why they couldn't. I
 6 think my concern is more that it doesn't give an
 7 opportunity for the Commission to ask questions and
 8 to flesh out issues that it may have with the filings
 9 that have been made by the parties. And I think
 10 that's one of the benefits that the workshop forum
 11 provides, is that it gives you an opportunity to ask
 12 questions, it gives you an opportunity to hear the
 13 parties discuss the issues, and I think -- my
 14 impression is that that has helped staffs and
 15 commissions to understand the nature of the disputes
 16 a little better.

17 JUDGE RENDAHL: Now, you'd mentioned the
 18 Colorado Commission. Maybe that was in context of
 19 data review on the performance issues. Colorado is
 20 reviewing the PAP separately; correct?

21 MS. DeCOOK: That's my understanding.

22 JUDGE RENDAHL: And have they gone through
 23 a workshop process yet or are they reviewing it in
 24 the way Qwest has requested here in Washington?

25 MS. DeCOOK: I'm not certain.

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1 JUDGE RENDAHL: Maybe, Mr. Crain, you can
 2 weigh in on that, or others.

3 MR. CRAIN: Sure. The Colorado process was
 4 that Colorado appointed a special master, Phil
 5 Weiser, who's a professor at the University of
 6 Colorado. Sorry, I need to turn this on. He used to
 7 work for the DOJ. He met numerous times with the
 8 parties and had numerous discussions with the parties
 9 and, as a result of those discussions, made a

10 proposal about a -- of what kind of QPAP there ought
 11 to be for Colorado.

12 The parties then all commented on Mr.
 13 Weiser's report and it is currently being considered
 14 by the Commission. All the comments and the report
 15 are being considered by the Commission.

16 JUDGE RENDAHL: And was the process that
 17 Mr. Weiser held similar to a workshop or was it more
 18 of a informal discussion?

19 MR. CRAIN: It was similar to what I have
 20 -- my understanding is how Texas dealt with most of
 21 these issues, where Pat Wood, the chairman of the
 22 Commission, sat down with the CLECs in one room and
 23 tried to get them to reach certain -- or tried to
 24 find out what their issues were, then he'd go over
 25 and sit with SBC in the room and find out what their

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1 issues were and went back and forth. That is what

2 Mr. Weiser did. He had meetings with Qwest
 3 separately and then he had meetings with CLECs
 4 separately, and as a result of all those meetings, he
 5 has issued his report about what the QPAP ought to
 6 look like.

7 MS. FRIESEN: This is Letty Friesen. I'm
 8 the Colorado lawyer, and I'd just like to add a few
 9 things to what Andy has said. At no time did Mr.
 10 Weiser allow the parties to confront one another or
 11 talk to one another in regard to the QPAP. They had
 12 to file what he called ex parte reports. He would do
 13 his interview with the individual CLECs, and then the
 14 CLECs would file ex parte reports.

15 It's my understanding to date that the
 16 chairperson of the commission that's overseeing this
 17 QPAP process has not allowed the parties to discuss
 18 with one another or confront one another in any
 19 fashion, so I think that the process is slightly
 20 different than what Qwest is proposing in terms of
 21 the legislative approach.

22 JUDGE RENDAHL: Okay. I'm just trying to
 23 get clarification. Ms. Doberneck, did you have a
 24 comment?

25 MS. DOBERNECK: You know, I think when I

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1 get to serve my series of comments generally about
 2 the procedural, I can throw in the QPAP, or I can do
 3 that now.

4 JUDGE RENDAHL: Why don't we do that, go in
 5 sequence.

6 MS. DOBERNECK: Sure.

7 MR. CROMWELL: Judge Rendahl, I can tell
 8 you that I got a call from the Colorado OCC, and

7 JUDGE RENDAHL: I guess I'm trying to
8 understand what you mean by commercial usage, the
9 term commercial usage, and how that might differ from
10 actual performance?

11 MS. DeCOOK: Well, I think they're
12 synonymous. I think the distinction I'm trying to
13 make is CLEC experience, their actual experiential
14 data versus the results from the ROC test. I think
15 you have to look at both of those and compare them to
16 get a real picture of what's going on in your state.

17 JUDGE RENDAHL: Okay, thank you. Okay.
18 Ms. Doberneck.

19 MS. DOBERNECK: I'll try to be brief,
20 because I do think AT&T pretty well covered the
21 waterfront. From Covad's perspective, there are a
22 few specific issues that I want to touch upon,
23 because there are things that we have particular
24 concern and/or interest about.

25 Starting with CICMP, I think Letty hit the

6 you know, that perspective, rather than from where we
7 stand as CICMP currently is going forward, because I
8 -- you know, our folks who participate just don't
9 have the same idea in mind. They look at it as how
10 will this really work on a day-to-day basis, versus
11 me looking at it from how does this impact Covad as a
12 company, the rights to which we're entitled under law
13 and contract.

14 The final point about CICMP is -- I think
15 Becky referred to this, which is a lot of things that
16 we have discussed in these workshops, tech pubs,
17 things like that, are all supposed to be run through
18 CICMP to sort of sync them up with changes that have
19 been made through the workshops, changes in the SGAT,
20 to ensure that they're consistent with what's been
21 agreed to and what CLECs' rights are under either the
22 interconnection agreement or the SGAT.

23 So I think we need to, to the extent we get
24 to CICMP and what happens with it and how we're
25 supposed to use it, you know, we need an opportunity

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1 nail right on the head when she said that the promise
2 of a process is just not sufficient to ensure that
3 CICMP won't be used as it has been in the past, to,
4 you know, pretty much trample on CLECs' rights under
5 their interconnection agreements. And I'm not -- you
6 know, this is not hyperbole. I think it's probably
7 very well-tread ground throughout these various
8 workshops that things, product notices, policies,
9 have come out through CICMP that have completely
10 undone rights for which CLECs negotiated under their
11 interconnection agreements.

12 So, from our perspective, we are simply not
13 willing to say or agree to anything that says, Well,
14 this is the way CICMP's going to work, that's
15 sufficient for purposes of this particular
16 Commission's review. So we would strongly object to
17 that position, as well as we want to see an
18 opportunity of how CICMP will actually work once it
19 is redesigned.

20 Related to that, and I think probably Letty
21 alluded to this, is that for the most part, and
22 certainly until very, very recently, the individuals
23 from Covad who did participate in CICMP were the
24 people actually using the processes, you know, order
25 administration, more technical people, and they do

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1 not look at CICMP from the same perspective that this
2 Commission and certainly me, representing Covad's
3 interest in this 271 process, look at CICMP.

4 So I think it's really critical to bring it
5 back before this Commission and to look at it from,

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1 to see if, in fact, on the representations that were
2 made in the workshops and how CICMP will be used to
3 correct certain documents, for example, actually
4 happens, and I know Mr. Zulevic has certainly
5 discussed this a lot and it is something of great
6 concern.

7 Turning to the QPAP, I think one of the
8 most important things that this -- or one of the
9 greatest ways by which this Commission would benefit
10 is by holding a hearing or a workshop on the QPAP
11 that this Commission is considering. And I certainly
12 don't say that to extend the process or, you know,
13 personally to add to my own workload, but when this
14 Commission is looking at the positions of the
15 parties, what the various parties are asking for,
16 it's imperative that the Commission realize that you
17 can argue for something without the opportunity to
18 explain why exactly it is that it's important.

19 For example, in our comments we submitted
20 on the QPAP in Washington, we discussed the audit
21 provisions, what we think needs to be included within
22 the scope of the audit. I can give some example, but
23 I think it helps the Commission to understand why I'm
24 arguing for a particular aspect to be included in the
25 QPAP and what our experience is that's dictating our

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1 request and why that request is reasonable. The
2 Commission can only understand and absorb that kind
3 of information if, in fact, the parties do have an
4 opportunity to set those out, because, just frankly

3 written comments.
 4 JUDGE RENDAHL: So you believe that once
 5 Mr. Antonuk issues a report from the multi-state
 6 process, that there should be more process here in
 7 Washington than Qwest has proposed, that there should
 8 be an actual workshop-style discussion before there's
 9 a presentation to the Commissioners?
 10 MS. DOBERNECK: I think that's appropriate.
 11 And one thing -- the reason I think it's particularly
 12 appropriate is that one of the things that you see
 13 with the PAP is that it's geared towards, for
 14 example, all CLECs. Well, all CLECs, you can't lump
 15 Covad in with AT&T on a bunch of different issues.
 16 And I, having not seen Mr. Antonuk's report --
 17 JUDGE RENDAHL: Well, it's not been issued
 18 yet. I mean, it's --
 19 MS. DOBERNECK: Right, right. Yeah, I
 20 know. It's still forthcoming, but there are very
 21 individual CLEC-specific issues that I'm not certain
 22 will be covered in that report. And to the extent
 23 they are, I would like the opportunity to present
 24 them to this Commission in workshop format or what
 25 have you.

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1 JUDGE RENDAHL: Okay. And also, my last
 2 question is whether you agree with Ms. DeCook's
 3 comments on behalf of AT&T that the Commission should
 4 not address the issues seriatim, as Qwest has
 5 proposed, but to have one final fifth workshop that
 6 would incorporate all of the remaining issues?
 7 MS. DOBERNECK: I think probably
 8 streamlining the process, and particularly given the
 9 overlap between a number of the issues, I think that
 10 makes sense. I would certainly just have it come
 11 with the caveat that the more things we roll into one
 12 final workshop, and I'm perfectly happy to do that,
 13 it's easier when it's a single streamlined process,
 14 is to have adequate time to provide the evidence, the
 15 data, and the comments that would be necessary to
 16 address the issue in the workshop.
 17 JUDGE RENDAHL: Do you see any issues that
 18 could be dealt with without a workshop, as Qwest has
 19 proposed? If any were subject to the more
 20 legislative-style hearing, which issues do you think
 21 are more appropriately dealt with that way?
 22 MS. DOBERNECK: Frankly, given experience,
 23 I don't really see any of the issues that could be
 24 dealt with in a context other than, say, a
 25 workshop-style process, rather than a

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 1 legislative-style hearing.

2 JUDGE RENDAHL: Okay, thank you. Ms.
 3 Young.
 4 MS. YOUNG: Yes. Always great to have
 5 Becky go first, because she's so thorough. Thanks,
 6 Becky.
 7 MS. DeCOOK: Long-winded, you mean.
 8 MS. YOUNG: I don't really have a lot to
 9 add, other than I would support, I think, the fifth
 10 workshop. When I look at the process that Qwest has
 11 proposed, it takes Staff kind of out of the equation.
 12 And I understand Mr. Crain's reasoning is that in
 13 that we don't really have disputed impasse issues
 14 that require Staff summary and then an order, initial
 15 recommendation to be submitted, but I do think that
 16 leaving everything to a presentation to the
 17 Commissioners -- not that they aren't capable,
 18 because they certainly are, of making decisions --
 19 without a summary of what's going on, I think that's
 20 of value to have that go on.
 21 And I think, then, having a fifth workshop
 22 would allow more of a Staff participation in between.
 23 And I think that's of value. So I guess that would
 24 be -- that would be my only concern.
 25 Also, with regard to CICMP, I kind of share

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1 Covad and AT&T's concern. I know that I just
 2 recently found out who was participating in the CICMP
 3 process on behalf of Sprint, and they are operational
 4 people, and that probably was appropriate to begin
 5 with. But, certainly, with the way it's evolved,
 6 it's important that policy issues are taken into
 7 consideration, too.
 8 I know Sprint is supporting the OBF change
 9 management process in developing the new CICMP
 10 process, and now that I'm working with our operations
 11 folks, I'm a lot more comfortable with what's going
 12 on there, but I share those concerns, also, with
 13 regard to how that's being handled
 14 JUDGE RENDAHL: Thank you, Ms. Young. Ms.
 15 Hopfenbeck.
 16 MS. HOPFENBECK: WorldCom supports the
 17 recommendation that the remaining issues in this
 18 proceeding be addressed in a workshop format, as
 19 opposed to the legislative format that Mr. Crain
 20 outlined.
 21 I'm not -- for the reasons that I'll add in
 22 more detail a little bit later, I'm not as whetted to
 23 that workshop being one workshop to address all
 24 remaining issues. And one of the concerns that
 25 WorldCom has is that if the OSS test results are not

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 1 report on the ROC results waiting until the CICMP
 2 test is complete, or will they issue a report and
 3 then supplement it with a CICMP update?
 4 MR. CRAIN: I don't know what their
 5 intention is. Currently, the plan, the test plan and
 6 everything allows for both of those to happen at the
 7 same time. The schedule we're on for completing that
 8 process allows them to do their evaluation before the
 9 final test was issued. I anticipate that the CICMP
 10 evaluation will be included in the final report.
 11 It's possible they may actually issue an interim
 12 report before that. If the test is delayed, they may
 13 get done with the CICMP evaluation ahead of time and
 14 submit an interim report, but my anticipation at this
 15 point is it would be part of the final report.
 16 JUDGE RENDAHL: Okay. So Ms. Hopfenbeck,
 17 just so I'm clear about what your recommendations are
 18 to the Commission, is that if the KPMG report is
 19 delayed due to the CICMP issue or other issues, that
 20 you would suggest that the Commission have a workshop
 21 on the QPAD and any fulfillment of agreements,
 22 compliance issues and any other performance related
 23 issues, and then hold any -- whatever Commission
 24 review of the CICMP and ROC testing as a separate
 25 process?

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 1 MS. HOPFENBECK: I think that would be an
 2 appropriate way to handle it. I don't have strong
 3 objections, should the Commission want to wait and
 4 hold all the hearings at the end. I'm just concerned
 5 that that's a lot to take on, and if we're in a
 6 position where we're really rushed to get through
 7 because the Commission's on a deadline for issuing
 8 its recommendation to the FCC when that clock has
 9 been tolled by Qwest filing, that's the only concern
 10 and the only reason why I suggested that you might
 11 want to break some of it out and handle it up front.
 12 JUDGE RENDAHL: Okay, thank you. Mr.
 13 Cromwell or Mr. Kopta, who wishes to go first?
 14 MR. CROMWELL: Go right ahead, Greg. I'll
 15 bat cleanup.
 16 MR. KOPTA: Thank you. I guess we'll make
 17 it unanimous with the other CLECs that have discussed
 18 these issues and really agree with everything that's
 19 been said so far. I think it makes sense to have a
 20 fifth workshop that addresses all of these issues,
 21 recognizing that it may be a little bit different
 22 from the workshops we've had up to now.
 23 Certainly, when the SGAT provisions have
 24 been involved, it has been kind of a negotiation
 25 session, let's see what we can work out, how much

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 1 common ground we can work out. I suspect, with most
 2 of these issues, if not with all of them, there won't
 3 be a whole lot of common ground to be worked out.
 4 Rather, it will be trying to flesh out positions,
 5 understand where data comes from, what it means, but
 6 still in a process that allows a full and fair airing
 7 of the various issues, as opposed to making the
 8 Commission labor through all of this on a paper
 9 record.
 10 And I want to stress the importance of
 11 that, because, from our perspective, performance is
 12 the be-all and end-all for this process. Certainly,
 13 up to now, a lot of what's gone on has been
 14 structured around looking at Qwest's SGAT. And
 15 that's fine. I mean, we have a consolidated docket
 16 that is reviewing both the SGAT and looking at their
 17 compliance with Section 271, but we have an existing
 18 interconnection agreement with Qwest, as does, I
 19 believe, everybody else at the table. And there has
 20 been precious little discussion about those
 21 documents. Rather, the focus has been, at least from
 22 a legal perspective, on the SGAT, what does the SGAT
 23 say and what are the provisions in the SGAT, is Qwest
 24 set up to comply with the SGAT, but little, if any,
 25 discussion about the existing interconnection

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 1 agreements.
 2 I think the Commission emphasized from Day
 3 One that it was going to look into that issue,
 4 whether Qwest was currently complying with its
 5 obligations that this Commission has already reviewed
 6 and approved that are in effect, that do govern the
 7 existing operations between CLECs in the state of
 8 Washington and Qwest. And a review of performance
 9 under those existing agreements is critical to the
 10 Commission's understanding of whether Qwest, as
 11 Section 271 requires, is providing services and
 12 facilities that it's obligated to provide under the
 13 Act and under the interconnection agreements.
 14 And I think, rather than having competing
 15 reports or competing information, the Commission, to
 16 my mind, is not going to have much of a basis for
 17 making a decision if Qwest files a report, the CLEC
 18 says, Okay, here's our experience in the month, and
 19 you've got two different sets of numbers. What is
 20 the Commission going to do with that information? I
 21 think unless there's an opportunity for the parties
 22 to sit around the table to try and understand why
 23 there's a disconnect, to the extent that there is, it
 24 may be that there is data that can be agreed on, but
 25 to the extent that there is a discrepancy, what's the

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 1 been presented to date. Unless Qwest is going to
 2 simply take the record that's been compiled before
 3 this Commission and truck it to the FCC, then there's
 4 going to be, of necessity, some either additional
 5 information, some editing of the information,
 6 something other than what has already been filed with
 7 the Commission.
 8 Certainly, Andy can correct me if I'm
 9 wrong, but I would be surprised if Qwest simply
 10 wholesale took the entire record and didn't do
 11 anything else in submitting whatever it's going to
 12 submit to the FCC. Obviously, whenever there's any
 13 additional material, whether there's any editing of
 14 material, then there is occasion for judgment. And
 15 this Commission, before rendering its opinion to the
 16 FCC, needs to have the opportunity to evaluate
 17 whatever that material is that Qwest is going to
 18 submit to the FCC.
 19 So I do think that we shouldn't lose sight
 20 of the fact that the procedural order, as it exists
 21 right now, does include a mechanism whereby the
 22 Commission does have an additional review period
 23 before Qwest files with the FCC to make sure that
 24 everything is as it believes it to be.
 25 JUDGE RENDAHL: Let's be off the record for

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 1 a moment.
 2 (Recess taken.)
 3 JUDGE RENDAHL: Let's go back on the
 4 record. Be back on the record, and we'll be hearing
 5 from Mr. Cronwell, assuming, Mr. Kopta, you're
 6 finished with your comments?
 7 MR. KOPTA: I'm finished. Thank you.
 8 JUDGE RENDAHL: Okay. Thank you. And I
 9 don't have any questions for you, Mr. Kopta. I'm
 10 sorry.
 11 MR. KOPTA: Darn.
 12 JUDGE RENDAHL: Running out of questions
 13 now. Mr. Cronwell, and then I understand Mr. Crain
 14 has some responsive comments he wishes to make.
 15 MR. CROWWELL: Good morning, Judge Rendahl.
 16 This actually, surprisingly, worked out very well,
 17 because as I outlined my comments here this morning,
 18 I pick up with the supplemental interpretive and
 19 policy statement issued in UT-970300 on March 15th of
 20 this last year, 2000.
 21 The third from the last bullet point on
 22 page three, US West's actual 271 application to the
 23 FCC must be filed in Washington State before US West
 24 files it with the FCC. In the Commission order that
 25 adopted that interpretive and policy statement at

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 1 paragraph 41, discussing concluding adjudication,
 2 I'll just read the last sentence, US West must file
 3 its, quote, unquote, final Section 271 application to
 4 the FCC in Washington State at least 90 days before
 5 US West plans to file it with the FCC, unless the
 6 Commission sets a shorter time based on the extent of
 7 remaining issues and the Commission's perceptions of
 8 remaining evidentiary and process needs.
 9 I guess my predicate question is what need
 10 is there, if any, to diverge from the Commission's
 11 existing orders? We can certainly discuss the
 12 rationales for doing so, but I think that we need to
 13 have that discussion.
 14 I guess the second question that was posed
 15 to me by Mr. Crain's presentation this morning is
 16 whether Qwest intends to ignore the Commission's
 17 orders in that regard. Certainly, what he said this
 18 morning led me to that conclusion.
 19 I concur with the prior statements that
 20 some form of fifth workshop or some other process
 21 like one is needed. If I can, you know, step back
 22 and build an analogy for a second, we're building a
 23 house here. We've got OSS and testing, we've got the
 24 QPAP over here and we've got the SGAT over here.
 25 It's like we're building a foundation, a roof, and a

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 1 set of walls for a house on site, but no one's put
 2 them together yet. We don't even know if the walls
 3 fit the foundation or if the walls will hold the
 4 roof.
 5 And for that reason, I think that it's
 6 incumbent on this Commission to examine what occurs
 7 if, for example, the QPAP that will, in theory,
 8 result from Mr. Antonuk's recommendations, if he
 9 follows the model used by Mr. Weiser in Colorado,
 10 he'll have the issues identified and he'll propose
 11 resolutions to them. And based upon that, Qwest
 12 could develop a QPAP that would comport with Mr.
 13 Antonuk's recommendations.
 14 What would happen if we applied that to
 15 July's OSS data? Would it result in penalties? If
 16 so, how much? I think these are -- in Colorado,
 17 they're considered mock reports, in terms of Mr.
 18 Weiser's recommendations. I think it would be very
 19 valuable for this Commission to examine what happens
 20 when we try and put this house together, when we pull
 21 all these disparate elements that we've been talking
 22 about serially, but separately. What happens when
 23 you actually bring it all together. Is the thing
 24 going to work.
 25 Part of what Qwest has argued here in the

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1 there when that ruling was made, I participated in
 2 that discussion, and I remember very clearly what the
 3 decision was. The 90-day procedural -- the 90-day
 4 adjudicative process, as it was just called, was in
 5 the original procedural order that was issued in
 6 1997. We suggested that a series of workshops be
 7 held, rather than a formal hearing, and the
 8 Commission's ruling was basically, We're not going to
 9 take that piece of -- that 90-day process out of the
 10 procedural order, but we're going to review it at the
 11 end to see if it's necessary. And that's what -- I
 12 think that's reflected in the order.

13 That's what we're talking about. One of
 14 the issues I think we need to address now, is that
 15 necessary. And basically, what they were saying then
 16 was we are ensured that this is going to be a
 17 complete process where all the issues are really
 18 going to be delved into in detail, because we've
 19 never done this before. Now they have, and I think
 20 there is no doubt, I don't think there could be any
 21 doubt that all of the issues have been delved into in
 22 excruciating detail here on every checklist item.

23 In terms of how to handle the rest of the
 24 case, change management. Change management is being
 25 dealt with in the change management process. It's

1 also being completely reviewed by the vendors in the
 2 ROC. I don't anticipate there are going to be any
 3 significant issues remaining after we're done with
 4 the negotiation process and I don't think that
 5 there's any reason right now that a separate
 6 proceeding ought to be set to review the change
 7 management process. We'll file the change management
 8 documents when we're done, people can file comments.
 9 I think that's a reasonable way of handling that one.

10 Data review. We welcome data review. We
 11 want to do it, we want to do it now. There's no
 12 reason to wait till the end of the test to start
 13 looking at people's data. In terms of the is our
 14 data correct or is their data correct issue, one of
 15 the things that I have heard is being proposed by at
 16 least -- I've heard that other state commissioners
 17 are looking at whether or not we should retain
 18 Liberty to do that through the ROC process, and
 19 that's actually a process we would welcome and we
 20 would support, where Liberty would be able to look at
 21 their data, our data, get us in a room together, if
 22 necessary, and see whose data is correct and do that
 23 kind of -- and that is really excruciating work in
 24 terms of trying to figure out why one person's data
 25 is different. So we anticipate that that will be

1 handled through the ROC process.

2 In terms of how we're performing and how
 3 that looks, that is something I believe the
 4 Commission would want to hear itself. It is not
 5 suited for a workshop process. It's not something
 6 that we're going to sit around and try to resolve
 7 differences and delineate where we can reach
 8 agreement and where we have impasse issues. That's
 9 not necessarily an appropriate thing for a workshop
 10 process.

11 It's more appropriate for presentations to
 12 the Commissioners themselves, so that they can look
 13 at that data, they can see how we're performing. And
 14 you're right, they probably will want to ask
 15 questions, and I think that is a very appropriate way
 16 of handling that.

17 The FCC does want to look at the most
 18 recent months and most current data. There's going
 19 to be an inevitable time lag for any filing. The
 20 Commission is going to have some kind of proceedings
 21 to review our data. Additional data will probably
 22 come in between that time and the time we file with
 23 the FCC, even if it's a couple of days worth or a
 24 month's worth. Almost every filing that -- actually,
 25 every filing that has been made by BOCs at the FCC

1 has contained new data and isn't just the data that
 2 was most recently reviewed by the state commission.

3 So we need to start looking at that now, we
 4 need to have the Commissioners start hearing that
 5 information now. There's no reason to wait till the
 6 end. And we welcome that being evaluated, and we
 7 just want that process to get moving.

8 In terms of the QPAP, state-specific issues
 9 are being addressed in the Antonuk process, and
 10 parties are -- have been asked to file comments
 11 regarding state-specific issues. CLECs and other
 12 parties have had numerous chances of presenting all
 13 of their issues on the QPAP. We had the ROC process
 14 with workshops, which created the document that we
 15 have filed with Mr. Antonuk.

16 All CLECs have had numerous opportunities
 17 during those workshops to file comments, to make oral
 18 presentations, to talk through the issues with us
 19 with all the state staffers in the room, and I think
 20 that that was a complete and sufficient process. Now
 21 you add the Antonuk process on top of that and it is
 22 way beyond complete and sufficient, and add another
 23 -- yet another workshop process after that is really
 24 reaching, I think, absurd levels.

25 The nine-state process is looking at the

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 1 changes to the CICMP involved, that the CICMP has a
 2 role, not just for OSS, the OSS process, but also it
 3 has a role in the SGAT and various other places, and
 4 a suggestion that there might need to be a workshop
 5 to look at changes to SGAT sections on CICMP itself.
 6 And I'm wondering what Qwest's thoughts are on that
 7 particular point.
 8 MR. CRAIN: There's only one -- well, there
 9 are paragraphs in the SGAT that refer to the CICMP
 10 process, and those have actually all been -- I
 11 believe all been negotiated and addressed in the
 12 separate checklist item workshops, with one sole
 13 exception. And that sole exception is the -- there's
 14 one paragraph in Section 12 in which Qwest says, We
 15 will maintain a CICMP process. And I don't think
 16 that that particular paragraph has been addressed,
 17 but all the issues relating to that paragraph --
 18 well, that's the only remaining issue that --
 19 remaining section of the SGAT that refers to CICMP
 20 that I believe hasn't been addressed in the
 21 workshops.
 22 JUDGE RENDAHL: Okay. Do you have any
 23 further comments on future process? I think there
 24 may be some comments around the table before we
 25 close. Ms. Hopfenbeck, did you have --

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 1 MS. HOPFENBECK: I just wanted to address
 2 your last question on the CICMP and -- because it was
 3 my observation that CICMP needed to come back here,
 4 and that's because while it's true that the
 5 provisions that reference CICMP have been closed,
 6 they've all been closed subject to, you know,
 7 condition on the understanding that the CICMP process
 8 would be adequate to address those important issues.
 9 And by those important issues, they're the
 10 kinds of issues that Ms. Doberneck raised, which is
 11 there's been -- in almost every workshop, the CLECs
 12 have raised a concern about Qwest's practice of
 13 unilaterally changing the terms and conditions under
 14 which they must do business with it. And two,
 15 concern about delays that they've experienced in
 16 providing products because of an inadequate amendment
 17 process for their interconnection agreements.
 18 Those two issues are very important to
 19 WorldCom, in particular, and without a review of
 20 CICMP to see that there are processes in place to
 21 address those concerns, we don't believe Qwest can be
 22 found to be in compliance.
 23 JUDGE RENDAHL: Okay, thank you. Is there
 24 anything else before -- anything else on future
 25 process before we're done with our prehearing

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 1 conference? Ms. Strain.
 2 MS. STRAIN: I wanted to just ask a couple
 3 more questions about the -- I think it was Ms.
 4 Doberneck and perhaps Ms. DeCook were talking about
 5 the Colorado process and talking about for looking at
 6 the QPAP, and looking at what the process was that
 7 Qwest proposed here and your concerns with it.
 8 Was the concern that there would not be
 9 table time or face time with the commissions, or with
 10 the Washington Commission, in particular, or with the
 11 Staff on the aspects of the PAP, or was the issue
 12 that you liked the Colorado process and the process
 13 here that involved a written record and responses and
 14 interaction between the parties was not what you
 15 wanted?
 16 MS. DeCOOK: Well, speaking for AT&T, I
 17 think the concern I was trying to address is that I
 18 -- I think it's difficult in a multi-state forum to
 19 present your issues to individual commissions. And I
 20 think it's an important part of the process to be
 21 able to voice your issues directly to the
 22 decision-maker, so that they can understand your
 23 concerns, ask questions. They may have questions of
 24 their own, particularly this Commission, as they get
 25 confronted with a record that they weren't involved

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 1 directly. And as Mr. Cromwell suggested, they may
 2 have their own issues, their own concerns relative to
 3 Washington issues that have come across their desks
 4 over the years.
 5 So I think having the right and the
 6 opportunity to present your issues directly to the
 7 decision-maker is important to AT&T.
 8 JUDGE RENDAHL: Ms. Doberneck.
 9 MS. DOBERNECK: Yeah, I would echo what
 10 Becky said. From my perspective, what was very
 11 appealing about the Colorado process, I mean, you
 12 couched it as face time, but from my perspective, it
 13 was an opportunity -- basically, they're all impasse
 14 issues, so to speak. Qwest had its proposal, I
 15 disagreed, and it was an opportunity to speak
 16 directly to the individual making the recommendation
 17 and fleshing out my side of the impasse issue and how
 18 and why or why not Qwest's proposal did not
 19 adequately address it.
 20 So it was an opportunity to explain my
 21 position and the reasonableness of it, and why
 22 something that on its face might appear to address it
 23 did not, in fact, do so.
 24 MS. STRAIN: And so your concern, I guess
 25 both of you, your concern is that you would not have

1 SGAT/271 WORKSHOP IV, 7/31/01 5420
 Mr. Antonuk does not have that kind of a
 2 background. So while certainly he will do his best
 3 to develop a record, I believe he won't come at it
 4 with the same perspective as Commission Staff or this
 5 Commission will with a background and the
 6 understanding of past events, as well as, you know,
 7 Qwest's history in the state of Washington.
 8 So I think the concern that we have is that
 9 that piece of the component of whether the
 10 Performance Assurance Plan is appropriate for
 11 Washington, by necessity, is just not going to be
 12 there.
 13 JUDGE RENDAHL: Okay. Let's be off the
 14 record for a moment.
 15 (Recess taken.)
 16 JUDGE RENDAHL: Okay. Let's go back on the
 17 record. Mr. Weigler, Ms. Hopfenbeck, and then Mr.
 18 Crain.
 19 MR. WEIGLER: Steven Weigler, for AT&T.
 20 First, as far as what the workshop process has
 21 created thus far in the QPAP, I would like to state
 22 that I think the record created by the facilitator
 23 speaks for itself on what happened in the QPAP
 24 workshops. And to paraphrase, it wasn't at all a
 25 complete process. Thus we have come to what we call

1 SGAT/271 WORKSHOP IV, 7/31/01 5421
 the Antonuk process, where, presumably, and we're
 2 having a prehearing conference on what exactly is
 3 going to happen on August 3rd, but presumably we will
 4 have some kind of presentations by both parties to a
 5 neutral facilitator, and then that person will create
 6 a report.
 7 Although if you review the record, that is
 8 -- you review the record on what happened in the last
 9 prehearing conference with Mr. Antonuk, that is not
 10 what Qwest agreed to do and that's not what Qwest
 11 requested. Qwest said that they want to present the
 12 whole thing, lock, stock and barrel, and Mr. Antonuk
 13 says that either meets the public interest test or
 14 doesn't.
 15 I'm hearing different things from Mr.
 16 Crain, and I think that's because there's been a lot
 17 of -- when everyone filed our comments, I think
 18 reality is we're going to have to go piece-by-piece
 19 into that issue.
 20 Regardless, even if Mr. Antonuk does come
 21 up with a report, public interest -- and I filed a
 22 brief on this or comments on this in Washington -- is
 23 part of the public interest test. And only
 24 Washington can determine if the QPAP, and even what
 25 Mr. Antonuk recommends or doesn't recommend, only

1 SGAT/271 WORKSHOP IV, 7/31/01 5422
 Washington can determine if the QPAP, as part of the
 2 public interest, which is a checklist item, is
 3 appropriate for the state of Washington. And that's
 4 why AT&T believes that this needs to be at least
 5 reviewed in Washington, and preferably with the
 6 opportunity for people like Mr. Cromwell and other
 7 CLECs and other parties that have interest to either
 8 tell you -- present arguments to the Commission
 9 either why it's appropriate, the QPAP is appropriate
 10 for that prong of the public interest test or that
 11 QPAP isn't appropriate.
 12 But the FCC, I think, is relatively clear,
 13 and the arguments get kind of technical, and that's
 14 why I will defer to my brief on this that I filed a
 15 couple days ago, but it is part of the checklist item
 16 and this Commission needs to address it.
 17 JUDGE RENDAHL: Thank you. Ms. Hopfenbeck.
 18 MS. HOPFENBECK: I just wanted to set the
 19 record straight on what WorldCom, at least, has
 20 filed. Mr. Crain has represented that the
 21 multi-state would provide a forum for CLECs to have
 22 state-specific issues considered that relate to the
 23 QPAP.
 24 WorldCom has filed a lot of comments
 25 raising generic issues, issues on the QPAP that would

1 SGAT/271 WORKSHOP IV, 7/31/01 5423
 exist in every state that's considering that QPAP.
 2 We have not addressed state-specific issues. We
 3 haven't addressed how the QPAP relates to rules that
 4 exist in Washington, and we haven't done that for two
 5 reasons.
 6 One is that we understood, when the
 7 Commission made its decision to join, that the
 8 Commission always intended to consider state-specific
 9 issues in some kind of later process, and two, given
 10 the Washington Commission's -- I mean, even if they
 11 hadn't done that, given the lateness of the decision
 12 and the fact that the person at WorldCom who's doing
 13 that process for the multi-state only had one day
 14 between getting that order and going into workshops
 15 in Colorado and public interest, I don't think we
 16 even could have addressed state-specific issues. So
 17 I just say that. I don't -- it's not being addressed
 18 yet. I don't see how it could conceivably be
 19 addressed in there, for the reasons that Mr. Kopta
 20 raised.
 21 JUDGE RENDAHL: Mr. Crain.
 22 MR. CRAIN: Couple things. First of all,
 23 there is only one issue in the QPAP. It is do we
 24 meet the public interest requirement or do we not.
 25 That is the central issue there. We made a proposal,

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 1 meeting here, so on its face, I don't see anything
 2 that we discussed additionally that needs to be
 3 changed.
 4 MS. FRIESEN: Could I ask for just a few
 5 clarifications, since I'm not looking at Exhibit 813?
 6 JUDGE RENDAHL: Go ahead, Ms. Friesen.
 7 MS. FRIESEN: Margaret indicated that in
 8 Section 8.2.4.9 that Qwest had accepted the "on or
 9 for" addition of AT&T. Did Qwest refuse to accept
 10 the addition of duct and conduit and building also
 11 found in that same paragraph?
 12 MS. BUMGARNER: No, those changes were
 13 already in the previous exhibit that we had, which
 14 was the Qwest 812, I believe. Those were reflected.
 15 This was the changes in addition to that, adding the
 16 words that we had agreed to last time.
 17 MS. FRIESEN: Okay. Thanks for the
 18 clarification. And I think that Ken's statements are
 19 accurate. What the disputed issue is relates to
 20 whether or not they should be charging for site
 21 visits. And as I recall Qwest's testimony, the
 22 alleged reason they charged for those is because
 23 every time they have a site visit, they have to
 24 invite a structural engineer.
 25 While AT&T disputes that and disputes that

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 1 those charges should be there in the first instance,
 2 we are going to reserve for future time, whenever we
 3 need to consider microwave collocation, that issue
 4 for AT&T's purposes. Because, as I recall, and if
 5 Mr. Butler is on the line, Mr. Butler and his group
 6 that is currently using microwave collocation in
 7 Washington has accepted those charges.
 8 MR. BUTLER: Yes, that's correct.
 9 MS. FRIESEN: Okay. So I guess it's AT&T's
 10 position, then, with respect to this language, rather
 11 than take it to impasse, AT&T will just reserve the
 12 right to argue about those charges at a later date in
 13 a BFR-type process to the extent that we have to
 14 engage in microwave collocation in Washington, if
 15 that's acceptable to the Judge.
 16 JUDGE RENDAHL: That's fine. I think AT&T
 17 obviously has its own interconnection agreement with
 18 Qwest, and if it chooses to adopt this microwave
 19 collocation provision, then, you know, it's up to AT&T to
 20 decide how it wants to work out those arrangements
 21 with Qwest.
 22 Are there any other comments on this -- on
 23 the microwave collocation language in what's been
 24 marked as Exhibit 813? Okay. So at this point, it
 25 appears that there are no other issues on microwave

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 1 collocation that need to be addressed.
 2 MS. BUMGARNER: Okay.
 3 JUDGE RENDAHL: And that the language is
 4 agreeable, for the most part, to all the parties.
 5 Thank you all for discussing microwave collocation in
 6 this workshop on short notice and dealing with the
 7 issues.
 8 MS. FRIESEN: Your Honor, this is Letty
 9 Friesen. I'll be dropping off the phone at this
 10 time. Thank you for allowing me to participate.
 11 JUDGE RENDAHL: Okay. Before you drop off
 12 the phone, is there any objection to admitting
 13 Exhibit 813?
 14 MS. FRIESEN: No objection.
 15 JUDGE RENDAHL: It will be admitted.
 16 MS. FRIESEN: Is there a question I could
 17 run down Rick Wolters on?
 18 JUDGE RENDAHL: I think the question --
 19 let's be off the record.
 20 (Discussion off the record.)
 21 JUDGE RENDAHL: Let's be back on the
 22 record. We now have Mr. Busch joining us at the
 23 table representing --
 24 MR. BUSCH: Washington Association of
 25 Internet Service Providers.

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 1 JUDGE RENDAHL: And are you also here today
 2 for Yipes?
 3 MR. BUSCH: Yes, I am.
 4 JUDGE RENDAHL: But not on this particular
 5 issue?
 6 MR. BUSCH: Not on this issue.
 7 JUDGE RENDAHL: Okay. Thank you. Okay.
 8 Go ahead, Mr. Busch or Ms. Anderl.
 9 MS. ANDERL: Thank you, Your Honor. Qwest
 10 and the WAISP have been in discussions since the
 11 petition to intervene was granted, and we believe
 12 that we have resolved WAISP's concerns sufficiently
 13 for their purposes. At this point in time, their
 14 intent is to withdraw from the proceeding. And I can
 15 let Mr. Busch confirm that, and then we are going to
 16 want to just simply ask Your Honor what type of a
 17 memorialization of that agreement you would like to
 18 see on the record, if any.
 19 JUDGE RENDAHL: Okay. Mr. Busch.
 20 MR. BUSCH: Thank you, Your Honor. Qwest
 21 has addressed the issues that we've raised to our
 22 satisfaction, and at this point we would like to make
 23 a motion to withdraw the testimony of Mr. Reimer and
 24 Mr. Miller, and also to withdraw our intervention
 25 from this docket.

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 1 be done and complete LSRs would be submitted before a
 2 CLEC could run a jumper.
 3 As the parties may be aware, Qwest accepted
 4 the Antonuk recommendation that for the first sets of
 5 subloops that a CLEC wanted to run at an MTE
 6 terminal, they could run those while the inventory
 7 was being completed, and then Qwest would then put
 8 the final information on.
 9 So we have gone through the SGAT. We did
 10 find -- I don't know the exact number, approximately
 11 three or four places where there needed to be small
 12 word changes to accommodate that, and we are
 13 prepared, in the subloop portion, to present those
 14 changes.
 15 JUDGE RENDAHL: Thank you, Ms. Stewart.
 16 MR. WEIGLER: AT&T would look forward to
 17 seeing the changes as soon as possible, because
 18 that's what I was hoping to do last week, so I could
 19 be prepared for today's workshop.
 20 JUDGE RENDAHL: Okay. My understanding,
 21 from looking at our -- looking at our agenda, let's
 22 be off the record.
 23 (Discussion off the record.)
 24 JUDGE RENDAHL: Let's be on the record.
 25 While we were off the record, we determined that we

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 1 were going to start with packet switching. Before we
 2 turn to that, this SGAT Lite, who is the best witness
 3 to sponsor this, Ms. Liston?
 4 MS. LISTON: That would be fine.
 5 JUDGE RENDAHL: Okay. When the time comes,
 6 we'll make it an exhibit to Ms. Liston. Yes?
 7 MS. ANDERL: Yes. My recollection is that
 8 she sponsored the prior SGAT Lite from the main
 9 workshops, so, just to stay consistent with that,
 10 we'll do it that way.
 11 JUDGE RENDAHL: We will do that. Okay. So
 12 turning to packet switching, does everyone have the
 13 revised packet switching and dark fiber issues list
 14 that Ms. Strain circulated?
 15 MS. STEWART: I don't.
 16 JUDGE RENDAHL: You do not.
 17 MR. CRAIN: We're pulling out copies here.
 18 JUDGE RENDAHL: Let's be off the record.
 19 (Recess taken.)
 20 JUDGE RENDAHL: All right. Let's be back
 21 on the record. We're turning first to packet
 22 switching issues. And I notice, looking at the
 23 issues log, which I hope everyone has copies of now,
 24 that the remaining issues are mostly all at impasse.
 25 And so I guess I'll just open up the floor to see if

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 1 there are any issues that have -- if you've made any
 2 further progress on any of these issues and which
 3 ones should just clearly be at impasse. Mr. Wilson,
 4 or Mr. Zulevic first.
 5 MR. ZULEVIC: Yes, just briefly. I'd like
 6 to add some additional information pertaining to
 7 PS-1, packet switching one.
 8 JUDGE RENDAHL: That would be Washington
 9 PS-1?
 10 MR. ZULEVIC: Yes, that's correct.
 11 JUDGE RENDAHL: Okay.
 12 MR. ZULEVIC: This is some information that
 13 just became available since the last workshop, and
 14 what it deals with is a order that came out of the
 15 Texas PUC Order 22469 that was issued on July 13th.
 16 JUDGE RENDAHL: Is that 224619?
 17 MR. ZULEVIC: I'm sorry, 22469.
 18 JUDGE RENDAHL: Thank you.
 19 MR. ZULEVIC: Issued July 13th of 2001.
 20 That dealt with a very similar issue. This has to do
 21 with the unbundling requirements associated with the
 22 SBC Pronto project, very similar to the ruling that
 23 came out of Illinois earlier. And the Texas PUC also
 24 ordered the SBC to provide access to the Project
 25 Pronto, next generation digital loop carrier, on an

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 1 unbundled basis using UNE pricing, whereas I
 2 understand that the architecture that Qwest has
 3 proposed and is currently deploying in Washington
 4 State is not exactly the same as Project Pronto
 5 conceptually, it is the same type of architecture in
 6 that it provides the ability to get to distant parts
 7 of the network using either fiber or copper-fed
 8 services to provide digital loop -- to provide DSL
 9 services to those remote locations.
 10 And I would just like the Commission to
 11 take note of this order that came out of Texas and
 12 give it consideration as it pertains to PS-1.
 13 JUDGE RENDAHL: Thank you.
 14 MR. WILSON: Ken Wilson, for AT&T. I have
 15 also read this Texas order, and it does address the
 16 same issues that we discussed at length in the
 17 workshop here, and the Texas Commission has found it
 18 in the best interest and within the spirit of the FCC
 19 orders, and certainly within the interest of the
 20 state, to require unbundling of packet switching in
 21 an architecture that is almost identical to that
 22 which Qwest is deploying and will be deploying more
 23 extensively in the future, so that competition can
 24 have a chance in neighborhoods where copper loops
 25 will not be competitive for DSL services.

1 SGAT/271 WORKSHOP IV, 7/31/01 5444
 MS. HOPFENBECK: Yeah. I just thought we
 2 had to --
 3 MS. STEWART: Qwest would agree to change
 4 the period after "such technology" to a comma.
 5 MS. HOPFENBECK: But WorldCom still doesn't
 6 believe that this provision goes far enough.
 7 JUDGE RENDAHL: That it needs to extend to
 8 packet switching, not just line sharing?
 9 MS. HOPFENBECK: Yes.
 10 JUDGE RENDAHL: Okay.
 11 MS. HOPFENBECK: And also, we have a
 12 problem with the phrase to the extent that Qwest is
 13 obligated by law to provide access to such
 14 technology. That's suggesting that they don't have
 15 that obligation now.
 16 JUDGE RENDAHL: Okay. Ms. Doberneck.
 17 MS. DOBERNECK: I would simply -- Ms.
 18 Hopfenbeck covered it, which is, even as currently
 19 written, we disagree with the language contained in
 20 that section, but of course you'll read about that in
 21 our brief.
 22 JUDGE RENDAHL: Okay. We'll look forward
 23 to it. So issue Washington Packet Switching 1 is
 24 still at impasse with that further additional
 25 information.

1 SGAT/271 WORKSHOP IV, 7/31/01 5445
 Has there been any movement on any of the
 2 other packet switching issues, any of the impasse
 3 items, Ms. Stewart?
 4 MS. STEWART: Yes, on packets -- Washington
 5 PS-5, the issue of new packet switching definitions,
 6 Qwest and WorldCom have currently exchanged a limit
 7 -- some definition, or at least a definition for
 8 packet switch that's currently under review. We
 9 don't have a decision yet from WorldCom's technical
 10 people whether it's acceptable. We hope to still be
 11 working on that today. And if, while this proceeding
 12 is still underway, we get an answer, we'll report; if
 13 not, then --
 14 MS. HOPFENBECK: We'll just report in our
 15 briefs.
 16 MS. STEWART: Briefs.
 17 JUDGE RENDAHL: Thank you. I have a
 18 question about Packet Switching Issue 4 for
 19 Washington. The impasse was check on status at
 20 follow-up. Exhibit A to SGAT will include interim
 21 rates. Ms. Anderl, do you have any information on
 22 that?
 23 MS. ANDERL: If I understand the question
 24 correctly, Qwest's current Exhibit A to the SGAT does
 25 have proposed interim rates for unbundled packet

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 1 switching in it, and it is simply that those rates
 2 have not been run through a Commission cost docket.
 3 But Qwest does offer those rates as currently
 4 available in Washington and I believe will propose
 5 that the unbundled packet switching rates go through
 6 the next phase of -- or be something that is
 7 considered in the next phase of the Commission's cost
 8 docket.
 9 JUDGE RENDAHL: Okay. Thank you. Is there
 10 anything further on packet switching? Okay. Let's
 11 move on to dark fiber issues. And let's be off the
 12 record for a moment.
 13 (Discussion off the record.)
 14 JUDGE RENDAHL: Let's go back on the
 15 record. While we were off the record, we determined
 16 that Dark Fiber Issues 10 and 13 need to be
 17 discussed. Let's start with 10 and just quickly deal
 18 with that. That was a WorldCom issue concerning
 19 clarification of cross-connect charges. Ms.
 20 Hopfenbeck or Ms. Stewart, do you want to recap where
 21 we are on that?
 22 MS. STEWART: It's Ms. Stewart, from Qwest.
 23 I believe that we have answered WorldCom's questions
 24 and concerns about the applicability of those
 25 charges.

1 SGAT/271 WORKSHOP IV, 7/31/01 5447
 MS. HOPFENBECK: That's what my
 2 understanding is. So that issues closed.
 3 JUDGE RENDAHL: Thank you. Dark Fiber
 4 Issue 10.
 5 MS. STRAIN: SGAT section?
 6 JUDGE RENDAHL: Oh, is there an SGAT
 7 section, or it was just a question about charges and
 8 applicability? So there was no corresponding SGAT
 9 section.
 10 Okay. And then, turning to the Yipes
 11 issues under Dark Fiber Issue 13, Mr. Busch.
 12 MR. BUSCH: Thank you. The issue here,
 13 again, was the interconnection with dark fiber
 14 subloops at a point that we've kind of called
 15 mid-span meet points. Qwest's SGAT does offer to
 16 interconnect -- provide interconnection for dark
 17 fiber subloops at certain points. Yipes would like
 18 Qwest to provide interconnection to unbundled dark
 19 fiber at splice cases that are not located at the
 20 points where Qwest indicates it will offer them, and
 21 we've dubbed those mid-span meet points. It's the
 22 points in between the ends of the fiber. It's not
 23 accessible terminations under the FCC's description.
 24 I believe Qwest and Yipes are willing to
 25 stipulate that interconnection at mid-span meets for

1 SGAT/271 WORKSHOP IV, 7/31/01 5452
 MR. BUSCH: Yes.
 2 JUDGE RENDAHL: Okay.
 3 MS. STEWART: We will, on the break and
 4 prior to the conclusion of this workshop, will have
 5 language specifically put in the SGAT rate section
 6 that the rates will be interim for portions or
 7 subloops of dark fiber.
 8 JUDGE RENDAHL: Okay. And that will be
 9 language in Exhibit A or language in the SGAT?
 10 MS. STEWART: I believe it would be
 11 appropriate to put it in the actual body of the Dark
 12 Fiber Section, 9.7.
 13 JUDGE RENDAHL: Okay. Thank you. So is
 14 there anything further on dark fiber issues, assuming
 15 everything else will be argued on brief? Okay. I
 16 think we're ready to go on to subloops. Let's be off
 17 the record for a moment.
 18 (Discussion off the record.)
 19 JUDGE RENDAHL: Let's be back on the
 20 record. While we were off the record, I received two
 21 documents from Qwest concerning subloops, and one is
 22 a revised version of Section 9.3, Subloop Unbundling.
 23 The other is High-Level LSR Process Flow for
 24 Intra-Building Cable. Would these be exhibits to Mr.
 25 Orrel's or Ms. Stewart's testimony? Ms. Stewart's

SGAT/271 WORKSHOP IV, 7/31/01 5453
 1 testimony. Okay.
 2 Then let's turn to -- the revised Section
 3 9.3 will be Exhibit 1020, and the High-Level LSR
 4 Process Flow for Intra-Building Cable will be Exhibit
 5 1021. And we are going to have another document
 6 concerning access protocols, and will that be an
 7 exhibit to your testimony, Mr. Wilson, or also to Ms.
 8 Stewart's? Does it matter?
 9 MS. STEWART: Yeah, it probably should be
 10 ours, since it's our document.
 11 MR. WILSON: It's Qwest's document, yes. I
 12 think at some point AT&T may have a marked-up
 13 version, but this version is their original
 14 new-improved.
 15 JUDGE RENDAHL: Okay. Then let's be off
 16 the record for a moment.
 17 (Discussion off the record.)
 18 JUDGE RENDAHL: Let's be back on the
 19 record. When that document is circulated, it will be
 20 marked 1164, and it is titled Qwest Multi Tenant
 21 Environment, (MTE), Access Protocol. What is the
 22 date of that document?
 23 MR. ORREL: July 17th, 2001.
 24 JUDGE RENDAHL: July 17th, 2001. Thank
 25 you. Okay. Let's start on subloops. Which is the

SGAT/271 WORKSHOP IV, 7/31/01 5454
 1 first issue that we need to talk about?
 2 MS. STEWART: This is Karen Stewart, with
 3 Qwest. I believe we were going to do the access
 4 protocol first, but since it's being copied, perhaps
 5 I could identify in Exhibit 1020 the new SGAT Lite
 6 for Section 9.3, where the various sections of new
 7 verbiage originated from to hopefully facilitate the
 8 group's review when we get to this portion of the
 9 proceeding.
 10 JUDGE RENDAHL: Thank you.
 11 MS. STEWART: In Exhibit 1020, there is a
 12 new complete red-lined Section 9.3.1.1.2 and
 13 9.3.1.1.3, and 9.3.1.1.4. These three new sections
 14 are almost verbatim. There is one small change,
 15 which I will discuss. These three sections are
 16 virtually verbatim from the seven-state recommended
 17 report of Mr. Antonuk on what are the various
 18 circumstances and conditions that should be taken
 19 into consideration when a CLEC would like to access
 20 subloops in a manner not contemplated by the Qwest
 21 SGAT.
 22 Qwest has agreed to this language and has
 23 incorporated and adopted this language in the seven
 24 states covered by that proceeding and has voluntarily
 25 extended that language to each of its other states.

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 1 The small change is in 9.3.1.1.4, and that small
 2 change is in the middle of the section.
 3 I believe in Mr. Antonuk's report, it had
 4 said, Qwest will impose in the six areas identified,
 5 and it either had Section 1 or Section A above, and
 6 since it now had an SGAT number, we've inserted --
 7 replaced that 1 or A with the appropriate section
 8 number of 9.3.1.1.2. With that minor correction, I
 9 believe the language is verbatim from his recommended
 10 report.
 11 Next change was in 9.3.1.3.2. This was a
 12 conforming change, where the words "during or after
 13 an inventory" has been inserted. That insertion was
 14 necessary because of a subsequent section we'll talk
 15 about where Qwest agrees that a CLEC can access
 16 subloop elements during the creation of the inventory
 17 of the CLEC's terminations.
 18 Going on to Section 9.3.3.5, again, these
 19 are conforming changes to identify that a CLEC can
 20 submit LSRs without the complete inventory
 21 information, and that Qwest will hold those in
 22 abeyance, and subsequently the orders will be
 23 processed in such a manner as contemplated in the new
 24 section, which we'll discuss in a second, 9.3.5.4.1.
 25 The next change is in Section 9.3.5.4.1.

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 1 whole document, and the change in advocacy on a CLEC
 2 can request that Qwest run jumpers.
 3 MR. WEIGLER: And then, just to clarify,
 4 did other commissions state, if you made these
 5 changes, that you would be in compliance on subloop
 6 unbundling?
 7 MS. STEWART: I believe that process is
 8 underway in each of the states. I'm not aware that
 9 any state has issued a final order.
 10 MR. WEIGLER: But is there any state that
 11 said if you make the changes suggested by the Antonuk
 12 report, that you would be in compliance?
 13 MS. STEWART: As I indicated, I don't think
 14 any state has formally responded to Mr. Antonuk's
 15 report or done a final order.
 16 MR. WEIGLER: Now, there is at least one
 17 order that's come out that has suggested that Qwest
 18 make some changes to be in compliance. The one I'm
 19 referring to is the Arizona order. And I believe
 20 Qwest indicated that they would comply with the
 21 Arizona order, also, but there's some things in here
 22 that I don't see changes -- that Qwest has made the
 23 changes that are suggested by the Arizona order. Is
 24 Qwest intending to do so?
 25 MS. STEWART: I would have to look at my

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 1 notes on the Arizona order. The only one that comes
 2 to mind out of the Arizona order -- and I apologize
 3 if it turns out to be Colorado, because they're now
 4 starting to run in my mind a little bit here. One of
 5 the orders had slightly different recommended
 6 intervals on the determination of ownership. Instead
 7 of -- maybe this was Colorado. Instead of being two,
 8 five and 10 for the various situations, they
 9 recommended one, five and 10.
 10 And I believe in our responsive comments,
 11 and this is Colorado, I'm now remembering, we just
 12 indicated that we would propose that Colorado adopt
 13 two, five and 10, so that we would have consistency
 14 in our states.
 15 And once again, I would have to get my
 16 notes from the chair over there, but I'm not aware
 17 that, right off the top of my head, that there was
 18 specific subloop SGAT language in the Arizona order.
 19 Is there a section you can point me to, in
 20 particular, you're thinking of?
 21 MR. WEIGLER: Yeah, I'm just making sure
 22 that I have the right section here. If I could just
 23 have a second. Yeah, I'm talking about Section
 24 9.3.6.4.1. The language is as follows: Staff also
 25 agrees with AT&T that Qwest has not justified its

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 1 proposed inventory charge, and accordingly, SGAT
 2 Section 9.3.6.4.1 should be deleted.
 3 And I see that in the SGAT, if I turn --
 4 and it's a heavily-contested issue to AT&T, and
 5 that's whether AT&T should pay a subloop nonrecurring
 6 charge. CLEC will be charged -- and I'm reading from
 7 the SGAT. CLEC will be charged a nonrecurring charge
 8 for time and materials required for Qwest to complete
 9 the inventory of CLEC's facilities within the MTE,
 10 such that subloop orders can be submitted and
 11 processed.
 12 MR. CRAIN: That is from the Arizona --
 13 MR. WEIGLER: Order.
 14 MR. CRAIN: -- recommended Staff order.
 15 And have we conceded the issue?
 16 MR. WEIGLER: I believe you have.
 17 MR. CRAIN: I don't know, I don't know.
 18 MR. WEIGLER: I don't want to speak for
 19 Qwest, but I believe that, reading your brief, you
 20 have conceded to Arizona Staff's changes. And as
 21 this applies to Washington, AT&T desires to know if
 22 Qwest will be striking Section 9.3.6.4.1, as
 23 recommended by the Arizona Commission Staff. If so,
 24 that obviously isn't an impasse issue.
 25 MR. CRAIN: We'll get back to you.

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 1 MS. STEWART: We'll confirm that.
 2 JUDGE RENDAHL: Okay. And you'll try to do
 3 so before tomorrow, before the end of the day
 4 tomorrow?
 5 MS. STEWART: Correct, before the end of
 6 the day tomorrow.
 7 JUDGE RENDAHL: Great.
 8 MS. STEWART: And if we've made that change
 9 in Arizona, we'll make the change in Washington.
 10 MR. WEIGLER: Also, I could fax or I could
 11 e-mail Qwest a copy of the comments that showed that
 12 they acquiesced at least to the Commission's order.
 13 MS. STEWART: We believe we can have access
 14 to it.
 15 MR. WEIGLER: Okay.
 16 JUDGE RENDAHL: Well, thank you for going
 17 through the document 1020, Exhibit 1020, and
 18 clarifying the changes, and thank you, Mr. Weigler,
 19 for pointing out inconsistencies.
 20 We now have what I had marked as Exhibit
 21 1064, which is Qwest's Standard MTE Terminal Access
 22 Protocol document. Mr. Orrel, which issue is this?
 23 We had talked about -- Ms. Kilgore, you said it might
 24 be Subloop Issue 4. Is that --
 25 MR. WEIGLER: Your Honor, this is Subloop

1 SGAT/271 WORKSHOP IV, 7/31/01 5468
 MR. ORREL: The intent of this document was
 2 to produce a template, if you will, for access to
 3 Qwest MTE terminals where Qwest owns the wire that
 4 goes into the terminal in one side and comes out the
 5 other, in other words, for access to subloop
 6 environments.
 7 And the purpose of the document is to
 8 provide CLEC technicians with some sort of guide to
 9 obtaining access to the terminal once certain
 10 activities have taken place, such as an LSR being
 11 passed to Qwest for access to the subloop element at
 12 that location. And this document is still in draft
 13 form, we're in the July 17th version of this year,
 14 and I know we filed it probably about a week or so
 15 ago.
 16 And while we were offline during break, I
 17 know AT&T has several questions regarding the
 18 document. It might be more productive if we just
 19 work through their questions and --
 20 JUDGE RENDAHL: Okay. And that's fine.
 21 This is actually Document 1164, Exhibit 1164, not
 22 1064.
 23 MR. ORREL: 1164, okay.
 24 JUDGE RENDAHL: Mr. Weigler.
 25 MR. WEIGLER: Thank you, Your Honor. Steve

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 1 Weigler, from AT&T. To start out, the access
 2 protocol is a little more than an access protocol,
 3 because in Section 9.3.5.4.5.1, it indicates when
 4 CLECs access subloops in MTE terminals, it should
 5 adhere to Qwest's standard MTE terminal access
 6 protocol. I can't read my writing after that, but
 7 that is the section that matters that the parties
 8 need to adhere to this access protocol. Thus, it
 9 becomes almost part of the SGAT, or it does become
 10 part of the SGAT, because it says that if we're going
 11 to access, and it takes us to off the SGAT document
 12 to a multi tenant environment terminal access
 13 protocol.
 14 The parties, as part of this docket, and
 15 also Docket 3120 involving AT&T's complaint that we
 16 were not getting access to what AT&T considers the
 17 NID and Qwest considers an MTE terminal, and so thus
 18 we'll consider it today an MTE terminal, so everyone
 19 knows -- is on the same page.
 20 Qwest issued a docket -- a document on six
 21 -- June 14th, 2001, called a Standard MTE Terminal
 22 Access Policy Protocol. The parties got together.
 23 After reviewing the document, we had some concerns
 24 about the access policy protocols. In fact,
 25 significant concerns. But we, in the spirit of

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 1 compromise and as ordered by this Commission, we got
 2 together offline to discuss our issues.
 3 We brought our issues to the attention of
 4 Qwest, including Mr. Orrel, and then received another
 5 document dated July 17th, 2001, although we didn't
 6 receive it probably until sometime last week.
 7 Anyway, the document that we received is in ways
 8 significantly different than access protocol that we
 9 saw before. And we have -- because -- and it seems
 10 to me, not being a technical person, but I brought my
 11 technical person along, to be more limiting even than
 12 the document that we saw on June 14th, 2001, and the
 13 document we've been negotiating over.
 14 As this is part of the SGAT, in a sense,
 15 because it is referenced that we have to follow this
 16 protocol and it is more limiting, AT&T has
 17 significant concerns that our access is being limited
 18 to the MTE terminals to access the internal wiring as
 19 -- and that that would be against the requirements of
 20 the Act.
 21 However, during break, we did meet with Mr.
 22 Orrel, who indicated that this is a draft, that there
 23 is room for negotiation on this, and that there --
 24 and also clarified some language to alleviate some of
 25 our concerns. With that, I hand it over to our

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 1 technical witnesses to discuss some of the issues and
 2 problems that we see with the document. Thank you.
 3 JUDGE RENDAHL: Okay. Mr. Sawbridge or Mr.
 4 Wilson.
 5 MR. WILSON: Can Wilson, Your Honor. Let's
 6 just walk through a few issues quickly, so we can see
 7 some of the problems that we have. If you go to page
 8 four first of Qwest 1164, the second bullet point,
 9 second sentence essentially has a caveat that says
 10 that any terminal that's not addressed in this
 11 document will be available only on an individual case
 12 basis, and that has always been a problem for CLECs,
 13 and it's definitely a problem in this context.
 14 What this is saying is that any terminal
 15 that's not specifically addressed here will only be
 16 available on an individual case basis. And we feel
 17 that all terminals need to be addressed, at least
 18 generally, and that all references to CEC should be
 19 removed from this document.
 20 If we then go on to page five, I would
 21 remove bullets three and four. They're redundant.
 22 Those two issues are as important to the SGAT itself.
 23 And I have taken out those two particular issues
 24 several places you'll see later on, and I would wish
 25 some humor on the new -- one of the new SGAT

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1 bring in either one 100-pair cable with four
 2 complements of 25-pair within the cable or individual
 3 25-pair cables to tie down to a splice strip that's
 4 associated with the protector field such that you
 5 would splice into that protector field once, close
 6 the splice, and leave it alone.

7 Those splice strips aren't intended to be
 8 -- they're not accessible terminals, if you will, not
 9 intended to have multiple access within them. So all
 10 we're trying to say is it's not a limitation; it's
 11 just an indication that if you want to access the
 12 protector side of a terminal, you access it where
 13 there's spare protectors, and we just ask that, from
 14 a waste perspective, from Qwest's perspective, that
 15 we don't bring one pair and effectively tie up 25
 16 pairs on the protector field.

17 JUDGE RENDAHL: Does that clarify some
 18 language?

19 MR. BEVERIDGE: We need to propose some
 20 alternative language, Your Honor.

21 JUDGE RENDAHL: Okay. Is that something
 22 you want to do now or --

23 MR. BEVERIDGE: I think we'd like to take
 24 it offline.

25 JUDGE RENDAHL: Okay. That's fine.

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1 MR. WILSON: Continuing on, actually, the
 2 -- on the same page eight, the same paragraphs we
 3 were looking at, which is titled CWSTP Option One,
 4 that's essentially a MID access situation, and we're
 5 concerned that even though the MTE -- this MTE access
 6 document is ostensibly talking about access to
 7 subloop, they have put a section in which is
 8 essentially access to a MID where Qwest does not own
 9 the inside wire.

10 And I think that's a bit troubling, because
 11 we have statements about access to MIDs within the
 12 SGAT itself, and I'm not sure we want to modify those
 13 with this document.

14 Moving on, the bottom of page eight, on
 15 option two, the first bullet has this same 25-pair
 16 increment issue, which we will deal with in the same
 17 way.

18 If we then go to page nine, in Option
 19 Three, I think, is where we start getting into the
 20 real bulk of the inside wire issues. In the first
 21 paragraph, the third sentence, I would actually
 22 strike that whole sentence, because I think it's
 23 AT&T's position that there are no situations in which
 24 we would want to preclude the CLEC from accessing
 25 these terminals. Essentially, that sentence contains

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1 a statement which says there are terminals that are
 2 hard-wired and there's no access. And I think we
 3 would disagree that such a preclusion, even if it's
 4 just implicit, should be in this protocol.

5 And in that -- this paragraph goes on
 6 further to say, in a later sentence, hard wire
 7 terminals perform the function of a splice, rather
 8 than a cross-connect. We would disagree with that
 9 sentence and strike it. And then I would actually
 10 strike the sentence after that, as well.

11 MR. STEESE: Ken, if I can interject for a
 12 second. This is Chuck Steese, from Qwest. Question
 13 for you. We're going through and you're proposing
 14 verbiage changes. Would it be possible, I mean, to
 15 simply get a red-lined version of that and this is
 16 something that is akin to the type of technical
 17 document that we can run through CLECs. Would it be
 18 more efficient to do that? Because you're going
 19 through a number of proposed changes, and I'm not
 20 sure how we're supposed to react to that. It's not
 21 sure what you have in mind. Maybe you could explain.

22 MR. WEISLER: Chuck, this is Steve Weisler,
 23 and I think I articulated the reason we need to go
 24 through these changes is that you're directly
 25 limiting our access to MTE terminals or subloop

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1 elements via the use of this standard access terminal
 2 or, what is it, MTE terminal access protocol. It's
 3 directly referenced in your SGAT that this is the way
 4 that we can obtain access to the MTE, thus we
 5 consider it as if it is part of the SGAT, and
 6 therefore we need to discuss the issues that we have
 7 with this particular document on the record, because we
 8 don't believe that, as written, without the suggested
 9 changes, that you're in compliance with the Act.

10 MR. STEESE: Let me ask it a different way,
 11 Steve. I heard you say that -- we obviously
 12 disagree. That's fine. But the question is, is
 13 there a more efficient way than having Mr. Wilson go
 14 through and say I would strike this sentence for
 15 you, since you have this checked available, maybe to
 16 provide a red-line version to us with your proposed
 17 changes on that instead of saying he would strike
 18 this sentence, for example.

19 And given the fact that there is some
 20 opportunity for Qwest to react to that, maybe it
 21 would be more efficient for us to get that red-line
 22 version, say we can accept these 10 things, not those
 23 10, whatever it might be, and that way we can save
 24 time on the record.

25 MR. WEISLER: We'd agree to provide a

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 1 the way to end user premises within the building, but
 2 not tied down to an existing cross-connect field.
 3 And my question would be is it permissible in that
 4 case, in Qwest's view, to use a temporizing method
 5 where access to the pairs in sort of a free space
 6 nonterminated way would be permitted?
 7 JUDGE RENDAHL: Mr. Orrel.
 8 MR. ORREL: I guess one of the questions
 9 I'd have to ask is who owns the cable?
 10 MR. BEVERIDGE: The assumption would be
 11 Qwest owns the cable for this example.
 12 MR. ORREL: If Qwest owns the cable, more
 13 than likely there is a cross-connect there or
 14 terminal there. We don't just coil up cable and put
 15 it in the riser.
 16 MR. BEVERIDGE: My experience has indicated
 17 that that is the practice in certain cases, where the
 18 riser cable is larger than the space permitted for
 19 the existing -- for so many 66-type termination
 20 blocks on the customer side. So the unused pairs, if
 21 you will, are simply coiled up, looped. They're
 22 typically not cut off.
 23 MR. ORREL: I don't think I have an answer
 24 for you, because I haven't personally experienced
 25 that, so I need to do some checking.

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 1 MR. BEVERIDGE: Okay.
 2 JUDGE RENDAHL: Okay. Any other response
 3 to any of Mr. Wilson's comments? Any other response
 4 to Mr. Wilson's comments on this document?
 5 MR. ORREL: Well, actually, I'll start with
 6 Mr. Weigler's comments. The genesis of this document
 7 kind of goes back a ways into the workshops. We were
 8 challenged by AT&T in the workshops to provide direct
 9 access to our subloop terminals, MTE terminals, in
 10 particular. Qwest agreed to do that. We agreed to
 11 develop a terminal access protocol because we
 12 objected to the direct splice methodology that AT&T
 13 has employed in various locations to access subloop
 14 elements.
 15 So Qwest agreed to develop the document
 16 under the premise that it was a draft, it was a
 17 working draft. We encouraged comment from AT&T as
 18 the draft was developed. Some of the comments I'm
 19 hearing today about option four being a new element,
 20 the fact that option one shouldn't be in there, that
 21 option three hardware terminals is not an appropriate
 22 description of what the terminal looks like, et
 23 cetera, these are issues that we've had on the table
 24 for quite some time in our previous versions. These
 25 aren't new issues.

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 1 But I wanted to make sure that we left on
 2 the table the fact this is a working draft. We have
 3 been working with AT&T directly on this, and we do
 4 welcome any red lines that you feel compelled to
 5 provide to us.
 6 Going to page four, the issue of ICB, as
 7 far as the access to the terminal, what we're really
 8 talking about here is the ability to access the
 9 terminal may not be readily apparent when an AT&T
 10 technician walks up to it. The terminal may be an
 11 option three, where it's hard-wired, may be a very
 12 old variety of terminal. We've been placing these
 13 things for decades. There's literally tens of
 14 thousands of these in the network. They look
 15 differently depending on when they were deployed.
 16 So as a result of that, what we're saying
 17 is the access to that may have to be determined on an
 18 ICB basis. Qwest is not going to prohibit the access
 19 to that terminal because we're still trying to figure
 20 out the appropriate access for that terminal.
 21 I think further back in the document, page
 22 six, bullet five, we state if there is no customer
 23 cross-connect field, the CLECs shall access utilizing
 24 some form of temporizing method -- we don't dictate
 25 what that is, it's not very descriptive, I don't

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 1 believe -- that minimizes long-term accessibility to
 2 the terminal.
 3 Just saying when you do go in and access
 4 it, until we can figure out what the appropriate
 5 cross-connect field should be there, do it in such a
 6 manner that preserves the plant in a manner such that
 7 with the high amount of churn that's normal in these
 8 type of buildings, if, for example, another CLEC
 9 wants access to that customer or Qwest gets the
 10 customer or somebody new moves into that apartment,
 11 we're able to get that customer back on their
 12 cross-connect over to the terminal.
 13 MR. WILSON: Barry, on that paragraph you
 14 just read, isn't that a typo? Shouldn't that be
 15 maximizes instead of minimizes?
 16 MR. ORREL: Yeah, I think you're right,
 17 Ken. Thank you for that assistance.
 18 MR. WEIGLER: See, we're making headway.
 19 MR. ORREL: I think a lot of the issues
 20 we're talking about, as far as the line by line
 21 issues, I think we can develop some mutually
 22 agreeable language. I don't see an issue there.
 23 However, on page five, when we talk about
 24 striking line three, even -- I believe, my
 25 interpretation, anyway, of the Antonuk report

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 1 service buildings, access is gained as in CWSTP
 2 option three above, something simple like that.
 3 Because it could be the same, an identical
 4 type of terminal and could be accessed in the same
 5 way. If it's a pedestal on a concrete pad associated
 6 with a building, then I think you'd probably go to
 7 the -- an environment more like a feeder distribution
 8 interface point. But it may just be the same type of
 9 66 terminal or 76 terminal, et cetera.

10 MR. ORREL: Okay. We'll take a look at
 11 that and we'll look at your red-line, too, when you
 12 get that ready. And I think that's pretty much it.
 13 You know, I really don't think that this document is
 14 as evil as it's sometimes portrayed. It's intended,
 15 again, just to be an assist to the technician. We'll
 16 take a look at your red-line and see what we can do
 17 with it and we'll continue discussions with you on a
 18 direct basis to see if we can get this resolved.

19 MS. KILGORE: Can I just ask one question?

20 JUDGE RENDAHL: Ms. Kilgore, Mr. Wilson,
 21 and then I have a question.

22 MS. KILGORE: Mr. Orrel, do you have any
 23 estimate of the percentage of terminals that would
 24 not be covered by the protocol set out in this
 25 document, where it would be an ICB basis, as you

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 1 proposed it here?

2 MR. ORREL: I have no idea. But, remember,
 3 the ICB basis is as far as a determination of whether
 4 or not we need to retrofit the terminal and make it a
 5 single point of interconnection, SPOI. That's what
 6 we're talking about when we're talking about the ICB.
 7 That's not stopping AT&T or any other CLEC from
 8 accessing that subloop.

9 MS. KILGORE: Is that your tem -- sorry, I
 10 forgot the word, but --

11 MR. ORREL: Temporizing solution, yes.
 12 That's an old telephony term. Sorry.

13 MS. KILGORE: All right. So when you talk
 14 about ICB in here, you're saying go ahead and do the
 15 temporizing solution, and then ICB means we're going
 16 to go back and look at it and figure out the best way
 17 to deal with this terminal.

18 MR. ORREL: Right. We'll determine whether
 19 or not -- and we're going to not only look at the
 20 type of terminal, we're going to look at the age of
 21 the terminal, will it hold up to direct access. Some
 22 of the terminals are fairly old and are not very
 23 pliable. We're going to look at what we anticipate
 24 to be the volume there, even though we don't really
 25 have forecasts for this, try to determine --

SGAT/271 WORKSHOP IV, 7/31/01 5494
 1 obviously, if AT&T's interested in building, we're
 2 going to have to determine, based on several
 3 variables, whether or not that terminal needs to be
 4 replaced. In case of an option three, if it's a
 5 large apartment building, chances are very good that
 6 we would want to change that if there's a real
 7 cross-connect field there for the CLEC and a
 8 demarcation point for test access.

9 MR. WILSON: Actually, that raises an
 10 interesting question. If there is a terminal where
 11 the CLEC needs to use some of these temporary
 12 solutions and Quest determines that it needs to put
 13 in a permanent type of solution, does Quest expect
 14 the CLEC to pay for that entire new terminal or part
 15 of the terminal? What is contemplated there?

16 MR. ORREL: I believe the intent there is
 17 to capture the cost through recurring charges, rather
 18 than a nonrecurring flat rate up front.

19 MR. WILSON: Okay. I had actually an issue
 20 that I wanted to ask the group about connecting the
 21 access protocol back up to the SGAT, so maybe if
 22 Judge Rendahl had a question on the access protocol,
 23 you should go first.

24 JUDGE RENDAHL: I do, but I think we're
 25 maybe on the same wavelength here. In the issues

SGAT/271 WORKSHOP IV, 7/31/01 5495
 1 log, it seems that the issues that are addressing

2 this terminal access protocol -- it seems to me there
 3 are two issues. One is disagreements over the
 4 terminal access protocol language and whether that's,
 5 you know, whether the parties agree on the language.

6 And I support the parties working together
 7 to try to resolve the language, understanding that
 8 there may be some underlying impasse issues, and
 9 those I would expect to be briefed. And I think
 10 that's, Mr. Weigler and Mr. Steese, what you both
 11 agreed to do; is that correct?

12 MR. STEESE: Yes.

13 MR. WEIGLER: Yes, Your Honor.

14 JUDGE RENDAHL: Okay. And so to the extent
 15 that at least for purposes of Issue 5B-I, the
 16 question really there is whether -- it says whether
 17 the SGAT provisions for access to subloop elements
 18 are consistent with the FCC's, you know, definitions
 19 would that be this protocol? Is that what we're
 20 really talking about here or are there separate SGAT
 21 sections that we then need to also get to? Mr.
 22 Wilson.

23 MR. WILSON: That was kind of my point. I
 24 think it's both. Definitely, the SGAT calls into
 25 effect the access protocol, so we believe that the

SGAT/271 WORKSHOP IV, 7/31/01 5500
 1 and I don't know if those concerns are there or not.
 2 I have to review their new SGAT language to determine
 3 at least if they adhere to various Commission orders
 4 and if I have concerns about those. So the idea that
 5 we've pounded these issues into the table, we just
 6 got this language. That's why we're here. So I
 7 think that we need to keep this dialogue, if it's via
 8 online or a determination offline, on what's still an
 9 issue before we close out and decide to brief these
 10 issues.

11 MR. STEESE: Maybe I was misunderstood,
 12 Steve. When you look, first of all, at the SGAT
 13 language, the SGAT language that we're offering is a
 14 concession for issues already at impasse, things that
 15 we've discussed at length. Now, we think maybe the
 16 language, as we offer it now, might take an issue
 17 you've already agreed to brief earlier this month in
 18 Washington off the table.

19 But then, with respect to the access
 20 protocol, maybe I didn't speak clearly. What we did
 21 in the past is we had a vigorous discussion about
 22 subloop generally. Then -- at the time, it was
 23 Dominick Sekich, from AT&T, and Steve Beck, from
 24 Qwest, sat down and hammered out what the issues log
 25 was. What is it where we disagree, where is it that

SGAT/271 WORKSHOP IV, 7/31/01 5501
 1 we agree, is there anything that we can, off the
 2 record, close.

3 So with respect to the protocol itself, Mr.
 4 Wilson has certainly laid out some of his concerns.
 5 We've heard those. It comports with a lot of what
 6 Mr. Wilson has said in the past. All we're saying is
 7 that, offline, continue to see if we can close
 8 issues. If we can't, identify the specific language
 9 issues within the protocol itself that we disagree
 10 with, the overarching issue, and provide it to the
 11 Judge for resolution.

12 JUDGE RENDAHL: This is Judge Rendahl.
 13 We're discussing subloop issues today and tomorrow.
 14 That's what has been on our workshop list. I guess
 15 I'm a little hesitant to just cut off all discussion
 16 and say this is the way it is. If, as Mr. Weigler
 17 says, I mean, there is new SGAT language that's just
 18 been distributed today. I think we may be -- at
 19 least on the issue of the terminal access protocol,
 20 there's not much more we can do right here, right
 21 now. Obviously, if there's any changes, the parties
 22 need to do those offline. It's not productive to do
 23 it here today.

24 So I guess I'd like to keep working with
 25 the document that Ms. Stewart distributed as the

SGAT/271 WORKSHOP IV, 7/31/01 55
 1 changes to the subloop section. And maybe we just
 2 need to end it today and have the parties go back and
 3 look at this new language and come back fresh in the
 4 morning. And maybe with some discussion, you know,
 5 offline, it might be very quick in the morning, but
 6 I'm not seeing much progress right now. I guess
 7 that's what I'm talking about. So let's be off the
 8 record for the moment and have a discussion about
 9 what we do from here.

10 (Discussion off the record.)

11 JUDGE RENDAHL: Let's be back on the
 12 record. While we were off the record, we decided
 13 that we're going to end this follow-up workshop
 14 today, this session today, and come back at 9:00
 15 tomorrow morning. In the meantime, the parties will
 16 continue to work offline on these issues and we'll
 17 discuss this in the morning, how we proceed. Let's
 18 be off the record.

19 (Proceedings adjourned at 4:58 p.m.)

20
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 22
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 24
 25

1 BEFORE THE WASHINGTON UTILITIES AND
 2 TRANSPORTATION COMMISSION
 3
 4 In the Matter of the) Docket No. UT-003022
 5 Investigation Into US WEST) Volume XXXVII
 6 Communications, Inc.'s) Pages 5503-5695
 7 Compliance with Section 271 of)
 8 the Telecommunications Act of)
 9 1996.)
 10
 11 In the Matter of US WEST) Docket No. UT-003040
 12 Communications, Inc.'s)
 13 Statement of Generally)
 14 Available Terms Pursuant to)
 15 Section 252(f) of the)
 16 Telecommunications Act of 1996.)
 17
 18 A workshop in the above matter was
 19 held on August 1, 2001, at 9:21 a.m., at 900 Fourth
 20 Avenue, Suite 2400, Seattle, Washington, before
 21 Administrative Law Judge ANN RENDAHL.
 22
 23 The parties were present as
 24 follows:
 25 AT&T, by Rebecca DeCook, Steven
 Weigler, Sarah Kilgore, and Dominick Sekich (via
 teleconference bridge), Attorneys at Law, 1875
 Lawrence Street, Suite 1575, Denver, Colorado, 80202.
 QWEST, by Kara Sacilotto (via
 teleconference bridge), Attorney at Law, Perkins
 Coie, LLP, 607 14th Street, N.W., Washington, D.C.
 20005, and Charles W. Steese and John Munn (via
 teleconference bridge), Attorneys at Law, 1801
 California Street, 49th Floor, Denver, Colorado
 80202, and Laura Ford (via teleconference bridge),
 Attorney at Law, Perkins Coie, 1899 Wynkoop Street,
 Suite 700, Denver, Colorado 80202.

1 WORLDCOM, by Ann Hopfenbeck,
 2 Attorney at Law, 707 17th Street, Suite 3600, Denver,
 3 Colorado, 80202.
 4 XO WASHINGTON, INC., and ELI, by
 5 Gregory J. Kopta (via teleconference bridge),
 6 Attorney at Law, Davis, Wright, Tremaine, LLP, 2600
 7 Century Square, 1501 Fourth Avenue, Seattle,
 8 Washington, 98101.
 9 SPRINT, by Barb Young, Group
 10 Regulatory Manager, 902 Wasco Street, Hood River,
 11 Oregon 97031.
 12 PUBLIC COUNSEL, by Robert Cromwell
 13 (via teleconference bridge), Assistant Attorney
 14 General, 900 Fourth Avenue, Suite 2000, Seattle,
 15 Washington, 98164.
 16 COVAD, by Megan Doberneck,
 17 Attorney at Law, 7901 Lowry Boulevard, Denver,
 18 Colorado 80230.
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24 Barbara L. Nelson, CCR
 25 Court Reporter

1 INDEX OF EXHIBITS

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1 We're here this morning starting the second day of
 2 our follow-up workshop in the fourth workshop here in
 3 Washington before the Washington Utilities and
 4 Transportation Commission in Dockets UT-003022 and
 5 UT-003040.
 6 We have on the bridge line an attorney from
 7 Qwest, Mr. Munn, and an attorney from AT&T, Mr.
 8 Sekich, and Qwest's witness, Ms. LaFave. There are
 9 also a number of people here in the room. And I'm
 10 going to just ask briefly if the attorneys would
 11 identify themselves for the record and then, also,
 12 then we'll go to the bridge line and take
 13 appearances, swear in Ms. LaFave, and then we will go
 14 through any questions for Ms. LaFave. Starting with
 15 AT&T, Ms. Kilgore.
 16 MS. KILGORE: Yes, Sarah Kilgore, for AT&T.
 17 You want my witnesses?
 18 JUDGE RENDAHL: No.

SGAT/271 WORKSHOP IV, 8/1/01 5511
 1 final question. Are there any facilities of QCI or
 2 QCC that are available for use by QC?
 3 MS. LaFAVE: Not as far as I'm aware, no.
 4 MR. SEKICH: If QCI owned an office
 5 building, for example, would those facilities be made
 6 available to, say, co-house or include or provide
 7 space to QC?
 8 MR. MUNN: Dom, are you asking if that is
 9 occurring today or are you asking a hypothetical?
 10 MR. SEKICH: Well, actually, that's a good
 11 point, Mr. Munn. Why don't we ask today. Is there
 12 any facility owned by -- not owned by QC, but owned
 13 by QCI or an affiliate of QCI that is presently in
 14 use by QC?
 15 MS. LaFAVE: I honestly don't know with
 16 respect to any real estate structure, but to the
 17 extent it would all be handled and accounted for
 18 under the affiliate accounting rules.
 19 MR. SEKICH: And that's the end of my
 20 questions.
 21 JUDGE RENDAHL: Okay. Do you have
 22 anything, Mr. Munn?
 23 MR. MUNN: No, Judge. Thank you.
 24 JUDGE RENDAHL: Okay. Is there anything
 25 from any party around the table, any questions by any

SGAT/271 WORKSHOP IV, 8/1/01 5512
 1 party for Ms. LaFave? Okay. Hearing nothing, thank
 2 you very much for being patient with us, Ms. LaFave,
 3 Mr. Munn, and Mr. Sekich, in getting our technical
 4 difficulties resolved and starting later than we
 5 intended. So you're free to go if you'd like.
 6 MR. SEKICH: Thank you. This is Dominick
 7 Sekich. I'll be dropping from the bridge.
 8 MR. MUNN: Ms. LaFave and I will also be
 9 dropping.
 10 JUDGE RENDAHL: Okay. Thank you very much.
 11 Let's be off the record.
 12 (Discussion off the record.)
 13 JUDGE RENDAHL: Let's be on the record.
 14 While we were off the record, Qwest has circulated a
 15 definition of packet switch, which, as I understand,
 16 will resolve the issues in Washington Packet Switch
 17 Issue Five; is that correct?
 18 MS. STEWART: Yes.
 19 JUDGE RENDAHL: Okay. And is this SGAT
 20 language, does this go to a particular SGAT section?
 21 MS. STEWART: Yes, it is SGAT language. It
 22 will go in the definitions section of the SGAT.
 23 Currently that section is numbered, but my
 24 understanding is they're in the process of converting
 25 that SGAT section to an alphabetical list without

SGAT/271 WORKSHOP IV, 8/1/01 5513
 1 individual numbers, so this will enter into the
 2 appropriate place alphabetically in that definition
 3 list.
 4 JUDGE RENDAHL: Okay. And this is within
 5 Section Four of the definitions?
 6 MS. STEWART: That is correct.
 7 JUDGE RENDAHL: Okay. So this would be an
 8 exhibit to your testimony, I suppose?
 9 MS. STEWART: Yes, it would.
 10 JUDGE RENDAHL: We will make this Exhibit
 11 1166.
 12 MS. STEWART: 1166 or 107
 13 JUDGE RENDAHL: 1166. I made a mistake
 14 yesterday. The SGAT Section 9.7.5.2.2 should be
 15 1165. Does that make more sense?
 16 MS. STEWART: Yes, it would. Thank you.
 17 JUDGE RENDAHL: Okay. And so this is
 18 agreed upon language. Now PS-5 is no longer at
 19 impasse?
 20 MS. HOFFENBECK: That's correct. Just to
 21 spell out what the -- there was a compromise here,
 22 and WorldCom has withdrawn its request to have both a
 23 definition of packet switch and packet switching and
 24 has agreed that our concerns would be satisfied by
 25 simply adding this particular definition of packet

SGAT/271 WORKSHOP IV, 8/1/01 5514
 1 switch, which is identical to the definition that was
 2 proposed by Mr. Schneider in his Exhibit MSW-3 that
 3 was admitted as -- I don't have the exhibit list
 4 handy. My friend here --
 5 JUDGE RENDAHL: Hold on a second.
 6 Schneider, MS-3, MSW-3?
 7 MS. HOFFENBECK: Yeah, MSW-3, which is
 8 Exhibit 862. It's identical to that, with the
 9 exception of one word, and that is the fourth word,
 10 router, in our proposed definition said switch, and
 11 we're willing to accept substitution of the term
 12 router for switch here.
 13 So this satisfies our concern that the SGAT
 14 accurately described a packet switch from a technical
 15 perspective, and that issue is closed from our
 16 perspective.
 17 JUDGE RENDAHL: Okay. And for my own
 18 clarification, Washington PS-4, we're still at
 19 impasse, but we resolved the status of the interim
 20 rate issue; is that correct?
 21 MR. STEESE: Can you say that again, Judge?
 22 JUDGE RENDAHL: On our issues log,
 23 Washington Packet Switching Issue Four was at impasse
 24 and indicated we needed to check on the status of the
 25 follow-up of Exhibit A. We did that yesterday, and

SGAT/271 WORKSHOP IV, 8/1/01 5519
MR. ORREL: What I would propose to do is

1
2 this is a MTE Terminal Access Protocol Lite, if you
3 will. It doesn't include the original photographs
4 that were in the original version of Exhibit 1164.
5 So with that, what has transpired since yesterday is
6 Qwest has taken comments that AT&T provided in a
7 red-line version of this access protocol and tried to
8 incorporate as many of the concerns as Qwest can into
9 this Exhibit 1167.

10 This morning, AT&T and Qwest communicated
11 some additional changes that could be made to soften
12 the positions, if you will, from both parties. What
13 this document represents is the fairly close
14 approximation -- and Mr. Wilson, you can verify this
15 for me, if you'd like -- of where Qwest and AT&T
16 stand with the access protocol. It's a very close
17 document to an agreement, as far as how the access
18 should be provided.

19 We do have some exceptions. I think AT&T
20 has some issues that they would like to present on
21 the record that probably are still issues, even with
22 this Exhibit 1167. With that, I'll let Mr. Wilson
23 address those.

24 JUDGE RENDAHL: Thank you, Mr. Orrel.
25 MR. WILSON: Ken Wilson, for AT&T. I think

SGAT/271 WORKSHOP IV, 8/1/01 5520

1 We're much closer than we were on this. There are
2 still a few issues. I think a number of those issues
3 are already addressed in the disputed issues list.
4 However, we did see one spot on page 14 that somehow
5 got missed, and we think the last sentence on page 14
6 needs to be removed. It's an ICB sentence that we
7 think is now covered by -- for instance, the first
8 paragraph on the next page, page 15, talks about
9 additional access methods, et cetera.

10 MR. ORREL: We can remove that, Ken.
11 You're right. That's an oversight.

12 MR. WILSON: Okay. I think we're very
13 close on this. I think any problems we -- I think
14 we're going to have to take this back, and if there
15 are any remaining issues, we could probably address
16 them in briefing on this access protocol.

17 I do have a number of issues in the SGAT
18 related to the same Washington issue. I guess we're
19 on what, SB-3 still. So I think we need to go over
20 the new SGAT language that Qwest passed out yesterday
21 for a few moments. We have some questions on a few
22 issues.

23 JUDGE RENDAHL: And that being Exhibit
24 1020, the new Section 9.3?

25 MR. WILSON: Yes, Your Honor.

SGAT/271 WORKSHOP IV, 8/1/01 5521

1 would offer to do is get a complete version with that
2 latest change of the MTE access protocol as a
3 late-filed exhibit.

4 JUDGE RENDAHL: Why don't we just replace
5 -- you need to make the change for August 1, anyway.

6 MR. ORREL: Yes.

7 JUDGE RENDAHL: So why don't we replace
8 Exhibit 1167 with those two changes.

9 MR. ORREL: I can do that before we leave
10 here today.

11 JUDGE RENDAHL: Okay.

12 MR. WILSON: So perhaps if we can go to the
13 -- Exhibit 1020, I believe, was the new SGAT late for
14 Subloop Section 9.3. Do we need Mr. Orrel?

15 MS. STEWART: Probably. He's coming back.

16 JUDGE RENDAHL: Which section are we
17 looking at?

18 MR. WILSON: Let's first look at Section
19 9.3.3.5. The first addition that I would like to add
20 to this to clarify a dispute which was discussed
21 yesterday, in the fifth line of 9.3.3.5, it says,

22 Qwest's systems to support subloop orders, and then I
23 would insert "at no charge to CLEC."

24 MR. STEESE: Can you say that again, Ken?

SGAT/271 WORKSHOP IV, 8/1/01 5522

1 I'm sorry. You cut out at that exact moment.

2 MR. WILSON: In the fifth line, it says,
3 Qwest's systems to support subloop orders, and then I
4 would add "at no charge to CLEC."

5 MS. STEWART: Ken, if I could just clarify
6 your intent here. We have the dispute over what
7 believes that it's appropriate to charge the CLEC for
8 the inventory creation, and by you inserting no
9 charge, are you discussing that or are you saying
10 that no additional charge beyond what's contemplated
11 in the nonrecurring?

12 MR. WILSON: I was trying to focus the
13 dispute with language that could be put in or not.
14 So it is that charge.

15 MS. STEWART: That's what I was trying to
16 say, whether you were trying to clarify you would pay
17 the inventory once and then you wouldn't pay for
18 anything additional to put it into the LER, or are
19 you just saying the whole inventory would be at no
20 charge?

21 MR. WILSON: It's my understanding, and
22 we're going to get to this in some other paragraphs,
23 that the inventory of the CLEC terminations is done
24 by the CLEC, and that the whole Qwest actually is to
25 put that into your systems. Now, there are some

1 SGAT/271 WORKSHOP IV, 8/1/01 5527
 MS. KILGORE: It's the additional sentence
 2 at the end of 9.3.3.5. Currently --
 3 JUDGE RENDAHL: Do you have this document,
 4 Mr. Steese?
 5 MR. STEESE: I have it right on my computer
 6 as she's speaking, yes, ma'am.
 7 JUDGE RENDAHL: Okay. So where it says
 8 "before Qwest completes completion of the inventory,"
 9 maybe it can be changed to say "before Qwest inputs
 10 the inventory into its systems," or "before Qwest
 11 completes the" -- you know, completes inputting --
 12 whatever language satisfies your needs.
 13 MS. STEWART: This is Karen Stewart. I
 14 would propose for the sentence to now read, "If CLEC
 15 submits a subloop order before Qwest inputs the
 16 inventory into its systems, Qwest shall process the
 17 order in accord with Section 9.3.5.4.1."
 18 JUDGE RENDAHL: Is that acceptable?
 19 MS. KILGORE: Sounds good to me.
 20 JUDGE RENDAHL: Mr. Steese.
 21 MR. STEESE: Yes.
 22 JUDGE RENDAHL: Okay. Can we move on? I
 23 guess the next issue is with Section 9.3.3.7; is that
 24 correct, Mr. Wilson?
 25 MR. WILSON: Yes. The last sentence in

1 SGAT/271 WORKSHOP IV, 8/1/01 5528
 that paragraph says that the CLEC shall pay for this
 2 new terminal. However, I believe we heard Qwest say
 3 yesterday that this would be built into the recurring
 4 charge. So I suggest the last sentence be deleted.
 5 JUDGE RENDAHL: Do you mean the whole
 6 sentence or the last phrase, having to do with the
 7 ICB portion?
 8 MR. WILSON: The whole sentence, I believe.
 9 MR. STEESE: Is Mr. Orrel in the room?
 10 MR. ORREL: Yes.
 11 MR. STEESE: Barry, what are your thoughts
 12 on that or --
 13 MR. ORREL: What we were discussing
 14 yesterday is when we had to place a SPOI, that the
 15 cost for the retrofit of the terminal would be part
 16 of a recurring charge on a termination basis. So I'm
 17 trying to determine the context of this actual item,
 18 9.3.3.7.
 19 MR. STEESE: I'm not trying to tread on
 20 consensus that was reached yesterday, and so Barry,
 21 correct me if there's something I'm saying that's
 22 incorrect, but what this relates to is the UNE remand
 23 order, which specifically contemplates such
 24 rearrangements in an MTE context, and it also
 25 contemplates that the cost for such rearrangement

1 SGAT/271 WORKSHOP IV, 8/1/01 5529
 1 would be borne by the CLEC.
 2 And there are two scenarios that I see
 3 here. One where if you look at the type of terminal
 4 that we have in place, AT&T or some other CLEC
 5 couldn't gain access to it wherein we would have to
 6 rearrange. The other is a situation where you need
 7 to expand the terminal to accommodate AT&T despite
 8 the fact that such terminal access would have been
 9 permissible. You might have a number of CLECs, you
 10 might have a building owner saying they want to
 11 rearrange and move where the building terminal was
 12 located. There are a number of potential scenarios
 13 here.
 14 I'm not sure if what Mr. Orrel said
 15 yesterday contemplated all of those or simply the
 16 instance where you have, for lack of a better term, a
 17 hard wire facility that you couldn't gain access to
 18 simply by virtue of how it was physically wired.
 19 MR. WILSON: Chuck, this is Ken Wilson. I
 20 think where we kind of have gotten in discussions
 21 with Qwest offline this morning and yesterday was
 22 that if it's a terminal where the CLEC can go in and
 23 gain access in a temporary manner, but it's an old
 24 terminal and Qwest thinks that it needs to be
 25 retrofitted, Qwest would do that and it would be

1 SGAT/271 WORKSHOP IV, 8/1/01 5530
 1 built into the nonrecurring.
 2 If the CLEC requests that Qwest build a new
 3 terminal, then the CLEC would pay. I think that's
 4 where we kind of have left it.
 5 MR. ORREL: Just as a clarification, Ken,
 6 it's a recurring. You said nonrecurring.
 7 MR. WILSON: I'm sorry, yes, recurring.
 8 MR. ORREL: And I think that's what Chuck
 9 is outlining. You've got two scenarios, one where
 10 you need to retrofit an existing terminal to create a
 11 demarcation point, to create a readily accessible
 12 kind of arrangement, cross-connect field. The other
 13 one, what Chuck is talking about, comes out of, I
 14 think, the MTE access order from the FCC that in
 15 scenarios where there is no single point of
 16 interconnection and the -- or there are issues with
 17 the owner, the CLEC can request that that single
 18 point of interconnection can be built, and at that
 19 point, the CLEC pays the nonrecurring charge.
 20 Do I have that right, Chuck, as far as what
 21 the order said?
 22 MR. STEESE: It comes from the UNE remand
 23 order, but other than that, yes.
 24 MR. ORREL: Okay, I'm sorry. Thanks.
 25 MS. KILGORE: Chuck, could you give me a

1 SGAT/271 WORKSHOP IV, 8/1/01 5535
 MR. WILSON: Okay.
 2 MR. STEESE: What about 60 days instead,
 3 Ken, to get you past the 45?
 4 MR. WILSON: Well, I'm just concerned that
 5 if you leave the 45 and then you've got the
 6 possibility of extension, plus there's -- that really
 7 doesn't include us discussing what to do up front.
 8 I'm just afraid that we can get in situations where
 9 there isn't enough overlap. So I was trying to -- if
 10 we could change the 30 in 9.3.3.6 to 90, I think we
 11 could leave the 45.
 12 MS. KILGORE: Chuck, this is Sarah. If I
 13 could suggest, perhaps in 9.3.3.6, we use a period of
 14 time that would begin once the work is completed in
 15 9.3.3.7.1.
 16 MR. STEESE: That's not the only instance
 17 when you might use a temporary fix, though. You
 18 might decide for your own reasons (inaudible).
 19 JUDGE RENDAHL: Mr. Steese, you'll have to
 20 speak up. The court reporter can't quite hear you.
 21 MR. STEESE: I apologize. It seems to me
 22 that there are circumstances other than those
 23 outlined in 9.3.3.7.1 when a CLEC may use a temporary
 24 situation. So looking at the suggestion, if we're
 25 going to do anything to 9.3.3.6, I would recommend

SGAT/271 WORKSHOP IV, 8/1/01 5536
 1 something along the lines that Mr. Wilson just
 2 discussed. But I would look to Mr. Orrel and Ms.
 3 Stewart to see if the 90 days is something that Qwest
 4 could accept.
 5 MR. WEIGLER: I have a question.
 6 JUDGE RENDAHL: Mr. Weigler.
 7 MR. WEIGLER: Steve Weigler, from AT&T. It
 8 looks like 9.3.3.6 might contradict the access
 9 protocol that Qwest has proffered, because it talks
 10 about if we use temporary wiring, CLECs shall remove
 11 them and install permanent wiring within -- well,
 12 right now it says 30 calendar days. In the access
 13 protocol, Qwest talks about Qwest, actually, if they
 14 do a change-out, that Qwest would be changing out or
 15 --
 16 MR. ORREL: That's correct, Steve. But the
 17 issue with 9.3.3.6 covers more territory than just
 18 the scenario where a terminal is retrofitted and
 19 terminations are moved onto the new terminal. From
 20 the perspective of what Ken offered, I think 90 days
 21 is acceptable as far as the temporized solution in
 22 place. That provides an interval for if Qwest
 23 changes out the terminal, let's just say we do it on
 24 the 45th day, we would, as a part of that process,
 25 move the temporized terminations onto the new

SGAT/271 WORKSHOP IV, 8/1/01 5537
 1 terminal for the CLEC. And going forward, the CLEC
 2 would utilize that new cross-connect field.
 3 So I think it would capture the interval
 4 that is required for retrofitting. It provides AT&T
 5 or the CLECs more flexibility with temporizing their
 6 terminations and avoids the whole issue of conflict
 7 with the access protocol.
 8 MR. WEIGLER: And to avoid conflict with
 9 the access protocol, I would request the following
 10 language. After the first comma, I would suggest
 11 that we add "if required under the provisions of this
 12 SGAT," because there's times --
 13 MR. ORREL: Which section are you in?
 14 MR. WEIGLER: I'm sorry, 9.3.3.6. "If a
 15 CLEC connects Qwest subloop element to CLEC's
 16 facilities using any temporary wiring or cutover
 17 devices" -- oh, it actually should read "CLEC shall
 18 remove them and install permanent wiring within 90
 19 calendar days, comma, if required under the
 20 provisions of this SGAT."
 21 Because there's times when Qwest is going
 22 -- that we're going to put in temporary wiring and
 23 it's going to be -- if Qwest wants to retrofit, it's
 24 Qwest's responsibility to remove it. So there's
 25 times when it's appropriate for the CLEC to do it and

SGAT/271 WORKSHOP IV, 8/1/01 5538
 1 there's times that it's appropriate that Qwest is
 2 suggesting, through their access protocol, that it's
 3 appropriate for Qwest to do it.
 4 MS. STEWART: Okay. Well, I think -- okay,
 5 first of all, I think it could get confusing if you
 6 say "if required under the SGAT." I am not opposed
 7 to crafting an additional sentence that indicates if
 8 the temporary wiring is associated with the fact you
 9 couldn't get access to the terminal, then yes, that
 10 would be the case. But it's a fact that many
 11 companies use temporary cutover devices when they're
 12 cutting over a large customer because they don't want
 13 to keep the large customer out of service a period of
 14 time. So they'll pre-wire and then the night it cut,
 15 they'll do a cutover. And a lot of times those
 16 temporary cutover devices add confusions and problems
 17 and repair issues later, and the plan is always to
 18 come back and take out those cutover devices.
 19 We're trying to make it a statement you've
 20 got to come back and get those out. So this is
 21 really not about the temporizing, but I can see, now
 22 that you've brought it up, how the word temporary
 23 wiring sounds like it's the temporizing. So we will
 24 deal with the temporizing, but no, when you put in
 25 temporary cutover devices to aid in cutting a large

1 SGAT/271 WORKSHOP IV, 8/1/01 5543
 2 I had the discussion a little bit ago on the other
 3 side. I think, will highlight what our remaining
 4 questions are and we got that language.

5 MR. JUDGE RENDAHL: Okay. So --

6 MR. WILSON: Now I would go to 9.3.3.8.
 7 I had the question close to the end of my changes, I
 8 thought. This is a paragraph which prohibits
 9 rearrangement, but I don't think that it contemplates
 10 the same result. So I was going to add a
 11 sentence right after the first sentence, which says
 12 something like the following, and maybe you just want
 13 to have the language before you write it down.

14 I was going to add the following sentence:
 15 "This shall not preclude normal rearrangement of
 16 wiring or cabling." -- ERICSSON MO.

17 MR. JUDGE RENDAHL: Let's be off the record for
 18 a moment.

19 (Discussion off the record.)

20 MR. JUDGE RENDAHL: Let's be back on the
 21 record.

22 MR. WILSON: Okay. The new sentence would
 23 read, which does not preclude normal rearrangement of
 24 wiring or jumpering necessary to connect inside wire
 25 or inter-building cable to CLEC facilities in the
 26 manner described in the MTE access protocol."

27 SGAT/271 WORKSHOP IV, 8/1/01 5544
 28 MR. STEWART: I think I've got it, Ken.

29 MR. JUDGE RENDAHL: This does not preclude
 30 normal rearrangement of wiring or jumpering necessary
 31 to connect inside wiring or intra-building cabling to
 32 inter-building cables in the manner described in the MTE
 33 access protocol."

34 MR. WILSON: Yes.

35 MR. JUDGE RENDAHL: Okay. And the parties are
 36 to agree on that?

37 MR. WILSON: Yes.

38 MR. JUDGE: The only thing, Judge, that I
 39 would make plain, and this is nitpicky, but you put
 40 "wiring or intra-building cabling." And inside
 41 inter-building cable, at least
 42 inter-building cable is defined, so I think I would
 43 have to be in the generic intra-building cable, even
 44 though it's probably non-terminative grammar.

45 MR. JUDGE: So delete the inside wiring
 46 part.

47 MR. STEWART: No, put inside wire or
 48 inter-building cable, and just leave it at that. You
 49 can't have it.

50 MR. JUDGE: Oh, I put the i-n-g on,

51 I agree.

52 MR. JUDGE: It was nitpicky.

1 SGAT/271 WORKSHOP IV, 8/1/01
 2 MR. WILSON: Moving right along, under

3 Section 9.3.5, Ordering and Provisioning, the third
 4 paragraph there, 9.3.5.1.2, asks for NC and NCI
 5 codes, and I had the following question. What codes?
 6 If -- and I'm more concerned with the intra-building
 7 wiring. Is that just a code? I mean, is that -- do
 8 you just mean the code for intra-building wiring?

9 MS. STEWART: We distributed Exhibit 1021
 10 yesterday. You might want to have 1021 handy. It
 11 has the NCI codes.

12 JUDGE RENDAHL: This is a document called
 13 High Level LSR Process Flow for Intra-Building Cable.

14 MS. STEWART: That is correct. The last
 15 page.

16 JUDGE RENDAHL: Does that resolve your
 17 concerns, Mr. Wilson?

18 MR. WILSON: So it's just, as I read your
 19 document for building wiring, it would -- there would
 20 be two different codes, one for two-wire, one for
 21 four-wire?

22 MR. VIVEROS: Correct.

23 MR. WILSON: Okay. I think that answers my
 24 question. I think there's an overall issue on the
 25 need for the LSR, but that's a separate issue. I
 26 just wanted to clarify. Thank you.

27 SGAT/271 WORKSHOP IV, 8/1/01 5546
 28 Continuing on, section 9.3.5.4.1, the -- I

29 understand the new language you added is based on the
 30 language that was proposed in the multi-state, and
 31 there may be some dispute on that, but my issue was I
 32 think it would be a good idea for Qwest to start
 33 creating or to create a Web site where, as buildings
 34 are identified, Qwest would log the building -- the
 35 ownership of inside wire onto the Web site so that we
 36 don't have to continually go through this process
 37 with new CLECs requesting, et cetera, et cetera.

38 In other words, why don't we facilitate
 39 this kind of like we have with central office

40 collocation, where there's now a Web site. You can
 41 look to see if there's space available, et cetera.

42 But I think for now what I'm suggesting is that a Web
 43 site be created just to clarify the building

44 ownership and that that be populated as Qwest

45 determines the ownership through CLEC request or as
 46 new buildings are installed by Qwest, et cetera.

47 JUDGE RENDAHL: Thoughts from Qwest.

48 MS. STEWART: This is a new request, and I
 49 would have to check with our various people

50 responsible for the Web sites to see if that's a

51 possibility. And well, yeah, we -- I guess I'm just

52 sort of thinking the staggering number of entries

1 SGAT/271 WORKSHOP IV, 8/1/01 5551
 2 ~~Washington~~ Subloop Issue 13 an open issue of whether
 3 Qwest should create a Web site for ownership of
 4 ~~inside wire~~, would that capture the issue?
 5 MS. STEWART: I believe it would. I've got
 6 ~~perhaps~~ some wording here that might do that. And we
 7 ~~would be~~ willing to leave it open to the conclusion
 8 ~~at the end of~~ this workshop. If, by the end of this
 9 workshop, we have not been able to answer the
 10 question, then we would need to send it to impasse.
 11 My proposed wording, "AT&T has requested a
 12 Web site be created to identify MTE locations where
 13 Qwest has already determined building ownership."
 14 JUDGE RENDAHL: To identify MTE --
 15 MR. STEWART: -- locations where Qwest has
 16 already determined building ownership. Oh, yeah,
 17 including ownership, good thinking. "Determined
 18 ~~intra-building~~ cable ownership."
 19 JUDGE RENDAHL: Right, that was going to be
 20 ~~the~~ question. I thought we were talking about the
 21 inside wiring portion.
 22 MS. STEWART: Yeah, it's our real estate --
 23 JUDGE RENDAHL: Okay. With that, it looks
 24 like there are two remaining issues under SB-3, and
 25 that's SGAT sections 9.3.5.4.4 and 4.5; is that
 correct? Or do you have additional --

1 SGAT/271 WORKSHOP IV, 8/1/01 5552
 2 MR. WILSON: I have just a few more.
 3 JUDGE RENDAHL: Okay. Would this be a good
 4 time to take a morning break?
 5 MR. WILSON: Perhaps it would, and maybe a
 6 few of these I could talk to Mr. Orrel at break,
 7 because some of them are questions.
 8 JUDGE RENDAHL: Okay. Well, why don't we
 9 take our mid-morning break, and we'll reconvene by 10
 10 o'clock. Let's be off the record.
 11 (Recess taken.)
 12 JUDGE RENDAHL: Let's be back on the
 13 record. While we were off the record for an extended
 14 mid-morning break, AT&T and Qwest, I think, made some
 15 significant progress on Section 9.3, which is
 16 memorialized in Exhibit 1020. Ms. Stewart, would you
 17 care to explain the additional changes that you made
 18 beyond what we discussed on the record already?
 19 MS. STEWART: Yes, I will. An additional
 20 change is going to be made to 9.3.3.7, and will be
 21 reflected in a Replacement Exhibit 1020 that we're in
 22 the process of currently producing. What the
 23 situation is is that in 9.3.3.7, this is a situation
 24 where there's a dispute between the parties on
 25 whether a SPOI and how the SPOI should be built or
 renumbered, and Qwest believes that, per the UNE

1 SGAT/271 WORKSHOP IV, 8/1/01 5553
 2 remand, it's required to move forward to build a
 3 SPOI, but believes that the CLEC should be
 4 responsible for the nonrecurring charges. I believe
 5 this paragraph will stay as is and then will become
 6 the impasse paragraph between the parties.
 7 JUDGE RENDAHL: Okay.
 8 MS. STEWART: Then, two new paragraphs are
 9 being added, and these two new paragraphs provide
 10 clarity about nondispute situations. And then they
 11 are an agreement between the parties.
 12 JUDGE RENDAHL: And they will be
 13 subparagraphs to 9.3.3.7?
 14 MS. STEWART: That is correct.
 15 JUDGE RENDAHL: Okay.
 16 MS. STEWART: The first new paragraph, "If
 17 CLEC requests that a new SPOI be established, then
 18 CLEC shall pay Qwest a nonrecurring charge that will
 19 be ICB, comma, based on the scope of the work
 20 required."
 21 New paragraph to cover the third situation.
 22 "If the MTE terminal is hard-wired in such a manner
 23 that a network demarcation point cannot be created,
 24 comma, Qwest will rearrange the terminal to create a
 25 cross-connect field and demarcation point, period.
 Charges for such rearrangement shall be recovered

1 SGAT/271 WORKSHOP IV, 8/1/01 5554
 2 through reoccurring charges, period."
 3 JUDGE RENDAHL: Now, will those two
 4 paragraphs be new paragraph 9.3.3.7.1 and .2, and
 5 those numbering --
 6 MS. STEWART: I just left it all part of
 7 9.3.3.7, just as continued -- but I've separated them
 8 into paragraphs, because two are in agreement and one
 9 is at impasse.
 10 JUDGE RENDAHL: Okay. I just wanted to
 11 clarify how we were doing that.
 12 MR. WEIGLER: Karen, I just have a quick
 13 question on that language. When you say that it will
 14 be captured by recurring charges, are you
 15 specifically citing to the charges listed in the
 16 subloop section?
 17 MS. STEWART: We would anticipate they
 18 would be included in the recurring charges of the
 19 subloop element itself, intra-building cable.
 20 MR. WEIGLER: So is that 9.3.6.1.1?
 21 MS. STEWART: I believe so, but I've got
 22 Mr. Orrel, my expert, not on the mic. They want to
 23 confirm the exact recurring charge. It's the subloop
 24 intra-building cable; correct?
 25 MR. ORREL: To my knowledge, that is the
 correct charge. I think that's the only recurring

SGAT/271 WORKSHOP IV, 8/1/01 5559
 I want for us to enter into that discussion would be to
 I want sorry talk about 1021, if he's available.
 MS. STEWART: I believe it's going to be
 I want. Whoever who will discuss that, but --
 MS. KILGORE: Fine.
 JUDGE RENDAHL: Okay. Before we go on, so
 I want done with issue Subloop Three with the changes
 I want to Exhibit 1020, and the impasse issues that
 I want remain, and the new issue that we added on concerning
 I want the web site.
 MS. STEWART: Correct.
 JUDGE RENDAHL: Okay. Then let's move on
 I want to Subloop Issue Four. And you want -- Ms. Kilgore,
 I want you've asked Quest to walk through Exhibit 1021, the
 I want High Level LSR Process document?
 MS. KILGORE: Yes.
 MR. VIVEROS: And actually, Exhibit 1021,
 I want it has several parts to it. The process flow at the
 I want top of the first page is actually the overall process
 I want that will be used by Quest when they receive a
 I want request from a CLEC for an intra-building cable
 I want subloop, so it reflects at the beginning the CLEC
 I want submitting the request, in this case via the IMA LSR
 I want system. It comes into our service delivery center.
 I want they convert that LSR into service orders. Those

SGAT/271 WORKSHOP IV, 8/1/01 5560
 I want service orders are distributed to various
 I want provisioning and maintenance systems and eventually
 I want to the billing system.
 As part of that process, the request for
 I want subloop data a circuit identification, a circuit ID
 I want assigned to the subloop element. It's not reflected
 I want in detail in the high level process flow, but where
 I want the CLEC is submitting the LSR prior to the
 I want completion of the inventory, as part of the
 I want assignment process, Quest will manually intervene,
 I want to hold that order until the end cable count has been
 I want defined, assigned a termination, and then continue
 I want processing the order.
 JUDGE RENDAHL: Mr. Viveros, before you go
 I want together, there are a number of acronyms in this
 I want process flow. If you could, just for the record,
 I want identify what those acronyms are, that would be
 I want the best. CLEC, I think we know. CPS? Okay. Mr.
 I want Stewart?
 MR. STEWART: Thanks for putting me on the
 I want spot. I don't know what that means. We'll find out.
 MS. KILGORE: Can you describe the
 I want responsibility of what it is? Is it a database or --
 MR. VIVEROS: Quite honestly, I'm going to
 I want to go some checking around that entire step.

SGAT/271 WORKSHOP IV, 8/1/01 5561
 1 Given the fact that it's labeled 1A, my presumption
 2 is it was a late add to the process flow. Someone
 3 identified this additional need. So we'll need to
 4 investigate that a little bit further.
 5 JUDGE RENDAHL: Okay. And what is SOC?
 6 MR. VIVEROS: That is the service delivery
 7 center. That is the name of our wholesale center.
 8 JUDGE RENDAHL: Okay. SOPs, standard
 9 operating procedures.
 10 MR. VIVEROS: No, that is service order
 11 processors.
 12 JUDGE RENDAHL: Okay. Thank you. This is
 13 why I needed you to identify this. What is LMOS?
 14 MR. VIVEROS: Loop maintenance operating
 15 system.
 16 JUDGE RENDAHL: Okay. And CRIS.
 17 MR. VIVEROS: Customer records and
 18 information system.
 19 JUDGE RENDAHL: Okay. SOAC?
 20 MR. VIVEROS: Service order assignment and
 21 control.
 22 JUDGE RENDAHL: Okay. WFA-DO?
 23 MR. VIVEROS: Work force administration,
 24 dispatch out.
 25 JUDGE RENDAHL: Okay. And then LFACTS?

SGAT/271 WORKSHOP IV, 8/1/01 5562
 1 MR. VIVEROS: Loop facility assignment and
 2 control system.
 3 JUDGE RENDAHL: Thank you. Your test is
 4 over. You passed. Go ahead.
 5 MR. VIVEROS: So that is the high level
 6 process flow that we will utilize in order to either
 7 literally get it to a technician to run the jumper
 8 when the CLEC asks us to or to go through the process
 9 of defining the subloop with a circuit ID,
 10 inventorying it in our provisioning and maintenance
 11 systems, and eventually posting it to the CRIS
 12 billing system. At the bottom of -- yes, Ken?
 13 MR. WILSON: Actually, I was going to ask
 14 some questions on the points at the bottom, but if
 15 you're going to go through them, go ahead.
 16 MR. VIVEROS: Okay, yes. At the bottom of
 17 that first page are the LSR requirements for the CLEC
 18 to initiate this process. We talked about this a
 19 little earlier today. Basically, the CLEC would
 20 identify that it is intra-building cable subloop by
 21 the NC/NCI codes, which are contained on the last
 22 page of the exhibit. They would populate the end
 23 user's address so that we knew where the termination
 24 was taking place. They would provide the cable and
 25 pair information, or the CFA that we've been talking

1 the jumper, then you avoid that -- your concern about
 2 the manual?
 3 MR. WILSON: Yes.
 4 JUDGE RENDAHL: Okay.
 5 MR. VIVEROS: And as I said, we'll be glad
 6 to take that back, but just so that we're clear, the
 7 fact that they're making an entry in the remarks
 8 section is not introducing additional manual effort.
 9 MS. KILGORE: To clarify that, Mr. Viveros,
 10 on your diagram, your flow diagram, arrow two that
 11 goes from IMA down to STC, at that point, could you
 12 explain what the service delivery center does with
 13 the LSR?
 14 MR. VIVEROS: Sure. They receive the LSR,
 15 they review the LSR for accuracy and completeness,
 16 they compare the entries on the LSR to the
 17 requirements for the type of request they're
 18 receiving. Certainly in a scenario where you were
 19 converting an existing retail service to port out
 20 that customer's telephone number and then access the
 21 intra-building cable subloop, they would be looking
 22 at the existing customer records to ensure that there
 23 was a correlation, basically validating the accuracy
 24 that they had the right number, the customer
 25 information matched, we're talking about the same

1 problem.
 2 JUDGE RENDAHL: So the presumption is that
 3 the CLEC would run the jumper unless there's a remark
 4 put in requesting quest to run the jumper, is that
 5 the agreement?
 6 MS. STEWART: Well, we're going to double
 7 check, but yes.
 8 JUDGE RENDAHL: And that's what you all
 9 have discussed around the table here?
 10 MR. WILSON: That's what AT&T would
 11 request. If we have to send an LSR, which is still a
 12 bit of dispute, it should be efficient and require
 13 the minimum amount of effort, because this, as we've
 14 said in the previous workshop, this is a very simple
 15 thing.
 16 JUDGE RENDAHL: And AT&T's concern about
 17 the remark section is that your concern is any time
 18 you put a remark in an LSR, it bumps it to a manual
 19 process and takes longer and costs more?
 20 MR. WILSON: Yes, the AT&T person would
 21 have to type it in manually, somebody at quest would
 22 then have to look at it, and it would be manual. I
 23 mean, you're guaranteeing it's manual on both sides.
 24 JUDGE RENDAHL: Okay. So by not -- by
 25 having the presumption that AT&T or the CLEC will run

1 you -- you're the one that wants this LSR. We don't
 2 want to send it. If I don't put a comment in it,
 3 quest receives
 4 MR. VIVEROS: If you don't put a comment of
 5 MR. WILSON: Well, number five says that I
 6 want to put a comment. What if I don't put a
 7 comment?
 8 MR. VIVEROS: Right now, these are our LSR
 9 requirements. So if we moved forward with them as
 10 they are, right here and if you did not make an
 11 indication as to whether or not we were to run the
 12 jumper or you were to run the jumper, I would expect
 13 a service delivery center to reject the LSR back to
 14 MR. WILSON: For not putting a comment in?
 15 MR. VIVEROS: For not making a
 16 recommendation, this is one of the LSR requirements
 17 that we're putting out. We can certainly go
 18 either way or the other. We can certainly go
 19 either way and estimate very quickly, before the end of the
 20 week, whether or not we can agree to a default of
 21 the jumper. And I think that's all we're
 22 MR. WILSON: We can do that. That's not a

1 problem, not you put something every time and
 2 someone got to look at it and decide.
 3 MR. WILSON: I would ask quest, does that
 4 mean to a manual process on your side, that there's
 5 going to be a remark that someone has to review every
 6 time?
 7 MR. VIVEROS: Right now, it is a manual
 8 process. There is no way to automatically or
 9 automatically prevent an order from dispatching out,
 10 through order situations where there are very
 11 specific facilities involved, are defined in our
 12 system and completely cut through.
 13 So these orders are, one, going to be
 14 rejected by our service delivery center. Putting this
 15 -- or rejecting this remark isn't going to change
 16 that at all, but more importantly, depending on what
 17 circumstances we're talking about, in cases -- in I
 18 guess the vast majority of cases where we are not
 19 going to dispatch out to do provisioning work, the
 20 provisioning systems have not been able to be
 21 automated to automatically assume that, if you will,
 22 and prevent it. It does require intervention on
 23 quest side of the orders to preclude us from
 24 provisioning out to the premise.
 25 MR. WILSON: Wait a minute. What if I send

CONTINUATION

[7]

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 1 the association to IMA to expand its capabilities.
 2 right now, it supports distribution subloop and
 3 service subloop and it is being enhanced to support
 4 terminating cable subloops.
 5 MR. WILSON: My third question is is there
 6 going to be a charge, like an LSR charge, to the CLEC
 7 for this type of LSR?
 8 MR. VIVEROS: No.
 9 MR. WILSON: I don't have any further
 10 questions.
 11 JUDGE REMDAHL: Ms. Young.
 12 MR. YOUNG: Chris, I just have one
 13 question. The service order assigner, that person
 14 who gets the circuit ID back on the LSR; is that
 15 correct? Is that how the circuit ID piece will work?
 16 MR. WILSON: Actually, the SOAC assigner
 17 is assigning the termination. The circuit ID is
 18 already already on the service order. It is created
 19 at the time the CLEC turns the LSR into an internal
 20 service order.
 21 MR. YOUNG: Okay. And then the circuit ID,
 22 is it put on the -- how does that get communicated
 23 back to the CLEC so that they know, for repair
 24 purposes, what it is?
 25 MR. VIVEROS: The service delivery center

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 2 JUDGE, YES, WAS ASSIGNED THE LSR, IF YOU WILL, IN THE
 3 CREATION OF THE FIRM ORDER CONFIRMATION.
 4 MR. YOUNG: Okay.
 5 MR. WILSON: The circuit ID would be
 6 associated on that FOC back to the CLEC.
 7 MR. YOUNG: Okay. And looking at the
 8 second page, where we're looking at an actual service
 9 order, I notice a circuit ID of 4.LXFU.506984..PN,
 10 toward the bottom of the service order.
 11 JUDGE REMDAHL: Which line?
 12 MR. YOUNG: Actually, it's about three
 13 lines from the bottom on the second page. Is that
 14 the type of circuit ID we would expect to see? In
 15 other words, would LSP always designate
 16 terminating cable as far as a circuit ID goes, do
 17 you think?
 18 MR. WILSON: That is the type of circuit
 19 ID you would see. I'm not sure that the third
 20 character would always be an F, but I would expect it
 21 to almost always be an F. It would definitely be an
 22 terminating ID.
 23 MR. YOUNG: Okay. Thank you.
 24 JUDGE REMDAHL: Okay. Are there any other
 25 questions? Mr. Wilson
 MR. WILSON: Well, I think that discussion

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 1 brought up one of the issues which we covered a bit
 2 previously, but I just want to bring it up again. I
 3 have a big concern with the association of circuit
 4 IDs with these intra-building cables. If there does
 5 happen to be a problem with the inside wire, what it
 6 essentially means is the CLEC has to go back
 7 somewhere in a database and find out what circuit ID
 8 was assigned to this by Qwest before they can get
 9 Qwest to go out and fix the trouble.
 10 And typically, you'll have an installer, an
 11 AT&T technician at the premises, you've got a panel
 12 there, you've got lots of wires. They know which one
 13 is bad, they can flag it and tag it. Why someone
 14 then needs to go find out what Qwest called this
 15 termination I think is adding a level of complexity
 16 that is unnecessary.
 17 I -- and I think this is one of our
 18 problems with this whole LSR business in establishing
 19 these circuit IDs. If the CLEC has, say, a dozen
 20 inside wires that they're using in the building, how
 21 in the world do we know which one is the one that we
 22 ought to be telling Qwest. I think it's going to
 23 cause a lot of rejects of maintenance requests and a
 24 lot of unnecessary problems. That's my opinion on
 25 the subject.

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 2 JUDGE REMDAHL: Mr. Viveros.
 3 MR. VIVEROS: Qwest disagrees, and Mr.
 4 Orrel may want to expand on this when he comes back
 5 in the room, but the process for associating some
 6 non-telephone number identifier to an end user's
 7 service is a standard common practice that occurs
 8 every day when CLECs buy unbundled loops or buy any
 9 other UNE that they need to communicate back to the
 10 ILEC with that isn't telephone number-based.
 11 MR. WILSON: And I under -- I mean, if
 12 you're in a central office, you're on relay racks,
 13 these things all have number assignments, row and
 14 column. You're out in the field, you got these ugly
 15 terminals that multiple technicians work on, and if
 16 AT&T has 10 different loops to that terminal, so 10
 17 different circuits, we have a problem on one of them,
 18 how does AT&T and Qwest figure out which of the 10 of
 19 your 10 circuit IDs is the one that's got a problem?
 20 How do we do that?
 21 MR. VIVEROS: There's a one-for-one
 22 relationship between the individual subloop that
 23 you're accessing and the circuit ID that we've
 24 assigned to it. You've gained access to the subloop,
 25 you've sent me a request telling me that you've done
 that, that you've run the jumper, and I'm returning a

1 SGAT/271 WORKSHOP IV, 8/1/01 5583
 2 MR. WILSON: I think that there's

3 information about this being an impasse

4
 5 MR. KILGORE: Your honor, could I ask one
 6 question, a quick question? If Quest gets a trouble
 7 report for the end customer for an inside wire issue
 8 or where where you own the inside wire or
 9 something like cable, how does the Quest technician
 10 identify which subloop element needs repair?

11 MR. ORREL: The technician doesn't repair
 12 subloop elements for Quest facilities. Quest does
 13 trouble isolation utilizing test access points,
 14 and then we isolate to that section. We don't have
 15 subloop elements per se.

16 MR. KILGORE: Well, okay, I'm sorry. I
 17 don't know. Let's say we're talking about the
 18 trouble-reporting wire for a particular customer has a
 19 trouble, there's a problem with that wire, just as
 20 the technician we've been talking about. How do you
 21 identify which cable it is that needs the work? Do
 22 you have identification on that line and is that
 23 maintained in your database at your provisioning
 24 center where you would roll the truck from?

25 MR. WILSON: It's by circuit ID. In the

1 SGAT/271 WORKSHOP IV, 8/1/01 5584
 2 language of the parties other tone service, the circuit ID

3 is the telephone number, so the end user customer
 4 would be required to report trouble under the
 5 telephone number. They couldn't call up and say, I'm
 6 having a problem with my inside wire, I'm having a
 7 trouble with my jacks, and my address is 123 Main,
 8 please send someone out. We would need the telephone
 9 number, and the trouble report would be opened
 10 against that tone record.

11 MR. ORREL: Or, in the scenario of a
 12 trouble report for a single-type circuit, the customer would
 13 provide the same circuit ID that's very similar to
 14 the one on the exhibit in Exhibit 1021.

15 MR. KILGORE: Is the customer's phone
 16 number identified at the MTE terminal?

17 MR. ORREL: No, the customer's telephone
 18 number is not identified at the MTE terminal.

19 MR. KILGORE: So how do you know which wire
 20 you're working off of?

21 MR. ORREL: Because, with the customer
 22 record, we know what telephone number's associated
 23 with which address. That address and telephone
 24 number tells us which terminals the facility passes
 25 through, providing us with the locations to go to do
 the trouble isolation.

1 SGAT/271 WORKSHOP IV, 8/1/01 5585
 2 MR. WILSON: I think what Ms. Kilgore was

3 getting at, if you have a terminal with 100 different
 4 inside wires, the technician probably has to go out
 5 and determine which one it is.

6 MR. ORREL: That's not true, Ken. For
 7 example, on a closed terminal, the lid will have the
 8 addresses associated with the terminations labeled on
 9 the lid of the termination. The information's
 10 available at the MTE terminal.

11 MR. WILSON: If you're lucky. I've been in
 12 lots of them where --

13 MR. ORREL: That's your opinion, Ken.

14 MR. WILSON: I've been in lots of them

15 where it's not that clear, and you'd have to do some
 16 work to figure it out.

17 JUDGE RENDAH: Well, I think it's clear
 18 that there's an impasse on this issue, and I think
 19 the parties can brief it. I think it's also clear
 20 that maybe blood sugar is running a little low, and
 21 it may be time to take our lunch break. So let's be
 22 off the record.

23 (Discussion off the record.)

24 JUDGE RENDAH: Let's be back on the

25 record. Before we take our lunch break, we want to

reflect that Issue SB-6 has been closed. The

1 SGAT/271 WORKSHOP IV, 8/1/01 5586
 2 language that the parties agreed to will close that

3 issue out. And we have added Issue SB-13 concerning
 4 AT&T's request that Quest create a Web site. That's
 5 been added to the list. So with that, I think we are
 6 done with subloops and will now take our lunch break.
 7 Let's be off the record, unless, Ms. Stewart, you
 8 have something you want to add on the record?

9 MS. STEWART: Off the record.

10 (Lunch recess taken.)

11 JUDGE RENDAH: Let's be on the record.

12 We're back from our lunch break and we're going to
 13 discuss line sharing. I understand we have Ms.

14 Sacilotto and Ms. Ford, representing Quest, on the
 15 line, and we are going to turn to line sharing. So
 16 we have a line sharing issues list. Who would care
 17 to summarize where we are?

18 MS. STEWART: This is Karen Stewart. I

19 believe I can. In our previous first phase of this
 20 workshop, we discussed and either closed or impass
 21 all the line sharing issues.

22 My understanding of the need to discuss
 23 line sharing at this point is that Covad has

24 additional information they would like to add to the
 25 record in regards to issue Washington LS-6.

MS. DOBERNECK: Thank you. That's correct.

to move to loops, NIDs, and line splitting. Let's be off the record for a moment.

(Discussion off the record.)

JUDGE RENDAHL: Let's be back on the record. While we were off the record, there was a proposal by WorldCom and Qwest to dispense with discussion of general terms and conditions in this docket, and possibly AT&T was involved in that discussion, as well, I don't recall.

And at this point, I've agreed to allow the parties to file the Colorado transcripts. The work there will be ending on the 24th, and the parties should file, as Exhibit 799, any transcripts and exhibits concerning general terms and conditions from Colorado in this docket, and the parties will brief the discussion of that.

Also, while we were off the record, Mr. Hill, of AT&T, called in and he will be filing as Exhibits 1170 and 1171-C, the confidential and nonconfidential portions of the testimony and exhibits from the multi-state on public interest. We also discussed scheduling. The schedule that was set in supplemental -- the fifth supplemental order in this proceeding for Workshop

four will be modified as follows: The post-workshop briefs, instead of having a single brief on August 21st, there will be an initial brief due on September 7th and reply briefs on Section 272 issues and public interest issues only. The opportunity is there for the parties to reply -- file reply briefs on those issues on September 14th. An initial order targeted for October 12th and comments on October 26th, and a presentation to the Commissioners to be determined.

Mr. Kopta was on the line, maybe still is, and mentioned to us that there is still an outstanding issue of when comments are due on the initial order in the third workshop and when the Commissioners' presentation is. I indicated I was not aware of when those dates were, but that they were currently being scheduled.

Mr. Viveros pointed out that there is a change to the Replacement Exhibit 1020 for Section 272. There were some words omitted. On the second line, following "or a new facility constructed," the following words should be inserted: "and when Qwest was the jumper."

And I think that concludes any of the outstanding issues. I guess the only other issue that's remaining, Ms. Hopfenbeck, and we didn't

discuss this off the record, is whether WorldCom and Qwest had resolved the interval issue, or is that still outstanding?

MS. HOPFENBECK: You're talking about the forecasting issue?

JUDGE RENDAHL: Forecasting issue, yes.

MS. HOPFENBECK: And I'm sorry to say that over the lunch break I tried to reach my people to find out -- we've just been negotiating and we're very close, but we haven't --

JUDGE RENDAHL: But it's not resolved enough for me to know about it yet?

MS. HOPFENBECK: That's right. But I guess at this point I'm pretty confident that this is going to be finished. It's just wordsmithing. It's just that we're not there yet. So what I would propose is that next week I just simply send a letter to the Commission, and I'll do that jointly with Qwest or with Qwest's authority, and we will advise the Commission about the withdrawal of our testimony.

JUDGE RENDAHL: Okay. But at this point, you're not planning to offer Ms. Wicks or Qwest is not offering Ms. Bumgarner or Mr. Freeberg at this time?

MS. HOPFENBECK: That's right.

JUDGE RENDAHL: Okay. All right. With that understanding, let's move on to loops, NIDs, and line splitting and see if we can wrap it up by the end of the day today. Okay.

On the loops issues log, starting with loops, are there issues that -- who is still on the bridge? I think somebody just left.

MS. SACILOTTO: Kara is still on the bridge.

MS. FORD: And this is Laura. I'm going to drop off.

MR. KOPTA: And this is Greg Kopta. I'm still here.

JUDGE RENDAHL: Okay. That lovely echo is what occurs when people drop off and somebody's talking. The loop issues log is quite extensive, and maybe the parties can target those issues that they want to revisit. If an issue is at impasse, I'm assuming it will remain at impasse unless you all indicate it. So I don't know who wants to take the laboring oar on this.

MS. DeCOOK: There may be some in addition -- there may be some where we have a designation of impasse where there may be some additional information we want to provide. We'll note that as

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1 that's a follow-up.
2 MS. SACILOTTO: Suffice it to say it's
3 already been addressed in the general terms and
4 conditions workshop. I don't know the status. I'm
5 assuming it's probably not closed.
6 MS. KOPFENBECK: No, it's not closed.
7 JUDGE RENDAHL: No, it's not closed, but I
8 think the discussion is in the multi-state workshop
9 transcripts, is what I'm hearing.
10 MS. DOBERNECK: And I believe we also have
11 Arizona that will be part of this record, because we
12 had a great deal of discussion on that, and I think
13 that's where we left it last time we talked about
14 this issue in Washington, the multi-state in Arizona.
15 JUDGE RENDAHL: I've received those
16 transcripts. Well, you know, let's be off the
17 record.
18 (Discussion off the record.)
19 JUDGE RENDAHL: Let's be back on the
20 record. We do have transcripts, and those are
21 Exhibit 797 and 798-C, from other states on BFR, SRP
22 and ICW. So I don't think we need to have further
23 discussion on that issue here.
24 Is there anything more on 1-C that's at
25 impasse? Hearing nothing, Loop Issue 2 appears to be

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1 at impasse. Is that still at impasse?
2 MS. SACILOTTO: Yes.
3 MS. LISTON: Yes.
4 JUDGE RENDAHL: Yes. 3-A. I'm sorry, Ms.
5 DeCook.
6 MS. DeCOOK: Just a piece of information on
7 1-C. I'm not sure if you're aware of this, Your
8 Honor, but in Workshop Three in Washington, there is
9 a ruling on the issue about Qwest's obligation to
10 build, and I can't recall if it was in this state. I
11 believe it was in this state where we were all
12 agreeing that whatever the outcome was on that issue
13 would resolve the issue for purposes of this issue in
14 loops. And I note that this one relates to OCN
15 loops, and there may be another issue in the issues
16 list that deals with other loops and the requirement
17 to build those loops, as well. I was looking for it,
18 but I got distracted.
19 MS. DOBERNECK: It's Loop 8-B.
20 MS. DeCOOK: Thank you.
21 MS. DOBERNECK: Washington Loop 8-B.
22 MS. SACILOTTO: I would not totally agree
23 with Ms. DeCook's characterization. In other
24 workshops in other states, and perhaps here in
25 Washington, we have recognized there's an overlap

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1 between the issues, but we have not agreed that they
2 were identical or that the resolution from Workshop
3 Three would necessarily apply in this workshop, so I
4 can't agree with her characterization of this issue.
5 I mean, we've presented evidence and
6 information that distinguishes loops from other kinds
7 of UNEs and certainly hi-cap loops from other kinds
8 of loops, so I would not agree that the Workshop
9 Three ruling dispenses with this issue at all.
10 JUDGE RENDAHL: Well, you all can argue
11 that on your briefs.
12 MS. SACILOTTO: Okay. I just want to make
13 sure that we don't close this issue. We are still at
14 impasse and we are disagreeing with the Commission's
15 initial order in Workshop Three on this issue.
16 JUDGE RENDAHL: Okay. So noted. Can we
17 move on to Loop 2? Okay. Those -- A and B appear to
18 be at impasse. Is that still the case? Is there any
19 additional information we need on that issue?
20 MS. KILGORE: I don't believe so.
21 MS. LISTON: No.
22 JUDGE RENDAHL: Okay. Loop Issue 3.
23 MS. KILGORE: Yeah, AT&T would like to add
24 a little bit of information, similar to what we just
25 did. As we read through this Texas decision, there's

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1 quite a bit of discussion about loop information and
2 what's -- what information CLECs should have access
3 to, and one of -- the solution that Texas came up
4 with was to have the CLECs perform an audit of the
5 data that SWBT, S-W-I-T --
6 MS. DeCOOK: SWBT.
7 MS. KILGORE: -- SWBT, sorry, maintains in
8 their back office. And since we are having a hard
9 time understanding what information Qwest personnel
10 have available to them with respect to loop
11 information, perhaps a similar solution would work
12 here that would enable CLECs to understand what data
13 exists and what information Qwest personnel are able
14 to obtain and the manner in which they obtain it. In
15 other words, how quickly do they get to it, in what
16 format. And so we'd like to just bring that in here
17 as part of the discussion and point to that
18 discussion in the Texas decision.
19 JUDGE RENDAHL: And do you have a page
20 number in that decision?
21 MS. DeCOOK: 101.
22 MS. KILGORE: Yeah, the Arbiter's
23 discussion of it is at page 101. The issue number is
24 20. The discussion of it begins at page 99.
25 MS. SACILOTTO: Has AT&T agreed to give

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1 here was deferred to consider in ROC OSS test
2 proceeding or performance proceeding. Would someone
3 care to recap this, since I can't seem to recall?
4 MS. DOBERNECK: I will. We raised the
5 issue that had come up earlier that, where there's a
6 new -- oh, you know, I'm sorry. I'm thinking of a
7 different issue. Okay. Forget what I was about to
8 say.
9 MS. DeCOOK: I can talk about this one.
10 JUDGE RENDAHL: Thank you, Ms. DeCook.
11 MS. LISTON: Or I could.
12 MS. DeCOOK: This is an issue that relates
13 to CLEC LSRs being rejected because of problems
14 within the address that's identified on the LSR. We
15 had an extensive discussion about AT&T's issue on
16 address validation problems that we've encountered in
17 the multi-state, and as a result of those
18 discussions, we agreed to defer the issue to the ROC
19 OSS test. And if we encountered any additional
20 problems with address validation, we would raise
21 those in the context of a performance workshop, which
22 hopefully we'll have.
23 JUDGE RENDAHL: Okay. All right. So at
24 this point, this issue is deferred for our purposes?
25 MS. LISTON: Correct.

MS. SACILETTO: For purposes of this record
of Washington, you know, we -- the only issue that's
been raised within Washington Loop 5 is the issue the
ALJ was talking about that should be closed is should
we go with the 72-hour FOC to the ROC.

I mean, I would disagree with your
characterization of the reconciliation process in
Washington. As it's being presented, it sounds as if
we didn't offer to reconcile or we didn't follow
through on requests to reconcile data, and that's

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Comment. Only two carriers asked to do it, one of
which followed through and then subsequently withdrew
90 percent of their own data. So you know, for
purposes of Washington, I agree with the ALJ that
this issue is closed.

MS. DOBERNECK: To bring the comments full
circle, getting back to the 72-hour FOC, Covad had no
objection to Qwest going to the ROC for that. We're
currently operating under 72 hours, so we had no
objection.

JUDGE RENDAHL: It seems to me that the
issue, as Ms. Saciletto stated, here in Washington is
whether going to a 72-hour testing interval is
acceptable to the parties, and my understanding, from
hearing all of you, is that that is okay. So for
purpose of the issue here in Washington, it is
closed. If there are performance issues that result
out of that, I expect we'll be hearing about that
when we're discussing performance here in Washington.

MS. DOBERNECK: On behalf of Covad, that's
my understanding, as well.

MS. LISTON: We agree with that statement,
uh-huh.

JUDGE RENDAHL: Okay. So that issue will
be closed. The next issue, Loop Issue 7, it states

1 here was deferred to consider in ROC OSS test
2 proceeding or performance proceeding. Would someone
3 care to recap this, since I can't seem to recall?
4 MS. DOBERNECK: I will. We raised the
5 issue that had come up earlier that, where there's a
6 new -- oh, you know, I'm sorry. I'm thinking of a
7 different issue. Okay. Forget what I was about to
8 say.
9 MS. DeCOOK: I can talk about this one.
10 JUDGE RENDAHL: Thank you, Ms. DeCook.
11 MS. LISTON: Or I could.
12 MS. DeCOOK: This is an issue that relates
13 to CLEC LSRs being rejected because of problems
14 within the address that's identified on the LSR. We
15 had an extensive discussion about AT&T's issue on
16 address validation problems that we've encountered in
17 the multi-state, and as a result of those
18 discussions, we agreed to defer the issue to the ROC
19 OSS test. And if we encountered any additional
20 problems with address validation, we would raise
21 those in the context of a performance workshop, which
22 hopefully we'll have.
23 JUDGE RENDAHL: Okay. All right. So at
24 this point, this issue is deferred for our purposes?
25 MS. LISTON: Correct.

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1 here was deferred to consider in ROC OSS test
2 proceeding or performance proceeding. Would someone
3 care to recap this, since I can't seem to recall?
4 MS. DOBERNECK: I will. We raised the
5 issue that had come up earlier that, where there's a
6 new -- oh, you know, I'm sorry. I'm thinking of a
7 different issue. Okay. Forget what I was about to
8 say.
9 MS. DeCOOK: I can talk about this one.
10 JUDGE RENDAHL: Thank you, Ms. DeCook.
11 MS. LISTON: Or I could.
12 MS. DeCOOK: This is an issue that relates
13 to CLEC LSRs being rejected because of problems
14 within the address that's identified on the LSR. We
15 had an extensive discussion about AT&T's issue on
16 address validation problems that we've encountered in
17 the multi-state, and as a result of those
18 discussions, we agreed to defer the issue to the ROC
19 OSS test. And if we encountered any additional
20 problems with address validation, we would raise
21 those in the context of a performance workshop, which
22 hopefully we'll have.
23 JUDGE RENDAHL: Okay. All right. So at
24 this point, this issue is deferred for our purposes?
25 MS. LISTON: Correct.

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JUDGE RENDAHL: Okay. Washington Loop
2 Issue 8, currently at impasse. Any change, other
3 than that B is now -- we're also referring to
4 Washington Loop Issue 1-C, but there's a dispute as
5 to whether it's the same issue or a related issue.
6 Okay. Loop Issue 9, at impasse. It says,
7 Discuss additional aspects in OSS test proceeding.
8 Is there anything further we need to talk about here?
9 MS. DOBERNECK: Wait. On 9?
10 JUDGE RENDAHL: On 9.
11 MS. DOBERNECK: I had the anticompetitive
12 conduct.
13 JUDGE RENDAHL: Yes, the action status here
14 in Washington is listed as impasse, and discuss
15 additional aspects in OSS test proceeding.
16 MS. LISTON: I think one of the things that
17 Qwest noted is we were kind of -- we're not sure what
18 that additional note was on there in terms of discuss
19 it in OSS test proceeding. We think it's just
20 strictly an impasse issue.
21 JUDGE RENDAHL: Okay. Then I don't know
22 why it's there, and we'll just take it off.
23 MS. STRAIN: I don't know, either, and I
24 wrote it.
25 MR. WILSON: Maybe, Your Honor, one comment

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MS. SACILOTTO: Well, I don't know if this
is as much an objection as this is an incident that
related to Colorado, not to Washington. And also, I
would note that Ms. Doberneck has been providing the
testimony regarding it, not an actual witness. So I
don't know how the Commission deals with things of
that nature.
JUDGE RENDAHL: I think, to the extent, Ms.
Saciotto, that this letter kind of closes the loop
on an issue that was testified to in the main
workshop, I think it provides information on the
incident and on Qwest's responsiveness to the
incident. And so I think, to that extent, I don't
believe it's necessarily prejudicial to the company.
MS. SACILOTTO: No, nor do I.
JUDGE RENDAHL: So I think I would simply
allow it for purposes of closing the loop and let the
document speak for itself. So if, Ms. Doberneck, if
you wouldn't mind circulating that, that will be
marked as Exhibit 973.
MS. DOBERNECK: Thank you, Your Honor.
JUDGE RENDAHL: Is there anything further
on Loop Issue 9?
MS. DOBERNECK: No, Your Honor.
JUDGE RENDAHL: Okay. Anything further on

SGAT/271 WORKSHOP IV, 8/1/01 5616
Loop Issue 10?
MS. SACILOTTO: I believe we have some SGAT
language that Ms. Liston has hopefully -- have you
circulated it, Jean?
MS. LISTON: We have not circulated it yet,
Ma'am.
JUDGE RENDAHL: Okay. Why don't we be off
the record while we circulate both of these exhibits.
Let's be off the record.
(Discussion off the record.)
JUDGE RENDAHL: Let's be back on the
record. While we were off the record, we marked, as
Exhibit 943, a document titled Washington Loop 10,
is SGAT proposed changes, which includes changes to
Sections 9.2.2.3.2, 9.2.6.7, and 9.2.6.8.
While we were off the record, Ms.
Saciotto requested or asked whether we had admitted
as Exhibit 942 the SGAT Lite version issued by Qwest
on July 24th, and I stated that I believed I had
admitted it yesterday, but if I had not, it is now so
admitted.
Is there any objection to the admission of
Exhibit 942? Hearing nothing, it will be admitted.
And Ms. Liston, you had some changes to this
document?

SGAT/271 WORKSHOP IV, 8/1/01 5617
MS. LISTON: Yes, Your Honor, just one
minor change. In 9.2.2.3.2, it should read, in the
very first sentence, "if CLEC orders a two/four-wire
non-loaded loop." So just change it to two/four.
JUDGE RENDAHL: Okay. So these changes are
proposed, then, to try to resolve the impasse?
MS. HOPFENBECK: One issue. Actually, it's
really related to only one issue.
JUDGE RENDAHL: Can you speak into the
microphone, because I know Ms. Saciotto can't hear
you.
MS. HOPFENBECK: Okay. This change,
9.2.2.3.2 is a provision to which WorldCom objected,
and specifically the issue that WorldCom was
concerned about is that this appeared to put in
Qwest's discretion the determination of whether or
not there was a facility that would meet the CLEC's
needs. And so by these changes, to which WorldCom
has agreed, Qwest has basically provided for, one,
allowed the CLEC to decide how to place its order,
whether it's going to order specifically an ADSL
compatible unbundled loop or it's going to order the
more generic variety two or four-wire non-loaded
loop.
And then Qwest is required here to

SGAT/271 WORKSHOP IV, 8/1/01 5618
basically only report whether there's -- when there's
no copper facility available capable of requesting
that generically-requested service. It's no longer
tied to the NC/NCI codes, which was our concern.
JUDGE RENDAHL: So does this language
resolve the concern that you had on 9.2.2.3.2?
MS. HOPFENBECK: Yes.
JUDGE RENDAHL: Okay.
MS. DeCOOK: Just a comment. This
provision would be impacted by whatever decision
comes out of this Commission on the requirement to
build.
JUDGE RENDAHL: From Workshop Three?
MS. HOPFENBECK: Yeah, that's actually
true, but this is a completely different issue on
that.
MS. DeCOOK: Right.
MS. SACILOTTO: Well, preserving our
objection, I mean, I think there's also a big
difference between even what's ordered in Workshop
Three and what the CLECs purport to be saying here.
I mean, this is not necessarily a situation in which
there is an exhaust of facilities.
This might be a situation in which the
facilities that are actually there and in place and

1 ~~MS. SACILOTTO:~~ SGAT/271 WORKSHOP IV, 8/1/01 5623
 2 ~~work through the interference problem on repair. But~~
 3 ~~from an ordering perspective, we would not be~~
 4 ~~reporting a CLIC's request. So those two changes~~
 5 ~~were also opposed, based on the discussions we had~~
 6 ~~with WorldCom.~~

7 ~~MS. SACILOTTO:~~ MS. SACILOTTO: I would like to, I guess
 8 ~~with that discussion, see what the status is of~~
 9 ~~number four.~~

10 ~~MS. LISTON:~~ MS. LISTON: Before we go there, one last
 11 ~~thing that I need to also point out is during the~~
 12 ~~process of the discussion with WorldCom, we also went~~
 13 ~~back and did some looking at language, both ours and~~
 14 ~~WorldCom's, and one of the things~~
 15 ~~that we noticed was in the proposed Rhythms language,~~
 16 ~~they talked about moving to HDSD Four, I believe they~~
 17 ~~referenced it, and it's throughout their proposed~~
 18 ~~language that they make reference to that.~~

19 ~~What we have since found out, since the~~
 20 ~~last workshop, is that HDSD Four technology will not~~
 21 ~~be available until 2002, so part of what's in the~~
 22 ~~Rhythms proposal is not technology that we currently~~
 23 ~~deploy in Qwest, nor is it currently available.~~

24 ~~JUDGE RENDAHL:~~ JUDGE RENDAHL: Mr. Zulevic.

25 ~~MR. ZULEVIC:~~ MR. ZULEVIC: Yeah, Jean. I do have a
 26 ~~question on the language in 9.2.2.3.2. I'm wondering~~

1 ~~SGAT/271 WORKSHOP IV, 8/1/01 5624~~
 2 ~~if there is any measurement that will be able to~~
 3 ~~track the number of loops that are rejected because~~
 4 ~~there is no copper facility available. And I think~~
 5 ~~it's going to be a growing concern for Covad,~~
 6 ~~especially, when we're looking at the availability of~~
 7 ~~pure copper, pure copper, good copper pairs,~~
 8 ~~to feed the more distant parts of the wire~~
 9 ~~center based upon the deployment plans of Qwest~~
 10 ~~to enable us to make DSLAM deployment.~~

11 ~~I'd really like to find out if there's~~
 12 ~~going to be any way to measure how often we're really~~
 13 ~~being rejected.~~

14 ~~MS. LISTON:~~ MS. LISTON: I'm not aware of any
 15 ~~performance measurement associated with a reject~~
 16 ~~because of copper facilities, lack of copper~~
 17 ~~facility. There's -- I know there's a generic reject~~
 18 ~~performance measure, but not a specific one, so I do~~
 19 ~~not believe that there is a specific performance~~
 20 ~~measurement associated with that.~~

21 ~~JUDGE RENDAHL:~~ JUDGE RENDAHL: Ms. Hopfenbeck.

22 ~~MS. HOPFENBECK:~~ MS. HOPFENBECK: I actually have to address
 23 ~~the exhaust issue, because, frankly, do you know,~~
 24 ~~Ann, I didn't know that 9.2.6.7 and 9.2.6.8 were~~
 25 ~~responsive to WorldCom's exhaust issue, and I don't~~
 26 ~~believe they really do resolve this issue. I view~~

1 ~~SGAT/271 WORKSHOP IV, 8/1/01 5625~~
 2 ~~these two provisions as addressing something slightly~~
 3 ~~different than what we were talking about.~~
 4 ~~I mean, WorldCom proposed language in its~~
 5 ~~testimony that would specify that if Qwest~~
 6 ~~reconfigures loops into a different binder group, it~~
 7 ~~shall do so in a competitively neutral manner,~~
 8 ~~consistent with all relevant industry standards, and~~
 9 ~~that loops won't be delayed by any lack of~~
 10 ~~availability of specific binder groups or spectrum~~
 11 ~~exhaust. And those were the two issues that we -- I~~
 12 ~~don't see how these changes respond to that request.~~

13 ~~MS. LISTON:~~ MS. LISTON: And I think what the concern
 14 ~~-- I mean, the position that Qwest is taking is that~~
 15 ~~we don't do up-front rejects based on facilities, so~~
 16 ~~that we would not be in a situation where we would be~~
 17 ~~rejecting it because of binder group information.~~

18 ~~So the only thing that -- what we tried to~~
 19 ~~do, then, was look to see what may have indicated~~
 20 ~~that that would be our policy. And when we saw these~~
 21 ~~two, we said, Well, it could be that this would lead~~
 22 ~~one to believe that we're going to do the up-front~~
 23 ~~rejects. We were not in a position right now to go~~
 24 ~~ahead and incorporate new language to put more~~
 25 ~~specific, because at this point we are accepting the~~
 26 ~~orders regardless. And if we have facilities that~~

1 ~~SGAT/271 WORKSHOP IV, 8/1/01 5626~~
 2 ~~meet what you ask for, we're going to provide it.~~
 3 ~~MS. HOPFENBECK:~~ MS. HOPFENBECK: Regardless of spectrum
 4 ~~exhaust?~~
 5 ~~MS. LISTON:~~ MS. LISTON: Exactly.
 6 ~~MS. HOPFENBECK:~~ MS. HOPFENBECK: So that's what you're --
 7 ~~MS. LISTON:~~ MS. LISTON: So rather than put in a
 8 ~~specific provision saying that, we wanted to remove~~
 9 ~~language that would indicate that we were going to do~~
 10 ~~some kind of up-front rejection.~~

11 ~~JUDGE RENDAHL:~~ JUDGE RENDAHL: With that explanation, Ms.
 12 ~~Hopfenbeck, is that something you need to take back?~~

13 ~~MS. HOPFENBECK:~~ MS. HOPFENBECK: It is.

14 ~~JUDGE RENDAHL:~~ JUDGE RENDAHL: Okay. Well, why don't we
 15 ~~put Four as a takeback with reference to Exhibit 943,~~
 16 ~~and then you all can let us know in briefing whether~~
 17 ~~it's acceptable or --~~

18 ~~MS. SACILOTTO:~~ MS. SACILOTTO: Well, I would hope that we
 19 ~~could find out beforehand, because I don't want to~~
 20 ~~brief it if we're all okay. And I appreciate that~~
 21 ~~Ann needs some time to get back with her client, but~~
 22 ~~I'm wondering if we can, since we have, under your~~
 23 ~~ruling, Your Honor, five weeks before briefs are due,~~
 24 ~~maybe she can get back to us, you know, as soon as~~
 25 ~~possible and let us know. I really don't want to~~
 26 ~~have either of us go through unnecessary briefing.~~

1 product or process change that is being announced
2 through the forum.
3 And to the subpart of the question that was
4 asked, that process itself is going under
5 transformation through a collaborative effort of
6 interested CICMP participants and Qwest to really
7 take the existing process as it exists and the change
8 that was introduced last year, to expand it from a
9 systems oriented process to a more inclusive process
10 and systems process, and really redefine it using the
11 emerging guidelines out of the OBF for change
12 management and other change management processes
13 across the country as the guiding force.

14 I believe those meetings actually began in
15 earnest, full-day, lock-down type sessions last week.
16 And so in a number of weeks there should be, at the
17 very least, a framework that a subcommittee, if you
18 will, is going to be presenting to the broader CICMP
19 process. I think the most effective way to address
20 the issues that are being raised by AT&T is to ensure
21 that those concerns are accounted for in the revised
22 process.

23 I can appreciate that your operations
24 people don't always completely understand 271
25 obligations. However, counter to that, I think that

1 there is a lot of good work and good decisions that
2 come out of having the operational people from our
3 multiple companies sit in a room and really hammer
4 out an issue, regardless of what the legal
5 requirement may be, the practical implications of
6 something and getting service actually provided to an
7 end user in most instances, at least in my mind,
8 would outweigh any technical deviations from a 271
9 obligation.

10 MS. SACILOTTO: I would just agree with Mr.
11 Viveros. You know, the technical publications are
12 intended to be for the operational folks. It's been
13 our position that CICMP was the appropriate place to
14 review them, not through these workshop processes.
15 And what we committed to do and what we've been doing
16 is having our operational people revise those
17 technical publications. Hence, we've had Mr. Orrel
18 and other people attending these workshops so that
19 they are familiar with what has occurred here, and
20 then the place that we can discuss this issue would
21 be through the CICMP process.

22 JUDGE RENDAHL: Ms. DeCook and Ms. Kilgore
23 and Mr. Zulevic.

24 MS. DeCOOK: A comment on that. You know,
25 it's all well and good to have operational people

1 product or process change that is being announced
2 through the forum.
3 And to the subpart of the question that was
4 asked, that process itself is going under
5 transformation through a collaborative effort of
6 interested CICMP participants and Qwest to really
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18 and other people attending these workshops so that
19 they are familiar with what has occurred here, and
20 then the place that we can discuss this issue would
21 be through the CICMP process.

22 JUDGE RENDAHL: Ms. DeCook and Ms. Kilgore
23 and Mr. Zulevic.

24 MS. DeCOOK: A comment on that. You know,
25 it's all well and good to have operational people

SGAT/271 WORKSHOP IV, 8/1/01 5639

1 to specific tech pubs when it talks about certain

2 issues. I know most about loops, and I know that the

3 loop tech pub has been specifically referenced. As

4 such, in my mind, it's incorporated by reference into

5 the SGAT, which makes it something appropriate for

6 review in this proceeding.

7 This is not new. Our original position was

8 that all terms and conditions relating to these

9 services should be incorporated into their SGAT and,

10 you know, they objected strenuously to that, so this

11 is where we are now. And as we're seeing them say

12 we've issued a new tech pub in compliance with

13 agreements that have been made in this process, and

14 then we review that publication and see that it's

15 still not -- it still does not reflect what's been

16 going on here, I think that that raises even further

17 our concern that this has to be dealt with now and

18 not outside this process.

19 MS. SACILOTTO: Well, I don't think there's

20 any disagreement on our part that if you believe that

21 there is something that's inconsistent in a tech

22 pub, that you can't raise that issue with Qwest.

23 We've just proposed that, rather than have lawyers

24 and people who go through these very technical

25 operational documents, that it be done through the

SGAT/271 WORKSHOP IV, 8/1/01 5641

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24 and people who go through these very technical

25 operational documents, that it be done through the

SGAT/271 WORKSHOP IV, 8/1/01 5640

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2 issues. I know most about loops, and I know that the

3 loop tech pub has been specifically referenced. As

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5 the SGAT, which makes it something appropriate for

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24 and people who go through these very technical

25 operational documents, that it be done through the

SGAT/271 WORKSHOP IV, 8/1/01 5642

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2 issues. I know most about loops, and I know that the

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4 such, in my mind, it's incorporated by reference into

5 the SGAT, which makes it something appropriate for

6 review in this proceeding.

7 This is not new. Our original position was

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19 MS. SACILOTTO: Well, I don't think there's

20 any disagreement on our part that if you believe that

21 there is something that's inconsistent in a tech

22 pub, that you can't raise that issue with Qwest.

23 We've just proposed that, rather than have lawyers

24 and people who go through these very technical

25 operational documents, that it be done through the

SGAT/271 WORKSHOP IV, 8/1/01 5647
1 to be articulated through CICMP, we are entitled to
2 bring that back in connection with the 271
3 proceedings, because they suppose -- the
4 representations were made to resolve issues to bring
5 some sort of initial compliance on whatever checklist
6 then we were talking about where it came up. So you
7 know, a representation is nothing without proof that
8 it's been articulated, so I think we're entitled to
9 bring that back.

10 Finally, I am simply not willing to foist
11 upon the technical and operational people we have in
12 CICMP to act like lawyers and to make legal arguments
13 and to impose that burden on them. They have no idea
14 of what their rights are, they don't know what they
15 can expect with regard to Quest, and they have
16 absolutely no knowledge or history of the
17 representations that were made in the 271 process.

18 And so for purposes of continuity and
19 consistency, for example, on Covad's behalf and the
20 positions we're pushed for, it really has to come
21 back, when we're talking about 271 representations,
22 to these proceedings.

23 JUDGE RENDAHL: Okay. Ms. Hopfenbeck, then
24 Ms. DeCook.

25 MS. HOPFENBECK: Ms. Doberneck said it all.

SGAT/271 WORKSHOP IV, 8/1/01 5648
1 JUDGE RENDAHL: Okay. Ms. DeCook.
2 MS. DECOOK: Just very briefly, we --
3 Quest, as currently devised -- the process hasn't
4 been changed, but as currently devised, it would
5 allow Quest ultimate discretion as to what they do
6 with the tech pubs or IRG. We could raise our
7 issues, but it's up to them whether they change
8 anything at all.

9 That may change as part of the discussions
10 that occur on a going forward basis, but I think that
11 qualifies why we're not yet willing to use the
12 Quest process as a surrogate. At this point, it
13 doesn't provide us with an ultimate Commission review
14 as to whether the changes Quest has made are
15 consistent with the order, are consistent with the
16 agreements, are consistent with 271 obligations. I
17 know that that has to be done in front of the
18 Commission.

19 And we certainly don't want to take all
20 these issues to a dispute resolution process. That's
21 going to take forever. So you know, I am extremely
22 troubled by the angle that Quest is taking on this.
23 I know it's tempting to divert all of these issues
24 to the Quest process, rather than the 271 review. I
25 know that's inappropriate.

SGAT/271 WORKSHOP IV, 8/1/01 5649
1 JUDGE RENDAHL: Thank you. Ms. Strain.
2 MS. STRAIN: I just have a question about
3 how would you want the 271 process to address the
4 issue that concerns you -- I guess I'm talking to the
5 CLECs here -- about the tech pubs not being
6 consistent with either your interconnection
7 agreements or the SGAT, in terms of the legal
8 obligations? What is it you're looking for the 271
9 process to give you when -- you know, before this
10 docket closes? I guess, you know, I'm hearing that
11 -- well, that's just my question, so --

12 MS. DOBERNECK: I'll give a quick response.
13 Methods of procedure. Mr. Zulevic testified about
14 methods of procedure that impose additional
15 obligations on Covad in connection with receiving
16 collocation space. The representation was made that,
17 okay, we'll run the methods of procedure through
18 CICMP to make sure that no additional obligations are
19 imposed on any CLEC in connection with collocation
20 over and above what's in the interconnection
21 agreement or the SGAT.

22 And so what I envision is it's those kinds
23 of representations, you know, when the documents are
24 run through CICMP, when we have the opportunity to
25 measure them up, and if that representation that was

SGAT/271 WORKSHOP IV, 8/1/01 5650
1 made, to make the agreements consistent, say, with
2 methods of procedure and it didn't happen or we
3 dispute that it's consistent with the representation
4 that was made, that's what we would bring forward to
5 the Commission, is the fact that we don't believe the
6 representation was satisfied.

7 I'm not anticipating that we would ask the
8 Commission, for example, to resolve a specific
9 technical issue. Just simply, yes, it's consistent,
10 no, it's not, go back and fix it.

11 MS. STRAIN: Are you looking for something
12 to come out of this docket that would establish a
13 procedure that you would use on an ongoing basis or
14 would you be -- I guess that's what I'm asking about,
15 is are you saying that, you know, what will come out
16 of this proceeding will be either you comply or you
17 don't comply.

18 I guess what I'm wondering is are you
19 looking for the Commission here to decide on what the
20 right method is that you all should be using in order
21 to resolve any kind of disputes that come up about
22 the consistency of tech pubs and SGAT and/or
23 interconnection agreements, or is the proper forum
24 for that to bring arbitration proceedings before the
25 Commission under your interconnection agreements or

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 2 I would like to see in this workshop. What I would consider
 3 to be that the discussion that we've had here really
 4 goes into what's discussed in the prehearing
 5 conference and what should occur in the future. And
 6 so I will consider the discussion here as a part of
 7 the discussion on future process. So do not, please,
 8 forget this issue for this workshop. Okay. Let's be
 9 off the record.
 10 (Voice taken.)
 11 JUDGE RENDAHL: Let's be on the record.
 12 Starting with Loop Issue 11, is there an issue, Ms.
 13 DeCook?
 14 MS. DECOOK: No, not an issue, but I
 15 would just like to add, Mr. Zulevic brought this up
 16 into the --
 17 JUDGE RENDAHL: Please talk into the mic.
 18 Thank you.
 19 MS. DECOOK: Mr. Zulevic brought this up
 20 in the time sharing context, but I'd also like to
 21 note that with respect to Loop 11-G, which is the
 22 proposed for loop conditioning, we'd just simply
 23 refer the Commission to the Texas arbitration
 24 decision, in which the Texas Commission set a 10-day
 25 interval for conditioning, or conditioned line-shared
 26 loop. And while we're still advocating for five

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 2 MS. DOBERNECK: I will.
 3 JUDGE RENDAHL: Oh, okay.
 4 MS. DOBERNECK: Just not at the moment.
 5 JUDGE RENDAHL: You will, okay. Thank you.
 6 So anything else on Issue 11?
 7 MS. DOBERNECK: Page 125 for that specific
 8 cite.
 9 JUDGE RENDAHL: Thank you. We did change
 10 Issue 1-K from closed to impasse, because we closed
 11 Loop Issue 1-A. That was my understanding. But
 12 other than that, is there anything else on 11? Okay.
 13 Twelve?
 14 MS. DECOOK: Nothing new.
 15 JUDGE RENDAHL: Thirteen?
 16 MS. LISTON: Thirteen. Qwest does have new
 17 SGAT language.
 18 JUDGE RENDAHL: Has that already been
 19 circulated?
 20 MS. LISTON: I don't think it has been
 21 circulated. Joanne, did you circulate that before?
 22 This is the one that's 9.2.2.10. Might as well hand
 23 them both out.
 24 JUDGE RENDAHL: Okay. This is 9.2.2.10?
 25 MS. LISTON: That's the first SGAT section
 26 on the top of this page. There's several different

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 2 I think we at least think it supports the proposition
 3 that the conditioning interval should be less than
 4 10.
 5 MS. LISTON: The only thing that Qwest has
 6 to say to that, and I'd have to go back and look,
 7 like I said earlier, I have not read the Texas
 8 decision, but I believe that Texas was one of the
 9 states that did conditioning outside of the
 10 prehearing interval, and I don't know if it's 10
 11 days, plus their five for service installation, so
 12 that's one of the things that I want to go back and
 13 check.
 14 MS. FACILITATOR: And we would just point the
 15 Commission to the other evidence we've submitted that
 16 suggests that -- or that demonstrates that other BOCs
 17 are doing it on an IED basis, not even within any
 18 kind of prehearing interval.
 19 JUDGE RENDAHL: Okay. Ms. Doberneck, do
 20 you have a page site to that, or do you have a full
 21 site? I think we had a full site initially, but can
 22 you repeat that?
 23 MS. DOBERNECK: I will pull it up and
 24 provide it to you before we leave today.
 25 JUDGE RENDAHL: Okay. Thank you. But I
 26 want to see how a page site on this one?

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 2 SGAT sections. While that's being passed out, I'll
 3 just give a little bit of information. The loop plus
 4 multiplexing issue, we've discussed it in this
 5 workshop a little bit, we've gone through several
 6 pieces of working towards loop plus MUX. On Friday,
 7 July the 27th, the loop MUX CICMP notification was
 8 distributed to the parties, and the notification
 9 included service availability, product description,
 10 and basically the ordering process. And the product
 11 catalog, the PCAT description of the loop plus MUX
 12 was also included.
 13 In Oregon, we did address the loop plus MUX
 14 SGAT language, although I don't know if we ever
 15 completely got all of it on the record in Oregon.
 16 What we've done is brought that language forward here
 17 to Washington in hopes that we can close this issue
 18 regarding loop plus MUX. Basically, what we had to
 19 do in the SGAT section was to make some changes to
 20 point it to the EEL portion of the SGAT. The
 21 original SGAT language is pointed to UDIT, and that
 22 was incorrect, so we've made some modifications so
 23 that it's pointing to the correct SGAT sections.
 24 JUDGE RENDAHL: Okay. I have marked what
 25 starts as SGAT Sections 9.2.2.10 and various ones as
 26 Exhibit 944, and 9.1.13 as 945. All right. Response

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1 for unclassified loops under the rates -- under the
 2 rates, terms, and conditions for multiplexing of
 3 EELs. It doesn't just say you order it under that;
 4 it talks about the rates, terms and conditions.
 5 MR. KOPTA: No, and I agree that that
 6 addresses the issue of ordering it, but when I'm
 7 thinking of ordering, I usually think of that in
 8 terms of ordering a new circuit, not converting an
 9 existing circuit from a private line service to an
 10 unclassified loop.
 11 MR. LISTON: And I think, when we look at
 12 ordering, it's any request that comes in to Qwest --
 13 any request that Qwest receives from a CLEC. It
 14 could be a conversion, it could be a new connect, it
 15 could be a change. You know, there's multiple kinds
 16 of orders that you place. Conversions are one of the
 17 types of orders, you know, new connect is another
 18 type of order. So I think that -- I think it's just
 19 language.
 20 MR. KOPTA: I agree. And I just want to
 21 make it clear that ordering does include conversion.
 22 I mean, it's kind of a unique issue, just because of
 23 the FCC requirements.
 24 MS. SACILOTTO: Yeah.
 25 MR. KOPTA: And it applies really pretty

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1 SGAT/271 WORKSHOP IV, 8/1/01
 MR. KOPTA: Yes.
 2 MS. DeCOOK: Okay.
 3 MS. SACILOTTO: Can we take that -- let's
 4 take that under speedy consideration.
 5 MR. KOPTA: Sure. That's fine.
 6 MS. SACILOTTO: Okay. Because I want to
 7 make sure that we run this by Ms. Stewart.
 8 JUDGE RENDAHL: Okay. Now, even if the
 9 parties agree to that language on 944, it still looks
 10 like there's an open issue concerning Qwest providing
 11 the product notification documents to XD and ELI.
 12 MS. SACILOTTO: Jean, can you update on the
 13 notices that went out?
 14 MS. LISTON: Yeah, the notice went out to
 15 the parties on Friday, the 27th of July, so Qwest has
 16 provided a product notification through the CICMP
 17 process.
 18 MR. KOPTA: Well, I did get a copy of the
 19 notice of the loop plus multiplexing product, along
 20 with some other notices that were sent out on the
 21 27th. I've looked at those quickly, as well as
 22 looking at the references on Qwest's Web site for
 23 those particular products.
 24 And I think, with the changes in the SGAT,
 25 the only issue that I really have with what Qwest has

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1 SGAT/271 WORKSHOP IV, 8/1/01
 2 such only to EELs and loops, and so I just want to
 3 make sure that there isn't any question that when
 4 we're talking about ordering conversions and -- so my
 5 concern is only to make absolutely clear that there
 6 isn't any disconnect in terms of people's
 7 understanding that are looking at this agreement
 8 after we're not in the picture.
 9 MR. LISTON: What if we -- I mean, we could
 10 get the same language, I guess, into 9.2.4.6 about
 11 the, you know, making the reference back to the EEL
 12 section of the SGAT.
 13 MR. KOPTA: That would be great if you
 14 would do that, because I think that would make it
 15 clearer.
 16 JUDGE RENDAHL: So is there language that
 17 the parties are going to work on offline or try to do
 18 something right now?
 19 MR. KOPTA: Well, I think what we could do
 20 is just take the second sentence in 9.2.2.10, and
 21 move it into 9.2.4.6, and the only thing we would
 22 have to change is maybe replace the word "order" in
 23 that sentence in 9.2.2.10 with "convert" when we move
 24 it to 9.2.4.6.
 25 MS. DeCOOK: Do you mean replicate it in
 9.2.4.6, also leaving it in 9.2.2.10 as is?

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1 sent out by way of notification and what it's set up
 2 on its Web site is that on the Web site, when we're
 3 talking about -- or when Qwest is talking about
 4 converting existing private line or special access
 5 circuits to this new loop plus multiplexing
 6 combination, there's a prequalification process that
 7 has response intervals for, depending on the number
 8 of circuits, for one to 28 circuits, the response
 9 interval is nine business days; for 21 to 60
 10 circuits, the response interval is six business days;
 11 for 61 to 99 circuits, it's seven business days; and
 12 100 or more, it's negotiated with the Qwest service
 13 manager. And I don't remember this being part of
 14 Exhibit C that had the other intervals in it, nor do
 15 I remember this being a part of the discussion of
 16 conversion of EELs, and so I wanted to question
 17 whether this is something new or whether it's
 18 something in the SGAT that I've simply missed.
 19 JUDGE RENDAHL: Ms. Liston or Mr. Viveros?
 20 MS. LISTON: I don't remember seeing the
 21 loop plus MUX intervals in Exhibit C, either. I know
 22 that Ms. Stewart was addressing many of the intervals
 23 with EELs and we were looking at the loop plus MUX
 24 issues with the deployment of some of the EEL issues.
 25 And I don't -- I don't know if there was discussion

1 SGAT/271 WORKSHOP IV, 8/1/01 5671
2 JUDGE RENDAHL: Okay. Anything on 14, 15,
3 MS. HOPFENBECK: Closed.
4 JUDGE RENDAHL: Closed?
5 MS. HOPFENBECK: Well, at least A, closed.
6 JUDGE RENDAHL: A is closed, okay. B?
7 MS. LISTON: B, we had a -- Qwest had a
8 takeback to check on number portability and loop
9 qualification. I have been advised that, currently,
10 both the wholesale and retail, if a customer has a
11 ported telephone number, that information is not
12 accessible through a qualification, and that is both
13 on retail and wholesale. Our systems people have
14 been advised of this. There is not a system fix
15 that's scheduled right now. They're looking at
16 trying to see if they can get something scheduled,
17 but we are aware that the problem is there, and it is
18 a problem that is applicable both to wholesale and
19 retail.
20 JUDGE RENDAHL: Any comment, Ms. Kilgore?
21 MS. KILGORE: Just to clarify, Jean, are
22 you talking about all ported numbers or just numbers
23 that are geographically ported from one CO to
24 another?
25 MR. VIVEROS: It's the latter. I mean, the

1 SGAT/271 WORKSHOP IV, 8/1/01 5672
2 investigation was around the specific scenario that
3 Mr. Sekich raised. And when a Qwest retail customer
4 moves and wants to retain their number and we port it
5 via geographic porting, the service at the new
6 location with the non-native number for that switch
7 is then not available in the loop qualification
8 database. And we had offline discussions around what
9 might be driving that.
10 What Ms. Liston explained is correct, and
11 that was information that we supplied offline to Mr.
12 Sekich at the last workshop, at the first workshop.
13 As Ms. Liston indicated, our systems organization is
14 aware of the issue and are working to eliminate that
15 limitation. We just don't have a date for when that
16 might occur. That is specific to the scenario of a
17 retail customer who is retaining Qwest as their
18 service provider porting.
19 JUDGE RENDAHL: Okay. Does that address
20 your concern, Ms. Kilgore?
21 MS. KILGORE: I think it does. Is there a
22 way -- does this mean that that information, the loop
23 qualification information, is not available in the
24 database, period, or is there a way to manually push
25 this so that we can get that information for that
line?

1 SGAT/271 WORKSHOP IV, 8/1/01 5673
2 MR. VIVEROS: Well, the limitation has to
3 do with the fact that the number is non-native for
4 that wire center. I shouldn't say for the wire
5 center. For that switch. So it's not there. And
6 that is what precludes us, on a retail basis, from
7 being able to qualify a customer for DSL at their new
8 location. They are looking at how they might be able
9 to associate the loop makeup for that service with
10 the non-native number and have it readily available
11 in the loop qualification database.
12 JUDGE RENDAHL: Mr. Zulevic.
13 MR. ZULEVIC: This would also apply to a
14 case where we may be wanting to provide DSL services
15 to a ported number, as well as if Qwest were -- you
16 know, it's not just restricted to when Qwest is the
17 underlying provider of DSL through Megabit; it would
18 be any time it's a ported number, geographically.
19 It is possible, however, to do a manual
20 loop qual, would it not, to be able to physically
21 test an individual loop, not using the MTF, and
22 determine whether or not it has the proper
23 characteristics to provide DSL service?
24 MR. VIVEROS: It's certainly possible, on a
25 manual basis, to have, you know, someone go in and
locate source records for that non-native telephone

1 SGAT/271 WORKSHOP IV, 8/1/01 5674
2 number and manually transcribe the loop makeup and
3 provide it to a CLEC.
4 MS. LISTON: The other alternative that's
5 available to the CLECs is that, like we've said
6 before, if they place the order, we will go through
7 the qualification process and look for facilities
8 that would meet their request. So even though -- I
9 mean, other jurisdictions, I mean, other companies
10 have a 72-hour manual pre-survey option, Qwest does
11 not have that in place. However, we would accept the
12 order and do a manual verification that includes
13 overall assignment, and if we do find anything that
14 works, we will go ahead then and notify the CLEC that
15 it does meet qualifications and we can place the
16 order and it will move ahead within the five-day
17 interval.
18 MR. ZULEVIC: Would there be a charge for
19 that type of a manual qualification?
20 MS. LISTON: No, because that's the basic
21 process associated with your ordering and your loop
22 assignments to begin with. So it would be you place
23 the order and, you know, we do a 72-hour FOC on it.
24 If we find valid facilities that are going to work,
25 we'll provision it and keep going and you'll get the
five-day interval. So we won't preclude you because

SGAT/271 WORKSHOP IV, 8/1/01 5679
 1 happens when a ported number comes up. It sounds
 2 like it's just rejected, there's no facilities
 3 available, or it doesn't qualify when you try to do a
 4 loop qual. How often does that happen; how many
 5 ported -- geographically ported numbers are we
 6 dealing with; is there a work around method that you
 7 could use until you have it mechanized so it would be
 8 more of a flow-through.

9 Also, I would wonder when you feel that you
 10 may have that mechanized fix available. So those are
 11 the kinds of questions that come to my mind.

12 MS. LISTON: Like I said earlier, you know,
 13 to the extent that we have our loop qualification
 14 tools, it will be audited. They are in a situation
 15 where -- we are in a parity situation where it's both
 16 Qwest and the CLECs right now that don't have access
 17 to this on a qualification basis. For unbundled
 18 loops, the CLECs can put the orders in. I can't
 19 answer the line sharing one. I'd have to do some
 20 checking.

21 I guess my only concern regarding AT&T is
 22 are you suggesting that we wind up having an offline
 23 meeting, conference call kind of situation, where we
 24 continue developing the record or -- I'm just not
 25 sure what --

SGAT/271 WORKSHOP IV, 8/1/01 5680

1 MS. DeCOOK: I'd like to understand if
 2 there's a possibility of a work around that we --
 3 JUDGE RENDAHL: This is my suggestion,
 4 that we leave this as an open issue and allow AT&T
 5 and Covad and Qwest to look into this in whatever
 6 process you wish to. If you reach some conclusion
 7 that it's either okay, you know, Qwest's proposal,
 8 and AT&T and Covad are fine with it, then let us know
 9 that it's a closed issue. If it becomes an impasse
 10 issue, let us know, and you can brief it.

11 To the extent that there may be additional
 12 information that you need to present to us through
 13 documents, you know, then I leave it up to you all to
 14 request late admission of them, but I think we should
 15 leave this as open for now and move on and see if we
 16 can finish up in the next 15 minutes.

17 MS. DeCOOK: That's fine with me.

18 JUDGE RENDAHL: Is that acceptable, Ms.
 19 Sacilotto?

20 MS. SACILOTTO: Well, I need to consult
 21 with Ms. Liston and Mr. Viveros on whether or not
 22 they think that's going to be acceptable or if we are
 23 prepared now to just simply -- you know, what we said
 24 is what we said.

25 MS. LISTON: We're okay. We'll take it the

SGAT/271 WORKSHOP IV, 8/1/01 5681

1 way that you said it, Your Honor.

2 JUDGE RENDAHL: Okay. Then let's leave 8,
 3 16-B as open for the moment and let you all try and
 4 work this through. Is there anything -- okay.

5 Seventeen and 18 are closed. Anything on 19?

6 MS. KILGORE: I believe that 19 is closed,
 7 based on a conversation that I had with Mr. Orrel,
 8 where he agreed to put "NID or" back into that
 9 section, 9.2.5.1. Since he's not here, I don't know
 10 if he communicated that to his colleagues.

11 MS. SACILOTTO: Well, he didn't communicate
 12 that to his Counsel, but I can --

13 MS. LISTON: He did to me.

14 MS. SACILOTTO: -- close it subject to
 15 check.

16 JUDGE RENDAHL: Ms. Liston says that he did
 17 communicate that to her.

18 MS. SACILOTTO: Oh, good.

19 JUDGE RENDAHL: Is that correct, Ms.

20 Liston?

21 MS. LISTON: That's correct. Sorry, Kara.

22 JUDGE RENDAHL: Is that okay with you now,
 23 Ms. Sacilotto?

24 MS. SACILOTTO: I was assuming I was out of
 25 the loop, so to speak.

SGAT/271 WORKSHOP IV, 8/1/01 5682

1 MS. LISTON: Which one is it? Is it 19?

2 MS. KILGORE: It's 19.

3 JUDGE RENDAHL: Can we close 19?

4 MS. LISTON: Yes.

5 JUDGE RENDAHL: Ms. Sacilotto?

6 MS. SACILOTTO: Yeah.

7 JUDGE RENDAHL: Okay.

8 MS. LISTON: Sorry, Kara.

9 JUDGE RENDAHL: Twenty, 21, and 22 are
 10 closed subject to either OSS testing or performance
 11 measures. I think that finishes the loops, unless
 12 there are additional issues. Ms. DeCook.

13 MS. DeCOOK: I just had a bit of
 14 information for the record. I talked to Ms. Liston
 15 about it and told her what I was going to say and
 16 what my proposal is on it. We were asked at the last
 17 workshop whether we had any DSL customers in
 18 Washington, and I learned, through a contact last
 19 week, that we do have several. And in fact, we, at
 20 least with respect to one of our customers, have had
 21 a meeting with Qwest on some of the issues, some of
 22 the issues we have addressed here in the workshop,
 23 and either we have fixes for them or we've deferred
 24 them subject to performance review.

25 Those include facility availability issues.

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 1 pointed out in Oregon that it hadn't made the SGAT.
 2 JUDGE RENDAHL: Got it. So we're done with
 3 loops. There are no MID issues, correct?
 4 MS. KILGORE: Correct.
 5 JUDGE RENDAHL: So the last issue is line
 6 sharing?
 7 MR. WILSON: Splitting.
 8 JUDGE RENDAHL: Line splitting. Let's be
 9 off the record for a moment.
 10 (Recess taken.)
 11 JUDGE RENDAHL: We're ready to go on line
 12 splitting. Let's be back on the record. Ms. Liston,
 13 which of the issues that are remaining, or should I
 14 be asking Ms. DeCook or someone else?
 15 MS. LISTON: I believe that the two that
 16 are open are Line Split 7 and Line Split 8.
 17 MS. DeCOOK: Just one comment on line --
 18 I'm hoping I'm reading this right. Line Splitting 1.
 19 No, maybe it's -- it's the one that says impasse
 20 issue, Washington Line Splitting 1-A. No, sorry. I
 21 have the line sharing.
 22 JUDGE RENDAHL: Okay. So Line Splitting 7
 23 and 8 for Washington.
 24 MS. KILGORE: I had a question on 2.
 25 JUDGE RENDAHL: On 2, okay. Go ahead.

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 MS. KILGORE: I understand that Qwest has
 2 changed their policy and is agreeing to continue to
 3 provide Megabit service on UNE-P lines.
 4 MS. LISTON: Correct.
 5 MS. KILGORE: Could you explain why Qwest
 6 will not do Megabit on UNE loop, for example, a
 7 different way that the CLEC might be providing local
 8 service over Qwest facilities? Is it a technical
 9 reason?
 10 MS. LISTON: So looking at -- so if you
 11 purchased an unbundled loop, whether we would be
 12 willing to partner with a CLEC and do the data?
 13 MS. SACILOTTO: We're not already providing
 14 Megabit, I think is the concept with an unbundled
 15 loop.
 16 MS. KILGORE: You might be.
 17 MS. SACILOTTO: What scenario?
 18 JUDGE RENDAHL: Ms. Liston, do you
 19 understand the question?
 20 MS. LISTON: I understand the question.
 21 I'm just -- I mean, I guess my initial reaction is
 22 that when you look at an unbundled loop scenario, we
 23 would be in a position -- we always said, you know,
 24 when you're into a line splitting scenario, it's an
 25 agreement between the CLEC and the DLEC, and that

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 1 we're providing -- it's voice and data from two
 2 different providers. Qwest is not party to that.
 3 Qwest is not in a position that we would be
 4 offering Megabit on an unbundled loop basis. I'm not
 5 sure if we could technically do it. I mean, I've not
 6 investigated this issue, this is a brand new issue.
 7 And I'm just trying to think through whether there
 8 would be technical limitations associated with that.
 9 But this is -- in all of the multiple workshops, this
 10 is the first time this issue has been asked on
 11 whether we would do Megabit on an unbundled loop.
 12 JUDGE RENDAHL: Okay. In the interest of
 13 time -- let's be off the record for a moment.
 14 (Discussion off the record.)
 15 JUDGE RENDAHL: Let's be back on the
 16 record. I think the remaining line splitting issues
 17 are 7 and 8. So let's turn to 7. The issue is
 18 should references to voice services and data services
 19 be replaced with references to low frequency and high
 20 frequency? That was an AT&T/Qwest takeback. Is
 21 there any resolution of that?
 22 MS. LISTON: The exhibit that was
 23 distributed, 945.
 24 JUDGE RENDAHL: That's the language that's
 25 proposed to resolve it?

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 1 SGAT/271 WORKSHOP IV, 8/1/01
 MS. LISTON: That's the language that's
 2 proposed to resolve it. And then we have one
 3 additional change. We met with AT&T during the
 4 breaks this morning, and we will add one more
 5 sentence to the end of the SGAT section, and I
 6 believe then we are in agreement.
 7 JUDGE RENDAHL: Okay.
 8 MS. LISTON: The new sentence is "Other
 9 references to the voice, in quotes, or voice band, in
 10 quotes, portion of the loop in this agreement will
 11 mean the low frequency portion of the loop."
 12 MS. DOBERNECK: Would you read that again?
 13 MS. LISTON: "Other references to the voice
 14 or voice band portion of the loop in this agreement
 15 will mean the low frequency portion of the loop."
 16 JUDGE RENDAHL: Does low frequency need to
 17 be in quotes?
 18 MS. KILGORE: No.
 19 MS. LISTON: No.
 20 JUDGE RENDAHL: Just the voice and voice
 21 band?
 22 MS. LISTON: Correct.
 23 JUDGE RENDAHL: And that's acceptable to
 24 AT&T?
 25 MS. KILGORE: Yes, that issue can now be

1 nothing, those will be admitted.
 2 And then, lastly, there was something that
 3 was circulated by e-mail concerning intellectual
 4 property, a change to Section 5.10 in AT&T exhibit.
 5 Is that something that we need to address?
 6 MS. DeCOOK: No, Your Honor. That should
 7 be introduced in the Colorado proceeding that's going
 8 to take place and will come in the record that way.
 9 JUDGE RENDAHL: Okay. Thank you. With
 10 that, I think we're concluded here. Thank you all
 11 for your patience and willingness to get this done
 12 today. We'll be off the record.
 13 (Proceedings adjourned at 5:20 p.m.)
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**Qwest's Standard
Multi Tenant Environment (MTE)
Terminal Access
Protocol**

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Introduction

Qwest provides CLECs, possessing a valid interconnection agreement, direct access to its multi-tenant environment (MTE) terminals. Direct access to Qwest MTE terminals is provided for the purpose of accessing inside wire owned by Qwest (hereinafter "Intrabuilding Cable"). CLECs may directly access a MTE terminal to obtain access to a subloop unbundled network element (e.g., Intrabuilding Cable) from Qwest or directly access a NID to obtain access to customer owned inside wire.

This document provides the appropriate access methodology or protocol for CLEC access to Qwest owned or controlled MTE terminals that are attached either to the outside of an MTE or inside of a MTE premises. It is intended for use by CLEC field technicians provisioning telecommunications services to its end user customers.

The MTE access protocol is presented by first providing the assumptions and precondition requirements that establish the correct parameters to allow CLEC direct MTE access. It also addresses the conditions in the form of correct behavior to be exercised when accessing a Qwest owned MTE terminal. Then the access protocol is described in the context of where the network demarcation point occurs as well as the MTE termination arrangements found in Qwest's network. This document is intended to illustrate access in many of the large number of MTE terminals placed in Qwest's networks over several decades. While not inclusive of the entire MTE terminal universe, the access protocol provides clear direction for direct CLEC access of the vast majority of such terminals.

Assumptions for direct CLEC Access of Qwest MTE Terminals:

1. There are many types of outside plant (OSP) terminals currently deployed in Qwest's network. This MTE Access Protocol provides CLECs with the methodology to directly access building terminals mounted inside buildings and those attached to the outside of buildings (i.e., Inside Terminals, Wall Feed Terminals).
2. The volume and variety of OSP terminals complicates the capability for any MTE terminal access protocol to address every scenario encountered in Qwest's network. Therefore, proper access methodology to Qwest MTE terminals not identified in the MTE access protocol will be provided on an individual case basis (ICB). Prior to providing proper access methodology, such assessment shall not prevent CLEC from directly accessing Intra-Building Cable Loop utilizing common industry temporizing methods.
3. CLEC will perform appropriate procedures to ensure subloop access to the correct subloop customer. These procedures may include adding tone to the subloop to verify access to the correct end user customer.
4. Qwest and CLECs will always adhere to National Electric Code (NEC) and National Electric Safety Code (NESC) requirements.
5. Access to Qwest subloop UNEs provides CLEC with access to an Intra-Building Cable Loop which is a Qwest provided facility from the building terminal inside a MTE, commonly the MPOE, to the demarcation point at the end user customer premises inside the same building. This subloop UNE only applies when Qwest owns the intra-building cable (i.e., riser cable, inside wire).
6. Access to MTE terminals that perform a demarcation point between Qwest's distribution network and end user customer or landlord owned intra-building cable shall be negotiated between CLEC and the end user customer or landlord. Qwest has no ownership or control of such inside wire or riser cable.

Preconditions for CLEC Access to Qwest MTE Terminals:

1. CLEC has an in effect interconnection agreement in the state where the MTE is located.
2. The appropriate *Qwest Cable Wire Service Termination Policy (CWSTP)* option, as defined by tariff, has been identified for the MTE for which the CLEC desires direct access.
3. Qwest has received a valid local service request (LSR) for subloop access.
4. CLEC termination inventory is contained in appropriate Qwest provisioning and repair systems. CLEC termination inventory creation may occur during, or in conjunction with, the first subloop Intra-Building Cable Loop UNE order in a given MTE terminal.

Conditions for CLEC Access of Qwest Owned MTE Terminals:

1. Access must minimize disruption to Qwest facilities and not disrupt Qwest customer service.
2. Intra building cable (IBC) owned and controlled by Qwest is only to be used to provide telecommunications services, as contemplated in the Telecom Act of 1996, to a MTE end user customer.
3. Line protection of Qwest facilities must remain intact per National Electric Code (NEC) and National Electric Safety Code (NESC).
4. Direct MTE terminal access protocol shall provide CLEC direct access to the customer side of the MTE terminal cross-connect or direct access to the MTE terminal protector field.
5. If no customer cross-connect field exists in the MTE terminal, CLEC shall access utilizing a temporizing method that maximizes long-term accessibility to the terminal (e.g., maintains the length of Qwest's network facilities).
6. Direct MTE terminal access protocol shall provide methodology for CLEC to break direct current (DC) continuity with Qwest's network.
7. Terminal technology and/or subloop volume may necessitate placement or re-placement of a cross-connect field to serve as a single point of interconnection (SPOI).
8. CLEC may access Qwest MTE terminal as a test access point for subloop Intra-Building Cable Loop UNEs leased from Qwest.

CLEC Responsibilities:

A local service request (LSR) must be issued by CLEC to Qwest in all cases before access to a Qwest owned terminal. This will allow Qwest to:

- Remove cross-connects, or connectivity, from records.
- Review terminal for the Cable Wire Service Termination Policy (CWSTP) option.
- Review type of terminal for direct access capability.

When attaching conduit to closures:

- Use existing knockouts in closures.
- If not equipped with knockouts, use standard size hole punch to make an opening.
- Locate opening to not hinder door or other operating parts or cable/jumper paths.
- Conduit entry into MTE terminal must not allow water to drip into closure.

Attaching jumper to Intra Building Cable (IBC):

- Identify IBC from MTE terminal customer side.
- If a cross-connect field exists at MTE terminal, take appropriate action to remove connectivity from Qwest network, if any, and attach CLEC jumper (e.g., "lift and lay").
- If no cross-connect field exists, access IBC by placing a temporary connection.

Housekeeping:

- Maintain a safe and clean work environment at the MTE terminal.
- Remove left-in jumpers completely from terminations (i.e., no dangling ends).
- Dress jumpers in proper raceways or paths.
- Close and secure closure properly.
- Remove any trash resulting from work operation.

Direct MTE Terminal Access Determined by CWSTP Option:

CWSTP Option 1

MTE Terminals identified as Option 1 are MTE network interface devices (NIDs). A MTE NID is defined as a terminal that is simultaneously the minimum point of entry (MPOE) and the network demarcation point where Qwest of telecommunication facilities ownership and control ends and the property owner's ownership and control begins. MTE NID access may be obtained at the protector field, where spare capacity exists, as well as at the customer's inside wire appearance (i.e., customer cross-connect side of the MTE NID). Once inside wire ownership is determined to be that of the end user customer or landlord (i.e., MTE NID), CLEC shall have access to the inside wire without precondition and interference from Qwest.

Qwest provides access into a protector field at MTE NIDs on an individual case basis (ICB) dependent upon the type of protector field present at the MTE terminal, the type of splice stub available to connect to the protector field, and availability of spare unused protectors (i.e., no distribution facilities connected to the protector). The CLEC will be allowed to splice into the protector field, at the splice point on the OSP side of the protector, when spare protector capacity exists. Per pair access will be granted at the protector stub splice, except where modular splice connections exist, and only be allowed in cable size increments appropriate to the spare capacity available in the terminal. In such case, for example, if the splice chamber allows splice strips (i.e., modular connectors) for 25 pair cable increments, CLEC access will be granted in 25 pair increments as spare capacity exists. All cable pairs brought into a MTE NID protection field via splice chamber must be terminated per section 315 of the NESC and section 800.30 of the NEC. If CLEC capacity requirements exceed terminal capacity, Qwest will provide more capacity where it is technically feasible (e.g., space, power, building owner's cooperation) at CLEC request and expense. CLEC may directly access customer owned inside wire without limitation from Qwest. Management of DC continuity with Qwest's network is the responsibility of the CLEC. CLEC is not authorized to manipulate Qwest's terminations or line protectors within the MTE NID.

CWSTP Option 2

Option 2 sets the demarcation point at the floor level in a multi story building. In Option 2, Qwest owns and maintains riser cable from the floor level back to the MPOE terminal. The same architecture also applies to trailer parks and marinas. Option 2 typically provides a readily accessible cross connect field for direct MTE terminal access at the MPOE. Qwest typically inventories Qwest owned inside wire (riser cable) extending beyond the MTE terminal to the network demarcation point. Option 2 MTE terminal access may be obtained at the MPOE

protector field, MPOE terminal, and at the network demarcation point (e.g., located on each floor of a multi-story building or dock of a marina).

- Qwest provides access into a protector field at Option 2 MTE terminals on an individual case basis (ICB) dependent upon the type of protector field present at the MTE terminal, the type of splice stub available to connect to the protector field, and availability of spare unused protectors (i.e., no distribution facilities connected to the protector). The CLEC will be allowed to splice into the protector field, at the splice point on the outside plant side of the protector, when spare protector capacity exists. Per pair access will be granted at the protector stub splice, except where modular splice connections exist, and only be allowed in cable size increments appropriate to the spare capacity available in the terminal. In such case, for example, if the splice chamber allows splice strips (i.e., modular connectors) for 25 pair cable increments, CLEC access will be granted in 25 pair increments as spare capacity exists. All cable pairs brought into a protection field via splice chamber must be terminated per section 315 of the NESC and section 800.30 of the NEC. If CLEC capacity requirements exceed line protector capacity, Qwest will provide more capacity where it is technically feasible (e.g., space, power, building owner's cooperation) at CLEC request and expense.
- CLEC access to customer cross-connects is accomplished in substantially the same manner as Qwest provides for itself. For MPOE terminal access, CLEC places jumper wire between the CLEC controlled cross-connect to the end user customer suite of the Qwest owned MTE terminal. If MTE access is gained at the network demarcation point, the CLEC has direct access to terminations cabled to the suite or apartment units.

CWSTP Option 3

For Option 3, the demarcation point is located either in the suite or apartment unit. Qwest owns and maintains all wire and equipment from the suite or unit back to the central office. Option 3 MTE terminals typically consist of terminals at the MPOE that are hand-wired and contain no readily accessible cross-connect field. The exception to this rule is large MTE buildings. Prior to direct CLEC access, Qwest owned and controlled inside wire for Option 3 MTE terminals was not always inventoried in provisioning and maintenance databases. Hand-wired terminals perform the function of a splice rather than a cross-connect as Qwest technicians have little access to access such terminals. However, the need for over-voltage protection in the MPOE terminal resulted in the placement of a terminal without cross-connects. Option 3 MTE terminal access may be obtained at the MPOE protector field as well as at the network demarcation point between Qwest's owned and controlled inside wire and the first point of entry into the end user customer suite or apartment. Direct CLEC access to Option 3 hand-wired terminals will initially require a temporized connection. If conditions warrant, Qwest will replace the Option 3 hand-wired terminal with a terminal containing a proper cross-connect field and clear demarcation points for test access.

- Qwest provides access into a protector field at MTE terminals on an individual case basis (ICB) dependent upon the type of protector field present at the MTE terminal, the type of splice stub available to connect to the protector field, and availability of spare unused protectors (i.e., no distribution facilities connected to the protector). The CLEC will be allowed to splice into the protector field, at the splice point on the outside plant side of the protector, when spare protector capacity exists. Per pair access will be granted at the protector stub splice, except where modular splice connections exist, and only be allowed in cable increments appropriate to the spare capacity available in the terminal. In such cases, for example, if the splice chamber allows splice strips (i.e., modular connectors) for 25 pair cable increments, CLEC access will be granted in 25 pair increments as spare capacity exists. All cable pairs brought into an MTE NID protection field via splice chamber must be terminated per section 315 of the NESC and section 800.30 of the NEC.
- CLEC access to customer cross-connects are accomplished by first determining the terminal block type (e.g., 66 and 76 type terminal blocks) and following the access procedures outlined below for Option 3.
- If CLEC capacity requirements exceed line protector capacity, Qwest will provide more capacity where it is technically feasible (e.g., space, power, building owner's cooperation) at CLEC request and expense.

CWSTP Option 4

Option 4 provides a MPOE for campus environments. Such terminals may be attached to the MTE but typically are placed near the property line of a campus environment and are detached from MTE buildings usually resting on a separate pad on provided rights of way. Access to attached Option 4 terminals functioning as Option 1 NIDs will be provided as described above in Option 1. Access to Option 4 detached terminals is provided through Field Connection Point (FCP) and collocation processes (see SGAT for terms and conditions).

Access Protocol for Common MTE Terminal Types

66 Type Terminal Blocks

If the 66 type terminal block is a M150 or M125 type, CLEC may directly access the MTE terminal on the customer side of the cross-connect field by performing a "lift and lay" process whereby the Qwest jumper wire is removed and the CLEC jumper wire is placed. If a bridge clip acts as a jumper wire, the CLEC must remove the bridge clip or wire jumper and lay jumper wire on the customer side of the cross connect field. Removal of a bridge clip or wire jumper removes DC continuity with Qwest's network (*Fig 1*).

When found in Option 3, often the 66 terminal block is a single terminating strip. In this scenario, the CLEC must determine the type of line protector provided in the MTE terminal.

- If the protector is a carbon (screw) or fuse type protector, a M150 or M125 type 66 block the existing 66 block must be replaced. Protectors of this type do not provide a mechanism to remove DC continuity that may lead to excessive bridge tap in direct MTE terminal access applications. Qwest will perform the terminal block replacement (*Photo 3*).
- If the protector is a five-pin line protector, CLEC may directly access the terminal by placing a capacity expanding device (Marconi part # SA3) over the existing customer cross-connect and then laying the CLEC jumper wire onto the capacity expanding device. To break DC continuity, the CLEC must remove the five-pin line protector for the end user customer and replace it with a service denial line protector unit (Marconi part # F013789).

Additionally, CLEC must perform the following activities:

1. Tag the CLEC jumper wire with CLEC name and unit number accessed.
2. Properly dress jumper wire in wire guides provided within terminal or on backboard.
3. Provide raceway or conduit appropriate to the environment (i.e., inside versus outside) between the CLEC terminal & the customer side of the Qwest provided terminal.
4. Utilize knockouts, where they exist and are accessible, for conduit placement in attached outside and closed terminals. If no knockouts exist in the MTE terminal for conduit placement, drill hole in such a manner to minimize introduction of moisture into the terminal.

76 Type Terminal Block:

When accessing 76 type terminal blocks (*Photo 5*) in MTE terminals, CLEC may directly access the customer side of the cross-connect field by performing a "lift and lay" procedure. 76 type terminals utilize a screw type binding post connecting the Qwest's distribution network between the central office and the network demarcation point near the end user. Access to 76 type MTE terminals involves the CLEC unscrewing the customer cross connect binding post, removing Qwest's jumper wire, placing CLEC jumper on the customer cross-connect, and tightening the screw on the binding post. Additionally, CLEC must perform the following activities:

1. Tag the CLEC jumper wire with CLEC name and premises unit number accessed.
2. Properly dress jumper wire in wire guides provided within terminal or on backboard.
3. Provide raceway or conduit appropriate to the environment (i.e., inside versus outside) between the CLEC terminal & the customer side of the Qwest provided terminal.
4. Utilize knockouts, where they exist and are accessible, for conduit placement in attached outside and closed terminals. If no knockouts exist in the MTE terminal for conduit placement, drill hole in such a manner to minimize introduction of moisture into the terminal.

Removal of the Qwest jumper wire at the customer cross-connect breaks DC continuity with Qwest's network.

Weather Protection for OSP Wall Feeds

Weather protection must be considered when accessing OSP closures. Typically, wall feeds are located in weatherproof closures mounted on the side of buildings. The closure houses a splice chamber, protector field, and termination block(s). Terminations are grounded per NESC and NEC regulations (*Photo 4*).

To access an OSP closure, the CLEC will place a conduit with a weatherproof connection from CLEC closure to the Qwest closure. This conduit must not obstruct any openings or access panels so as to block entry into the cabinet. The conduit will utilize existing knockouts for entrance into the closure where possible or will place CLEC facilities through the bottom skirting of the closure. CLEC closure must be protected and independently grounded per NESC and NEC standards before connecting conduit to the Qwest closure.

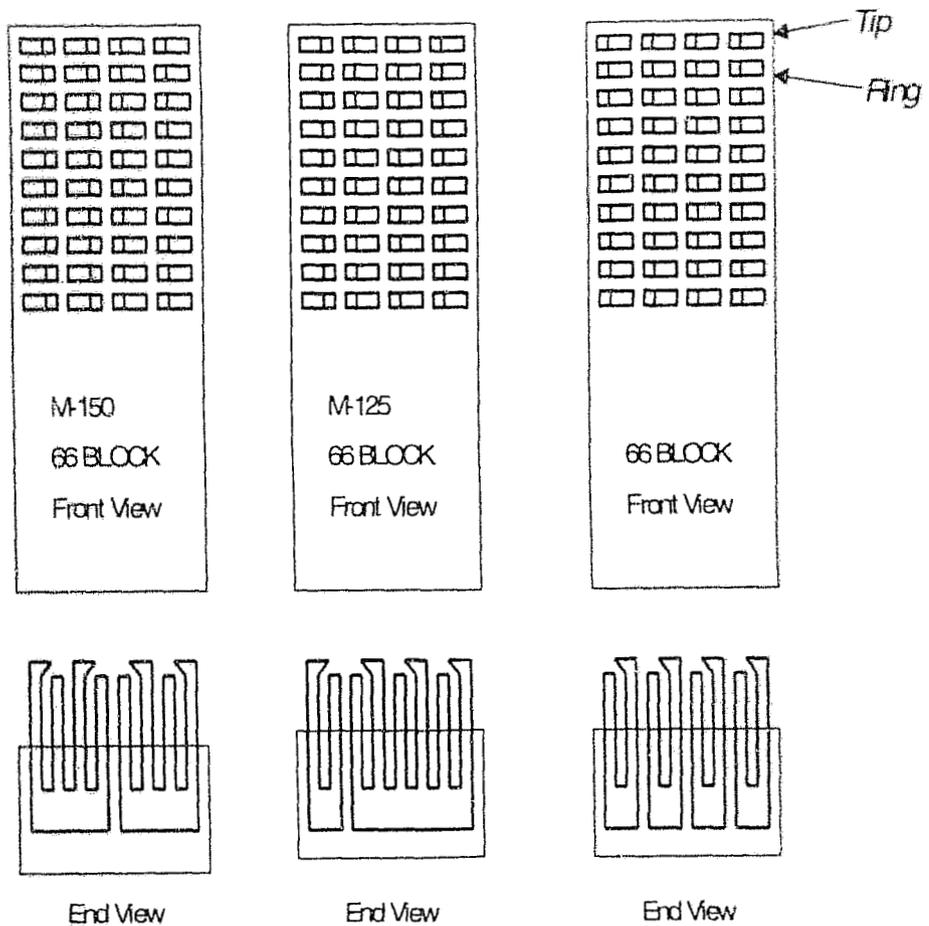


Single Point of Interconnection (SPOI)

For CWSTP options 1, 2, and 3, Qwest may place a Single Point of Interconnection (SPOI) at or near the MTE terminal as space, terminal technology, or terminal access volumes dictate. On an ICB, Qwest will provision a new cross-connect field as a SPOI where technically feasible (space, power, building owner's cooperation). CLEC shall have access to existing MTE terminal prior to placement of SPOI utilizing temporary connections at such terminal.

If a SPOI is placed after direct CLEC access has been granted at a MTE terminal, Qwest will negotiate with CLEC timing to minimize end user customer service disruption to move all existing terminations to the SPOI and subsequent MTE terminal access will be granted to CLEC at the SPOI only.

Family of 66 type blocks



ADDITIONAL ACCESS METHODS

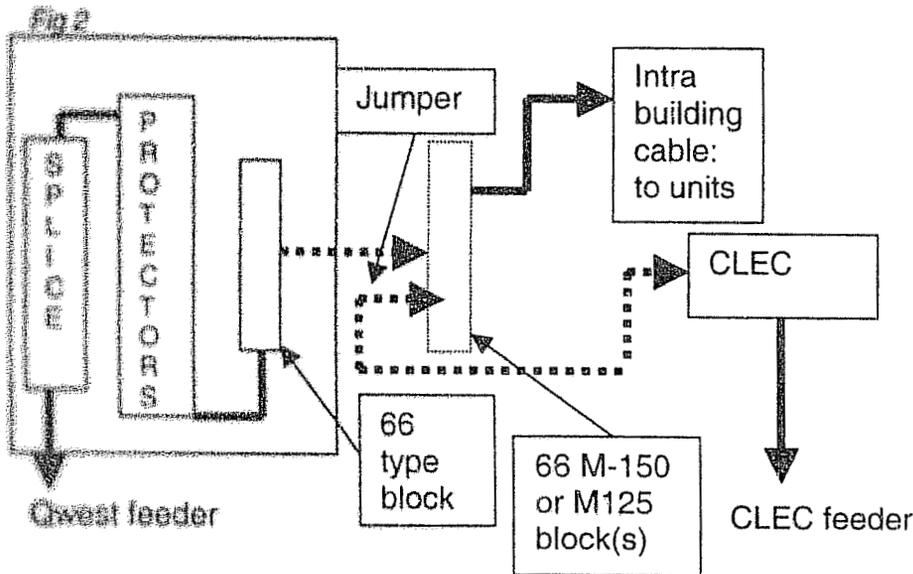
CLEC may access subloop UNEs at any accessible terminal, including the NID, MPOE, or demarcation point. If the terminal is equipped with a cross-connect field, the CLEC may access the subloop UNE at the customer side of the cross-connect. If a cross-connect field does not exist, CLEC may use a temporary connection to obtain access to the customer side of the MTE terminal until Qwest can provide a proper cross-connect field or SPOI. Where Qwest places a SPOI to create a permanent cross-connect field for CLEC direct access, Qwest will move all temporary CLEC connections onto the SPOI. CLEC may not temporize its connections once Qwest places a SPOI. CLEC may request Qwest place a SPOI at CLEC expense.

Typically, feeder cable and intra building cable are terminated on separate 66 blocks. Cross-connect jumpers are run between the 66 blocks to connect the feeder cable to the intra building cable.

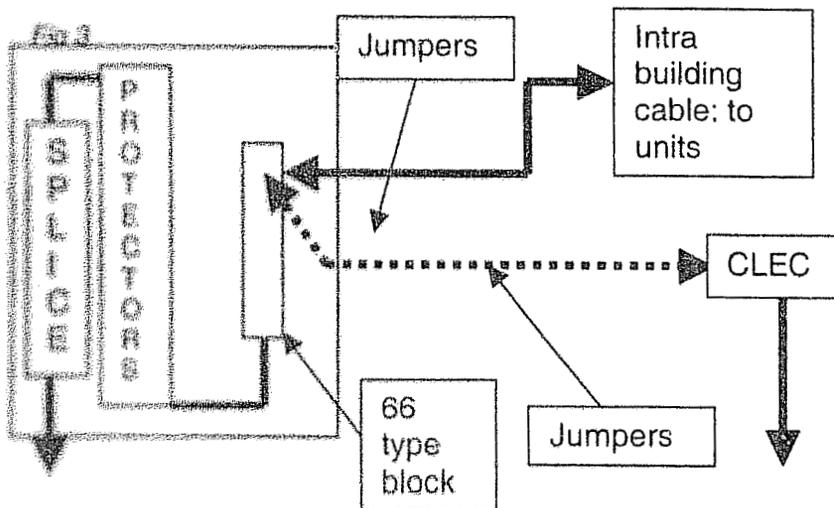
Either 66-M150 or 66-M125 blocks can be used as a cross-connect field supporting multiple vendors. Cable connected back to the Qwest central office is terminated on the left side of the M-150 or M-125 block. Intra building cable (IBC) is connected on the far right side of the blocks. Continuity from the feeder side to the intra building cable side is achieved by:

- A) Placing a bridging clip across the correct center to end termination tips.
- B) Laying a jumper wire down on the correct center to end termination tips.

Typically Inside Terminals consisting of 300 pairs and less are equipped with extra 66 blocks on the backboard. CLECs gain access to IBC by placing a jumper at the 66-M150 or M-125 block(s). Continuity to Qwest's network is eliminated by removing a jumper or bridging clip at the 66-M150 or M125 block.



Inside terminal without M150 or M125 66

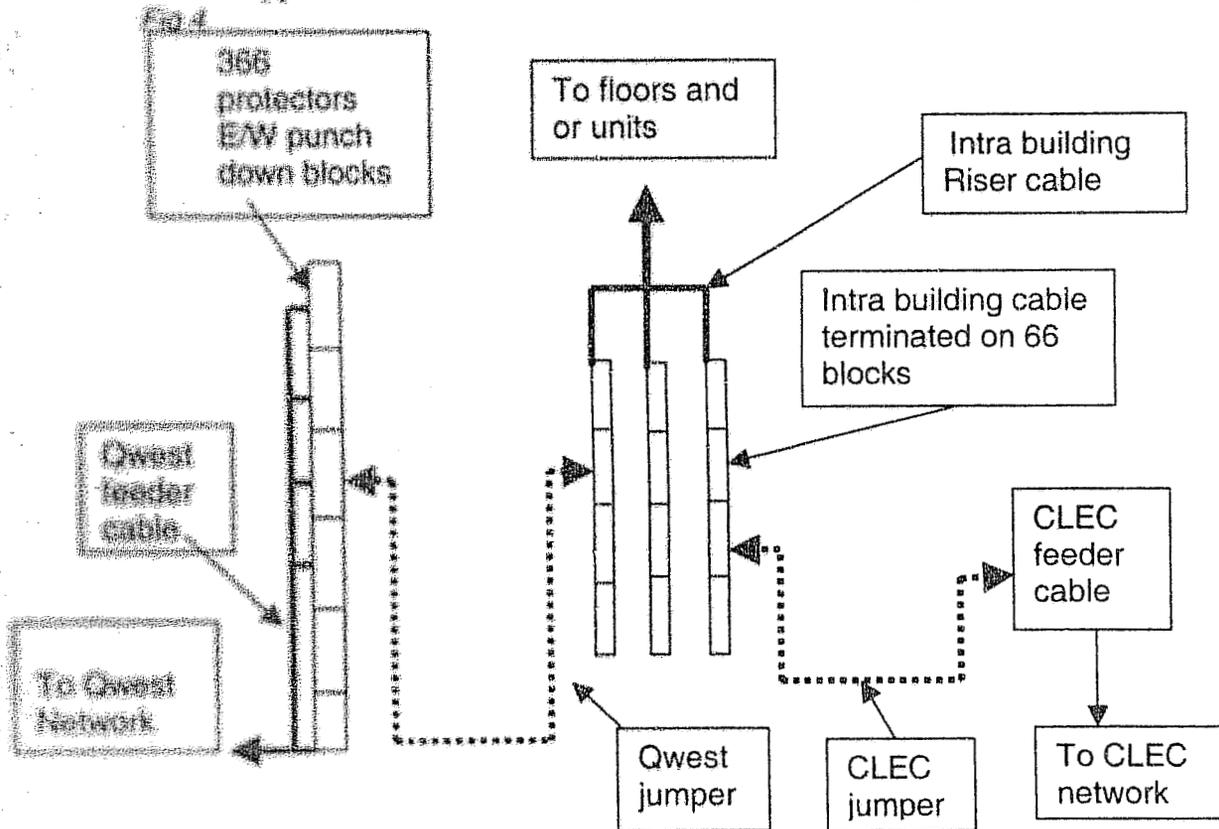


Qwest feeder

CLEC feeder

Access is obtained by placing a capacity expanding device (Seimon part # SA3) over the existing customer cross connect and then lay the CLEC jumper wire onto the capacity expanding device. To break DC continuity, CLECs must remove the 5 pin line protector for the customer and replace it with a 3 pin service denial line protector unit (Marconi part # F013789) and leave the 5 pin protector in the closure.

Typical MTE with more than 300 cable pairs



CWSTP Option 1: CLEC gains access to IBC through building owner or authorized party.

CWSTP Option 2: CLEC may access IBC subloops at the minimum point of entrance for a recurring charge. If a floor level terminal DMARC is an option, the access to the House Cable will be determined by the CLEC and the building owner or their agent.

Inside Terminal equipped with (E/W) carbon screw down protectors. Qwest cable comes in from below and is spliced to a protector field, which is terminated at the 66 blocks on the left. The IBC cable is terminated on the 66 blocks to the right. Because the IBC has separate accessible terminations a cross-connect field exist After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

Photo 1

Same concept as photo 1, except splice and termination components are arranged differently.

Photo 2

Inside terminal E/W building entrance protectors (BEP). Qwest cable comes in from below to a splice chamber (left side of black protectors). The splice chamber is E/W 25 pair splicing strips that has factory connections through the protector block to the 66 type block and/or the pin type connectors (Bottom closure far left). The IBC is terminated on separate 66 type blocks fastened directly to the plywood backboard. After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

Photo 3

Inside terminal, the Qwest cable comes in from top far right and splices into the protector block then it is jumpered to a 66 block (bottom center) and on to the RJ11 connections on the far left. The IBC is terminated on the 66 blocks with the blue backboard then jumpered to the RJ11 connections on the gray closure to the left.

After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

The IBC in this case may be accessed at the 66 blocks on the blue backboard or the RJ11 jacks.

Photo 4

Inside terminal: Qwest cable comes in from the bottom center through the protectors to the RJ11 jacks behind the orange colored covers. The IBC is terminated at 66 blocks on the far left and jumpered to the RJ11 jacks. After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

Photo 5

Photo 6

Photo 7

Wall feed: Qwest cable is direct buried to the closure, the screw down carbon protectors are spliced to the cable in the skirt of the closure. The IBC is terminated on 76 type post on the right. After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

Wall feed: Qwest cable is direct buried to the closure, the screw down carbon protectors are spliced to the cable in the skirt of the closure. The IBC is terminated on 76 type post on the on either side of the protectors. After determining the CWSTP option and issuing a LSR the CLEC may access the IBC by placing a temporary connection directly on the IBC pair. (See page 6)

Photo 8

Wall feed: The Qwest drop is terminated at the protector and wired to the screw down type termination. Then it is wired through the RJ11 jack and then terminated on the outside screw down terminations. After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

Photo 9

Photo 10

Wall feed: Qwest cable is direct buried to the closure, and spliced to the 5 pin protectors which is terminated on the 66 block. The IBC is terminated on 66 blocks located on the blue back board. After determining the CWSTP option and issuing a LSR the CLEC may access the IBC as outlined on page 6.

Photo 11

Photo 12

New prototype WF E/W a splice chamber, 5 pin protectors, feeder terminations, IBC terminations & knockouts for CLEC conduit. (Currently in a field trial in WA.)

Photo 13

Definitions

CWSTP	Cable and Wire Service Termination Policy. Qwest's tariffed offering of demarcation options available to MTE owners or landlords.
Demarcation Point	A physical point in the distribution network where Qwest ownership and control of the facility ends and MTE owner or landlord ownership and control of the facility begins.
MPOE	Minimum Point of Entry. The closest physical point to where the distribution facilities cross the property line or the closest practical point to where distribution facilities center a MTE building. Typically, MPOE consists of a building terminal containing overvoltage protection. The MPOE may also be the demarcation point.
MTE Terminal	Qwest owned building terminal that is physically attached to the inside or outside of a MTE building and the distribution facilities on both sides of the terminal are owned and controlled by Qwest.
NID	Network Interface Device. A NID is a device wired between a telephone line protector and the inside wiring. The NID consists of an overvoltage protector designed to isolate the distribution network from the inside wiring associated with the MTE.
SPOI	Single Point of Interconnection. At MTEs, a SPOI provides an accessible cross-connect field, where none exists, for CLEC and Qwest to access the customer side of the terminal.

Co 79a

Decision No. R01-1095-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 971-198T

IN THE MATTER OF THE INVESTIGATION INTO U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996.

ORDER REGARDING SUBLOOP ISSUES SB-16 AND SB-21

Vol III A

RECORDED

INDEXED

OCT 27 2001

Mailed Date: October 26, 2001

SEARCHED _____
INDEXED _____
OTHER _____ INITIALS _____

I. INTRODUCTION

A. This order addresses the remaining subloop issues from Workshop III of the § 271 collaborative process. On September 27, 2001, I issued Decision No. R01-1015, which resolved, in part, issues pertaining to emerging services under checklist item 2. With regard to issues SB-16 and SB-21, I found that there was a lack of an adequate record in Colorado. This combined with apparent confusion amongst the parties about the specific issues which remained at impasse. To resolve the issues surrounding subloop access at Multi-Tenant Environment ("MTE") terminals,¹ the IIIA Order directed Qwest Corporation

¹ In the Matter of the Investigation into U S West Communications, Inc.'s Compliance with § 271(C) of the Telecommunications Act of 1996, Docket No. 971-198T, Volume IIIA Impasse Issues Order (Mailed Date September 27, 2001) [hereinafter IIIA Order], at pp. 28-29.

issues, and the SGAT has been modified to reflect these agreements.

D. First, Qwest has added language from the Washington state SGAT which allows CLECs to access MTE terminals without collocation and to use temporary wiring methods for 90 days. This, in combination with SGAT § 9.3.3.7.1 (which gives Qwest 45 days to rearrange the terminal), affords CLECs the access they need when no space is available in an MTE Terminal. Second, the parties agreed that the CLEC would determine which company will run the jumpers in the MTE Terminal.³ As I find these agreements to be reasonable, these issues are now closed.

II. ISSUE REMAINING IN DISPUTE: WHETHER QWEST'S STANDARD MTE ACCESS PROTOCOL LIMITS THE CLECS' ABILITY TO ACCESS THE NID

A. Party Positions

1. Qwest:

Qwest has listed the four issues which AT&T has apparently briefed in Washington, concerning the MTE Access Protocol:

(1) CLECs should be required to pay when space is unavailable and Qwest must retrofit an MTE Terminal.

³ This was originally impasse Issue SB-21.

into the Access Protocol. Neither code addresses "line protection of Qwest facilities." AT&T's proposed language states that "CLECs will perform any installation pursuant to the NBC and NESC."

(4) Additional language to clarify the procedures relating to the attachment of conduit to closures should be incorporated into the Access Protocol. For example, the Access Protocol should indicate that CLECs should use knockouts in closures "when they are accessible."

(5) In the Access Protocol, CLEC access to the protector field is only being given in 25-pair increments. This has the potential to be discriminatory if, for example, AT&T wished to access only two tie down terminals. Access should be given when there is space available.

B. Conclusion:

1. I adopt AT&T's proposed MTE Access Protocol, and direct its inclusion to resolve impasse issue SB-16.

2. AT&T's proposed MTE Access Protocol is reasonable. Qwest should incorporate AT&T's redlined version of the Access Protocol.

1. Upon making necessary changes to the Access Protocol described below, I will recommend to the Commission that it certify Qwest's compliance with § 271 checklist item 2 regarding emerging services.

(3) AT&T concedes that Qwest's definition of the MTE Terminal is acceptable,⁷ but argues that Qwest's use of the NID contradicts the UNE Remand Order. Again, AT&T's proposed language more closely conforms with (or mirrors) the UNE Remand Order and should be adopted. For example, Qwest's Option 1 "MTE NID" is mystifying.⁸ Under Qwest's definition of a MTE Terminal, Qwest owns the wire on both sides of the building terminal.⁹ Yet, under the "MTE NID" definition, which is also an "MTE Terminal," the MTE NID is the "terminal that is simultaneously the MPOE and the network demarcation point where Qwest's ownership and control ends and the property owner's ownership and control begins." As AT&T points out, this appears to be a reference to the demarcation point. And, as stated above, the MPOE is not always the demarcation point, nor is the demarcation point always located at the NID.¹⁰ For clarity's sake, striking this language and replacing the Qwest NID

⁷ See Qwest Access Protocol at pg. 28, which defines the MTE Terminal as a "Qwest owned building terminal that is physically attached to the inside or outside of a MTE building and the distribution facilities on both sides of the terminal are owned and controlled by Qwest."

⁸ *Id.* at pg. 8.

⁹ *Id.* at pg. 16.

¹⁰ UNE Remand Order at ¶ 169: "In multiunit premises, there may be either a single demarcation point for the entire building or separate demarcation points for each tenant, located at any of several locations, depending on the date the inside wire was installed, the local carrier's reasonable and nondiscriminatory practices, and the property owner's preferences. This, depending on the circumstances, the demarcation point may be located either at the NID, outside the NID, or inside the NID."

knockouts that are inaccessible. This does not create an additional burden for Qwest.

e. 25-Pair Cable Increment Requirement

The parties dispute whether the Access Protocol requires the use of 25-pair cable into the terminal. Regardless, the adoption of AT&T's language strikes this clause from the Access Protocol¹¹ and is acceptable, as it promotes efficient use of available capacity.

f. Option 4 and SPOI Issues

As AT&T points out, Qwest appears to have made "typographical errors" which omit references to the access protocol to be utilized for Cable and Wire Service Termination Policy Option 4 and access to a SPOI once capacity has been exhausted. AT&T's proposed language clarifies these procedures, although it should be emphasized that CLEC access to the on-premises wiring using "any technically feasible means" is subject to the other provisions of the Access Protocol and the SCAT.

¹¹ AT&T's proposed language strikes the sentence: "In such case, for example, if the splice chamber allows splice strips (i.e., modular connectors) for 25 pair cable increments, CLEC access will be granted in 25-pair increments as spare capacity exists."

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 823

In the Matter of the Investigation into the)
Entry of QWEST CORPORATION into In-Region)
InterLATA Services under Section 271 of the)
Telecommunications Act of 1996.)
_____)

DATE: July 19, 2001

TIME: 9:00 a.m.

PLACE: Main Hearing Room
Public Utility Commission
550 Capitol Street NE
Salem, Oregon 97301-2551

BEFORE: Allan J. Arlow
Administrative Law Judge

VOLUME I

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Sue Price - Court Reporter (503) 831-2060

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APPEARANCES

- Mr. Larry Reichman, Attorney at Law
Appearing on behalf of Qwest Communications;
- Mr. Chuck Steese, Attorney at Law
Appearing on behalf of Qwest Communications;
- Ms. Kara Sacilotto, Attorney at Law,
Appearing on behalf of Qwest Communications;
- Ms. Ann Hopfenbeck, Attorney at Law
Appearing on behalf of WorldCom, Inc.;
- Mr. Steven Weigler, Attorney at Law,
Appearing on behalf of AT&T Communications;
- Ms. Rebecca DeCook, Attorney at Law, (by telephone),
Appearing on behalf of AT&T Communications;
- Ms. Sarah Kilgore, Attorney at Law,
Appearing on behalf of AT&T Communications;
- Ms. Lise K. Strom, Attorney at Law,
Appearing on behalf of Electric Lightwave, Inc.
and Time Warner Telecom;
- Ms. Jean Liston, Witness for Qwest Corporation;
- Mr. Dennis Pappas, Witness for Qwest Corporation;
- Ms. Karen Stewart, Witness for Qwest Corporation;
- Ms. Mary LaFave, (by telephone), Witness for Qwest
Corporation;
- Mr. Chris Viveros, Witness for Qwest Corporation;
- Mr. Ken Wilson, Witness for AT&T Communications;
- Mr. Tim Peters, Witness for Electric Lightwave, Inc.
- Staff: Mr. Tom Harris
Mr. David Booth

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1 for building the loops.

2 ALJ ARLOW: There are a lot of issues which we
3 would be considering in our SGAT proceeding, UM 973, as
4 far as Oregon policies, which are outside the scope of
5 the 271 proceeding. And I think there have been a
6 number of situations where we've talked about the
7 bifurcation of what's an Oregon issue as opposed to
8 what's a 271 qualifying issue. And this is one of those
9 things that I think will ultimately be determined in an
10 Oregon cost docket. But I think for the time being
11 we're trying to determine what the policies are with
12 respect to construction of plant, as opposed to how the
13 costing methodologies underlying. How they'll be priced
14 is another matter. So I'm kind of disinclined to
15 explore that as part of this proceeding, unless there's
16 some compelling legal showing that I'm supposed to be
17 doing that.

18 MR. WILSON: I think as far as the obligation
19 to build, Qwest is relying on an FCC statement that
20 discussed dedicated transport. This is a loop
21 workshop. We don't see anywhere that the FCC declined
22 to obligate the ILEC to build loop facilities. So I
23 think that's a fundamental difference.

24 ALJ ARLOW: And let's make that a briefing
25 item then, okay?

1 as opposed to the loop from the NID to the central
2 office, right, those are sort of like two separate
3 independent agreements?

4 MS. LISTON: That's correct.

5 ALJ ARLOW: Okay. Now, when that is leased,
6 when the -- when, quote, the loop is leased from you by
7 AT&T, they don't lease by two separate agreements, do
8 they; they lease by one agreement?

9 MS. LISTON: They do lease by one agreement.
10 Basically what happens is if you look at what Qwest
11 release -- from the central office to the demarcation
12 point, is Qwest facilities. On the other side of the
13 demarcation point, is customer owned facilities. And in
14 our retail services, the customer can elect to buy a
15 contract, a maintenance contract, that says if I have
16 trouble with my inside wire, I want Qwest to fix it.
17 It's a separate contract that they buy that.

18 ALJ ARLOW: But it's the customer's inside
19 wire; they have ownership over it.

20 MS. LISTON: They have ownership over it.
21 When we have --

22 ALJ ARLOW: So that's a maintenance agreement
23 for customer owned inside wire. That's not Qwest owned
24 inside wire.

25 MS. LISTON: That is correct.

1 BEFORE THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF COLORADO

3 Docket No. 971-198T - Workshop 3

4 * * *

5 IN THE MATTER OF THE INVESTIGATION OF US WEST
6 COMMUNICATIONS, INC.'S, COMPLIANCE WITH SS 271(c)
7 OF THE TELECOMMUNICATIONS ACT OF 1996.

8 -----

9 Pursuant to continuation, the Technical Workshop
10 was held at 8:35 a.m., April 19, 2001, at 3898 S.
11 Wadsworth, Lakewood, Colorado, before Facilitators
12 Hagood Bellinger and Martin Skeer.

13 APPEARANCES .

14 (As noted in the transcript.)

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25

1 billing systems the fact that we're going to bill the
2 CLEC for this subloop. That's one function.

3 The second function would be by using the
4 APOT information, you are able to create, in essence, a
5 circuit I.D. for that intrabuilding cable. That
6 circuit I.D. would be inventoried in our systems, such
7 that if a repair call were to come in and the CLEC were
8 to give that circuit I.D. information, then we would be
9 able to pull up a record and be able to issue a repair
10 ticket against that circuit. So, that, in the event
11 there was any repair issued for the intrabuilding
12 cable, we would have a way to -- I hope you would --
13 the CLEC would have a way to get Qwest to dispatch a
14 technician to repair that intrabuilding cable.

15 MR. SEKICH: It sounds as if the
16 submission of LSR would afford Qwest the opportunity to
17 populate one or more databases with information.

18 MS. STEWART: That's correct.

19 MR. SEKICH: Now, is there any other
20 activity that Qwest would accomplish upon submission of
21 that LSR?

22 MS. STEWART: In the case we've been
23 discussing here, of MTE terminal for intrabuilding
24 cable, it would be database work. We would not -- the
25 CLEC would be running the jumper, so we wouldn't be

1 customer X, Y, Z, tell me whether you want me to do the
2 jumper work, since that seems to be an option in your
3 proposal, send it to me so that I have notice and can
4 decide whether I want a Qwest technician to observe
5 your sequential use, sequential assignment of the
6 terminations we have inventoried, I think we can do the
7 process -- that, I mean, if it boils down to whether we
8 call it an LSR or not, I don't think that's a
9 significant issue.

10 You have talked about being concerned
11 about cost. Our costs obviously will be increased by
12 agreeing to the one-off process. I mean, the OBF has
13 addressed the issue of subloop access. They have taken
14 the existing LSR and affirmed it works for subloop. It
15 provides fields for the information that it sounds like
16 you are willing to provide us, so I am not really sure
17 what's at impasse or dispute.

18 MR. SEKICH: Well, if you're optimistic
19 we might be able to move to agreement, I am hoping to
20 share the optimism. That remains to be seen, however.
21 I want to maybe explore a couple of these options with
22 you.

23 Setting aside for the moment the case in
24 which we asked you to do the jumpering work, in
25 which logically you would need to know, and I would

1 Pair 3.

2 MR. WILSON: So AT&T's CFA or Qwest's
3 terminal number?

4 MR. VIVEROS: The CFA that you would use
5 is from the facility termination inventory that we
6 would perform once, upfront, that says you were
7 accessing subloops in the building. It's yours. It
8 would be in our records. It would reflect that was our
9 hand-off point to you. A purchase order number of
10 yours to reference on the bill --

11 MR. SEKICH: Maybe I can ask a question.
12 Let's assume, for the subloop customer -- a customer
13 we're not serving on subloop, we're serving you through
14 some other means. What's the difference? If, in fact,
15 we're taking that customer, we're not porting. I
16 guess, what would you need? There's no information
17 that would be shared with you, right?

18 MR. VIVEROS: I don't understand your
19 question, Dom.

20 MR. WILSON: If it's -- here's the
21 interesting issue. If this terminal or if this NID, as
22 we call it in the building, where we have access, if
23 the building owner owns the wire from thereon, I think
24 Qwest would agree that we don't owe them this
25 information. The FCC order clearly states that we can

1 have access to the NID and to our wires. They have no
2 repair responsibility because the building owner owns
3 the wire. And, so, we're creating all of this -- we're
4 in a situation where you, when you don't own the wire,
5 it's not needed.

6 And so I guess Mr. Sekich's question is,
7 isn't that true that we don't give you this stuff if
8 the building owner owns the wire?

9 MR. VIVEROS: If the building owner owns
10 the wire, then you are not accessing a Qwest network
11 element. Our responsibility stops at that device. You
12 are not accessing the Qwest network at all. And, yes,
13 I don't need to know when you're interconnecting with a
14 different party.

15 MS. QUINTANA: Ken, you just hit it on
16 the head in your question. You said they don't have
17 repair responsibilities, but when it's their wire, they
18 do.

19 MR. WILSON: Yes. And that then connects
20 back to my statement that, and as Mr. Orrel said, this
21 stuff doesn't break. There isn't --

22 MS. QUINTANA: The commission isn't quite
23 sure about that statement.

24 MS. STEWART: Doesn't break that often.

25 MR. ORREL: I think he said I said it

1 doesn't break. I said I think it doesn't happen too
2 often.

3 MR. WILSON: Let's put it this way: It
4 breaks so little that Qwest doesn't even keep records
5 of how often it breaks. They can't produce
6 disaggregation that shows what repair is attested to on
7 inside wire that they own. They keep it together with
8 customer terminal information.

9 MR. BELLINGER: I think that's a
10 different track from where you were and I think you
11 were at a good spot.

12 MR. SEKICH: The point is important.

13 MR. BELLINGER: Termination work, I
14 guarantee you, will cause problems.

15 MR. SEKICH: The point is important.
16 There's no need to introduce an excessive process for
17 circuits which are remote.

18 MR. BELLINGER: Okay.

19 MR. WILSON: Let me address Becky's
20 question a little more thoroughly. The wire is a
21 physical thing. It may break, depending -- this
22 on-premise wire, it could break whether Qwest owns it
23 or whether the building owner owns it, and someone will
24 need to fix it. I mean, that's a given. And AT&T
25 certainly wants to keep its customers in service. And

DOCKET NO. 22168

PETITION OF IP COMMUNICATIONS § PUBLIC UTILITY COMMISSION
CORPORATION TO ESTABLISH §
EXPEDITED PUBLIC UTILITY § OF TEXAS
COMMISSION OF TEXAS §
OVERSIGHT CONCERNING LINE §
SHARING ISSUES §

DOCKET NO. 22469

PETITION OF COVAD § PUBLIC UTILITY COMMISSION
COMMUNICATIONS COMPANY AND §
RHYTHMS LINKS, INC. AGAINST § OF TEXAS
SOUTHWESTERN BELL TELEPHONE §
COMPANY FOR POST- §
INTERCONNECTION DISPUTE §
RESOLUTION AND ARBITRATION §
UNDER THE §
TELECOMMUNICATIONS ACT OF §
1996 REGARDING RATES, TERMS, §
CONDITIONS AND RELATED §
ARRANGEMENTS FOR LINE §
SHARING §

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OVERSIGHT CONCERNING LINE	§	
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DOCKET NO. 22469

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1996 REGARDING RATES, TERMS,	§	
CONDITIONS AND RELATED	§	
ARRANGEMENTS FOR LINE	§	
SHARING	§	

I. SUMMARY OF PROCEEDINGS**BACKGROUND**

On February 25, 2000, IP Communications Corporation (IP) filed a petition to establish expedited commission oversight concerning line sharing.¹ On March 17, 2000, Southwestern Bell Telephone Company (SWBT) filed a motion to dismiss IP's motion, alleging that IP had not sufficiently stated grounds for the relief sought. On April 28, 2000, Covad Communications Company (Covad) and Rhythms Links, Inc. (Rhythms) jointly filed a complaint against SWBT

¹ Docket No. 22168.

actually able to begin providing advanced services on a shared loop within 180 days of release of this order.

Because of the FCC's directive to set interim rates to allow quick implementation of the line sharing order, this case was handled in phases. Phase I addressed issues necessary for interim relief. Phase II addresses the majority of remaining issues for the final award. The parties agreed that certain costing and pricing issues, most notably, rates for line sharing via fiber fed DLC will be addressed subsequent to the issuance of this Award.⁷ The Interim Award resulting from Phase I was filed on June 6, 2000. Subsequently, Sprint Communications Company, L.P. (Sprint) was granted intervention and Covad withdrew from this proceeding.⁸ In addition, in response to SWBT's Motion to Strike, the Arbitrators ruled that issues regarding SWBT's "Project Pronto" should be addressed in this docket, as the issues are inextricably intertwined, but that issues regarding line splitting should be addressed in Docket No. 22315 or its successor docket.⁹ Furthermore, the Arbitrators granted a severance of the issues related to Verizon to a separate docket because the parties agreed that additional discovery was necessary before proceeding.¹⁰ Finally, the Arbitrators granted IP's Motion to Dismiss with Prejudice as a party to this docket.¹¹ Therefore, the parties participating in proceeding include: Rhythms, WCOM, AT&T, Sage, Sprint, and SWBT. The Hearing on the Merits was held November 29 through December 1, 2000. Additional discovery issues were addressed after the hearing, culminating in parties submitting late-filed exhibits. Parties filed post-hearing briefs on February 9, 2001, and post-hearing reply briefs on March 1, 2001.

⁷ Order No. 13 (October 19, 2000).

⁸ Order No. 8 (August 25, 2000).

⁹ Prehearing Conf. Tr. (August 31, 2000); Order No. 11 (October 16, 2000).

¹⁰ Prehearing Conf. Tr. (November 27, 2000); Prehearing Conf. Tr. (December 6, 2000); Order No. 22 (January 11, 2001) (No party opposed the severance and these issues with respect to Verizon are now being addressed in Docket No. 23537).

¹¹ IP filed a Motion to Withdraw with Prejudice on May 8, 2001. This motion was filed after the introduction of all evidence, the hearing on the merits, and submission of post-hearing briefs. The Arbitrators granted IP's motion with prejudice on July 12, 2001, as no parties opposed the motion. The Arbitrators note that because of the timing of the motion, IP's positions, as advocated at the hearing and in post-hearing briefs, remain in this Award. However, as IP is no longer a party to this proceeding, the Arbitrators have not considered or relied upon any evidence put forth by IP in our rulings in this Award.

II. EXECUTIVE SUMMARY

SPLITTER AND CABLING ISSUES

The Arbitrators find that SWBT is required to continue providing ILEC-owned splitters for purposes of line sharing, based upon the Commission's prior determination in Docket No. 22315 that the splitter is part of the loop unbundled network element (UNE). The Arbitrators adopt that decision, which finds that the full features, functions, and capabilities of the loop includes the splitter; thus, SWBT's obligation to provide the splitter remains. The Arbitrators agree with SWBT, however, that splitters should continue to be provisioned on a line-at-a-time basis. The Arbitrators are not persuaded that the CLECs' proposal to provision on a shelf-at-time is necessary or more efficient than the line-at-a-time process. Further, the shelf-at-a-time proposal may cause underutilization, frame exhaust, and unnecessary expense for SWBT.

The Arbitrators find that it is reasonable for SWBT to place the SWBT-owned splitter in the Common Collocation Area, rather than mandating that SWBT place the splitter on the main distribution frame (MDF) or within close proximity to the MDF. The Arbitrators are persuaded that test access for CLECs, provided by locating the splitter in the common area, is vitally important, and that CLEC access to the MDF for testing and maintenance is unnecessary and problematic. In addition, the Arbitrators are not persuaded that any additional length of cabling, triggered by placing the splitter in the Common Collocation Area rather than on the MDF, causes service to be affected. Finally, the Collocation Tariff provides parties with augment and installation time frames that are reasonable and have previously been approved by the Commission.

FIBER-FED DIGITAL LOOP CARRIER ISSUES

The Arbitrators find that SWBT must provide access to "Project Pronto" functionality (e.g. the loop unbundled element) to CLECs on a nondiscriminatory basis. The Arbitrators find that SWBT should not be relieved of its existing unbundling obligations merely by the way in which it has chosen to design the network. The Arbitrators find that whether the transmission

should be provided. The Arbitrators, however, do include certain parameters that are necessary to ensure that systems unique to Texas are tested.

The Arbitrators find that the same provisioning interval as established in the *Interim Award* shall apply on a permanent basis for line sharing (e.g. three days or parity with SWBT or its data affiliate, whichever is less for loops without conditioning, and ten days or parity with SWBT or its data affiliate, whichever is less for loops with conditioning). The Arbitrators find that this time frame is reasonable and it balances SWBT's concerns regarding the volume of orders SWBT must process and the CLECs' desire for rapid provisioning. The Arbitrators find no reason to modify the intervals established by the Interim Award, which provide CLECs a meaningful opportunity to compete. Based on this rationale, the Arbitrators also concluded that a three day interval is appropriate for CLEC to CLEC transfers of line-shared service.

MAINTENANCE AND REPAIR ISSUES

The Arbitrators find that SWBT provides appropriate test access for CLECs as required by the *Line Sharing Order*. SWBT allows CLECs test access at the splitter location, and SWBT further allows CLECs to perform several tests, including the ability to perform the Automatic Numbering Identification (ANI), Mechanized Loop Test (MLT) and high frequency test. In addition, the Arbitrators believe that SWBT's Turn-up test, developed collaboratively in compliance with the Interim Award in this proceeding, lays sufficient groundwork for resolution of installations in the line sharing context. The Arbitrators believe that the Turn-up test is minimally acceptable and additional modifications should continue through collaborative efforts.

COSTING AND PRICING ISSUES

The Arbitrators find that the cost for the high frequency portion of the loop (HFPL) should be set at \$0, because SWBT did not provide evidence sufficient to support a HFPL rate of one-half the UNE loop rate. The Arbitrators believe that allowing a HFPL rate of one-half the UNE loop rate would allow SWBT to double recover (e.g. the entire loop cost from the voice customer and half the loop cost from the data provider). Because SWBT is already recovering its costs in the loop rates set previously by this Commission, any rate other than \$0 would require a total review of the established UNE loop rates.

III. RELEVANT FEDERAL PROCEEDINGS

LINE SHARING ORDER

The *Line Sharing Order* sets forth obligations of ILECs to provide line sharing to CLECs as an unbundled network element. The FCC found that ILECs must provide unbundled access to the high frequency portion of the loop so that carriers may use those frequencies to provide DSL services and provide access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs.¹³ The FCC determined that access to OSS is critical to a CLEC's ability to compete and that if a CLEC was, "unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for UNEs in substantially the same time and manner as ILECs, CLECs would be severely disadvantaged, if not precluded altogether, from fairly competing."¹⁴ The Order specifically addresses the situation where a competitive carrier seeks to line share over a copper loop, but does not address line sharing over fiber-fed DLC systems, such as SWBT's Project Pronto. However, the FCC made clear that, "states are free to impose additional, pro-competitive requirements consistent with the national framework established in this order."¹⁵

LINE SHARING RECONSIDERATION ORDER

On January 19, 2001, the FCC released the *Line Sharing Reconsideration Order* clarifying that even where an incumbent has deployed architectures using fiber-fed digital loop carriers, such as SWBT's "Project Pronto", an ILEC continues to have an obligation to provide line sharing.¹⁶ The FCC clarified that "the requirement to provide line sharing applies to entire loop, even where the incumbent has deployed fiber in the loop (e.g. where the loop is served by a

¹³ *Line Sharing Order* ¶ 19, 93.

¹⁴ *Line Sharing Order* ¶ 172.

¹⁵ *Line Sharing Order* ¶ 223.

¹⁶ *Deployment of Wireline Services Offering Advanced Telecommunications Capability, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (rel. January 19, 2001) ("*Line Sharing Reconsideration Order*") ¶¶ 9-10.

SBC/Ameritech merger.²³ On February 15, 2000, SBC filed a letter requesting a waiver of the Merger Order to allow the ILEC to own two pieces of equipment necessary for the Project Pronto architecture: ADLU Line cards and "Optical Concentration Devices" ("OCDs").²⁴ In response, the FCC granted the waiver request, thereby allowing ILECs SWBT to own both pieces of equipment. The FCC expressly limited the scope of the Waiver Order to the question of SBC ILECs' ownership of certain advanced services equipment otherwise prohibited by the order approving the SBC/Ameritech merger.²⁵

Nothing in this Order supersedes SBC's obligations to comply with all applicable Commission orders and rules, now and in the future. We stress again that this Order is confined only to the *Merger Conditions*, and so does not constitute any finding or determination with respect to SBC's compliance with section 251 or any other provision of the Act, or SBC's section 251 obligations regarding its Broadband Offering.²⁶

²³ *Merger Order*, ¶ 357.

²⁴ *In the Matter of Ameritech Corp. and SBC Communications, Inc. For Consent to Transfer Control of Corporation Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, Second Memorandum Opinion and Order, CC Docket No. 98-141, ¶ 43-44 (rel. Sept. 8, 2000) ("Pronto Waiver Order") ¶ 5.

²⁵ *Id.* ¶ 7.

²⁶ *Id.* ¶ 9.

Arbitrators' Decision

The Arbitrators agree with SWBT that CLECs should provide forecasts for anticipated use of SWBT-owned splitters. Splitter forecasts will allow SWBT to plan ahead, perform capacity management, and ensure that splitter ports are available for requesting CLECs. SWBT's capacity management tool allows its engineers to provision, order, and install facilities prior to exhaustion.³⁴ Also, as SWBT notes, forecasts will allow SWBT to engineer its offices efficiently instead of developing plans every time a CLEC makes a request for splitters.³⁵ The Arbitrators find that without reliable forecasts, SWBT would have to rely on actual usage and expected demand when developing plans to augment splitter capacity.³⁶ Reliable forecasts will allow SWBT to take into account such things as market conditions, planned promotions and price cuts, prior to developing plans to augment splitters.³⁷

In conclusion, the Arbitrators find that the forecasts will benefit both the ILEC and the CLEC. Therefore, CLECs that request SWBT-owned splitters shall provide non-binding splitter forecasts to SWBT on a semi-annual basis. In addition, if a CLEC changes its business plans such that it would impact its submitted forecasts dramatically, the Arbitrators encourage the CLECs to update their splitter forecasts with SWBT. CLECs shall use due diligence and exercise best practices when submitting forecasts on splitters. However, SWBT shall not penalize a CLEC in any manner for underutilization or overutilization of splitter ports beyond the submitted forecasts.

³⁴ SWBT Ex. 13, Rebuttal Testimony of Betty Schlackman "Schlackman Rebuttal" at 18-19 (October 20, 2000).

³⁵ Ms. Schlackman indicates in her Rebuttal Testimony at 18-19 "It is important to note that SWBT's engineering plans are to equip offices on an annual basis, not re-visit an office 3 to 4 times in one year to augment splitter capacity."

³⁶ Schlackman Rebuttal at 19.

³⁷ *Id.* at 18-19.

Without the splitter, they argue, CLECs cannot access the line sharing UNE. Therefore, Rhythms, IP and Sage believe that SWBT has a duty to provide splitters regardless of whether the splitter is a UNE.⁴³

In addition, Rhythms, IP and Sage argue that SWBT's refusal to provide splitters violates FCC regulations and "best practices" rules. They assert that SWBT is required to provide "any technically feasible method of obtaining interconnection or access to unbundled network element at a particular point upon a request by a telecommunications carrier."⁴⁴ Rhythms, IP, and Sage conclude that SWBT has not proven by clear and convincing evidence that providing an ILEC-owned splitter is not technically feasible, and furthermore, by voluntarily agreeing to provide splitters SWBT has in fact admitted that the configuration is technically feasible.⁴⁵

Furthermore, IP and Sage state that the Commission's recent decision in the *Line Splitting Arbitration* affirms the requirement that SWBT is required to provide splitter functionality.⁴⁶ In the *Line Splitting Arbitration*, the Commission confirmed that SWBT is obligated to provide stand-alone splitters to make the high frequency portion of the loop available to requesting carriers.⁴⁷ IP and Sage urge the Arbitrators to recognize the Commission's determination in the *Line Splitting Arbitration* and adopt a similar decision in this Arbitration as well.⁴⁸ In addition to its legal claims, Rhythms claims that different splitter vendors have differing levels of quality, features, and reliability and believes that CLECs should be able to designate the vendor from whom they desire the ILEC-owned splitters.⁴⁹ Rhythms

⁴³ Rhythms Initial Brief at 16; IP and Sage Initial Brief at 12-13.

⁴⁴ Rhythms Initial Brief at 16-17, citing 47 C.F.R. § 57.321(a); IP and Sage Initial Brief at 13-14, citing 47 C.F.R. § 57.321(a).

⁴⁵ Rhythms Initial Brief at 17; IP and Sage Initial Brief at 14; (The CLECs also note that SBC, SWBT's parent company, contended before the FCC that the ILEC is required to both "provide and manage" the splitter.)

⁴⁶ IP and Sage Joint Post-Hearing Reply Brief "IP and Sage Reply Brief" at 9-10 (March 1, 2001), citing *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252 (b) of The Federal Telecommunications Act of 1996*, Docket No. 22315, "Line Splitting Arbitration" at 18-19 (March 14, 2001).

⁴⁷ *Line Splitting Arbitration* at 18-19.

⁴⁸ IP and Sage Reply Brief at 10.

⁴⁹ Rhythms Ex. I, Direct Testimony of John Donovan "Donovan Direct" at 42, 46-47 (September 6, 2000).

the full functions, features, and capabilities of the loop.⁵⁹ AT&T acknowledges that the FCC did not specifically rule on the issue of splitter ownership in the *Line Sharing Reconsideration Order*, but points out that the FCC made it clear that this issue is left for future consideration.⁶⁰

SWBT's Position

SWBT asserts it will offer splitter functionality voluntarily, but has no legal obligation to continue doing so.⁶¹ SWBT argues that the Commission should not place onerous conditions on SWBT's voluntary offering and that SWBT should have the choice to provide splitters.⁶² SWBT supports its position by arguing that there is no support under current law to require it to provide splitters, the splitter is not part of the loop network, and the splitter is not a UNE.⁶³

SWBT argues that in the *Texas 271 Order*, the FCC declined to exercise its legislative rulemaking authority under section 251(d)(2) to require ILECs to provide access to splitters and concluded that the ILECs have no obligation to provide splitters to CLECs.⁶⁴ SWBT emphasizes that the *Line Sharing Order* gave ILECs the option to provide splitters or to allow competitive ILECs to purchase comparable splitters; therefore, that option should not change.⁶⁵ Because SWBT allows CLEC to purchase and use their own splitters, SWBT claims that it must not be compelled to provide splitters.⁶⁶

Furthermore, SWBT emphasizes that it is required to unbundle and provision elements of its existing network.⁶⁷ SWBT explains that the splitter is installed only to enable a CLEC to engage in line sharing, and is, therefore, not part of its existing network. However, SWBT adds that even if the splitter is considered a part of its network, it still does not meet the FTA's

⁵⁹ *Id.*

⁶⁰ AT&T Initial Brief at 6-7.

⁶¹ AT&T Initial Brief at 7, citing *Line Sharing Reconsideration Order*.

⁶² SWBT Initial Brief at 16-20.

⁶³ *Id.* at 21-22.

⁶⁴ *Id.* at 16.

⁶⁵ *Id.* at 17-18.

⁶⁶ *Id.* at 17, citing *Line Sharing Order* ¶¶ 146, 76.

⁶⁷ *Id.* at 18.

⁶⁸ *Id.* at 18-19.

However, on January 19, 2001, the FCC issued its *Line Sharing Reconsideration Order*.⁷⁵ Although the Order did not resolve the issue of splitter ownership, the FCC acknowledged that an open question remains as to whether electronics attached to the loop includes equipment like the splitter.⁷⁶ The FCC stated that it intends to address the splitter issue as part of its rulemaking proceedings.⁷⁷ The Arbitrators also noted in the *Interim Award* that we, "expect to consider this issue [splitter deployment] stringently in the permanent phase."⁷⁸ In addition, the Arbitrators also indicated that "the findings in the interim phase in no way preclude a different outcome in the permanent proceeding."⁷⁹ Therefore, we believe an open issue remains regarding SWBT's requirement to provide SWBT-owned splitters.

Although, SWBT asserts that the CLECs have failed to substantiate that they are "impaired" without access to an ILEC-owned splitter, the Arbitrators need not address that point. On February 8, 2001, the Commission ruled in the *Line Splitting Arbitration* that the splitter is part of the loop.⁸⁰ The Arbitrators in that proceeding were posed with a similar question of whether SWBT must provide splitters in a line splitting context, when the voice provider is someone other than the incumbent. In the *Line Splitting Arbitration*, the Arbitrators concluded that:

[The Arbitrators] agree with AT&T that it is purchasing all of the loop including the low and high frequency spectrum portion of the loop when it purchases the unbundled loop in combination with the switch port or the unbundled network element platform (UNE-P). As noted by AT&T, in the FCC's *Line Sharing Order* the FCC defined the high frequency loop as a capability of the UNE loop. In order to gain access to the high frequency portion of the UNE loop, line splitting is required. Such line splitting is accomplished by means of passive electronic equipment referred to as splitters. Although, as noted by SWBT, the FCC has to date has not required ILECs to provide the splitters in either a line sharing or line splitting context, the Arbitrators believe that Commission has the authority to do so on this record. The FCC has clearly stated that its requirements are the minimum necessary, and that state commissions are free to establish additional

⁷⁵ *Line Sharing Reconsideration Order* ¶ 25.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Interim Award* at 11-12.

⁷⁹ *Id.*

⁸⁰ *Line Splitting Arbitration* at 18-19.

record to require SWBT to order splitters from the vendors that CLECs desire. Pursuant to its obligations as an incumbent to provide splitters, SWBT has to perform capacity management and develop plans to provision splitters to any requesting CLEC in Texas. The Arbitrators do not believe that it is efficient for SWBT to plan, engineer and equip central offices with splitters from different vendors. Also, if a CLEC prefers a specific splitter type, the CLEC is free to purchase that splitter and install it in its collocation space. Therefore, although the Arbitrators require SWBT to offer splitters as part of the HFPL UNE loop, we decline to require SWBT to obtain splitters from the CLECs' desired vendors.

3. If an ILEC owns the splitter, should it be required to provide splitter functionality in line increments and shelf increments, at the option of the CLEC?

CLECs' Position

Rhythms asserts that splitter functionality should be provided in both line increments and in shelf increments. Rhythms contends that the line-at-a-time provisioning of splitters does not allow SWBT to hard-wire splitter connections through a CLEC's DSLAM.⁸³ Rhythms indicates that this results in added costs due to additional cabling, ladder racking, frame blocks, and provisioning work that have to be performed for every line.⁸⁴ Rhythms claims that the additional cabling involved in line-at-a-time provisioning could also multiply potential points of failure and increase the opportunities for central office technicians to make mistakes.⁸⁵ On the other hand, Rhythms maintains that the shelf-at-a-time provisioning results in lower costs, as it allows the ILEC to pre-wire the data ports of the splitter directly to the CLEC's collocation cage.⁸⁶

Rhythms further contends that SWBT's port-at-a-time proposal would force CLECs to rely on SWBT for capacity management and that CLECs would be aware of the number of splitter ports available in any given central office.⁸⁷ According to Rhythms, this scenario could lead to a possibility wherein a customer orders a xDSL service from a CLEC only to find that

⁸³ Rhythms Ex. 2, John Donovan Adopting Direct Testimony of Michael Zulevic "Donovan Adopting Zulevic Direct" at 14-18 (October 6, 2000).

⁸⁴ *Id.*
⁸⁵ *Id.*
⁸⁶ *Id.*
⁸⁷ *Id.*

upgrading the software system, but would have to re-format its inventories, revise its collocation application, rewrite all of SWBT's methods and procedures, procure and install additional splitters, and create or revise capacity management tools.⁹⁸

SWBT counters CLEC's claims that the shelf-at-a-time splitters is more efficient, by asserting that the line-at-a-time solution uses space on the MDF more efficiently than the shelf option.⁹⁹ SWBT stresses that the shelf-at-a-time proposal could lead to frame exhaust on the MDF.¹⁰⁰ SWBT points out that in a line-at-a-time arrangement, several CLECs share the same shelf, which results in optimal use of the splitter and reduces the number of blocks placed on the MDF.¹⁰¹ On the other hand, SWBT argues, with the shelf-at-a-time proposal, each CLEC has its own dedicated shelf, which may not be fully utilized. SWBT indicates that the shelf solution not only increases the number of splitters required for line sharing, but also the number of cables and blocks terminating on the MDF, thus reducing the effective space on the frame.¹⁰² SWBT is also concerned about CLECs utilizing its network inefficiently by reserving blocks of ports on the MDF without any guarantees that those will be used to serve customers.¹⁰³

SWBT considers offering splitters a line-at-a-time more efficient from an investment standpoint as well. Because more splitters have to be deployed for the shelf-at-a-time option, SWBT is concerned about stranded splitter investments resulting from unused splitters. Further, SWBT claims that splitter technology is in its infancy and that current splitters may become obsolete with advancements in technology.¹⁰⁴ Consequently, SWBT considers current splitter solutions to be interim, and perceives them to be a potentially dangerous investment.¹⁰⁵

⁹⁸ Ex. at 14.

⁹⁹ Ex. at 15.

¹⁰⁰ Ex. at 18.

¹⁰¹ Ex. at 18.

¹⁰² Ex. at 18-19.

¹⁰³ SWBT Initial Brief at 26-27.

¹⁰⁴ Ex. at 19.

¹⁰⁵ Communications Direct at 19.

¹⁰⁶ Ex. at 19.

Third, based on indications from the CLECs during line sharing trials, SWBT has already wired all of its 232 central offices in which CLECs requested SWBT-owned splitters, to accommodate line-at-a-time functionality.¹¹¹ According to SWBT, approximately 807 splitter shelves have been wired for line-at-a-time provisioning.¹¹² SWBT claims that to accommodate shelf-at-a-time provisioning, it will have to undergo not only the costs associated with upgrading the software system, but it would have to re-format its inventories, revise its collocation application, rewrite all of SWBT methods and procedures, procure and install additional splitters, create or revise capacity management tools, and train its employees.¹¹³ The Arbitrators believe that it would be an inefficient use of resources to require SWBT to reengineer its offices to accommodate the shelf-at-a-time functionality.

Fourth, SWBT's OSS systems currently limit SWBT's ability to provision splitters both a line-at-a-time as well as a shelf-at-a-time.¹¹⁴ SWBT upgraded its back office system, SWITCH, to accommodate line-at-a-time provisioning in a flow-through manner.¹¹⁵ At the time when the OSS systems for line sharing were developed, Telecordia, SWBT's OSS vendor, indicated to SWBT that it would not be able to support flow-through provisioning in a timely manner if it had to provide both splitter options.¹¹⁶ SWBT maintains that the flow-through feature was necessary to accommodate automatic assignment of splitter ports; therefore, the OSS was developed to accommodate line-at-a-time splitters only.¹¹⁷ Consequently, to provide splitters in shelf-at-a-time, the assignment of splitter ports would need to be done manually, a process that increases the likelihood of provisioning errors.¹¹⁸ If SWBT were required to accommodate a shelf-at-a-time offering with flow-through capability, it would have to reengineer and redo an expensive upgrade to its OSS system.¹¹⁹ Because SWBT has already met its legal requirement by

¹¹¹ Substitution Direct at 6.

¹¹² Id.

¹¹³ Id. at 14.

¹¹⁴ Id. at 14-15.

¹¹⁵ Id.

¹¹⁶ Id. at 15-17.

¹¹⁷ Id.

¹¹⁸ Id. at 19-20.

¹¹⁹ Id. at 16.

4. What should be the location of the ILEC-owned splitters within the ILEC central office?
7. In the event common collocation space is at capacity (for placing ILEC-owned splitters), should the ILECs be required to find space other than in the common collocation space within the same central office for placing ILEC-owned splitters? (IP, et al. Issue No. 5)

CLECs' Position

IP argues that the most efficient line sharing configuration is to have splitters located as close to the Main Distribution Frame ("MDF") or on the MDF, as engineering standards permit.¹²¹ IP raises several concerns associated with placing the splitter away from the MDF. First, IP asserts that placing the splitter away from the MDF will result in unreasonable increases in loop length, and limit the ability of end users to obtain xDSL services.¹²³ Second, IP claims that the further the splitter is away from the MDF, the greater the complexity in addressing maintenance concerns. IP believes that a splitter close to the MDF, or on the MDF, will minimize cabling, permit quick access to equipment by SWBT personnel, and allow orders to be provisioned expeditiously.¹²⁴ IP is also concerned about CLECs paying for the additional unnecessary cabling that results from placing the splitter further away from the MDF.¹²⁵ Third, IP rejects SWBT's position that placing the splitter on the MDF would lead to frame exhaust by pointing out that, while splitter densities have been increasing, SWBT's concerns are based on current splitter densities.¹²⁶ Fourth, IP maintains that it relied on SBC's initial representation that the ILEC-owned splitter would be located in the ILEC area rather than the common collocation area.¹²⁷ Finally, IP argues that if the Commission allows ILECs to place splitters in the common collocation area, and the area runs out of space, then SWBT should be required to find space other than the common collocation space within the central office.¹²⁸

¹²¹ IP Ex. 1, Direct Testimony of Jo Gentry "Gentry Direct" at 9-10. (September 5, 2000).

¹²² Id.
¹²³ Id.
¹²⁴ Id.

¹²⁵ Id. at 11. IP claims that when the density of frame-mounted splitter increase to 48 pairs per block, the total frame utilization will be equivalent to that of bay-mounted splitters.

¹²⁶ IP and SBC Reply Brief at 13

¹²⁷ Gentry Direct at 11-14

maintainable arrangement and is the best technical configuration for line-shared services.¹⁴⁰ WCOM states that SWBT's splitter placement proposal could add considerable distance to a line-shared loop, which could cause a customer to lose the ability to receive a desired maximum bandwidth.¹⁴¹

WCOM distinguishes the holding in *GTE v. FCC*, indicating that while it relates to whether CLECs can collocate in any technically feasible location on the ILEC's central office that scenario is different from the ILEC-provided splitters scenario.¹⁴² WCOM reasons that in many instances, the location of the CLEC's equipment does not dramatically impact the quality of service.¹⁴³ In the case of a splitter, however, WCOM argues the location of splitters will impact the quality of service offered by the CLECs.¹⁴⁴ WCOM further adds that notwithstanding the court's decision, the Commission has jurisdiction to establish requirements for splitter ownership.¹⁴⁵ WCOM supports IP on the issue on space exhaustion in the common collocation area.¹⁴⁶

Rhythms asserts that the splitter should be located on the distribution frame itself.¹⁴⁷ Rhythms states that efficient engineering practices call for locating all line related equipment, in particular xDSL equipment, as close to the frame as possible.¹⁴⁸ Rhythms explains that xDSL is a distance limited service, and therefore the splitter should be placed either on the frame or as close as possible to the frame (preferably placed within 25 feet from the distribution frame).¹⁴⁹ Rhythms offers Quest as an example of an ILEC that installs splitters on the distribution frame in certain large central offices.¹⁵⁰ Rhythms claims that placing the splitter in the common collocation space will reduce the amount of efficient space available for the CLECs to collocate

¹⁴⁰ Id.

¹⁴¹ WCOM Reply Brief at 6.

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ Id.

¹⁴⁷ WCOM Initial Brief at 8.

¹⁴⁸ Rhythms Adopting Service Direct at 4-5.

¹⁴⁹ Id.

¹⁵⁰ Id. at 7.

¹⁵¹ Id. at 8.

SWBT's Position

SWBT rejects CLECs' suggestions that the splitter should be placed on the MDF or near it. SWBT asserts that legally it has the discretion to choose the location of the splitter.¹⁶⁰ SWBT argues that decisions made by the Courts, the FCC and other state commissions, affirms its position.¹⁶¹ SWBT contends that the D.C. Circuit Court of Appeals in *GTE Services v. FCC*, upheld that incumbents are best suited to determine the placement of equipment in their central office.¹⁶² SWBT maintains that the FTA does not permit the CLECs to determine where to collocate their equipment in an ILEC's central office and therefore asserts that CLECs cannot dictate where the ILEC can place its own equipment within its central office.¹⁶³

SWBT claims that sound central office engineering practices do not call for installing the splitter on the MDF and that equipment like splitters are not normally mounted there.¹⁶⁴ According to SWBT, the MDF is a critical facility and its primary use is for mounting and connecting terminating blocks through the use of cross connects and jumpers. SWBT claims that using the MDF for mounting splitters will consume twice the amount of splitters necessary and lead to "frame exhaust", a term SWBT uses to imply lack of space on the frame.¹⁶⁵ Instead, SWBT believes that there are benefits to placing the splitter in the common collocation area. According to SWBT, placing the splitters in the common area versus the MDF allows the CLECs

¹⁶⁰ SWBT Initial Brief at 30-31.

¹⁶¹ SWBT notes that in *GTE Service Corp. v. FCC*, 205 F. 3d 416, 426 (D.C. Cir 2000), "*GTE v. FCC*" the court held that "the FCC offers no good reason to explain why a competitor as opposed to the LEC should choose where to establish collocation on the LEC's property.... It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises subject to only technical feasibility. There is nothing in § 251 (c)(6) that endorses this approach." SWBT also states that "The Illinois Commission rejected the CLEC argument that splitters be located on the MDF and confirmed that CLECs "cannot dictate where splitters are located in an [ILEC's] central office." The California Commission also reached this conclusion with regard to splitter placement, finding that "[n]othing in the FCC Line Sharing Order suggests or directs that the [CLEC] may dictate the location of an ILEC-owned splitter." Finally, in the *Line Sharing Order*, the FCC acknowledged that the splitter would not be placed on the MDF in stating that: "The splitter will likely be installed between the MDF and the other central office equipment." SWBT Post-Hearing Reply Brief "SWBT Reply Brief" at 18 (March 1, 2001).

¹⁶² *Id.* at 30-31.

¹⁶³ *Id.*

¹⁶⁴ Schlackman Direct at 22; SWBT Initial Brief at 31-32. "The MDF is designed for wiring -i.e., for mounting, connection and terminating blocks to facilitate cross connections and jumper wire placements."

¹⁶⁵ SWBT Initial Brief at 32.

one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners are free to pick and choose preferred space on the LEC's premises subject to only technical feasibility. There is nothing in §251 (c)(6) that endorses this approach.¹⁷²

Additionally, in the *Line Sharing Order*, the FCC recognized that the "[t]he splitter will likely be installed between the MDF and the other central office equipment."¹⁷³ CLECs cite efficiency as the main argument for placing the splitters close to the MDF. This view of efficiency advocated by the CLECs is limited in scope and targeted only toward optimizing DSL services. SWBT, as an ILEC, has additional obligations beyond providing splitter functionality to the CLECs. SWBT has to manage its central office floor space, take frame cabinet possibilities into consideration, optimize the network for competing technologies, address cost considerations and ensure that its facilities are used in an efficient and safe manner. Equipment placement policies, therefore, cannot be evaluated in a vacuum. Each central office is unique in its equipment placement, architecture and space constraints. To develop an equipment placement policy for a single piece of equipment, such as a splitter, without considering the constraints of other related equipment, is not sound public policy. The Arbitrators agree with SWBT that it is in the best position to determine from a overall network perspective how to best place and manage equipment in a central office.

The Arbitrators agree with CLECs that it is technically feasible to place the splitter on the MDF. However, the Arbitrators do not believe that the MDF is the appropriate location for mounting splitters. First, the MDF is primarily used for connecting and terminating blocks. To use a critical and expensive component such as the MDF for mounting splitters appears to be an inefficient use of a scarce resource. Second, frame-mounted splitters have less density compared to bay-mounted splitters. Therefore, the frame-mounted splitter occupies more area on the MDF to provide the same number of splitter ports as would be provided by a bay-mounted splitter. Moreover, 50% of SWBT's central offices where CLECs have sought SWBT-owned splitters

¹⁷² FCC v. PCC

¹⁷³ *Line Sharing Order* at ¶ 111

The record evidence does not support the assertion that placing the splitter away from the MDF results in increased failure and maintenance complexity, except in a small number of instances.¹⁸⁰ Whether the splitter is placed near the MDF or in a common collocation space as proposed by SWBT, the evidence shows that the same number of cross connects and cables are necessary. Provisioning cables from the frame to the collocation area is not unique to line sharing. SWBT provides the necessary wiring and cables, to and from the frame to CLECs' collocation cages, for other services as well. The Arbitrators required the parties to monitor this concern during the interim phase. The Arbitrators, however, were not presented with any new evidence to alter our decision.

Collocation space in many central offices may be limited and it is possible that with increased CLEC deployment, SWBT may run out of space for installing ILEC-owned splitters. The Arbitrators find that SWBT cannot reject CLEC orders for ILEC-owned splitters if the common area runs out of space, as SWBT has an obligation to provide splitters to requesting CLECs. SWBT has indicated that if the common collocation area runs out of space, it will install splitters within its equipment line-up.¹⁸¹ The Arbitrators are not opposed to SWBT placing ILEC-owned splitters along with SWBT's equipment if the space in the common area is exhausted. However, SWBT shall install the ILEC-owned splitters for CLECs in a similar and non-discriminatory fashion with ASI. If there is no space in SWBT's equipment line up to install ILEC-owned splitters, SWBT is required to place the splitters in other easily accessible areas of the central office. The Arbitrators are concerned about limiting CLECs' access for

card can be removed from the slot. (5) When the new card is replaced, the internal cables need to be seated into the card. (6) The cables on the card must be cut to remove the card. Now the technician must work in a very tight and restricted space to tie wrap down the cable and redress it so the card can be reseated. (7) Assuming the change is a permanent change to new splitter ports, the technician then tests the lines and closes out the repair ticket. (8) If the wiring to an unused splitter port was a temporary measure, the technician must rewire the two circuits back to the existing assignments, test the lines and close out the repair ticket." Schlackman Rebutal at 11-12.

¹⁸⁰ The Arbitrators acknowledge that xDSL is a distance sensitive service and the additional cable length associated with placing the splitter away from the MDF may limit the CLECs' ability to serve some of their far reaching customers. However, the Arbitrators note that this situation could be addressed by CLECs providing their own splitters. As SWBT points out, placing the splitter within the CLEC collocation cage, along side the DSLAM within a few feet, results in optimal placement of splitter. Therefore, in those limited instances, where interoffice "zigzagging" limits a customer's ability to obtain xDSL service, a CLEC can provide its own splitter functionality. The CLECs can determine whether or not to make the decision to provide its own splitter based on loop qualification analysis.

collocation area does not indicate that a central office is exhausted of all available physical collocation space as the existing collocation area may still have room for physical collocation arrangements, expansion into contiguous space, or availability in another part of the building.¹⁸⁸ SWBT further argues that even if there were no space in the common collocation area to place splitters, it should be able to meet CLEC's demand for splitters by placing them in SWBT's equipment space.¹⁸⁹

Arbitrators' Decision

The Arbitrators disagree with SWBT that it is not required to notify CLECs when the space in the "common" area is exhausted for placing splitters. The Texas Collocation Tariff requires SWBT to notify CLECs when space is exhausted in the physical collocation area. The Commission developed these requirements to ensure that CLECs that interconnect with SWBT's network have advance notice regarding space exhaustion and are prepared accordingly. While the Collocation Tariff does not specifically address the issue of notification when the common collocation area runs out of space, the Arbitrators believe that the Commission's intent should be preserved in this context as well. When space exhausts in the common area, the Arbitrators have indicated it is reasonable for SWBT to place the splitters along with its equipment line up or at other reasonably accessible places within the central office. However, placing the splitter in a location other than the common area, impacts test and maintenance access for the CLECs. For instance, if the splitter is placed alongside SWBT's equipment line-up, CLECs may have to obtain a security clearance to allow its employees access to the ILEC area, develop additional procedures for troubleshooting splitter problems and train employees accordingly. Therefore, the Arbitrators find that if space exhausts in the common area, SWBT is required to send an accessible letter to all parties that have a DSLAM collocated in its central office and post the notice on the SBC website.

¹⁸⁸ *Border Direct* at 5-6.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

CONTINUATION

[8]

SWBT's Position

SWBT states that the appropriate provisioning intervals for collocation are already in place in its Collocation Tariff, and there are no legitimate grounds for instituting new intervals specific to line sharing.¹⁹⁸ SWBT claims that the Collocation Tariff provides Texas CLECs with the most aggressive collocation intervals in the United States and, therefore, urges the Commission to adopt a decision consistent with the Tariff. While the Collocation Tariff does not address time intervals for reconfiguring tie cables, SWBT voluntarily agrees to perform reconfiguration using the same intervals as those outlined for augments in the Tariff. Those intervals are as follows:¹⁹⁹

Tie Cable augments for voice grade DS0 pairs²⁰⁰	
15 calendar days	100 Copper (shielded or nonshielded) cable pairs (blocks and cabling only; panels, relay racks and overhead racking exist)
30 calendar days	200 Copper (shielded or nonshielded) cable pairs (2 blocks) up to 400 feet
60 calendar days	400 Copper (shielded or nonshielded) cable pairs (2 blocks) up to 400 feet

Arbitrators' Decision

The Arbitrators held during the interim phase that tie cables should be provisioned pursuant to the intervals provided in the SWBT Collocation Tariffs.²⁰¹ The Arbitrators decision was based on the fact that tie cable provisioning "is not unique to the HFPL UNE."²⁰² Once again, the Arbitrators are not persuaded that the Commission should require SWBT to provide tie cables using a time interval different from those outlined in the Collocation Tariff. SWBT, as an incumbent, may be required to provision several orders simultaneously. The Arbitrators find that

¹⁹⁸ *Id.*

¹⁹⁹ Butler Direct at 7-8.

²⁰⁰ *Id.* at 8-9.

²⁰¹ The above calendar day intervals will apply only when the collocator provides a complete application. The job must be an augment to an existing collocator cage or area and limited up to and not more than the above quantities.

²⁰² *Interim Award* at 24.

²⁰³ *Id.*

WCOM takes no position on this issue.²⁰⁵

Rhythms takes no position on this issue.²⁰⁶

SWBT's Position

SWBT proposes that new OE (Office Equipment terminations used to connect to SWBT's voice service) and CP (Cable Pair terminations used to connect to the UNE loop) cables be placed in complements of 100 pairs, terminated on different blocks.²⁰⁷ SWBT believes that this increment is reasonable for three reasons: First, cabling from splitters to the frame is terminated on 100 pair connector blocks, which is supported by the vast majority of POTS splitter manufacturers.²⁰⁸ Second, the provisioning system used by SWBT links the assignments between the OE and CP blocks for optimal mechanized assignments. If the above counts are dissociated, SWBT claims that the pair loading process would become manual.²⁰⁹ Third, it will allow for proper stenciling, which will facilitate a SWBT technician's ability to identify the proper terminal block assignments.²¹⁰ SWBT's contends that its proposed CFA increments and reservation processes are reasonable and should be adopted by the Commission.

Arbitrators Decision

The evidence demonstrates that the CFA can be used for UNE loops or for line-shared services. The dispute over the CFA provisioning arises due to SWBT's internal OSS database incompatibilities. SWBT has designed the line sharing order process to follow a "POTS-flow" process that uses the SWITCH/FOMS database for facilities assignment.²¹¹ Stand-alone UNE loops, on the other hand, follow a "design-flow" process that uses the TIRKS database for facilities assignment.²¹² Unfortunately, while information from both databases is needed to

²⁰⁵ WCOM Initial Brief at 9.

²⁰⁶ Rhythms Initial Brief at 32.

²⁰⁷ Bunker Direct at 7.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.* (stenciling is the process by which a SWBT central office frame technician identifies cable pairs by installing appropriate name tags.)

²¹¹ IP and Sage Initial Brief at 24-25.

²¹² *Id.*

V. TESTING PROCEDURES

DPL ISSUES 37 - 40

37. What testing should SWBT be required to successfully complete prior to cooperative testing with CLEC?
38. What are the appropriate testing procedures to be included in the HFPL Appendix?
39. How is an ANI test initiated and completed for line sharing? (IP, et al. Issue No. 12)
40. Should SWBT be required to complete and pass a cooperative acceptance test with the CLEC before considering the installation of Line Sharing UNE complete?

CLECs' Position

IP and Sage argue that SWBT must perform testing sufficient to determine that it has completed its provisioning work correctly.²¹⁶ According to IP, this would require SWBT to perform continuity tests and ensure that all cables and cross connects are in place and properly tied down.²¹⁷ IP believes that the line sharing Turn-up test (Attachment JG-1) which was jointly developed between the ILECs and the CLECs addresses many of the installation testing issues.²¹⁸ IP and Sage support including the line sharing Turn-up test procedure as part of the HFPL appendix, with additional language to allow changes to the document through a mutually agreed procedure between SWBT and the CLECs.²¹⁹ IP and Sage are concerned that if the Turn-up procedure is not mandated, SWBT might unilaterally change the test procedure and CLECs will continue to have significant difficulty with the testing process.²²⁰ IP and Sage support Rhythms' position on cooperative acceptance testing.²²¹

²¹⁶ IP and Sage Initial Brief at 63.

²¹⁷ *Id.*

²¹⁸ County Direct at 24-25.

²¹⁹ IP and Sage Initial Brief at 64-65.

²²⁰ *Id.*

²²¹ *Id.* at 63.

SWBT's Position

SWBT states that it does not provide cooperative testing with CLECs during the xDSL installation process. Instead, SWBT states it will use a procedure developed along with the CLECs called the line sharing Turn-up test to determine if a loop is qualified for xDSL.²³³ Under this procedure, SWBT states that it will complete a series of steps to ensure that the service order is provisioned properly and is free of load coils.²³⁴ SWBT states that after 5:00 p.m. on due-date-minus-one, CLECs can independently test the loop.²³⁵ If a trouble is identified SWBT will have advance notice in order to attempt to clear the problem. However, if an order does not test properly, SWBT maintains that the order should still be closed and referred to SWBT's Local Service Center for immediate handling.²³⁶ SWBT explains that completion notices, which are issued when an order is closed, are necessary to realize the benefits of mechanization and to provide quick and thorough trouble isolation.²³⁷

SWBT acknowledges that the line sharing Turn-up test may have to be revisited and modified to continue to be effective as a testing procedure.²³⁸ SWBT indicates that it will jointly examine and assess testing procedures with the entire CLEC community to make appropriate changes to the Turn-up test.²³⁹

Arbitrators' Decision

The Arbitrators believe that the line sharing Turn-up test is an appropriate starting point toward developing a more comprehensive testing procedure. This document was developed through the combined efforts of SWBT and the CLEC community. The Arbitrators believe that the steps outlined in the document, when properly followed, ensure that xDSL line-shared

²³³ Substantive Rebuttal at 21-22.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Substantive Answer at 37.

²³⁷ *Id.*

²³⁸ Substantive Rebuttal at 22.

²³⁹ *Id.* at 22-23.

Some CLECs argue that cooperative acceptance testing should be included as part of provisioning line-shared loop.²⁴² While the Arbitrators acknowledge the merits of cooperative testing, we are not convinced that every line-shared loop needs to be cooperatively tested. The line sharing Turn-up test that the Arbitrators require SWBT to perform before provisioning a loop, among other things, tests for the presence of load coils, performs an ANI test, and ensures that jumpers and CFA cables are provisioned properly. Accordingly, the Arbitrators find that the line sharing Turn-up test, with the provision to update it as necessary, obviates the need to perform cooperative testing for every line-shared loop.

Although the Arbitrators have not required SWBT to perform cooperative testing as a standard part of the Turn-up test, we do believe that there may be some circumstances that warrant testing the loop in a cooperative fashion. For CLECs that would like to perform cooperative testing, SWBT shall provide it as an option, not as part of the line sharing Turn-up test. During Phase III of this proceeding, SWBT shall develop rates for cooperative testing of sDSL circuits in a manner consistent with the rates developed for cooperative testing for other services such as coordinated hot cuts.

41. Does virtual collocation provide CLECs with parity to the ILECs' DSL affiliates for line sharing? (IP, et al. Issue No. 15)

CLECs' Position

IP and Sage argue that virtual collocation does not provide CLECs with parity to ASI, SWBT's DSL affiliate for line sharing. IP and Sage dismiss suggestions that it has the same opportunity to virtually collocate as does ASI, because IP and Sage do not believe that ASI is totally treated as a separate affiliate.²⁴³ IP and Sage allege that while SWBT is required to determine splitter location on a non-discriminatory basis, SWBT's affiliate ASI benefits from proximity to the MDF, shorter cable lengths, and better maintenance and provisioning.²⁴⁴ IP and

²⁴² Donovan Direct at 52-53.

²⁴³ IP and Sage Initial Brief at 65.

²⁴⁴ *Id.*

lose some flexibility. However, the Arbitrators note that ASI operates under the same constraints.

AT&T alleges that CLECs do not have the ability to virtually collocate like SWBT's affiliate ASI. However, AT&T has not produced any evidence in this proceeding to establish that SWBT is discriminating against CLECs in favor of ASI. To the extent CLECs are able to bring forth evidence establishing they are not receiving parity with regard to virtual collocation, they should raise the issue in the appropriate forum. Presently, ASI is virtually collocated in SWBT's central office, and its equipment is placed along with SWBT's equipment line-up. To the extent a CLEC virtually collocates, SWBT shall provision line sharing to CLECs using the same number of cross connections and the same length of cables, as provided to ASI. However, as the Arbitrators noted in the *Interim Award*, "CLECs cannot pick and choose the benefits of virtual collocation, such as possible proximity to the MDF without taking the entire virtual collocation package."²⁵³

VI. TEST ACCESS ISSUES

DPL ISSUES 46 AND 47

46. What remote testing capabilities should SWBT be required to offer CLECs?
47. What physical test access should SWBT be required to allow CLECs?

CLECs' Position

Rhythms argues that CLECs must have direct physical and remote test access twenty-four hours a day, seven days a week to the MDF to test the cross-connects.²⁵⁴ Rhythms claims that

²⁵³ *Interim Award* at 15.

²⁵⁴ *Decision Adopting Zulevic Direct* at 19-21

SWBT's Position

SWBT does not believe that CLECs should be allowed access to the MDF.²⁶⁵ SWBT cites security as the main reason for denying access to MDF and states that the *Advanced Services Order* gives SWBT the right to protect its equipment.²⁶⁶ Instead, SWBT claims that it offers the CLECs a variety of testing options, which allow the CLECs to perform all the tests that SWBT can perform.²⁶⁷ SWBT contends that CLECs can perform MLT tests and High Frequency tests 24 hours a day, 7 days a week in addition to testing the Automatic Number Identification (ANI)²⁶⁸ and the Network Interface Device (NID).²⁶⁹ SWBT disagrees that CLECs will not be able to determine if the correct line has been wired to the circuit.²⁷⁰ SWBT states that CLECs can determine the proper loop by testing for ANI at the splitter pin.²⁷¹ SWBT asserts that CLECs have the ability to perform a test from the splitter that verifies continuity of wiring, presence of signal, condition of the loop, including presence or absence of load coils.²⁷² SWBT asserts that the mechanized test access it provides to the CLECs satisfies the requirements of the *Line Sharing Order*.²⁷³ SWBT, however, indicates that when splitters are placed in SWBT's equipment area, the CLECs will have limited access to those splitters, and will be allowed access to those areas on an escorted basis.²⁷⁴

Arbitrators' Decision

On testing, the *Line Sharing Order* states that:

²⁶⁵ Schlackman Direct at 41-42.

²⁶⁶ *Id.*

²⁶⁷ Schlackman Direct at 38-40.

²⁶⁸ Automatic Number Identification (ANI): ANI provides for the transmission through the network of the BN (Billing Number), versus the telephone number, of the originating party. Harry Newton, *Newton's Telecom Dictionary*, (15th edition 1999) at 56.

²⁶⁹ Network Interface Device (NID): 1. A device between a telephone protector and the inside wiring to isolate the customer's equipment from the network. Harry Newton, *Newton's Telecom Dictionary*, (15th edition 1999) at 583.

²⁷⁰ Schlackman Rebuttal at 25.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ SWBT Ex. 2, Rebuttal Testimony of Randall Butler "Butler Rebuttal" at 5 (October 20, 2000).

Further, the *Line Sharing Order* requires SWBT to provide physical test access points to the CLECs.²⁷⁸ In response, SWBT has agreed to provide the CLECs with a Mechanized Loop Test (MLT), which allows the CLECs to test the voice path from the voice switch to the customer premises in order to assure continuity. In addition, the ANI test will allow the CLEC to ensure that they are working with the proper customer's line. Also, SWBT has offered CLECs direct physical access to the test port on the splitter, which will allow the CLECs to test other parts of their xDSL circuit.²⁷⁹ For instance, by using the Mechanized Loop Test (MTL), the voice circuit from the voice switch to the customer premises can be tested for continuity, as well as for other features of the voice circuit. Since SWBT is also offering direct physical access to a test port on the splitter, CLECs can isolate and test other elements of the xDSL circuit. In addition, using high frequency tests, CLECs can perform any technically feasible test utilizing the HFPL from the DSLAM to the customer premises, thus allowing the data path between the splitter and the end user to be tested. The Arbitrators find that the above battery of tests are sufficient for CLECs to test xDSL circuits, and the Arbitrators further find that such tests comply with the requirements of the *Line Sharing Order*. Thus, the Arbitrators once again refrain from requiring SWBT to offer direct physical access to the MDF.

In addition, AT&T has raised test access issues when the splitter is not located in the common area. SWBT indicated that, if the splitter is placed as part of its equipment lineup, it will manage the splitters pursuant to the terms of a virtual collocation arrangement.²⁸⁰ In those circumstances, the Arbitrators are persuaded that the CLECs shall have maintenance and repair access to the splitters. Section 26.1 of the Texas Virtual Collocation Tariff reads:

"At SWBT's option in central offices, and at SWBT's option in other Eligible Structures where physical (including cageless) collocation space is available, or at the Collocator's option in CEV, huts and cabinets where physical collocation space is not available, SWBT will provide one of the following alternate types of virtual collocation:

²⁷⁸ See *Line Sharing Order* ¶ 175; § 512.319(h)(7)(i). "[ILECs] must provide, on a nondiscriminatory basis, physical loop test access points to requesting carriers at the splitter."

²⁷⁹ See *Interim Award* at 17-18 for a detailed discussion on the different xDSL circuit elements that can be tested using the MLT, ANI and High Frequency Tests.

²⁸⁰ *Outlet Direct* at 5.

VII. FIBER-FED DIGITAL LOOP CARRIER ISSUES

DPL ISSUES 11-14, 16-19

11. Should SWBT be required to support CLEC access to line sharing as a UNE from the customer location to the central office, whether the loop is configured over all-copper or fiber-fed DLC facilities?
16. Should SWBT's Pronto offering (or a comparable offering by any ILEC) be provided as an unbundled network element? (IP, et al. Issue No. 18)

CLEC's Position

Rhythms states that in its recent *Line Sharing Reconsideration Order*, the FCC has further clarified that ILECs must provide the line sharing UNE over fiber-fed digital loop carrier ("DLC") configurations, such as Project Pronto, in keeping with the goal of encouraging competitive provisioning of xDSL services.²⁸⁴ Rhythms indicates that the requirement to provide line sharing, as established in the *Line Sharing Order*, "applies to the entire loop where the incumbent has deployed fiber in the loop (e.g. where the loop is served by a remote terminal ("RT"))."²⁸⁵ Rhythms explains that the FCC did not intend to limit an ILEC's obligation to provide CLECs with access to the fiber portion of a DLC loop for line sharing purposes by using the word "copper" in the rule implementing the *Line Sharing Order*, Rule § 51.319(h)(1); instead, the FCC requires the ILEC to unbundle "the high frequency portion of the local loop even where the incumbent IEC's voice customer is served by DLC facilities."²⁸⁶

Rhythms believes that the *Line Sharing Reconsideration Order* also requires that the components of the Project Pronto architecture be unbundled and made available as UNEs.²⁸⁷ Rhythms asserts that CLECs must have the option of accessing the high frequency portion of the loop at the RT as well as at the central office.²⁸⁸ Rhythms argues that the FCC did not intend to

²⁸⁴ Rhythms Initial Brief at 34, citing *Line Sharing Reconsideration Order* ¶ 10.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

- i. the copper subloop from the RT to the network interface device (NID) at the customer premises;
 - ii. the copper subloop from the RT to the SAI ("serving area interface");
 - iii. the copper subloop from the SAI to the NID at the customer premises.
- c. ADLU line cards owned by the ILEC in the NGDLC equipment in the RT;²⁹⁷
 - d. A port on the OCD in the CO,²⁹⁸ and
 - e. Any combination thereof, including a line-shared xDSL loop from the OCD port to the NID.²⁹⁹

IP and Sage indicate that a recent D.C. Circuit decision affirms that ILEC advanced services such as NGDLC facilities are subject to Section 251 unbundling obligations. Specifically, IP and Sage mention that the appellate court held that the FCC may not permit an ILEC to avoid its Section 251 obligations when offering advanced services through an affiliate to offer those services.³⁰⁰ Further, IP and Sage argue that the court held that advanced services are not to be treated differently from telecommunications services, even if the services do not rely on the traditional local loop.³⁰¹ Therefore, IP and Sage argue that this Commission must reject arguments espoused by SWBT that the NGDLC loop is not subject to Section 251 obligations, either because it is an alleged overlay network or because it is used solely by its affiliate to offer advanced services. IP and Sage also argue that the CLECs collectively have demonstrated conclusively that unbundling SWBT's NGDLC loop is justified because the cost, timeliness, quality, ubiquity, and impact on network operations associated with any alternatives unequivocally support such a determination.³⁰²

IP and Sage assert that SWBT incorrectly dwells on the FCC's dated definition of subloops and its four-part test for unbundling packet switching from the *UNE Remand Order*. IP and Sage believe that no viable alternatives exist to unbundling NGDLC under the impair

²⁹⁷ Donovan Direct at 13.

²⁹⁸ Murray Direct at 51-52; Donovan, Exhibit JCD-7.

²⁹⁹ *Id.*

³⁰⁰ *Association of Communications Enterprise v. FCC*, 253 F.3d 622 (D.C. Cir. 2001).

³⁰¹ *Id.*

³⁰² See, e.g., Gentry Direct at 31-41; Drake Direct at 3-4; Turner Direct at 32-36; Donovan Direct at 57-63.

terminals that each serve only a few hundred customers, rather than the thousands reachable via central office collocation.³¹⁰ AT&T suggests that the economic reality of adjacent collocation is that remote deployment of transmission-related electronics by competitive LECs is unlikely to occur in most areas and is not feasible except in the most extraordinary circumstances.³¹¹ Therefore, AT&T argues, pursuant to the FCC's definition, ILECs must provide access to subloops at any location where the loop switches from copper to fiber, regardless of whether such point is located at: (1) a remote terminal, (2) a feeder-distribution interface, (3) a neighborhood pole or pedestal, (4) a serving area interface ("SAI") point, (5) the minimum point of entry (for multiple dwelling units), (6) any other point expressly specified by the FCC, such as the Network Interface Device, or (7) any other technically feasible point.³¹²

WCOM likewise indicates that SWBT should be required to unbundle Pronto and also provide sub-loop unbundling as required by the FCC and this Commission. WCOM believes that CLECs are impaired by lack of access to line sharing over DLC as a UNE because CLECs face "substantive differences" in the ability to collocate and access subloops at remote terminals.³¹³ Specifically, WCOM believes that ASI has much more favorable access to subloops as part of Project Pronto than CLECs that try to collocate at the remote terminals.³¹⁴ Accordingly, WCOM argues that SWBT must provide CLECs reasonable and non-discriminatory access to subloops at remote terminals. Sprint did not specifically present a position with respect to this issue.

SWBT's Position

SWBT opposes the CLECs' efforts to gain access to "Project Pronto" as an unbundled network element. SWBT has offered to provide CLECs with the Broadband offering. SWBT claims that the pricing scheme for the Broadband services it will offer to CLECs uses forward

³⁰⁹ *Id.* at 34.

³¹⁰ AT&T Initial Brief at 27-28.

³¹¹ *Id.*

³¹² *UNE Remand Order* ¶¶ 205-206.

³¹³ WCOM Initial Brief at 14.

³¹⁴ *Id.*

in which the alternatives would be available, (iii) the quality of service that will be provided over the alternatives, and (iv) whether the alternatives are ubiquitously available.³²³

Furthermore, SWBT argues that the CLECs will never be able to satisfy the FTA's "impair" standard because Pronto is not a replacement to SWBT's existing network and therefore, Pronto will not affect the availability of SWBT's existing network to support the provision of xDSL services, including line sharing.³²⁴ SWBT asserts that CLECs are able to provide xDSL service to end users using either "their own central office-based DSLAMs and SWBT's all-copper loops or their own remotely-located DSLAMs and SWBT's copper subloops."³²⁵ Because of the numerous service-offering alternatives available to CLECs, SWBT asserts that the lack of unbundled access to SWBT's Pronto architecture clearly does not "impair" the CLECs' ability to provide advanced services.³²⁶

SWBT also argues that it cannot legally be required to offer UNEs for line sharing over fiber because "Pronto" necessarily contains a component of packet switching and the FCC has already found that SWBT does not have to unbundle packet switching except in very limited circumstances that are not present in this case. SWBT indicates that none of the criteria in the UNE Remand Order are met and in fact under Project Pronto, those criteria will never be met.

SWBT argues that under the *UNE Remand Order* it is only obligated to provide unbundled access to packet switching where each of the following conditions are satisfied:

- (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
- (ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

³²³ *Id.* at 52.

³²⁴ Lube Direct at 3-4; *Pronto Waiver Order* at ¶ 25.

³²⁵ SWBT Ex. 11, Rebuttal Testimony of John Lube "Lube Rebuttal" at 22 (October 20, 2000).

³²⁶ *Id.* at 23.

requirements of Sections 251(d)(2) and 251(c)(6).³³³ Last, SWBT argues that public policy dictates that this commission should not force SWBT to offer UNEs for line sharing over Pronto as that decision would deter competitive entry and build out for broadband competition and may force SWBT to reconsider its investment.

Arbitrators' Decision

In the *Line Sharing Reconsideration Order*, the FCC clarified that ILECs must allow line sharing, even when the ILEC has deployed fiber-fed DLC facilities, including SWBT's Project Pronto.³³⁴ The FCC stated:

We clarify that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the word "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line shared xDSL services. As noted above, incumbent LECs are required to unbundle the high frequency portion of the *local loop* even where the incumbent LEC's voice customer is served by DLC facilities.³³⁵ The local loop is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end user customer premises, including inside wire owned by the incumbent LEC.³³⁶ By using the word "transmission facility" rather than "copper" or "fiber," we specifically intended to ensure that this definition was technology-neutral. The "high frequency portion of the loop" is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions. Thus, although the high frequency portion of the loop network element is limited by technology, i.e., is only available on a copper loop facility, *access to* that network element is not limited to the copper loop facility itself. When we concluded in the *Line Sharing Order* that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, we did not intend to limit competitive LECs' access to fiber feeder subloops for line sharing.³³⁷

³³³ *Id.*

³³⁴ *Line Sharing Reconsideration Order* ¶ 10.

³³⁵ *See Line Sharing Order* ¶ 91.

³³⁶ *UNE Remand Order*, App. C: 47 C.F.R. § 51.319(a)(1).

³³⁷ *Line Sharing Reconsideration Order* ¶ 10.

Citing the FCC's unbundling analysis, SWBT argued that alternatives exist for CLECs: thus, making it impossible to establish that lack of access to Project Pronto as a UNE will material diminish CLECs' ability to provide advanced services.³⁴³ The Arbitrators find, however, that the evidence in the record establishes that the alternatives upon which SWBT relies are either not viable, not concrete, or do not offer comparable service.³⁴⁴

First, the Arbitrators find that SWBT's attempt to offer CLECs "resale" in lieu of UNEs is problematic. The wholesale broadband service is not a comparable alternative to UNEs because competitors have no assurance that SWBT will not change the offering in such a way as to make it unsuitable as a manner in which to provide services that the CLEC seeks to offer.³⁴⁵ Indeed, the FCC assigns little weight in the "impair" analysis to the ability of a requesting carrier to use the ILECs' resold services as alternatives to UNEs.³⁴⁶ SWBT's proposal is not subject to any of the requirements of Section 252. Thus, SWBT can restrict the offering in such a way as to benefit its data affiliate and more importantly can rescind or alter its service offering at will.³⁴⁷ CLECs are prohibited from changing the offer in any manner and are thereby prohibited from introducing any product differentiation to consumers. In addition, although SWBT's proposed changes are purportedly different from a traditional wholesale discount, CLECs, as well as this Commission, are prohibited from scrutinizing the proposed pricing scheme in any manner.³⁴⁸

Second, use of all-copper loops to provide xDSL services merely provides CLECs with an option that SWBT itself is spending billions of dollars to avoid. As xDSL is distance sensitive, provisioning over Project Pronto, where the goal for the copper portion of the loop is 12,000 ft., rather than home-run copper, provides inherent, enhanced quality. The FCC

³⁴³ SWBT Initial Brief at 52-53.

³⁴⁴ For instance, SWBT's Broadband Service offering provides no assurances to CLECs or the Commission that the service will not be withdrawn, will be appropriately priced after review by the Commission, will offer all technically feasible flavors of xDSL, and will offer additional functionality, as developed, that is technically feasible.

³⁴⁵ *Local Demand Order* ¶ 69.

³⁴⁶ *Id.* ¶ 67.

³⁴⁷ *Tr.* at 313.

³⁴⁸ (To rebut the pricing concern, SWBT argues that its wholesale offering is of a different nature than a true resold services. SWBT believes that because it has offered the Broadband Service at TELRIC prices, it overcomes the scrutiny of the "resold" services argument. The Arbitrators believe that SWBT misses the point. The proposed pricing for the broadband service has undergone none of the scrutiny that pricing for unbundled elements would by CLECs and this Commission.) See SWBT Reply Brief at 31-32.

Finally, options for CLECs to replicate networks in lieu of gaining unbundled access have consistently been rejected.³⁵⁴ Requiring CLECs to invest in duplicative facilities would delay market entry and postpone benefits to consumers.³⁵⁵ The \$6 billion investment in SWBT's already established network would most certainly translate into substantially greater costs for CLECs to duplicate. Accordingly, the Arbitrators assign little weight to this alternative.

In addition to asserting that alternatives are available in lieu unbundling Pronto, SWBT has also argued that line sharing does not technically occur when provisioning service over the Pronto architecture because the data and the voice are transported from the remote terminal to the central office on different fibers. Thus, SWBT argues, line sharing as defined by the FCC is not technically feasible when NGDLC is deployed. However, the Arbitrators find that evidence in this proceeding clearly establishes that it is technically feasible to carry both voice and data on a single fiber. SWBT witness Mr. Lube admitted it is technically feasible to "fiber share" voice and xDSL traffic on the same fiber in the Project Pronto architecture.³⁵⁶ Specifically, Mr. Lube acknowledged that the Alcatel NGDLCs being deployed throughout the SBC territory under Project Pronto—the Litespan 2000 and the Litespan 2012—can be configured to carry xDSL traffic and voice traffic on the same fibers.³⁵⁷

Furthermore, the FCC defined the local loop as a transmission facility between a distribution frame or its equivalent and the loop demarcation point at the end user premises.³⁵⁸ The FCC reasoned that, although the high frequency portion of the loop is limited by technology (i.e., the HFPL refers to the manner in which line sharing is accomplished on a copper loop), access to the HFPL is not limited to the copper loop.³⁵⁹ The FCC concluded that its *Line Sharing Order* imposed no limitations on CLEC access to fiber feeder subloops for line sharing.³⁶⁰

³⁵⁴ UNE Rebound Order ¶ 355; First Report and Order ¶ 378.

³⁵⁵ See First Report and Order ¶ 378.

³⁵⁶ Lube Direct at 12.

³⁵⁷ *Id.* at 14-15. (In addition, the AMF UMC 1000 is deployed in smaller locations and carries voice and data traffic on the same fibers.)

³⁵⁸ Line Sharing Reconsideration Order ¶ 10.

³⁵⁹ *Id.*

³⁶⁰ *Id.*

SWBT must provide access to the entire loop, from central office to customer premises.³⁶⁵ Similar logic applies in the case of SWBT's Project Pronto.

In sum, the Arbitrators find that no viable alternatives exist with respect to provisioning xDSL through Project Pronto. Likewise, the Arbitrators find that line sharing is technically feasible over Project Pronto. Finally, the Arbitrators find that the transmission facility, whether it is end-to-end copper, or a configuration of copper and fiber with a remote terminal and remotely located electronics, is within the definition of an unbundled loop. Consequently, SWBT must provide CLECs access to the unbundled loop element from the demarcation point at the customer's premises to the termination (port) on the OCD in the central office, including the associated electronics at the RT and the CO (discussed specifically below).

Although the Arbitrators have found that the Pronto transmission facilities must be provided as part of the unbundled loop element, the Arbitrators are not convinced, as AT&T has argued, that the next generation loop electronics, such as line cards with DSLAM and splitter functionality, can be categorized as part of the loop. Although the Arbitrators believe that this argument has merit, the FCC currently includes DSLAMs within the definition of packet switching.³⁶⁶ Although the Arbitrators may disagree with that finding, the Arbitrators decline to adopt the position in this Arbitration that the necessary loop electronics used to provision service over Project Pronto are included as part of the loop. The Arbitrators note that the FCC is currently considering this issue, specifically whether to reevaluate its position with respect to new architectures being developed to deploy advanced services.³⁶⁷ The Arbitrators are hopeful that the FCC will expeditiously address this question, but until such time, we cannot support a finding in direct contradiction. Notwithstanding the fact that the Arbitrators decline to follow

³⁶⁵ *Application of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement Between AT&T and Southwestern Bell Telephone Company, et al.*, Docket Nos. 16226, et al., Arbitration Award I - Nov. 7, 1996; Arbitration Award II - Sept. 30, 1997; Arbitration Award III - Dec. 19, 1997, collectively ("Mega-Arbitrations").

³⁶⁶ *LINE Reform Order* ¶ 304.

³⁶⁷ *Third Report and Order on Reconsideration and Third Further Notice of Proposed Rulemaking in CC Docket 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets 98-147 and 96-98 (rel. Jan. 19, 2001) ("Second Collocation ORDER").

means to serve a customer.³⁷² The Arbitrators interpret this prong of the test broadly, as a literal reading proposed by SWBT would make this an impossible hurdle to clear. After carefully reviewing the FCC's rationale for unbundling packet switching in limited circumstances, the Arbitrators are convinced that the FCC would not have devised a set of criteria that could never be met.³⁷³ Clearly, the packet switching exception criteria was put in place for unique situations where CLECs' nondiscriminatory access was limited by the actions of the ILEC. This is one such occasion.

Second, the Arbitrators are not persuaded by the evidence that there are spare copper loops capable of supporting xDSL services the CLECs seek to offer. In some places, spare copper will be available. In others, the rollout of Pronto may indeed free up additional copper plant that CLECs can use to support some xDSL services.³⁷⁴ However, the Arbitrators believe that the evidence in this record supports the finding that without access to Pronto, including the packet switching functionality, CLECs will be impaired. Pronto was devised to reach consumers who otherwise could not be served over the existing network. By some estimates, nearly a quarter of customers who do not have access to ADSL today, will be able to obtain ADSL service after Pronto is rolled-out.³⁷⁵ Because line sharing generally cannot be supported on loops in excess of 18,000 feet, CLECs will be denied the opportunity to provide services to customers whose loops exceed that length. In other words, where spare copper is in fact available, the quality of service generally between the different distribution methods is somewhat disparate, especially in distance sensitive applications such as line sharing. This disparity does not meet the condition that spare copper loops should be able to "offer the same level of quality for advanced services."³⁷⁶

Third, the Arbitrators believe that SWBT does not allow CLECs to collocate DSLAMs at the remote terminal on the same terms and conditions that it provides to itself. Without equal

³⁷² SWBT Initial Brief at 55.

³⁷³ Tr. at 458.

³⁷⁴ See *UNE Remand Order* ¶ 313.

³⁷⁵ Chapman Direct at 16.

³⁷⁶ Rhythms Ex. 13A at 4.

³⁷⁷ *UNE Remand Order* ¶ 313.

longevity is clearly questionable.³⁸¹ The Arbitrators do not believe that SWBT should be able to escape this prong of the test through legal semantics.

Accordingly, the Arbitrators find that the record in this case demonstrates that the packet switching functionality incorporated within the particular architecture that SWBT is deploying should be unbundled for the limited purpose of providing CLECs access to Project Pronto. The Arbitrators note that the FCC already determined that CLECs were impaired without access to packet switching.³⁸² The Arbitrators need not independently perform additional "impair" analysis regarding packet switching, as we have found that SWBT's deployment of the Pronto architecture fits within the limited exceptions outlined in the UNE Remand Order.³⁸³ The Arbitrators believe that where SWBT has deployed remote terminals with NGDLC, SWBT must provide CLECs with access to the transmission facility from the customers' premises to the central office, including access to unbundled packet switching in order to transport the data signals from the RT to the terminating port on the OCD. The Arbitrators do not find that packet switching functionality should be unbundled generally, as we are cognizant of the FCC's limited exceptions for packet switching as indicated above. However, the evidence presented before us clearly demonstrates that the FCC's exception criteria are met by the way in which SWBT has designed the network.

The Arbitrators agree with SWBT that the FCC's packet switching "test" will not be met in totality for every situation that arises. However, the Arbitrators also believe it is axiomatic that the FCC would not impose a set of criteria that could never be met, as SWBT has asserted. If we were convinced that a case by case approach used to determine whether the FCC's packet switching criteria were met for every remote terminal was a workable alternative, we might have adopted such an approach here. However, in order to carry out Congress' mandate to promote rapid deployment of broadband services and to ensure consistency and reliability for all carriers, the Arbitrators believe that we must consider SWBT's network overall. The evidence in this record supports the finding that the concerns regarding remote terminal access laid out by the

³⁸¹ *Association of Communications Enterprises v. FCC*, No. 99-1441 (D.C. Cir. Jan. 9, 2001).

³⁸² *UNE Remand Order* ¶ 309 (The FCC declined to unbundle packet switching generally based on other criteria).

³⁸³ *Id.* ¶ 313.

any other point expressly specified by the FCC, such as the Network Interface Device, or (7) any other technically feasible point.³⁸⁵

IP and Sage commented that if this Commission determines the NGDLC loop is a UNE, the FCC requires SWBT to offer unbundled subloops wherever technically feasible.³⁸⁶ In addition, IP and Sage argue that there is a rebuttable presumption of technical feasibility once a state has determined that it is technically feasible for any incumbent in any state to unbundle the loop at the same point.³⁸⁷ IP/Sage maintain that SWBT bears the burden of demonstrating it is not technically feasible to do so.³⁸⁸

Rhythms argues that FCC has expressly required the unbundling of the high frequency portion of the copper subloop, the fiber subloop, and subloops in general. Under the *Line Sharing Order*, Rhythms asserts that the ILEC must unbundle copper subloops unless it can demonstrate to a state commission that unbundling is not technically feasible.³⁸⁹ Rhythms argues that SWBT has failed entirely to sustain its burden to prove that either copper or fiber subloops cannot be unbundled.

Rhythms indicates that the *Line Sharing Order* specifically required ILECs to unbundle the subloop consisting of the high frequency portion of the copper loop for customers served by a line-shared loop.³⁹⁰ In addition, Rhythms asserts that under the *Line Sharing Reconsideration Order*, the FCC clarified that subloops must be unbundled whether configured on all copper or fiber-fed DLC loops, and that such unbundling must occur at the remote terminal as well as the central office.³⁹¹ Rhythms believes that this requirement is in addition to the FCC's order requiring ILECs to unbundle UNE loops, whether all copper or a combination of copper and fiber, from the central office to the customer premises.³⁹² Furthermore, Rhythms believes that

³⁸⁵ SWBT Initial Brief at 36, citing *UNE Remand Order* ¶ 205-206.

³⁸⁶ IP and Sage Initial Brief at 48, citing *UNE Remand Order* ¶ 206.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ Rhythms Initial Brief at 41, citing *Line Sharing Order* ¶ 92.

³⁹⁰ Rhythms Initial Brief at 41-42, citing *Line Sharing Order* ¶¶ 91, 92.

³⁹¹ Rhythms Initial Brief at 41-42, citing *Line Sharing Reconsideration Order* ¶ 10.

³⁹² *Id.*

Sprint did not present a position with respect to this issue.

SWBT's Position

SWBT argues, in addition to the reasons set forth in DPL Issues above, that the Commission should not require line sharing over fiber-fed DLC because it is not necessary to allow CLECs to offer advanced services. SWBT indicated that CLECs will continue to have access to the all-copper loop and may offer advanced services over that loop. SWBT has agreed to construct an Engineering Controlled Splice (ECS) that will allow the CLEC to gain access between the customer premises and the remote terminal.⁴⁰⁰ SWBT states that CLECs may request a special construction arrangement to construct an ECS near the remote terminal, affording them access to multiple Serving Area Interfaces (SAI) that subtend that RT.⁴⁰¹ Furthermore, SWBT argues that CLECs can use a pair at a time to provision service to end users or, at their option, they can dedicate a certain number of pairs to be used by them between the ECS and the feeder distribution interface (FDI).⁴⁰² SWBT indicates that regardless of whether Project Pronto has been deployed in a particular serving area, CLECs can access the HFPL UNE at the central office or at the SAI through an ECS.⁴⁰³

In addition, SWBT indicated that CLECs have several options with respect to providing ADSL services. SWBT asserts that CLECs can access all-copper loops by collocating in the central office, they can utilize SWBT's wholesale broadband service by collocating in the central office, or they can remotely locate their stand-alone DSLAMs and use an ECS.⁴⁰⁴ Furthermore, SWBT has made numerous copper subloops available to CLECs at numerous points in the network.⁴⁰⁵ SWBT believes that the Commission should continue to allow it to provide access to copper subloops at technically feasible points, rather than requiring fiber-fed NGDLC "line sharing."⁴⁰⁶

⁴⁰⁰ SWBT Ex. 19, Rebuttal Testimony of Mark Welch Rebuttal "Welch Rebuttal" at 9 (October 20, 2000).

⁴⁰¹ Welch Rebuttal at 8; Tr. at 440-441.

⁴⁰² Tr. at 10.

⁴⁰³ Lobe Rebuttal at 28; Welch Rebuttal at 4.

⁴⁰⁴ Lobe Rebuttal at 50.

⁴⁰⁵ Welch Rebuttal at 5-6.

⁴⁰⁶ SWBT Initial Brief at 85.

remote terminals, the Arbitrators agree with WCOM that the only solution to SWBT's hard-wiring of the backplane of the remote terminal may be the SWBT ECS. The Arbitrators are concerned, however, with the evidence in this record that clearly indicates the enormous expense required to remotely collocate because of the hard-wired remote terminal. In essence, the Arbitrators believe that SWBT's offer to provide an ECS arrangement amounts to the CLEC having to pay for access that already is required. As SWBT could have designed the architecture in an open manner that provided CLECs with access to subloops with no additional cost to the CLEC as required, the Arbitrators believe that pricing for the ECS should be based on a forward-looking, efficient network design. However, because the pricing issue has not been raised in this phase of the arbitration, the Arbitrators make no specific ruling on this issue at this time.⁴¹¹

SWBT has also indicated that CLECs may avail themselves of dark fiber at the remote terminal and, therefore, SWBT should not be responsible for carrying the CLECs traffic from the remote terminal to the central office.⁴¹² However, dark fiber may not always be available, thus making it impossible for the CLEC to provision xDSL service with a remotely located DSLAM.⁴¹³ Therefore, the Arbitrators find that where a CLEC has collocated a DSLAM in SWBT's remote terminal, it is SWBT's burden to provide the fiber subloop back to the central office. If SWBT must increase the bandwidth capacity from the RT to the CO in order to provide CLECs access, then SWBT shall do so. Without such a ruling, SWBT could delay and/or halt a CLECs use of this method for provisioning service.

II. What terms and conditions should apply to CLEC ownership of DLC line cards at ILEC remote terminals?

CLEC's Position

Rhythms argues that terms and conditions for CLEC ownership of DLC line cards must be included in the Commissions decision. Without access to the line cards, Rhythms argues that

⁴¹¹ Tr. at 452 (SWBT agreed to address this issue in a final costing phase of this docket).

⁴¹² Lata Direct at 25; Tr. at 491-492.

⁴¹³ Tr. at 503-504.

SWBT argues that the FCC's rules require collocation of complete items of equipment.⁴²¹ SWBT states that the ADLU line card currently deployed is merely a sub-component of an NGDLC, with no stand-alone functionality unless it is integrated with the additional hardware and software in the NGDLC system.⁴²³

Second, SWBT argues, line cards are not "necessary" to allow CLECs access to UNEs. SWBT indicates that the D.C. Circuit Court of Appeals recently clarified that this second condition, that the equipment being collocated must be "necessary" for interconnection or access to UNEs, must be met.⁴²⁴ SWBT presented evidence that collocation of the line cards is not necessary for CLECs to interconnect or access UNEs and that placing the cards into SWBT's equipment does not provide access to UNEs or interconnection.⁴²⁵ SWBT argues that there are no means by which to physically cross-connect the ADLU card to any UNE at the RT.⁴²⁶ In addition, SWBT claims that the line card is not necessary to perform tasks of accessing UNEs.⁴²⁷

Third, SWBT indicates, allowing CLECs access to line cards causes operational problems, including premature exhaust of the NGDLCs and increased provisioning and maintenance processes that SWBT will be required to develop. SWBT believes that notwithstanding the legal prohibitions against collocating line cards, the Commission should decline to order such collocation for these operational concerns.⁴²⁸ Because of the design of the card, SWBT states that allowing CLECs' ownership will cause premature exhaust of the system.⁴²⁹ If the CLEC did not use all of the ports on the multi-port card, some portion of the line card would be underutilized. By disallowing collocation, SWBT argues that the Commission will preserve its ability to maximize utilization of all ports on every card.⁴³⁰ Finally, SWBT argues that allowing CLEC ownership of individual cards causes maintenance

⁴²¹ SWBT Initial Brief at 67-68.

⁴²² Id.

⁴²³ Late Direct at 24.

⁴²⁴ SWBT Initial Brief at 70, citing *GTE Serv. Corp. v. FCC*, 205 F.3d at 422-23.

⁴²⁵ Late Direct at 27-28.

⁴²⁶ Id. at 28.

⁴²⁷ Late Rebuttal at 12.

⁴²⁸ Late Direct at 24-26.

⁴²⁹ Id. at 17; In. at 6-10.

⁴³⁰ Late Direct at 19-20.

appropriate to consider this issue at some later time. For instance, as line card density increases, it may be less likely that resources will be underutilized by several CLECs owning line cards. In addition, if a multi-flavor line card (e.g. one that will provide more than ADSL functionality) is developed, this may also lead to better utilization.

As indicated earlier, the Arbitrators acknowledge that in fiber-fed DLC architectures it is problematic in most cases, and impossible in some cases, for CLECs to place electronics in the loop due to space constraints. Indeed, the Arbitrators agree that SWBT should not be relieved of its legal requirements simply because it has engineered its network in a certain fashion. However, the Arbitrators believe that by ordering SWBT to provide access to Pronto as part of the loop, CLECs will have a meaningful opportunity to compete. As the evidence revealed, SWBT currently does not offer different flavors of xDSL for line sharing, but instead only supports line cards capable of provisioning ADSL service. The Arbitrators believe that SWBT should encourage its vendors in consultation with CLECs to develop line cards that support other xDSL services or that are universal in application. When new cards become available SWBT shall have the same obligations with respect to those applications and should be required to show the Commission why a certain technology is not technically feasible to provision.⁴³⁵

14. Should SWBT be required to offer CLECs Permanent Virtual Paths ("PVPs") and Permanent Virtual Circuits ("PVCs") at all current ATM Quality of Service ("QoS") classes on fiber-fed DLC loops?

CLEC's Position

Rhythms believes that SWBT should be required to offer all ATM Quality of Service classes (QoS) on fiber-fed DLC loops, including Permanent Virtual Paths and Permanent Virtual Circuits regardless of whether SWBT or its data affiliate use them; however, Unspecified Bit Rate (UBR) is the only QoS that SWBT currently provides over Pronto.⁴³⁶ Rhythms believes that enabling CLECs to utilize QoS besides UBR, will allow them the ability to offer different speeds of xDSL and attempt to distinguish their service offerings. Rhythms argues that the

⁴³⁵ See *Shawnee Cable*, ¶¶ 193-211.

⁴³⁶ *Rhythms*, Ex. 17.

Arbitrators' Position

Based on the finding that CLECs should be allowed access to entire loop, the Arbitrators are persuaded that SWBT should provide CLECs with options for different amounts of bandwidth. The Arbitrators believe that the evidence indicates that some QoS classes are currently available and additional QoS classes will become available in the near future to allow CLECs the opportunity to provide distinctive offerings, if they so choose. Although SWBT argues that the CLECs have not proven that different QoS classes will work over the Pronto architecture, the Arbitrators believe that SWBT is required to provide evidence that different QoS classes are not technically feasible.⁴⁴⁶ If a CLEC wishes to provide a certain service, it is up to SWBT to prove that the service is incompatible with the current architecture. The Arbitrators agree that Texas consumers will benefit from increased xDSL speeds and variations in product offerings.

The Arbitrators remain mindful, however, of SWBT's concerns that additional testing is necessary to determine consequences of dedicated bandwidth that different QoS classes offer. Therefore, the Arbitrators do not order SWBT at this time to specifically offer a certain QoS, as capabilities are still being developed. SWBT shall continue its collaborative efforts with CLECs to ensure that additional capabilities that are technically feasible are introduced for the benefit of end-users. When a product becomes available and a CLEC wants to provide such service, SWBT shall have the burden to show, why from a technical feasibility standpoint, it cannot be provisioned at the CLEC's request. The Arbitrators believe that the Commission is the appropriate forum to address additional concerns of the parties should they arise.

17. Should SWBT be required to cross-connect the Pronto offering to the MDF for the integrated voice/data offering? (IP, et al. Issue No. 19)

CLEC's Position

AT&T believes that SWBT should be required to cross connect the Pronto offering to the MDF for the integrated voice/data offering because it is technically feasible to do so, as SWBT

⁴⁴⁶ See *Loop Sharing Order* ¶ 175.

for CLECs.⁴⁵⁷ IP indicates that CLECs are simply seeking the ability to order a cross-connect to most efficiently terminate the voice frequencies to an unbundled switch port.⁴⁵⁸

SWBT's Position

SWBT argues that it should not have to cross-connect the voice portion of the combined voice and data Broadband Services offering at the MDF to an unbundled switch port on the CLECs' behalf. Rather, SWBT argues that CLECs should combine this service with an unbundled switch port in its collocation space, consistent with CLECs' combining of network elements in its collocation space.⁴⁵⁹ SWBT believes that the CLECs have not provided the Commission with any legitimate reason why SWBT should be required to combine services (DSL over Pronto) with UNEs (the unbundled switch port); thus, the Commission should not mandate cross-connection of Project Pronto to the MDF.⁴⁶⁰ On reply, SWBT indicated that it could not be forced to cross-connect the voice portion of the combined voice and data Broadband Services, as SWBT is not obligated to combine a new "Project Pronto UNE" with the existing "UNE switching" for CLECs.⁴⁶¹ SWBT argues that the CLECs' request is unlawful and must be rejected.

Arbitrators' Decision

The Arbitrators agree with the CLECs that the testimony elicited at the hearing clearly demonstrates that it is technically feasible to cross-connect the voice portion of the combined voice and data Broadband Services offering at the MDF to an unbundled switch port purchased by a CLEC.⁴⁶² The Arbitrators agree with AT&T's witness Mr. Turner, that based on prior Commission precedent, SWBT is required to take the voice portion of the service from the

⁴⁵⁷ Genney Direct at 45.

⁴⁵⁸ *Id.*

⁴⁵⁹ SWBT Initial Brief at 81.

⁴⁶⁰ *Id.*

⁴⁶¹ SWBT Reply Brief at 35. (The plain language of Section 251(e)(3) of the Act prohibits any requirement that incumbent LECs combine UNEs for CLECs.) *IUB III*, 219 F.3d at 758-59; *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 215 U.S. 100, 107 (subsequent history omitted) ("*IUB I*"). This finding by the Eighth Circuit, acting in its role as a federal appellate court under 28 U.S.C. § 2342(1), cannot be collaterally attacked in any other forum (*see, e.g., FCC v. AT World Comm., Inc.*, 466 U.S. 463, 468 (1984)) and is binding on state commissions. *Verizon North, Inc. v. Board*, File No. 2000-CV-38, slip op. at 13-14 (W.D. Mich., Dec. 5, 2000).

regulatory requirements. Should the parties be unable to come to agreement over additional obligations, a petition for arbitration or post-interconnection dispute resolution would be appropriate.

18(b). Dispute resolution under this Appendix may be filed with the PUC?

CEC's Position

IP indicated that it is willing to accept current dispute resolution language contained in its Interconnection Agreement as long as SWBT agrees that the dispute resolution provisions contained in the General Terms and Conditions would apply to the HFPL Appendix and any separate appendix created for "Pronto."⁴⁶⁷ AT&T indicated that the General Terms and Conditions should apply so that no confusion exists as to what provisions governed various disputes.⁴⁶⁸ No other party took a position with the issue.

SWBT's Position

SWBT indicated that dispute resolution under the General Terms and Conditions should apply and that adding additional dispute resolution terms and conditions to the HFPL appendix could be confusing.⁴⁶⁹

Arbitrators' Decision

The Arbitrators believe that this issue is no longer in dispute based on the parties' filings and that the underlying Terms and Conditions dispute resolution provisions would apply to earlier disputes.

⁴⁶⁷ SWBT Initial Brief at 138.

⁴⁶⁸ IP and Sage Initial Brief at 37.

⁴⁶⁹ AT&T Initial Brief at 37.

⁴⁷⁰ SWBT Initial Brief at 138; Chapman Direct at 7.

19. Should SWBT (or an LEC with a comparable offering) be required to offer DS1s for the Pronto offering? (IP, et al. Issue No. 21)

CLEC's Position

IP and Sage argue that SWBT must allow CLECs to purchase a DS1 from the RT to the CO rather than a DS3 or OC3 that SWBT currently provides. IP and Sage argue that in order to serve residential customers, small carriers cannot justify purchasing entire OC3 bandwidth, as it is not economical.⁴⁷³ IP and Sage believe that CLECs who are targeting Tier 2 or 3 cities or predominantly rural areas cannot justify the costs associated with a DS3, particularly given the smaller demand in those areas.⁴⁷³ In most rural areas, IP indicates that a DS3 will not be economical unless the CLEC has a level of traffic greater than two DS1s.⁴⁷⁴ IP and Sage recommend ordering SWBT to charge for DS3 capability at the DS1 rate until such time as SWBT provides DS1 functionality.⁴⁷⁵ AT&T agrees that it is currently not always economical to order DS3s and that it is technically feasible for SWBT to offer DS1 functionality rather than DS3.⁴⁷⁶

SWBT's Position

SWBT argues that currently the system that it has deployed will only handle DS3 or OC3 termination points.⁴⁷⁷ In addition, SWBT claims that notwithstanding the technical constraints, the DS1 is priced at 65% of the DS3 and therefore makes no economic sense.⁴⁷⁸ Finally, SWBT asserts that forcing it to allow DS1 offerings will cause exhaust of the ports on the optical concentration device (OCD) in the central office.⁴⁷⁹ SWBT claims that ports are limited and once a CLEC chooses a DS1, there is no cost-effective process for migrating in-service xDSL consumers from the lower speed OCD port to the higher speed OCD port.⁴⁸⁰

⁴⁷³ Tr. 671-676.

⁴⁷⁴ *Id.*

⁴⁷⁵ CLECs' Direct at 44.

⁴⁷⁶ IP and Sage Initial Brief at 55.

⁴⁷⁷ AT&T Initial Brief at 37; Tr. at 671-673.

⁴⁷⁸ CLECs' Direct 17-18.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

to transfer service is five business days from when SWBT notifies the CLEC that DSI functionality is available.

VIII. PRE-ORDERING/ORDERING/PROVISIONING ISSUES

DPL ISSUES 15, 20-36, 42

20. What loop make-up information should be provided by an ILEC's loop qualification tool(s) for Line sharing UNE orders?

CLEC's Position

IP and Rhythms argue that SWBT should provide all loop make-up information, including all information on all loops that can be used to serve the customer's location.⁴⁸⁵ Rhythms argues that the ILEC is obligated to provide all loop information contained in its OSS databases, back-end systems and records that is available to any SBC employee; this information includes but is not limited to the information SBC promised during the POR collaboratives, a list of approximately 30 data elements.⁴⁸⁶

Rhythms states that SWBT is currently providing incomplete loop information.⁴⁸⁷ Rhythms states that the 45 loop elements that SWBT has agreed to provide falls far short of meeting SWBT's obligations under the FCC's Line Sharing Order, the FCC's UNE Remand Order, and the FTA.⁴⁸⁸ Rhythms argues that SWBT should be obligated to provide all loop qualification information, not just 45 elements, under these obligations.⁴⁸⁹ Furthermore, Rhythms states that the list of data elements SWBT offered in direct testimony is not the entire

⁴⁸⁵ IP Ex. 2, Rebuttal Testimony of Jo Gentry "Gentry Rebuttal" at 10-11 (October 20, 2000); Rhythms Ex. 6, Direct Testimony of Joseph Ayala "Ayala Direct" at 13-15. (October 9, 2000)

⁴⁸⁶ The elements are: Loop length; Loop length by segment; Loop length by gauge; 26-gauge equivalent loop length (including presence of lead coils; quantity of load coils; presence of bridged taps; length of bridged taps; presence of pas pair/DLC; qualification status of the loop based on specified PSD; presence/location of repeaters; quantity of repeaters; type of repeaters; type of plant; composition of loop; portion of loop of each composition type; availability of spare loops; quantity of bridged taps; number of occurrences of bridged taps; quantity of low pass filters; quantity of range extenders; location of range extenders; number of gauge changes; location of pair gain; location of DLC; quantity of DLC; presence of remote switching unit; type of remote switching unit; type of repeaters; wire center; taper code.

⁴⁸⁷ Ayala Direct at 13-15.

⁴⁸⁸ Id.

appropriate parameters of loop make-up information in the xDSL Arbitration. SWBT indicated that there are no differences between loop make-up information regarding stand-alone loops and line-shared loops. SWBT therefore believes that the CLECs are attempting another bite at the apple.

Arbitrators' Decision

Under the *UNE Remand Order*, SWBT is required to give CLECs access to all loop provisioning information contained in any of SWBT's backend systems, databases or records that may be accessed by any SWBT employee.⁴⁹⁵ The relevant inquiry is not "whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the incumbent's back office and can be accessed by any of the incumbent LEC's personnel."⁴⁹⁶ The Arbitrators believe that any limit of access to information is a great detriment to competition; as much of the information contained by ILEC systems is critical to the ability of other carriers to compete with ILECs.⁴⁹⁷ Therefore, by limiting CLECs to only a set list of data, SWBT may be improperly limiting CLECs' ability to access all loop provisioning information to which they are entitled. Although the list of elements that SWBT currently provides is helpful, it is not necessarily comprehensive. Our review of the provided elements, however, does not relieve SWBT from its obligation to provide all information to the CLECs. The Arbitrators cannot make a determination on this record as to whether SWBT is indeed providing CLECs with the required information, as that would entail a detailed audit of SWBT's backend systems and databases. SWBT has agreed to an audit of its backend systems in principle, as discussed in DPL No. 24. The results of such audit should reveal whether SWBT is improperly excluding information from CLECs.

- 22. Should SWBT be required to provide CLECs information on whether (a) a spare copper pair running from the demarcation point at the end-user premises to the**

⁴⁹⁴ *Id.*

⁴⁹⁵ *UNE Remand Order* ¶ 430.

⁴⁹⁶ *Id.*

⁴⁹⁷ *First Report and Order* ¶ 518.

Arbitrators' Decision

The Arbitrators disagree that SWBT's current inventory process is adequate. SWBT indicated that its systems currently provide information on whether Pronto facilities are available and whether a xDSL capable loop (copper) is available.⁵⁰⁵ However, the CLECs are not provided information regarding all loops that can serve the end-user. SWBT's process of only providing CLECs with limited information is based on its assessment that there is no reason to provide additional reports regarding other twisted pairs that are connected to an end user.⁵⁰⁶ However, CLECs are entitled to all information available in SWBT's backend systems, not a subset of that information that SWBT chooses to provide.⁵⁰⁷ The Arbitrators cannot allow SWBT to filter information because it believes that information is not useful. Therefore, SWBT shall provide CLECs with access to information regarding all loops that serve a particular end-user. The Arbitrators require SWBT to submit an implementation plan to successfully implement this requirement with its proposed contract language that comports with this Award.

23. **What is the appropriate interval for providing loop qualification information to CLECs?**

CLECs' Position

Rhythms argues that SWBT should provide loop qualification information to CLECs in real time.⁵⁰⁸ Rhythms indicates that the Commission has already determined that SWBT should make loop make up information available directly to CLECs in electronic format; thus, ordering SWBT to develop enhancements that allow real-time electronic access to loop qualification information.⁵⁰⁹ IP and Sage support Rhythms' position on this issue.⁵¹⁰

⁵⁰⁵ Tr. at 913.

⁵⁰⁶ Tr. at 895.

⁵⁰⁷ *CVE Remand Order* ¶ 427.

⁵⁰⁸ Murray Direct at 80-81.

⁵⁰⁹ *Id.*

⁵¹⁰ IP and Sage Initial Brief at 56.

quickly to be able to determine whether a particular loop will support xDSL service.⁵¹⁶

The Arbitrators are not convinced that the loop qualification process for line sharing is any different than for stand-alone loops, nor should it be provided in a different manner. The Arbitrators find nothing in the record to indicate that line sharing creates a unique situation in terms of loop qualification.⁵¹⁷ The Arbitrators agree with SWBT that this Commission has already ordered SWBT to provide real-time access to all loop qualification information that SWBT possesses.⁵¹⁸ Therefore, the Arbitrators find that SWBT must continue to provide loop qualification in the same manner that this Commission ordered in the xDSL Arbitration, that is, real time access to all loop qualification information contained in SWBT's databases or backend systems. Any outstanding concerns of CLECs regarding SWBT's failure to properly provide the required information should be addressed in the audit, as described in DPL Issue No. 24.

24. Should SWBT be required to allow CLECs to audit their backend systems, databases and records to determine what loop provisioning and loop plant information is available to SWBT?

CLECs' Positions

Rhythms believes that SWBT should be required to allow CLECs to audit their backend systems.⁵¹⁹ Rhythms asserts that CLECs are entitled to all information about the loop or loop plant that is useful for provisioning xDSL services and that is available to any SWBT employee.⁵²⁰ However, Rhythms points out that CLECs do not know precisely how much of this information exists or where it is contained in SWBT's records, backend systems and databases.⁵²¹ While SWBT has agreed to provide 45 data fields from all of its OSS backend systems and databases, Rhythms points out that just one of SWBT's OSS – LFACS -- has more

⁵¹⁶ *UNE Remand Order* ¶ 431.

⁵¹⁷ *Id.* at 866-876.

⁵¹⁸ In addition, the Commission has established a metric for SWBT to provide actual loop makeup information through a manual process, within 3 business days when the information is not contained in SWBT's databases. If SWBT can provide its retail ADSL personnel with actual loop makeup information in a shorter time frame, then the interval for CLECs should be parity with that timeframe.

⁵¹⁹ *Ayala Direct* at 22.

⁵²⁰ *UNE Remand Order* ¶ 426.

LFACS, FACS, TIRKS, LEAD/LEIS, ASON, ACIS, SWITCH, WFA/C, WFA/DO, SOAC, LMOS, MARCH, Premis, LASR, FOMS/FUSA, and ARES. The Arbitrators believe that allowing CLECs to audit SWBT's backend systems will provide CLECs assurances that SWBT is indeed providing the required information.

25. Should SWBT be required to update its databases permanently with loop provisioning information compiled during a manual loop qualification request?

CLECs' Positions

Rhythms argues that SWBT should be required to update its databases permanently when it performs a manual loop qualification on behalf of the CLEC. Rhythms cites the FCC's directive in UNE Remand Order, "that incumbent LECs will be updating their electronic database for their own xDSL deployment and to the extent their employees have access to the information in an electronic format, that same format should be made available to new entrants."⁵²⁶ Rhythms is concerned that SWBT may not permanently update its records, as SWBT utilizes a temporary storage database for a period of 90 days.⁵²⁷ Rhythms believes that the Commission should order SWBT to permanently update its records and specify terms and conditions to avoid confusion on this issue.⁵²⁸ IP and Sage support Rhythms' position on this issue. IP also alleges that SWBT is not permanently updating databases with information gained as a result of manual loop qualification requests as SWBT had pledged. IP argues that this information is "dropping off" SWBT's databases 90 days after it is entered.⁵²⁹

SWBT's Position

SWBT has committed to updating its records in LFACS database for any manual loop qualification that performs for CLECs.⁵³⁰ SWBT indicated that a temporary database was used

⁵²⁶ Rhythms Initial Brief at 91, citing *UNE Remand Order* ¶ 429.

⁵²⁷ *Ayala Direct*, Att. C.

⁵²⁸ *Id.*

⁵²⁹ Tr. at 931-932.

⁵³⁰ Tr. 823-824.

26. Should SWBT be required to enhance its databases to provide 100% actual (rather than designed) loop provisioning data?

CLECs' Positions

Rhythms believes that SWBT should be required to update its database to provide 100% actual loop provisioning data within a date certain. Rhythms believes that this request is reasonable since SWBT has approximately 20% to 30% of actual data on loops while SBC-Ameritech has 80% actual data on loops.⁵³⁷ Rhythms indicates that SWBT in the POR collaboratives revealed that a loop inventory system known as ARES was utilized in the Ameritech region to achieve a higher rate of actual loop data.⁵³⁸ Therefore, Rhythms believes that this system should be implemented in Texas to bring SWBT's actual data up to 100% as quickly as possible. Further, Rhythms believes that the Commission should specify the terms and conditions for SWBT's updates. Rhythms points out that Ameritech-Illinois has updated its OSS with actual loop provisioning information for free.⁵³⁹ IP and Sage support Rhythms on this issue.

SWBT's Position

SWBT argues that it does not have a legal requirement to update all of its loop data into its databases. SWBT asserts that all CLECs, including ASI, are similarly positioned: access to actual data is limited and where actual data is unavailable, design data is provided. SWBT has also committed under the POR to update all actual data permanently on a 13-State basis. SWBT estimates that it will take this amount of time to efficiently upload all of outstanding loop plant. SWBT does not agree that it should inventory LFACS at the same time it is committing resources for updating, on a region wide basis, all actual data.

Arbitrators' Decision

The Arbitrators believe that SWBT should continue to update its databases as it performs manual loop qualifications as indicated above. In addition, the Arbitrators believe that SWBT's

⁵³⁷ Tr. at 828.

⁵³⁸ Ayala Direct at 11.

not know exactly what information they need.⁵⁴² Rhythms indicates that it will need access to such information in order to determine how to provision xDSL service on a loop configured through a fiber-fed DLC.⁵⁴³ Rhythms believes that such data includes, at a minimum, deployment dates for remote terminals ("RTs"), location of RTs, wire center served by the RT, type of structure for the RT (hut, cabinet, controlled environmental vault), space available in the RT for CLEC equipment, slots available for xDSL cards in the next generation digital loop carrier ("NGDLC") equipment in the RT, number of ports initially available on the NGDLC equipment available for CLECs to provide xDSL line-shared services, and fill rates for the NGDLC ports and the RTs.⁵⁴⁴ IP and Sage agree that SWBT should be required to update its database as new networks are deployed. IP and Sage believe that this is vital to the CLECs in order to receive timely information through the loop qualification process.

SWBT's Position

SWBT argues that it is committed to updating manual records as its manual records are mechanized, just as it is for all loop qualification information.⁵⁴⁵

Arbitrators' Decision

The Arbitrators agree that SWBT is required to update its databases with information regarding new network architectures as they are deployed. This is within the definition of the *UNE Remand Order*, which requires SWBT to provide CLECs with all information accessible to SWBT.⁵⁴⁶ Without this requirement, SWBT could limit important information every time new plant was deployed. To the extent SWBT develops new systems necessary to access information or that contain additional information, SWBT is required to make such information or functionality available to the CLECs, consistent with this Award. As to the deployment information that Rhythms believes is vital to CLECs regarding Pronto, the Arbitrators believe that SWBT is required to provide this information as well. Consistent with our ruling that

⁵⁴² *Id.* at 3.

⁵⁴³ Ayala Direct at 18.

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.* at 15.

⁵⁴⁶ SWBT Initial Brief at 100; Jacobson Direct at 18.

Commerce Commission ordered SBC-Ameritech to provide read-only access to information in Ameritech's databases and backend systems.⁵⁴⁹

Rhythms claims that gateway access is insufficient because it delays access to the most recently updated information. When SWBT updates its databases with new information, CLECs cannot get such information until SWBT issues a new version of its gateway software, and CLECs are able to install it and get it to work error free. With direct access, CLECs would be able to obtain such information immediately. Rhythms also contends that access via gateways and graphic user interfaces ("GUIs") is slower than direct access, which would provide real time query capabilities.⁵⁵⁰

Rhythms asserts that SWBT's backend systems will be able to handle the added load of direct access inquiries by CLECs. Rhythms explains that SBC must have upgraded or expanded its systems to handle loop qualification requests for the 6 million customers that it expects to serve during the next three years.⁵⁵¹ IP and Sage support Rhythms' position and arguments on this issue.

SWBT's Position

SWBT argues that it should not provide direct access to its backend systems and databases.⁵⁵² SWBT states that it has fulfilled its obligation to provide CLECs with nondiscriminatory access to its OSS functions via its gateway systems.⁵⁵³ SWBT contends that the FCC has never required ILECs to provide CLECs with direct access to the ILEC's backend systems and databases. Also, SWBT argues that allowing CLECs such access would adversely affect SWBT's ability to protect proprietary and confidential business information contained in those systems that are not relevant to OSS functions. SWBT also proposes that direct access to

⁵⁴⁹ *Id.* at 31-32.

⁵⁵⁰ Rhythms Ex. 7, Rebuttal Testimony of Joseph Ayala "Ayala Rebuttal" at 15-16. (October 20, 2000).

⁵⁵¹ Ayala Direct at 3.

⁵⁵² Jacobson Direct at 8-9.

⁵⁵³ *Id.* at 8.

that OSS necessarily includes access to loop qualification information.⁵⁶¹ The incumbent must provide access to all its data, information, and systems, and the ILEC is not permitted to filter this information.⁵⁶² For instance, an ILEC cannot limit a CLEC's access to loop length data so that it is only provided a red, yellow, or green indicator; because underlying loop qualification exists in SBC's manual, computerized, and/or automated systems, it must be available to the CLEC.⁵⁶³ In addition, access to ILEC data, information, and systems is not limited to access that the retail arm of the ILEC possesses; rather, if information exists anywhere within the ILEC's backoffice and can be accessed by any of the ILEC's personnel, retail, wholesale, or otherwise, it must be provided to CLECs.⁵⁶⁴

SWBT argued that its existing gateways satisfy the required access to OSS. The gateways, including DataGate, Verigate, EDI, LEX, CORBA, LSR, and TA, were designed for CLEC remote access of SWBT's databases. Yet these gateways as they are currently configured do not provide access to all of the information contained in SWBT's databases and do not access to all of SWBT's backend systems.⁵⁶⁵ For example, as part of the pre-order process, CLECs query SWBT to determine if an xDSL loop is available to serve a customer. CLECs have expressed a desire to receive information on all loops available to a customer, so that a CLEC can choose the most favorable loop. Conversely, SWBT testified that CLECs should be limited to provisioning information for only one loop at a time.⁵⁶⁶ The Arbitrators find that policy may preclude CLEC access to loop information for alternate loops capable of serving a given address.⁵⁶⁷

In addition, SWBT argued that some filters are required on the gateway systems to protect proprietary and confidential business information from being accessed in backend systems. SWBT offers as an example the TIRKS and SWITCH databases, which contain the

⁵⁶¹ *Id.* ¶ 426.

⁵⁶² *Id.* ¶ 427-428. As an example, an ILEC must provide access to underlying loop information and not filter the information so it pertains only to a specific type of xDSL.

⁵⁶³ *Id.* ¶ 428.

⁵⁶⁴ *UNE Remand Order* ¶ 430.

⁵⁶⁵ Tr. 776-780.

⁵⁶⁶ Jacobson Rebuttal at 20.

⁵⁶⁷ See DPL Issue No. 22.

To determine if the gateway systems provided to CLECs provide the required information, the gateway should be able to produce quickly and efficiently any data in SWBT's systems that is not determined to be restricted due to confidentiality concerns. Nondiscriminatory access includes the functionality of any internal systems the ILEC employs in performing pre-ordering, ordering, billing, maintenance, and repair functions for its customers.⁵⁷² If SWBT's gateway systems for CLECs, such as DataGate, EDI, and LEX, cannot reproduce the functionality of SWBT internal systems, they must be modified to do so. The Arbitrators find that the minimum necessary filters shall be in place to prevent CLECs from obtaining access to proprietary or confidential information such as design and location of loops belonging to other CLECs.

SWBT's backend systems shall be enhanced to provided to CLECs via EDI, LEX, and other such gateway systems to all information existing anywhere within SWBT's backoffice that can be accessed by any of SWBT's personnel.⁵⁷³ As these systems are upgraded, supplemented, or replaced as needed, the CLECs should continue to receive the current level of access.

29. **What process should SWBT use to convert an existing xDSL customer to a new carrier?**
- 30(a). **Should CLECs be able to use a single LSR (completely MOG-able) for converting a customer to a CLEC customer?**
- 30(b). **If so, should the process be available on or before March 2001? (IP, et al. Issue No. 14 a, b)**

CLECs' Positions

Parties refer to the process of converting an existing xDSL customer to a new carrier as the Local Service Request (LSR) process. IP and AT&T argue that there must be a single

⁵⁷² UNE Remand Order ¶ 425-429.
⁵⁷³ *Id.* ¶ 430.

customer from its current provider. SWBT states that its internal systems cannot identify where to disconnect HFPL service, as the disconnect order does not tell SWBT what billing account number to take the circuit off of or what circuit to disconnect.⁵⁸⁴ With a new connect order there is no billing account for xDSL or a circuit already connected for xDSL, so these problems do not exist.

Arbitrators' Decision

The Arbitrators conclude that the parties are in agreement that CLECs should be able to use a single, completely MOG-able LSR for converting an existing line-shared xDSL customer to another carrier. However, the date by when the MOG-able LSR will be fully implemented has not been resolved. The Arbitrators find that SWBT shall have a completely MOG-able CLEC-to-CLEC conversion LSR process in place within three months of the issuance of this Award. A completely MOG-able CLEC-to-CLEC LSR is essential to create opportunities for meaningful competition. A manual process contains increased potential for error over a mechanized process. The CLEC-to-CLEC migration involves three separate orders, Disconnect, Change, and New Connect (D,C, and N). Errors in this process can lead to a customer experiencing a substantial lapse in service. Because the xDSL is being provided on the same loop as voice, errors in the conversion process can lead to a lapse in voice service, as well.

The evidence presented indicates there is little difference between an LSR for new HFPL connects and CLEC-to-CLEC transfers. The Arbitrators acknowledge that minor differences may have necessitated SWBT to set a later deadline for the release of a CLEC-to-CLEC LSR than for a new line sharing LSR. However, more than one year has passed from the release of the new connect LSR. The Arbitrators find that SWBT has had more than enough time to provide a MOG-able LSR which is essential for accurate and timely CLEC-to-CLEC HFPL transfers. Therefore, the Arbitrators order SWBT to submit a single written, identifiable LSR process for conversion of an existing xDSL customer to a new carrier.

⁵⁸⁴ Tr. at 920-21.

information in a manual format. Therefore, SWBT disagrees with CLECs that it should be required to provide this information to CLECs via an electronic, flow-through process.⁵⁸⁹ SWBT argues that it has committed to increasing the percentage of data in its mechanized databases, along with other initiatives to update loop qualification information.⁵⁹⁰

SWBT contends it still has challenges in developing a flow-through ordering and provisioning process for the HFPL UNE. For instances, SWBT indicates that the removal and entry of CLEC provisioning information for line-shared service over Project Pronto architecture cannot be performed on a flow-through basis.⁵⁹¹ SWBT explains that, for line-shared service over Project Pronto architecture, a new connect order ("N" order) and a disconnect order ("D" order) can be done on a flow-through basis, but the mechanized tools that process these orders do not currently have the capability to manage a change order ("C" order).⁵⁹²

Arbitrators' Decision

The Arbitrators conclude that SWBT shall continue to work towards supporting ordering and provisioning functions for line sharing arrangements on a flow-through basis. In the *Local Competition First Report and Order*, the FCC endorses mechanized systems for the processing of CLEC orders. The FCC recognizes that submission of paper forms and the requirement of human intervention in the provisioning process creates greater opportunities for human error and causes additional time and financial burdens on the competitive ILEC.⁵⁹³ The Arbitrators conclude that flow-through processes would be advantageous to the ILEC as well as the CLEC, by reducing staff time and human error for all parties involved.

For pre-ordering, the Arbitrators conclude that SWBT must provide the same access to loop qualification that it has available itself. Where the ILEC has electronic access to information, that must be provided to a requesting CLEC on a non-discriminatory basis. An ILEC is not required to catalog, inventory, and make available to CLECs loop qualification

⁵⁸⁹ Jacobson Rebuttal at 19-20.

⁵⁹⁰ *Id.* at 593-4. For more on this topic, see DPL Issue 25.

⁵⁹¹ Lube Rebuttal at 45.

⁵⁹² An A, D, C, and N order must be created to process the ordering of one line-shared loop; this process is known as the three-order process.

⁵⁹³ *Local Competition First Report and Order* ¶ 525-530.

with DSL, such as DSLAM.³⁰⁷ It also points out that SWBT has not provided any cost study or a proposed rate for the LST.³⁰⁸

SWBT's Position

SWBT agrees to perform an LST if it is able to locate an alternative xDSL capable loop.³⁰⁹ SWBT argues that it should be able to charge for the LST.³¹⁰ SWBT explains that before the HFPL was requested, the end user's loop was suitable for POTS service; therefore, SWBT is expending labor hours to provide an xDSL capable loop for which it receives no revenue, so SWBT should be entitled to cost recovery for the service it is providing.³¹¹ SWBT also asserts that the LST will typically require a SWBT technician to perform work on outside plant equipment, requiring the costs associated with a field dispatch.³¹² SWBT testified that it does not dig up the ground or open a cable splice to conduct an LST; the field work is aerial.³¹³ SWBT indicates that, although it does not perform any ground work for an LST, it does incur costs associated with dispatching a technician to perform work on outside plant equipment. Therefore, SWBT believes that it should be compensated for this additional work.

Arbitrators' Decision

The Arbitrators conclude that the parties are in agreement that SWBT will provide a Line-Station Transfer (1) when a customer is served by a loop with interferers, or (2) when a customer is served over fiber-fed DLC that does not support line sharing. SWBT makes line and station transfers available to its retail operations and its affiliate. Under the non-discrimination and parity provisions of the FTA and the *UNE Remand Order*, SWBT must make line and station transfers available to the CLECs as well.

³⁰⁷ IP and Sage Reply Brief at 19.

³⁰⁸ Id.

³⁰⁹ Tr. at 201.

³¹⁰ Substantive Issues at 39.

³¹¹ Id.

³¹² Id.

³¹³ Tr. at 198-201.

loop. For loops that require conditioning, AT&T asserts that the work involved is similar to the work required for a standalone xDSL loop, and therefore recommends a three to five day interval.⁶¹³

IP concurs with AT&T on the limited work required to provisioned HFPL, and emphasizes that no field work is required unless a line station transfer is necessary.⁶¹⁴ Therefore, IP proposes the same intervals proposed by AT&T *i.e.* a one day interval for loops that do not require conditioning and a five day interval for loops that require conditioning. IP further adds that these are the same intervals that were ordered by the Illinois Commission.⁶¹⁵

SWBT's Position

SWBT proposes different intervals based on the number of loops in an order. For loops that do not require conditioning, SWBT proposes five business days for orders of 1-20 loops, and 15 days (or as agreed by the parties) for more than 20 loops. For loops that require conditioning, SWBT proposes ten business days for orders of 1-20 loops, and 15 days (or as agreed by the parties) for more than 20 loops.⁶¹⁶ SWBT contends that it offers these intervals to its own xDSL affiliate, ASI, and therefore would denote parity in provisioning.⁶¹⁷ SWBT also argues that shorter intervals would adversely affect SWBT's provisioning of other non-line sharing services. Finally, SWBT adds that the shorter intervals would not comport with the "superior quality rule" in the Eighth Circuit's opinion in IUB III.⁶¹⁸

Arbitrators' Decision

The Arbitrators find that the provisioning and installation intervals for the HFPL UNE shall be the same as ordered in the *Interim Award*. In the *Interim Award*, the provisioning interval without conditioning was set to 3 business days *or* the provisioning and installation interval applicable to the ILEC's tariffed xDSL services *or* its affiliate's xDSL services,

⁶¹³ Turner Direct at 27-28.

⁶¹⁴ Gentry Direct at 21.

⁶¹⁵ *Id.* at 22-23.

⁶¹⁶ Schlackman Direct at 30.

⁶¹⁷ *Id.* at 31.

⁶¹⁸ *Id.* at 31-33.

contends that if the Arbitrators choose a longer interval for new connects, it should still be a tiered provisioning interval that would step based on the cross-connect work required. IP contends that a CLEC-to-CLEC HFPL conversion is a simpler process than provisioning a new HFPL UNE. IP explains that only one cross-connect will be needed when both data providers use ILEC-owned splitters, and up to three cross-connects when a customer switches from a data provider using a CLEC-owned splitter to an ILEC-owned splitter.⁶²²

SWBT's Position

SWBT suggests three different intervals depending on the type of service arrangement included in the transfer.⁶²³ However, SWBT has been inconsistent in its proposals for length of interval(s). SWBT's witness Mr. Lube, proposes a five day interval for the option SWBT refers to as the data with line-shared subloop, and a six-to-ten day interval for the data only offering. For the combined voice and data offering, no specific interval was indicated.⁶²⁴ On the other hand, SWBT witness Ms. Schlackman proposes a three to five day interval for all CLEC-to-CLEC conversions in her direct testimony and an interval that is parity with those provided to SWBT's data affiliate and SWBT's own retail customers in her rebuttal testimony.⁶²⁵ Further, during the hearing, Ms. Schlackman stated that a three day interval was appropriate regardless of whether or not three days was parity.⁶²⁶ SWBT explains that there is no practical way for it to offer scalable (or tiered) provisioning intervals based on the number of cross connects, as the ordering system does not have the capability to recognize service orders by the number of cross connects needed to install the service.⁶²⁷ SWBT contends that the interval should be based on those provided by SWBT to its data affiliate, and to its own retail customer for orders requiring similar work. However, SWBT does not have a specified interval it has committed to for retail service in Texas.⁶²⁸

⁶²² Gentry Direct at 22 (Assuming that the splitters are provisioned in port-at-a-time basis).

⁶²³ Tr. at 285-288.

⁶²⁴ Tr. at 286, 288-89.

⁶²⁵ Schlackman Direct at 36; Schlackman Rebuttal at 29.

⁶²⁶ Tr. at 297.

⁶²⁷ Schlackman Rebuttal at 29.

⁶²⁸ Tr. at 314-317.

3. Service Order flows to Loop Assignment Center for assignment.
4. LFACS determines if the pair assigned is DSL capable and is sent to SWITCH for CLEC's CFA assignment. If not, LFACS attempts to find a DSL capable loop.
5. CLEC provided CFA is entered into SWITCH along with splitter line, voice and data assignments.
6. C.O. technician wires circuit according to the FOMS document.
7. COT performs continuity and load tests as agreed to for all CLECs.
8. COT enters completion status in FOMS system.
9. FOMS completion triggers service order completion information if no field work is required.
10. Service order completion automatically triggers order completion notice to the CLEC, who begins testing next day orders at 5:00 p.m. the day prior to due date.
11. If the CLEC has difficulty, the CLEC calls the Local Operations Center (LOC) for handling outside of the normal repair flows.
12. The LOC technician works with the CLEC until the order is satisfactorily completed.

Arbitrators' Decision

The Arbitrators conclude that the provisioning process that SWBT has outlined is an appropriate process. SWBT shall formally adopt this process so that there is no uncertainty on the part of the CLECs as to the steps of the provisioning process.

6. Test for Pilot tone (Step to be technically reviewed)
7. Frame technician performs ANI test at the CP on MDF. If no dial tone, trace jumpers.
8. Frame Attendant repairs any defects found at the frame and refers activities and test results to LOC.
9. Frame technician tests for presence of load coils at MDF. If load coil(s) are present, discuss with LOC.
10. LOC verifies Local Make Up (LMU of cable pair). The LMU is compared with the loop conditioning authorized by the CLEC.
11. LOC contacts CLEC to hand off repaired trouble or to discuss situations where conditioning was not authorized on the Service Order. The CLEC may wish to issue an LSR to support conditioning.
12. If "No trouble found" (NTF), the CLEC may request a "Cooperative Test" with the LOC and frame attendant (as appropriate) on the line.
13. In case of "Chronic Trouble", the CLEC may request a "Vendor Meet". The vendor meet is an appointment set for the CLEC field technical forces to meet with the ILEC field technical support at an agreed upon site. (A service charge to the CLEC will result when "Cooperative Testing" or "Vendor Meet" is requested and trouble is found to be in the CLEC's area of responsibility. No charge will be issued if the trouble is proved into the SBC plant/equipment.)
14. If the Frame finds that a port (CFA) has gone bad, the Frame will contact the LOC. The LOC will contact the CLEC to get a new port assignment. The frame will change to the new port within the repair MTTR.⁶³⁵

IP adds that SWBT should complete each work step completely before closing out the trouble report with "no trouble found." Also, IP asserts that the process should come under review in the same critical parameters as the provisioning process, i.e. 90 days.⁶³⁶ Rhythms refers to issues 36, 37, 38, and 39 to define appropriate terms and conditions to govern the testing, maintenance and repair of line-shared loops. The other CLECs have no opinion on this issue.

⁶³⁵ Century Direct at Appendix JG-2.

⁶³⁶ Century Direct at 26.

consuming. IP also adds that the MLT test will quickly help isolate whether the trouble is inside the central office or in the outside loop plant.⁶⁴⁰ AT&T also proposes four and eight hour intervals for central office failures.⁶⁴¹ When the trouble is in the outside plant portion of the loop, AT&T argues that the repair interval should be the same as for regular unbundled loops as specified in the interconnection agreement.⁶⁴²

SWBT's Position

SWBT asserts that its contract provisions provide that it will clear all HFPL troubles in SWBT's central office within 24 hours, excluding weekends and holidays. SWBT argues that, if the trouble is in the outside plant portion of the loop, it will provide the same repair interval for the line-shared loop as it provides its own retail customers for the repair of POTS service. SWBT argues that focusing on the precise amount of time necessary to correct a problem is insufficient, as SWBT may not be able to devote all its resources to handling one individual problem from the moment a CLEC reports it.⁶⁴³

Arbitrators' Decision

The Arbitrators find that the repair interval for the HFPL UNE shall be 10 working hours. This interval is based on the repair interval for POTS and standalone xDSL loops set by the Commission.⁶⁴⁴ The Arbitrators conclude that if the trouble is in the outside plant portion of the loop, repair processes for the HFPL UNE are not significantly different than those conducted on a standalone xDSL loop. The Arbitrators recognize that additional cross connects and loop lengths in the central office may result in a slight increase in repair time needed to pinpoint a problem. Thus, a repair interval of 10 working hours is appropriate. The Arbitrators reject the CLECs' proposal to set the repair interval based on the location of the failure, as the Arbitrators do not believe this is a practical solution. In addition, repair intervals for POTS and standalone

⁶⁴⁰ *Id.* at 23.

⁶⁴¹ Turner Direct at 28-29.

⁶⁴² *Id.* at 27-28.

⁶⁴³ Schlackman Direct at 40.

⁶⁴⁴ PLIC Substantive Rule §26.54 (c)(6) sets the repair interval for a POTS loop at 8 working hours. The repair interval for standalone xDSL loops was set by the Commission at 9 hours to account for slightly more work that may be needed to perform repairs on these loops.

on the newly installed HFPL loop and during that time its employees in the LOC will work with the CLEC to resolve any installation- related errors in a real time and expedited fashion.⁶⁴⁶

Arbitrators' Decision

Proper provisioning is essential to providing equal opportunity for competition in the xDSL market. xDSL provisioning has a poor reputation among the public at the current time, a reputation that negatively affects the entire xDSL technology market. Delays in provisioning serve to degrade the CLEC, and not the ILEC, in the mind of the customer at a time when the customer is forming first impressions about the CLEC.

The Arbitrators conclude that failure to tie down cable properly is a provisioning issue, not a repair issue. However, the Arbitrators acknowledge that SWBT has provided a 72 hour window for the CLEC to report problems with the newly installed HFPL loop. Therefore, a problem reported on a loop after 72 hours following provisioning completion shall be reported as a trouble ticket. If a CLEC reports a problem with a loop after 5:00 p.m. on due date minus one and before this 72 hour interval has expired, the problem shall be reported as a provisioning error and recorded in the appropriate provisioning performance measures.

With regard to an expedited process to resolve provisioning problems, the Arbitrators concur with SWBT that it has already agreed to resolve installation-related errors in a real time and expedited fashion. This agreement is codified in the line sharing Turn-up test process outlined in DPL No. 37.

The Turn-up test requires that the CLEC be allowed to re-test the line after SWBT corrects provisioning errors. Once the CLEC has had an opportunity to verify the loop is provisioned properly, the jeopardy is removed on the loop. The Turn-up test process implies that provisioning errors result in a jeopardy being placed on a loop, not a trouble ticket. The Arbitrators find that this is an appropriate process, as trouble tickets should be reserved for repair issues, not provisioning issues.

⁶⁴⁶ See DPL Issue 37.

Commission to perpetuate this faulty approach in the future.⁶⁵⁰ At hearing, AT&T's witness Turner clarified that the price for the HFPL UNE should be approximately 30 to 40 percent of the wholesale loop rate.⁶⁵¹ Mr. Turner added that if the Commission cannot ensure that SWBT will not double recover because of the additional revenue received from the HFPL, then the price for the HFPL UNE should be zero.⁶⁵²

AT&T offers several arguments to support its assertion that setting a non-zero price is important for pro-competitive and equitable reasons.⁶⁵³ First, AT&T argues that there is no basis to artificially lower the cost of one service to the disadvantage of another service regardless of the identity of the voice service provider.⁶⁵⁴ Second, AT&T asserts that as voice services already provide the bulk of voice USF support, a zero price for line sharing would further advantage data carriers over voice carriers.⁶⁵⁵ Third, AT&T believes that providing cost advantages for xDSL technology over circuit switched technologies creates artificial incentives to deliver voice services in the HFPL, leading to an increase in the abandonment rate of the voice telephony infrastructure.⁶⁵⁶ Fourth, AT&T indicates that zero pricing of the HFPL potentially disadvantages facilities-based competitors who (i) must pay the entire cost of the loop (which often exceeds the price of a local service access line); (ii) will have little ability to attract xDSL partners to share in the cost of the loop; and (iii) will not be able to realize economies flowing from joint use of the loop.⁶⁵⁷ AT&T, believes that setting a zero price for the HFPL will have long lasting negative impacts on the development of competition for this new technology.⁶⁵⁸

Conversely, AT&T also maintains that applying a non-zero price for the HFPL UNE creates a new revenue stream for SWBT that has no offsetting cost.⁶⁵⁹ AT&T explains that

⁶⁵⁰ *Id.* at 17-18.

⁶⁵¹ *Id.* at 1223.

⁶⁵² *Id.*

⁶⁵³ Turner Direct at 17-18

⁶⁵⁴ *Id.*

⁶⁵⁵ *Id.*

⁶⁵⁶ *Id.*

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.*

⁶⁵⁹ *Id.*

Rhythms argues that a non-zero price for the HFPL UNE would result in double recovery for SWBT and make end-users pay once more for a loop that is already being fully paid for in monthly local service rates. Consequently, Rhythms contends that both the need to prevent windfall profits and public policy considerations support its proposal to adopt no recurring line sharing charge for access to the HFPL.⁶⁶⁷ Even if an offset were ordered, Rhythms continues, consumers would still pay unnecessarily high prices due to the administrative costs associated with such offset transactions.⁶⁶⁸ Rhythms argues that the net effect to SWBT's revenues would be the same and the net effect to the customer would also be the same.⁶⁶⁹

Rhythms contends that it is more accurate to regard line sharing as an enhancement to analog voice service that causes no loop-related costs since the HFPL is not available on a stand-alone basis.⁶⁷⁰ Rhythms contends that, if there is competition, no competing provider will be able to refuse to provide a desirable enhancement of the product or to extract a payment in excess of cost for its acquiescence in the enhancement.⁶⁷¹ Rhythms also argues that a non-zero HFPL UNE price would establish an artificially high, non-cost based price floor that will hamper competition in the advanced services market.⁶⁷²

Rhythms refutes AT&T's assertion that "providing cost advantages for xDSL technology over circuit switched technologies creates artificial incentives to deliver voice services in the HFPL..."⁶⁷³ Rhythms argues that these advantages are not "artificial," as those cost advantages, if they exist, are real economic advantages.⁶⁷⁴ Rhythms also refutes AT&T's suggestion that revenues from HFPL should be used to subsidize retail local exchange service. Rhythms argues that such a subsidy would likely force some residential and small business customers (those who

⁶⁶⁷ *Id.*

⁶⁶⁸ Tr. at 1167.

⁶⁶⁹ Tr. at 1151.

⁶⁷⁰ Murray Rebuttal at 12.

⁶⁷¹ *Id.* at 13.

⁶⁷² Murray Direct at 43-44.

⁶⁷³ *Id.* at 35.

⁶⁷⁴ *Id.* at 36.

a 30% loop rate was a reasonable substitution for line sharing.⁶⁸² SWBT argues that there is no mechanical or scientific method to allocate joint and common cost.⁶⁸³ SWBT asserts that when joint costs are involved, one of the fundamental economic facts is that cost causation does not help and, therefore, parties must find something reasonable.⁶⁸⁴

SWBT explains that setting the HFPL UNE rate at its proposed level positively impacts the future investment decisions of LECs, and eliminates the negative impact a zero rate would have on the development of other broadband services. SWBT argues that the impacts from this pricing decision will extend far beyond xDSL providers, such as, build-versus-lease decisions for all CLECs, financial viability of facilities investments in cable modem and wireless broadband services, and SWBT's future investment decisions.⁶⁸⁵ SWBT reasons that AT&T's position to support a non-zero rate is underscored by the fact that AT&T is a leading facilities-based competitor and the nation's largest cable operator.⁶⁸⁶

SWBT is also concerned that a zero rate for the HFPL UNE would not allow SWBT to recover the costs of the loop as prices for basic residential services do not covering all the costs associated with the loop.⁶⁸⁷ SWBT explains that its proposed rate for the HFPL UNE provides compensation to SWBT for its asset. SWBT suggests that, even if there were an over-recovery issue, it needs to be addressed in the overall context of all rates that are been earned in the state.⁶⁸⁸

Additionally, SWBT asserts that while it incurs maintenance costs on loop with a zero rate, it has no revenue stream to offset the cost of dispatching a technician to take care of the

⁶⁸² Tr. at 1145.

⁶⁸³ Tr. at 1145.

⁶⁸⁴ Tr. at 1145, 1148.

⁶⁸⁵ SWBT Ex. 5, Direct Testimony of William Fitzsimmons "Fitzsimmons Direct" at 8 (September 5, 2000).

⁶⁸⁶ SWBT Ex. 6, Rebuttal Testimony of William Fitzsimmons "Fitzsimmons Rebuttal" at 4 (October 20, 2000).

⁶⁸⁷ Tr. at 1176-1179, 1183, 1187.

⁶⁸⁸ Tr. at 1000.

additional incremental cost. Therefore, the Arbitrators determine that the rate for the HFPL UNE loop should be zero. The Arbitrators believe that these rates will address the FCC's concern regarding a potential price squeeze.⁶⁹⁵ In addition, it will also address Rhythms' concern that unaffiliated xDSL providers will be discriminated against CLECs if SWBT charges a price greater than its incremental cost. Only a zero price will provide parity between SWBT's affiliated and unaffiliated line-shared xDSL providers.

The Arbitrators note, as Rhythms argued, under a refund proposal, the net effect to SWBT and the consumer is the same, while additional implementation costs could be substantial.⁶⁹⁶ In addition, contrary to AT&T's assertion, the Arbitrators believe that a zero HFPL UNE rate will promote facility based competition in the sense that it will provide a positive incentive to CLECs to invest and develop necessary facilities other than the local loop, so that advanced services will be widely available to residential customers. Moreover, carriers may still prefer to build their own facilities since there are advantages associated with facility-based competition that cannot be realized through a line sharing arrangement, such as adopting a network with newer technology but lower cost, having additional control of the network, avoiding some of the costs incurred adjusting to the ILEC's network, and being able to collect all the revenues of data and voice services.

The Arbitrators emphasize that the HFPL rate is a cost based rate, not a value based rate. In a competitive market, customers will pay, and SWBT will receive, no more than the cost of the loop for voice and HFPL combined. The Arbitrators also note that, in its *Line Sharing Order*, the FCC states that "(c)urrently incumbent LECs are recovering the full-embedded cost of their loops through revenues recovered from intrastate business and residential voice services, access charges and intrastate access charges."⁶⁹⁷ Therefore, if SWBT has continuing concerns that its retail rates do not adequately cover the costs associated with provisioning service, SWBT should seek relief from Commission in the appropriate forum. Finally, SWBT claims that it incurs

⁶⁹⁵ *Line Sharing Order* ¶ 139.

⁶⁹⁶ *Id.* at 1151.

⁶⁹⁷ *Line Sharing Order* ¶ 152.

49. What are the permanent incremental cost-based non-recurring and recurring rates for access to ILEC-owned splitter? (IP, et al. Issue No. 31)

CLECs' Positions

AT&T argues that SWBT should not include land and building cost in the ACES factors that are applied to the splitter investment, as all of the floor space in the common area of the collocation arrangement is paid for by the CLECs through collocation space rental rates.⁷⁰⁰ AT&T indicates that when a CLEC pays for space within a "cage," the CLEC also pays for a pro rata share of common area space as well.⁷⁰¹ However, splitters that are outside of the common area of the collocation arrangement will require the application of the land and building ACES factor; as such, these splitters should have a slightly higher cost than those contained within the common area of the collocation arrangement. Accordingly, AT&T asserts that if the Commission determines that splitters on a going-forward basis should be placed in close proximity to the MDF, the Commission should adopt two costs for the splitters: one for those within the common area of the collocation arrangement (previously deployed splitters) and one for those outside of the common area of the collocation arrangement.⁷⁰² AT&T proposes a recurring rate of \$0.91 for a splitter in the common collocation area and \$0.82 for the splitter in near proximity to MDF.⁷⁰³ In addition, AT&T observes that the tie cables that extend between the MDF and the splitter have been included in the cost of the splitter.⁷⁰⁴

Rhythms recommends that the Arbitrators maintain the non-recurring splitter rate of \$1.50 as established in Interim Phase of the proceeding. Rhythms asserts that SWBT's revised proposed splitter charge is inflated. Rhythms explains that SWBT's cost study incorrectly increases SWBT's installation and power costs because SWBT has opted to purchase a more expensive splitter model.⁷⁰⁵ Rhythms clarifies that SWBT's cost analysis inappropriately includes power costs for a passive device and an inflated placement cost for installation.

⁷⁰⁰ Turner Direct at 11.

⁷⁰¹ *Id.* (For every 100 feet of "caged" space that is leased, the CLEC also pays for 37.5 square feet of common area.)

⁷⁰² *Id.* at 11-12.

⁷⁰³ *Id.* at 25.

⁷⁰⁴ *Id.* at 23.

⁷⁰⁵ Murray Direct at 49.

test points on the card rather than an external test point.⁷¹³ The Arbitrators have examined SWBT's revised cost study and agree with Rhythms that additional revisions are necessary.

The Arbitrators find that SWBT's cost analysis inappropriately includes power costs for the splitter, a passive device. The Commission has previously determined that the splitter is a "passive device."⁷¹⁴ Therefore, the splitter does not require additional power costs. The Arbitrators have revised SWBT's Splitter Cost Study to delete the building factor and SWBT's HPL Splitter Unit Investment Development Cost Study to delete the power factor for both the splitter shelf and splitter card. Therefore, the resulting rate for a SWBT-owned splitter is a monthly recurring charge of \$0.91, which corresponds to AT&T's proposal. This rate includes all the tie cables that are pre-wired from the splitter to the IDF.

The Arbitrators do not find sufficient evidence in the record to revise the placement cost for installation of the splitter as suggested by Rhythms. Therefore, the Arbitrators adopt SWBT's annual cost factors without revision.

50. What are the appropriate recurring and non-recurring charges for all elements of the fiber-fed DLC Line Sharing UNE under the FCC's Line Sharing Order (99-355) and costing principles established in Texas?

By agreement of the parties, this issue has been deferred until the final pricing phase of the proceeding.⁷¹⁵

51. Should SWBT be allowed to recover costs for modifications to their Operations Support System ("OSS") to support line sharing via an explicit charge to CLECs?

CLECs' Positions

AT&T asserts that to the extent the Commission finds it appropriate for SWBT to recover its OSS costs through a monthly recurring rate, AT&T supports a three-year recovery period.

⁷¹³ Smallwood Direct at 3; Smallwood Rebuttal at 3-4.

⁷¹⁴ Line Sharing Arbitration at 19-20.

⁷¹⁵ Tr. at 1075.

SWBT argues that the proposed charge is limited to the activities required to implement line sharing and accurately reflects the direct incremental cost for OSS modifications necessary to support line sharing over the HFPL.⁷²³ SWBT dismisses CLEC's claims that the demand forecast is incorrect.⁷²⁴ SWBT claims that its proposed recurring OSS modification charge of \$0.61 is both reasonable and consistent with the *Line Sharing Order*.⁷²⁵

Arbitrators' Decision

The Arbitrators find that SWBT should be allowed to recover costs for modifications to OSS to support line sharing via an explicit charge to CLECs. The *Line Sharing Order* requires that only a reasonable portion of SWBT's OSS development costs be included in the OSS modification charge. Therefore, the Arbitrators find that only the OSS modifications necessary to implement the FCC's spectrum unbundling requirements should be included in the charge.⁷²⁶

The Arbitrators agree with Rhythms that SWBT has not provided sufficient detail in its OSS modification cost study to determine what is attributable to its unbundling obligations and what is not. Therefore, the Arbitrators are unable to reasonably allocate the \$28 million SWBT has purportedly incurred for OSS modifications. The Arbitrators believe that the record is insufficient regarding which costs are directly attributable to implementing the OSS modifications required by the *Merger Conditions* and the creation of ASI, and which costs are directly attributable to implementing the spectrum unbundling requirements for CLECs.⁷²⁷ Further, the Arbitrators favor identifying specific costs for OSS modifications related to copper line sharing and costs related to fiber line sharing. However, the record only includes the total \$28 million Telecordia contract cost for OSS upgrades.

contract cost for the line sharing upgrade and the total projected demand across the 13 states to calculate a cost per line that applies equally in all of the 13 states.

⁷²³ Tr. at 1106.

⁷²⁴ Tr. at 1097.

⁷²⁵ Tr. at 1019-1025, 1095-1108.

⁷²⁶ *Line Sharing Order* ¶ 106: "We find, however, that further incumbent LEC OSS development is not likely to be solely driven by unbundling requirements. Consequently, we urge the state commissions not to permit incumbent LECs to delay the availability of access to the high frequency portion of the loop while they implement automated OSS solutions, nor will we permit incumbent LECs to attribute an unreasonable portion of their OSS development costs to our spectrum unbundling requirements." (Emphasis added.)

53. Should SWBT be required to absorb the cost of the tie cable that carries voice traffic from the CLEC's splitter to the ILEC's main distribution frame?
54. What are the appropriate rates for tie cables and cross-connections used in line sharing?
- 54(a). Should the costs, and ultimately the rates, for tie cable and cross-connects used in line sharing be based on efficient deployment of the ILEC-owned splitter near the Main Distribution Frame ("MDF")?
- 54(b). How many tie cables are required for efficient deployment of the ILEC-owned splitter?
- 54(c). Should the costs, and ultimately the rates, for cross-connects established in the Mega-arbitrations be used to establish cross-connect rates for line sharing? (IP, et al. Issue No. 32)

CLECs' Positions

AT&T asserts that the rates for tie cables and cross-connects should be based on the efficient deployment of ILEC-owned splitters near the MDF.⁷³¹ AT&T states that SWBT has assumed a common area splitter and additional equipment and distance that is not necessary for an efficient deployment of the splitter.⁷³² AT&T states that SWBT has also included an IDF between the MDF and the splitter.⁷³³ AT&T argues that regardless of how SWBT chooses to engineer its offices, the CLECs should not be required to pay for the extra length of cabling because of SWBT's chosen architecture.⁷³⁴ AT&T argues that if the splitter is placed in close proximity to the MDF, then the IDF investment would be eliminated from the tie cables and cross connects recurring charge and two of the cross connects would not be necessary.⁷³⁵ Consequently, the recurring charge for the tie cables and cross connects should be zero.⁷³⁶ The

⁷³¹ Turner Direct at 19-20.

⁷³² *Id.* at 19.

⁷³³ *Id.* at 20.

⁷³⁴ *Id.* at 1059.

⁷³⁵ Turner Direct at 23.

⁷³⁶ *Id.* at 21-23.

in the Mega-arbitration reflects the same type of work that is been reflected in the HFPL non-recurring cross connect rate element.⁷⁴⁵

Rhythms asserts that the charges for tie cables and cross connects should assume an efficient network arrangement. Rhythms believes that in an efficient network the splitter would be installed on the MDF, obviating the need for additional cross connects and cables. Rhythms explains that a facility such as a tie cable is always needed to link voice grade service to the switch, regardless of whether line sharing is involved.⁷⁴⁶ Thus, Rhythms asserts that the CLEC is not the cost causer and should not bear the cost of the existing tie cable merely because the service is reconfigured into a line sharing arrangement.⁷⁴⁷ Rhythms indicates that in the efficient network configuration only three cross connects are required. Thus, Rhythms argues that SWBT should only be allowed to charge for three cross connects rather than five as proposed by SWBT.⁷⁴⁸ IP and Sage support Rhythms' position and arguments on this issue.

Sprint agrees with the *Interim Award* ruling calling for a nonrecurring cost of \$4.72. Sprint supports cross connect rates that reflect an efficient configuration.⁷⁴⁹ Sprint proposes three service arrangements that recognize revised nonrecurring charges for cross connects.⁷⁵⁰

In addition, Sprint supports a recurring rate of \$0.47. Sprint assumes that the monthly recurring charge equates to a per line rate that supports all the material (cable and connections), as well as engineering and installation labor required to connect the splitters to the MDF.⁷⁵¹

WCOM generally supports the range of rates proposed by AT&T and Rhythms.

SWBT's Position

SWBT points out that in the *First Report and Order* the FCC states that TELRIC employs a "benchmark of forward-looking cost and existing network design [that] represents the

⁷⁴⁵ Tr. at 955.

⁷⁴⁶ *Dunbar Direct* at 40.

⁷⁴⁷ *Id.*

⁷⁴⁸ *Id.*

⁷⁴⁹ *McMahan Rebuttal* at 11-12.

⁷⁵⁰ *AL Exhibit SMM-3.*

ILEC-owned arrangement, SWBT proposes \$62.93 for the initial and \$45.49 for the additional.⁷⁶² SWBT states that the non-recurring costs for line sharing reflect the activities associated with the installation and removal of cross connect jumpers in the central office. Specifically the following activities are included: disconnecting the jumper that connects the plain old telephone service loop to the switch; establishing new jumpers at the MDF and the IDF; and, performing tests to ensure continuity.⁷⁶²

SWBT states that the number of jumper placements required depends on splitter ownership. If SWBT is providing the splitter, a SWBT technician will need to place five jumpers. If the CLEC owns the splitter, a SWBT technician will only need to place 4 jumpers.⁷⁶³ For the non-recurring cross connect costs developed, SWBT states that a network subject expert provided the costing data, which includes activities involved and times for activities.⁷⁶⁴

SWBT agrees with CLECs that there are two groups of activities included in the SWBT non-recurring cost for cross connects; installing the HFPL for an existing voice customer and disconnecting the HFPL. SWBT proposes costs under disconnect cover activities associated with disconnecting line sharing off of a POTS line served by SWBT and restoring the retail voice customer's loop on the MDF to the switch port.⁷⁶⁵ SWBT admits that, in its cost study, disconnecting counts for "slightly greater than half" of the cost and disconnect is assumed to happen 100% of the time.⁷⁶⁶

Arbitrators' Decision

The Arbitrators have ruled in DPL Issue No. 4 that locating the splitter on or near the MDF is not necessarily more efficient than other arrangements, considering the universe of services an ILEC has to offer. Based on that decision and applying a TELRIC standard, costing will not be based on a network configuration where splitters are located near or on the MDF.

⁷⁶² DPL 001.

⁷⁶³ Settlement Issues at 10-11.

⁷⁶⁴ DPL 011.

⁷⁶⁵ DPL 011.

⁷⁶⁶ DPL 000-001.

⁷⁶⁷ DPL 000-001.

particularly where the splitter is located within the incumbent LEC's MDF. Accordingly, we find it reasonable to establish a presumption that, where the splitter is located within the incumbent LECs' MDF, the cost for a cross connect for entire loops and for the high frequency portion of loops should be the same."⁷⁷⁰

"If the splitter is not located within the incumbent LEC's MDF, however, then we would expect the states to allow the incumbent LEC to adjust the charge for cross connecting the competitive LEC's xDSL equipment to the incumbent LECs' facilities to reflect any cost differences arising from the different location of the splitter, compared to the MDF. We would expect this amount would be only minimally higher than for cross connecting the splitter located within the MDF to the competitive LEC's xDSL equipment."⁷⁷¹

At the Hearing on the Merits, SWBT indicated that "minimal" was about 10%.⁷⁷² The Arbitrators find that rates developed by AT&T meet the criteria of being minimally higher than the rates developed under the assumption to locate the splitter on or near MDF.⁷⁷³ In addition, two tie cables were used to develop SWBT's proposed rates. As AT&T did not mention any adjustment to the number of tie cables in its proposed rate calculation, the Arbitrators determine that it is appropriate.

55. Has SWBT violated its obligation to negotiate in good faith by refusing to disclose cost information requested by xDSL CLECs?

On December 1, 2000, parties agreed that this issue no longer needed to be addressed in this proceeding.⁷⁷⁴

⁷⁷⁰ *Id.* Sharing Order ¶ 145.

⁷⁷¹ *Id.* ¶ 145.

⁷⁷² *Tr.* at 1091.

⁷⁷³ The adopted rates are \$20.62 initial, \$19.74 subsequent. The proposed rates assuming the splitter is on or near the MDF are \$14.04 and \$13.06.

⁷⁷⁴ *Tr.* at 1137.

Arbitrators have found that SWBT must provide CLECs access to Pronto SWBT will be required to provide the appropriate unbundled element indefinitely.

57. What terms and conditions should govern any indemnification obligations between the parties?

CLECs' Positions

IP is satisfied with the indemnification language in the interim HFPL Appendix.

Rhythms purports that any indemnification provisions beyond those already in the underlying interconnection agreements are unwarranted.

WCOM is not addressing this issue at this time.

SWBT's Position

SWBT asserts that it is imperative that the HFPL Appendix have comprehensive indemnification language because line sharing presents unique challenges due to the fact that two providers have responsibilities and access to shared facilities for the same end user. SWBT urges the Commission to adopt SWBT's proposed liability and indemnification clauses.

Arbitrators' Decision

The Arbitrators agree with Rhythms and are not persuaded to change our prior decision regarding indemnification language. The Arbitrators continue to find that the terms and conditions in the underlying interconnection agreements should apply and that additional indemnification provisions specifically for line sharing in the HFPL Appendix would be unnecessary and duplicative. SWBT has not provided compelling evidence that the existing indemnification language is not adequate.

different types of xDSL service from CLECs because they are locked into long term contracts with SWBT.

SWBT's Position

SWBT explains that at this time it does not provide retail xDSL services and therefore cannot charge end users termination fees if the end user does not fulfill the terms of their contract. SWBT clarifies that ASI, SWBT's advanced services affiliate, does provide advanced services, including xDSL services. However, SWBT continues, ASI is not a party to this proceeding.⁷⁷⁸

Arbitrators' Decision

The Arbitrators agree that SWBT does not provide retail xDSL services at this time and that ASI is not a party to this proceeding.⁷⁷⁹ Therefore, the Arbitrators decline to order ASI to allow existing xDSL customers to terminate their contract without penalty. The Arbitrators do not find compelling evidence in the record to support the assertion that SWBT has "locked" consumers into long-term contracts, thereby preventing CLECs from offering the services they desire.

⁷⁷⁸ Id. at 7-8.
⁷⁷⁹ Id. at 11-12.

XIII. CONCLUSION

The Arbitrators conclude that the foregoing Arbitration Award resolves the disputed issues presented by the parties for arbitration. The Arbitrators further find that this resolution complies with the standards set in FTA §252(c), the *Line Sharing Order*, and P.U.C. PROC. R. 22.301-22.310.

FTA § 252 PANEL

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