BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDEL
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238** **AT&T AND TCG PHOENIX'S COMMENTS ON LOOPS, LINE SPLITTING, NID AND LNP**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") file their comments on checklist item 4 (loops), including line splitting and Network Interface Device ("NID"), checklist item 11 (local number portability).

I. INTRODUCTION

The United States Congress conditioned Qwest Corporation's (formerly known as U S WEST Communications, Inc., hereinafter "Qwest") entrance into the in-region interLATA long distance market on Qwest's compliance with 47 U.S.C. § 271. To be in compliance with section 271, Qwest must "support its application with actual evidence demonstrating its *present* compliance with the statutory conditions for entry."[1]

As AT&T has previously stated in its Comments in this proceeding, the

[1] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, released December 22, 1999, ¶ 37 ("*BANY Order*").

Arizona Corporation Commission ("Commission") is charged with the important task of ensuring that Arizona's local telecommunications markets are open to competition and that Qwest is complying with its obligations under both the state and federal law. Although the Federal Communications Commission ("FCC") is the final decision-maker on Qwest's compliance with its section 271 obligations, the FCC looks to the state commissions for rigorous factual investigations upon which the FCC may base its conclusions.

To conduct a rigorous investigation, one must understand both the legal standards that Qwest is held to and investigate Qwest's actual implementation of those standards. Permitting Qwest to compete in the interLATA long distance market before it has fully and fairly complied with its obligations under section 271 will discourage, if not destroy, competition in both the local and long distance markets in Arizona.

Many a local competitor, including AT&T, has invested heavily in this State on the promise of open, fair competition in the local exchange market. AT&T requests that this Commission, through its rigorous investigation of Qwest's claims in this proceeding, ensure that the nascent local competitors realize that promise. To that end, AT&T respectfully submits these Comments addressing the topics of loops, local number portability and line splitting.

Through these workshops, the Commission is conducting its investigation of both Qwest's Statements of Generally Available Terms ("SGAT") and Qwest's actual

compliance, or lack thereof, with the checklist items contained in 47 U.S.C. § 271(c)(2)(B). With respect to the SGAT review, a "State commission may not approve such statement unless such statement complies with [section 252(d)] and [section 251] and the regulations thereunder." 47 U.S.C. § 252(f). Furthermore, a state commission may establish or enforce other requirements of state law in its review of the SGAT. *Id.*

To demonstrate compliance with the requirements of section 271's competitive checklist, Qwest must show that "it has 'fully implemented the competitive checklist [item]... .'"[2] Thus, Qwest must plead, with appropriate supporting evidence, the facts necessary to demonstrate it has complied with the particular requirements of the checklist item under consideration.[3] Qwest must prove each element by a preponderance of the evidence.[4] Furthermore, the FCC has stated that the most probative evidence is commercial usage along with performance measures providing evidence of quality and timeliness of the performance under consideration. Finally, as with any application, the "ultimate burden of proof that its application satisfies all the requirements of section 271, even if no party files comments challenging its compliance with a particular requirement[,]" rests upon Qwest.[5]

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[2] *BANY Order*, ¶ 44.
[3] *Id.*, ¶ 49.
[4] *Id.*, ¶ 48.
[5] *Id.*, ¶ 47.

II. LEGAL REQUIREMENTS

A. Unbundled Loops

1. Loops

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."[6] 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.[7] 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."[8]

In order to establish that it is "providing" unbundled local loops in compliance with section 271(c)(2)(B)(iv), 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.[9]

Qwest must also demonstrate that it provides nondiscriminatory access to

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[6] 47 U.S.C. § 271(c)(2)(B)(iv).

[7] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* First Report and Order, CC Docket No. 96-98, FCC 99-325, released August 8, 1996, ¶ 380 *("Local Competition Order")*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238, released November 5, 1999, ¶ 166-167, n.301 (*"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).

[8] *Local Competition Order*, ¶ 380; *UNE Remand Order*, ¶ 166-167.

[9] *BANY Order*, ¶ 269; *Application of BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, As Amended, To Provide In-Region InterLATA Services in Louisiana*, CC Docket No. 98-121, FCC 98-271, released October 13, 1998, ¶ 54 (*"BellSouth Second Louisiana Order"*).

unbundled loops.[10] Specifically, Qwest must provide access to any functionality of the loop requested by a competing carrier unless it is not technically feasible to condition the loop facility to support the particular functionality requested.[11] 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.[12] 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.[13]

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."[14]

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

[10] *BANY Order*, ¶ 269; *BellSouth Second Louisiana Order*, ¶ 185.
[11] *BANY Order*, ¶ 271; *BellSouth Second Louisiana Order*, ¶ 187.
[12] *BANY Order*, ¶ 271.
[13] *Local Competition Order*, ¶ 384.
[14] *UNE Remand Order*, ¶ 165

> advanced services, such as Digital Subscriber Line Access Multiplexers), and line conditioning. The local loop includes, but is not limited to, DS1, DS3, fiber, and other high capacity loops.[15]

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..."[16]

Thus, the termination of the loop must be clearly defined as is required by the FCC in the *UNE Remand Order*. Moreover, the FCC concluded that defining the 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."[17] Citing Section 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."[18] 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."[19]

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[15] 47 C.F.R. § 319(a)(1).
[16] *UNE Remand Order*, ¶ 167.
[17] *Id.*, ¶ 168.
[18] 47 C.F.R. § 51.319(a)(1)
[19] *UNE Remand Order*, ¶ 176.

The FCC concluded, 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.[20]

Further, the 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.

Finally, Qwest must provide dark fiber loops. The FCC made it abundantly clear that dark fiber is part of checklist items 4 and 6, unbundled loop and unbundled transport.[21] Therefore, the SGAT must explicitly and specifically permit CLECs to obtain dark fiber loops.

2. Line Splitting

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."[22] As a result, incumbent LECs have an obligation to permit competing carriers to engage in line splitting over the UNE-P where the competing carrier

[20] *Id.*, ¶ 175.
[21] 47 C.F.R. § 51.319(a)(1) and 319(d)(1)(b).
[22] 47 C.F.R. § 51.307(c).

purchases the entire loop and provides its own splitter. The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P. For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and DSLAM equipment and unbundled switching combined with shared transport to replace its UNE-P with a configuration that allows provisioning of both data and voice service. SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.

In addition, Qwest is required to provide to CLECs all the functionalities and capabilities of the loop, including electronics attached to the loop.[23] The splitter is an example of such electronics that it is included within the loop unbundled network element.

B. Network Interface Device (NID)

Section 271(c)(1)(B)(ii) states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 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 section 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."[24]

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[23] *UNE Remand Order*, ¶ 175.
[24] *Id.*, ¶ 233.

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 devices used for that purpose."[25] 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."[26]

In addition, the FCC's definition encompasses "smart NIDs" which are devices used on PBX 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.

C. Local Number Portability

Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Commission pursuant to section 251.[27] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[28] In order to prevent the cost of number portability from thwarting local competition, Congress enacted § 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as

[25] 47 C.F.R. § 51.319(b).
[26] *Id.*
[27] 47 U.S.C. § 271(c)(2)(B)(xii).
[28] 47 U.S.C. § 251(b)(2).

determined by the Commission."[29]

Pursuant to these statutory provisions, the FCC requires that BOCs provide number portability in a manner that allows users to retain existing telephone numbers "without impairment in quality, reliability, or convenience."[30] In addition, the FCC requires the BOC to demonstrate that it can coordinate number portability with loop cut-overs in a reasonable amount of time and with minimum service disruption. The FCC established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,[31] and created a competitively neutral cost-recovery mechanism for long-term number portability.[32]

D. Conclusion

When the standards outlined above, along with the more particular rules and statutory references, are applied to Qwest's Application, Affidavits and supporting evidence, it is clear that Qwest is not *presently* in compliance with its obligations under § 271. With respect to the SGAT, AT&T's comments herein discuss numerous instances wherein Qwest is not in compliance with its obligations under §§ 252(d) and 251 of the Act or state law.

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[29] 47 U.S.C. § 251(e)(2); *see also BellSouth Second Louisiana Order*, ¶ 274; *In the Matter of Telephone Number Portability*, Third Report and Order, CC Docket No. 95-116, FCC 98-92, released May 12, 1998, ¶ 4 ("*Third Number Portability Order*"); *In the Matter of Telephone Number Portability, Fourth Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95-116, released June 23, 1999, ¶¶ 1, 6-9 ("*Fourth Number Portability Order*").

[30] *BellSouth Second Louisiana Order*, ¶ 276.

[31] See 47 C.F.R. § 52.29; *BellSouth Second Louisiana Order*, ¶ 275; *In the Matter of Telephone Number Portability,* First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 95-116, FCC 96-286, released July 2, 1996, ¶¶ 127-140 ("*First Number Portability Order*").

[32] See 47 CFR §§ 52.32 & 52.33; *BellSouth Second Louisiana Order*, ¶ 275; *Third Number Portability Order*, ¶ 8; *Fourth Number Portability Order,* ¶ 9.

These comments also discuss AT&T's present commercial experience. While AT&T's experience confirms that Qwest is not presently in compliance with its obligations under § 271 and the SGAT requires substantial compliance to correct problems that have been encountered by AT&T, it is only after a proper review of all the audited performance data and CLECs data[33] that the Commission and Qwest will have sufficient substantiated evidence to determine the real level of compliance with the checklist items and standards outlined above.

III. COMMENTS

A. Unbundled Loops

1. Loops

a. Definition of Loops.

Qwest's definition of "Local Loop Transmission" or "Loop" or "Unbundled Loop" in Section 4.34 is deficient. This definition does not reflect the FCC's definition of the loop as set forth in the *UNE Remand Order*.[34] Qwest's definition must be revised to include: inside wire owned by Qwest; all features, functions and capabilities of such transmission facility, including, but not limited to dark fiber, attached electronics (except for DSLAMs) and line conditioning. Further, the demarcation point should be defined as set forth in the *UNE Remand Order*: "that point on the loop where [Qwest's] control of the wire ceases, and the subscriber's control (or, in the case of some multiunit premises, the landlords' control) of the wire

[33] Such data will be offered at the appropriate time in this proceeding.
[34] *UNE Remand Order*, ¶¶167-168.

begins. . . . [T]he demarcation point is defined by control; it is . . . a point where [Qwest's] and a property owner's responsibilities meet."[35] In addition Qwest's Interconnection and Resource Guide (IRRG) must be revised to be consistent with the FCC's redefinition of the unbundled loop obligations.

By not including these elements in the Loop definition, Qwest fails to demonstrate that it has a "concrete and legal" obligation to furnish the entire spectrum of loops and all related functionality and equipment as is required to demonstrate compliance with the unbundled loop checklist item.[36]

b. Section 9.2 Generally

Section 9.2 of the SGAT provides Qwest's offered terms and conditions regarding access to unbundled loops. Unfortunately, this portion of the SGAT fails to take into account several requirements imposed by the Act and the FCC, particularly those set forth in the *UNE Remand Order*. Qwest's proposed terms fail to demonstrate a contractual commitment to provide access to unbundled loops, as defined by the FCC, in a non-discriminatory manner and in a timely fashion. This SGAT section also has a number of gaps, failing to address some key elements for competitive access. These shortcomings raise a number of questions as to whether Qwest will provide CLECs with a meaningful opportunity to compete.

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[35] *Id.*, ¶169.

[36] *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, released June 30, 2000, ¶247 (*"SBC Texas Order"*).

c. Section 9.2.1

This section states that Qwest offers "non-discriminatory access to Unbundled Loops" and then goes on to define Unbundled Loops. Qwest should either refer to the definition of Unbundled Loops as provided in Section 4.34 or use the same definition in both places, as revised in accordance with AT&T's comments regarding Section 4.34.

The latter part of Section 9.2.1 does not include all of the necessary types of loops. A fourth type should be added to include fiber loops with OC-3 through OC-n capability. In addition, in loop type (iii), the reference should be to "Digital and Digital Capable" loops. Qwest is obligated to provide digital loops, not just digital capable loops. A digital "capable" ISDN loop might be considered to be a short copper loop with no bridge taps or load coils that the CLEC where the CLEC can install ISDN equipment to provide an actual ISDN loop. The *UNE Remand Order* requires that Qwest provide the actual ISDN loop, not merely an ISDN capable loop.[37] The same can be said for DS1, DS3 or ADSL loops. Qwest must provide the digital loops, not merely digital capable loops.

The loop description should also include a statement that the Unbundled Loop includes the CLEC's use of all test access functionality, including without limitation smart jacks, for both voice and data purposes. CLECs must have the ability to access test functionality in order to ensure that the loop is capable of supporting the desired functionality and is, in fact, functional.

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[37] *UNE Remand Order*, ¶175.

d. Section 9.2.2.1

Qwest should clarify that Unbundled Loops will be unbundled from local switching and transport, consistent with the requirements of the Act.[38] Furthermore, Qwest should insert the words "time and manner" after "quality," consistent with the legal standard set forth in the *SBC Texas Order*.[39]

Section 9.2.2.1 states that Qwest will provide loops "within a reasonable timeframe and with a minimum of service disruption." Qwest should describe in the SGAT its processes for cutting over UNE loops. In addition, Qwest should describe during the workshop the processes Qwest uses to cut over its Megabit service as compared to the processes for cutting over UNE loops. Both UNE loops and Megabit require new jumpering at the COSMIC or MDF. Qwest must show that there is no more time involved in provisioning a UNE loop than that required to jumper a Megabit service. Qwest must also demonstrate that the "minimal" service disruption for UNE loops is the same as the service disruption for Megabit.

e. Section 9.2.2

Section 9.2.2.2 describes the analog loops Qwest intends to offer on an unbundled basis. The description contains a frequency restriction on the loop of 300 to 3000 Hz. This restriction is unwarranted and is contrary to the FCC's loop definition. The CLEC should be able to utilize whatever bandwidth is available on the loop. The FCC provides for no bandwidth exceptions.

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[38] 47 U.S.C. §271(c)(2)(B)iv.
[39] *SBC Texas Order*, ¶251.

Furthermore, in the last sentence, the words "to the extent possible" should be stricken or an explanation given regarding when it would not be possible to provide the Unbundled Loop. In addition, Qwest's IRRG provides as follows:

> Unbundled Loops can only be established on copper or Universal Digital Loop Carrier (UDLC). Integrated Digital Loop Carrier (IDLC) cannot be used for an Unbundled Loop service at this time. *Qwest has chosen not to unbundle IDLC because of the expense of providing equipment to "groom" the DS0 lines.* During the Unbundled Loop facility assignment, an attempt will be made to Line and Station Transfer (LST) the IDLC loop to UDLC or copper. If there are no facilities available to complete the LST, the Co-Provider will be notified that the order has been placed into a held status. (Emphasis added.)

In the *BellSouth 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 . . ."[40] Qwest's SGAT and IRRG are not consistent with this requirement. Moreover, the manner in which Qwest provides the Unbundled Loop must ensure that the CLEC can provide service to end-users that is comparable in functionality, quality, provisioning interval and cost to a loop that is used by Qwest to provide service to its end users. Qwest should more fully describe its plans to provide unbundled loops when DLC is used to provide the basic loop.

f. Section 9.2.2.3

Qwest is required to provide all types of digital loops to the CLEC. This includes loops providing the following levels of service: ISDN, DS1, DS3, DSL, and OC-n. Section 9.2.2.3 does not specifically commit itself to providing the necessary electronics required to actually provide the digital capabilities of the particular loop

[40] *BellSouth Second Louisiana Order*, ¶187 and *SBC Texas Order*, ¶248.

type. In the *UNE Remand Order*, the FCC concluded, 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.[41] Qwest's SGAT does not include such a requirement.[42] Rather, in the fourth sentence of Section 9.2.2.3, and again in the third sentence of Section 9.2.2.3.1, Qwest states that it will determine the transmission technology by which the loop will be provided. This is contrary to the *UNE Remand Order*. Where more than one arrangement is available, CLEC should have the ability to select between available technologies.

The last sentence of Section 9.2.2.3 states "[c]harges shall apply for conditioning of the digital capable loops, as requested by CLEC, if necessary, as determined by Qwest." This statement is confusing and should be clarified. What will Qwest determine? Conditioning is either necessary or not.

In Section 9.2.2.3.1, Qwest offers fiber-based loops at SONET transmission rates OC-3 through OC-n on an Individual Case Basis (ICB). This section is inconsistent with the *UNE Remand Order*. Qwest must provide unbundled access to high capacity loops.[43] CLEC should be able to order any existing high capacity loop pursuant to the established ordering process rather than ICB, which invites delay and expense and fails to provide access to loops "in substantially the same time and manner as [Qwest] does for its own retail service."[44] It may be appropriate for Qwest to offer "other high capacity loops," which implies future technology, on an ICB

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[41] *UNE Remand Order*, ¶ 175.
[42] *Id.*, ¶175.
[43] *Id.*, ¶176.
[44] *SBC Texas Order*, ¶251.

basis, but SONET capability would not fall within this criteria. It is not new and it is subject to the explicit unbundling obligations in the FCC Rules.

Finally, in Section 9.2.2.3, Qwest is only offering ADSL loops. Qwest must offer all types of DSL loops, corresponding to the types of loops that Qwest uses to provide service to its own customers.[45] Where Qwest provides service via VDSL loops, the CLEC should be able to use such loops.[46]

g. Section 9.2.2.4

Section 9.2.2.4 presents Qwest's offer to provision non-loaded loops, a type of loop needed by CLECs to provision DSL and other high speed services. Qwest proposes to charge CLECs for unloading loops. CLECs should not be required to pay Qwest to upgrade its Qwest network where Qwest inappropriately provisioned load coils in the past. Load coils should only have been used on loops over 18 kilofeet. CLECs should not have to pay for the removal of load coils on loops less than 18 kilofeet. AT&T also should not have to pay to remove obsolete bridge taps that were used by Qwest in the past to provide party line service. Qwest should have removed old bridge taps when the party line configurations were removed years ago. Further, when Qwest removes load coils on loops over 18 kilofeet, the CLEC should be reimbursed for any conditioning charges if the customer switches service providers within one year from initial service. The SGAT should be amended to reflect these concerns.

In the *UNE Remand Order*, the FCC recognized that these costs may

[45] *UNE Remand Order*, ¶ 166.
[46] *Id.*, ¶167.

"constitute a barrier to offering xDSL services," and that "incumbent LECs may have an incentive to inflate the charge for line conditioning." The FCC then deferred "to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules. . . .".[47] Qwest should affirm that the charges it proposes here will be addressed in the appropriate cost case and that they will not be inflated or constitute a barrier to competitors offering service.

The conditioning service described in this section should include response time intervals to ensure that the conditioning is accomplished in a timely manner. Qwest should incorporate into the SGAT such intervals. Such intervals must be reasonable and provide the nondiscriminatory access to unbundled loops required by the Act and FCC rules and orders and subject to an appropriate performance assurance plan.

The reference in this Section to repeater placement as "Extension Technology" is curious. Presumably this is a reference to the IRRG, as the IRRG is cross-referenced when Extension Technology is referred to in Section 9.2.2.5. In any case, it is unclear what this reference means and Qwest should clarify what is intended by this statement. As AT&T and other CLECs have frequently noted, Qwest's numerous references to standards, terms and conditions in the IRRG do not create the concrete and legally binding obligations Qwest must establish before meeting the competitive checklist requirements. In short, because the terms of the IRRG are not definite and subject to modification at Qwest's discretion without consent of CLECs, they are not concrete terms on which Qwest can base its compliance with the Act. Qwest should modify this provision to satisfy AT&T's

[47] *Id.*, ¶194.

concerns and include all external terms or conditions or other requirements in the text of the SGAT.

With respect to the last sentence of this Section, please see the concerns raised regarding IDLC provisioning in the above comments on Section 9.2.2.2.

h. Section 9.2.2.5

Section 9.2.2.5 describes Qwest's offering for ISDN loops. The first sentence should read "Basic Rate ISDN loop," deleting the word "capable." The CLEC would be requesting an ISDN loop, not an ISDN capable loop that could be merely a conditioned copper loop. As discussed above Qwest is obligated to provide ISDN loops where available and ISDN-capable loops where ISDN loops are not available.

Qwest asserts that it will dispatch technicians to provide extension technology so that the loop will provide ISDN functionality. If the loop is already providing ISDN to a customer, no additional action is required by the CLEC and the CLEC should not be charged for the installation of ISDN equipment. In addition, the cross-reference to the IRRG is unacceptable. See remarks regarding IRRG in Section 9.2.2.4 above.

Finally, the same remarks made regarding Section 9.2.2.4 above regarding conditioning apply to ISDN loops, and the same remarks regarding the last sentence in Sections 9.2.2.2 and 9.2.2.4 apply to the last sentence of this section.

i. Section 9.2.2.6

Section 9.2.2.6 addresses unbundled DS1 and DS3 loops. The word "Capable" is capitalized but is not defined. As discussed above, Qwest should be required to provide DS1 and DS3 loops where available, and DS1 and DS3 Capable

loops where DS1 and DS3 loops are not available. An unloaded loop of short length may be capable of transmitting DS1 signals. Sections 9.2.2.6.1 and 9.2.2.6.2 should be revised as well. In addition, the term "access" should also be removed. Qwest must provide the existing electronics, not merely access to them.[48] The loop should provide DS1 and DS3. This would include all of the necessary electronics on each end and repeaters, as needed and appropriate.

Finally, Qwest should address the pertinent specifications for DS1 and DS3 loops that are referred to in Sections 9.2.2.6.1 and 9.2.2.6.2 in the workshop and make copies of those specifications available to the CLECs.

j. Fiber Loops

Qwest's SGAT does not appear to offer CLECs access to unbundled fiber loops. Fiber loops must be made available at SONET speeds of OC3 through OCn, in the same manner and in the same locations that Qwest makes them available to itself or to its retail customers.[49] Qwest must add such language to its SGAT.

k. Section 9.2.2.7

Section 9.2.2.7 limits the obligation of Qwest to provision digital loops. Qwest must provide loops, including digital loops, in a non-discriminatory manner.[50] Further, Qwest must provide access to any functionality of the loop . . . unless it is not technically feasible.[51] The Section should be modified to affirmatively state that CLECs can order digital loops in areas where they are available or where it is

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[48] *Id.*, ¶175.
[49] *Id.*, ¶176.
[50] 47 C.F.R. ¶ 51.319(a)(1); *BANY*, ¶¶ 269, 275; *SBC Texas Order*, ¶248.
[51] *SBC Texas Order*, ¶248.

technically feasible to provide them. The way the Section currently reads, Qwest would not be required to provide digital loops in areas where any loop is provided on facilities that cannot provide digital loops. It should also be affirmatively stated that an existing digital loop can be transferred from Qwest to the CLEC if the customer so chooses. In addition, the word "capable" should be removed from the Section.

Finally, the last sentence should be either removed or changed to provide some limitations on the control Qwest can exert on the use of cables. The sentence is very vague and overly broad. AT&T proposes the following language in order to ensure non-discriminatory treatment with respect to spectrum management issues:

> A request by CLEC will be treated in a non-discriminatory manner with regards to spectrum management as Qwest treats itself or its affiliates. To the extent that industry forums have convened and recommended guidelines for the non-discriminatory treatment of spectrum management and loop assignment within loop feeder and distribution cables, Qwest shall follow these recommendations.

l. Section 9.2.2.8

Section 9.2.2.8 addresses the conditioning of ADSL loops. This Section should be expanded to include other forms of DSL, as well. In addition, Qwest should address the design requirements of the referenced Technical Publication 77384 at the workshop and provide copies to the CLECs.

One important finding by the FCC in the *SBC Texas Order,* was that SBC demonstrated that it offered "non-discriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting technologies."[52] This was important to their determination that loop requests were

[52] *Id.*, ¶287.

processed in a "timely manner" that provided efficient competitors a meaningful opportunity to compete.[53] While access to OSS will be addressed in another workshop, Qwest should amend this section to reflect that information will be made available so that pre-qualification may be done by the requesting CLEC. AT&T proposes the following language:

> Qwest shall make available to CLEC on a non-discriminatory basis all loop qualification information available to Qwest. Such access shall be made available in a non-discriminatory manner identical to that which Qwest and its affiliates use to access this data. This data includes, but is not limited to: (1) the composition of the loop material, such as fiber optics, copper; (2) the existence, location and type of any electronic or other equipment on the loop, including but not limited to digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, pair-gain devices, disturbers in the same or adjacent binder groups; (3) the loop length, including the length and location of each type of transmission media; (4) the wire gauge(s) of the loop; and (5) the electrical parameters of the loop, which may determine the suitability of the loop for various technologies. Qwest must supply all loop qualification information and subsequent changes to such information necessary to enable CLEC to determine whether it can offer service to an end-user based on an individual address, zip code of the end users in a particular wire center, NXX code, or any other basis on which Qwest provides such information to itself or any of its affiliates. Qwest shall provide such information in electronic means in a format acceptable to CLEC using interfaces to be agreed upon.

Qwest should also make available on an ongoing basis those of its central offices that support xDSL services. AT&T proposes the addition of the following language:

> Within ten (10) days after the Effective Date of this Agreement, Qwest shall provide CLEC with an initial written report identifying the Qwest Central Offices that support the provisioning of xDSL capable Loops. Qwest shall update such report on a quarterly basis, but in no event later than Qwest makes such information available for use by its advanced services division, Qwest's own customers, a Qwest affiliate

[53] *Id.*, ¶288.

> or any other entity. If Qwest expands xDSL capability for itself or its affiliates in a Qwest Central Office where physical collocation space is exhausted or is projected by Qwest to exhaust within six (6) months, then Qwest shall be required to make alternative, reasonable, prompt and effective collocation arrangements available to CLEC so that CLEC is able to take advantage of the same xDSL capabilities that Qwest and its affiliates may utilize in that Central Office.

m. Sections 9.2.2.9.1 and 9.2.2.9.2

Sections 9.2.2.9.1 and 9.2.2.9.2 describe basic installation of loops. Qwest must describe in more detail in the SGAT the processes by which basic installation is accomplished by Qwest. Pursuant to Section 9.2.2.1, Qwest represents that it will provide loops with a minimum of service disruption. Qwest must address the installation process, including the "required parameter limits" in the workshop and provide their operations manuals for review so that the CLECs can determine if their processes are adequate and will meet the legal standards established in the Act and by the FCC rules and orders.

The reference to the WORD document and/or the service order in Section 9.2.2.9.2 is vague and undefined. Qwest should clarify what this means.

n. Sections 9.2.2.9.3 and 9.2.2.9.4

Sections 9.2.2.9.3 and 9.2.2.4 provide the only detail available regarding Qwest's coordinated installation process with testing. These sections are insufficient. First, Qwest must provide a detailed explanation in the workshop on exactly how these processes will work, along with copies of the relevant technical publication mentioned in these Sections (Technical Publication 77384). Second, Qwest does not specify the timeframes in which the CLEC can postpone cutovers that have been ordered for a particular time and must be delayed due to CLEC or end user needs.

This is necessary to ensure non-discriminatory treatment and limited disruption of service.[54] Third, the testing listed for digital loops is not adequate to determine if the loops are providing the digital capability required. Qwest must specify the digital tests that are required to adequately test the digital capability that the loop must provide. Fourth, Qwest must add fiber loops to the list of digital loops. Fifth, Qwest must permit access to ISDN, DS1, DS3 and xDSL loops, in addition to "Capable" loops or "Qualified" loops in Section 9.2.2.9.3 for reasons discussed above.

o. Section 9.2.2.11

Section 9.2.2.11 states:

> Unbundled Loops are provided in accordance with the specifications, interfaces and parameters described in U S WEST's Technical Publication 77384. Qwest's sole obligation is to provide and maintain Unbundled Loops in accordance with such specifications, interfaces and parameters.

This provision is contrary to law and unacceptable. Qwest should be required to provide and maintain unbundled loops in accordance with applicable federal and state law. In addition, Qwest is relying on the SGAT as demonstrating its compliance with the competitive checklist. It is holding the SGAT out as the document that establishes it has the concrete and specific legal obligations required by the Act and the FCC. However, this provision belies that representation by relying on an extraneous document as being the repository of Qwest's "sole obligation" to provide unbundled loops. Qwest cannot have it both ways. As AT&T and other CLECs have frequently noted, Qwest's numerous references to standards, terms and conditions in extraneous documents does not create the concrete and legally binding obligations

[54] *BellSouth Second Louisiana Order*, ¶185.

Qwest must establish before meeting the competitive checklist requirements. In short, because the terms of documents, such as these Technical Publications and the IRRG are not definite and subject to modification at Qwest's discretion without consent of CLECs, they are not concrete terms on which Qwest can base its compliance with the Act. Nor has Qwest provided the Technical Publications it references in these sections as evidence in this proceeding. Thus, it demonstration of compliance is woefully insufficient. To the extent Qwest is relying on the SGAT to demonstrate compliance with Section 271, the SGAT must reflect all of the terms and conditions and other obligations associated with any particular checklist item before it can be determined that Qwest has satisfied that checklist item.

The third sentence in this section does not comply with FCC rules, and appears to be unnecessary. Qwest must provide "non-discriminatory access to any functionality of the loop requested by a [CLEC] unless it is not technically feasible to condition the loop facility to support the particular functionality requested."[55] At minimum, Qwest should warrant the compatibility with facilities or equipment or for services currently provided with or over a given loop, or over similar loops at the same location. Qwest must affirmatively address this requirement, rather than limiting its obligation.

The fourth sentence in Section 9.2.2.11 reads: "[t]ransmission characteristics may vary depending on the distance between CLEC's end user and Qwest's end office and may vary due to characteristics inherent in the physical network." While this may be true for analog loops, it cannot be true for digital loops. For example,

[55] *Id.*, ¶187.

Qwest must provide DS1 loops complete with the necessary repeaters to provide service to any customer location, no matter the loop length.

In the last two sentences in this Section, Qwest asserts that transmission parameters may change. Qwest should explain the type of changes that might occur and any actual or contemplated changes occurring now or that will occur in the next few years.

At the end of this Section, Qwest reserves the right to make modifications and changes to its unbundled loops. Although AT&T does not object in principal to this reservation, and Qwest appears to warrant that such changes will result in nothing more than "minor changes to transmission parameters," AT&T is concerned that Qwest's modifications may create material changes in the quality and character of Qwest's unbundled loops and/or CLEC's ability to access them. Qwest attempts to ameliorate this concern by stating that it will provide advance notice of changes that affect network interoperability. AT&T's concern is that such modifications may not be of a nature to affect "network interoperability," but the could alter the nature of an unbundled loop or require a different method or point of access. AT&T requests that Qwest provide examples of the kinds of modifications that would affect "network interoperability" that would require advance notice. After review of Qwest's interpretation of the requirements of this section, AT&T may recommend further changes.

p. Section 9.2.2.12

Section 9.2.2.12 describes Qwest's policy on switching customers back to Qwest service if so directed by the end-user. This Section is troubling on many

levels. First, as has been addressed in other workshops regarding Proof of Authorization, Qwest must abide by the FCC slamming rules for local service. A reference to Qwest's binding obligation to do so should be included in this Section.

Second, AT&T is concerned that Qwest may attempt a win-back of a customer even before the loop is provisioned. This would constitute tortuous interference with a contract, whether an effective contract or a prospective one.

Third, Section 9.2.2.12 should clarify that the CLEC should not be required to pay the non-recurring charges if Qwest wins back the customer before the loop has been provisioned. Even if the loop has been provisioned, a Qwest win-back within two weeks of cutover should trigger a credit to the CLEC equal to the non-recurring charge. Alternatively, the CLEC should be able to charge Qwest for the work the CLEC will be required to do on the CLEC end when the loop is moved back to Qwest. Qwest assumes that they are the only party doing facilities work in these transitions. This is simply not the case. The CLEC must do provisioning work for unbundled loops, both when they are initially provisioned and when they are disconnected.

Fourth, Section 9.2.2.12(a) assumes that the end-user customer, by giving direction to Qwest to disregard the CLEC order, has been slammed, thus entitling Qwest to obtain the $100.00 windfall it established in Section 5.3 of the SGAT. This violates the CLECs' due process rights and the liability provisions of the FCC and Arizona slamming rules.[56] A customer has not been slammed merely because it succumbs to a Qwest win back effort, changes its mind, or forgets that it has switched

[56] A.R.S. § 44-1573.

service to the CLEC (yes, it happens; customers often forget that they've switched their local service). Qwest is not entitled to the $100.00 dollars under the SGAT or any slamming rule without first proving a slamming violation. Furthermore, Qwest should pay the CLEC the cost to switch the customer away from the CLEC (typically $ 5.00) and, as discussed above, it should not be permitted to recover from the CLEC any nonrecurring charges when Qwest entices the customer to disregard the CLEC UNE loop order.

Finally, AT&T underscores that Qwest has no ability to dictate the contractual relationship between the CLEC and a third party end-user. If the end-user customer determines that it doesn't want the CLEC service, the customer may be held responsible for the costs and expenses associated with the customer's decision to discontinue legitimately ordered service from the CLEC.

q. Section 9.2.2.13

Section 9.2.2.13 specifies the conditions under which Qwest can access facilities and lines furnished by Qwest on the premises of CLEC's end user. To the extent the CLEC has some right of access to the premises, this Section has some meaning. However in most instances, Qwest is asserting a right of access to customer property that the CLEC in no way controls. The CLEC is leasing the unbundled loop from Qwest, and, therefore, Qwest owns it. Presumably, Qwest would already have the right to access any facilities and lines that it owns on those premises. The CLEC cannot give permission to access the end-user's property. The CLEC has no right to give Qwest access to a customer's premises other than those rights that the CLEC may have acquired from Qwest in the first place. Indeed, Qwest may be asking for

the right to trespass. Qwest should either delete this Section or amend it so that it makes sense. At minimum, Qwest should be prepared to clarify what it is asking for with this Section at the workshop.

As a corollary, there is no provision in the SGAT to allow CLECs access to the unbundled loops they are using, either at the central office or at the customer premise. The SGAT does not afford the CLEC such rights of access. The SGAT must affirmatively give the CLECs rights of access to the unbundled loops they are leasing , minimally at the subloop points of the unbundled loop. The SGAT must be amended to give the CLEC access to appropriate subloop locations. The additions to the SGAT for CLEC access to loops could be made in Section 9.2.2.14. This Section is unnecessary, as it is already addressed in Section 9.2.1.

r. Section 9.2.2.15

Section 9.2.2.15 requires the CLEC to issue a disconnect order to Qwest for any loop where the loop has been relinquished by an end-user and the loop is required by Qwest or another CLEC. While it is not appropriate for CLECs to warehouse unbundled loops, there may be situations where it is appropriate for the CLEC to maintain control of a loop for some time after an end-user has relinquished it. The most common situation would be when one end-user is moving out and another is moving in, with the service provider remaining with the same CLEC. This may be particularly common in an MDU or business environment. The Qwest requirement would require the CLEC to give the loop back to Qwest to provision as they see fit. The CLEC may have agreements with the new end-user moving into the location that will require the loop to remain in place, and these contract commitments must take

precedence over a disconnection request from Qwest. At the very least there should be some reasonable time limits specified in this Section that allow the CLEC to retain the loop for a specified period of time before acceding to a Qwest request to have the loop returned.

s. Section 9.2.3.3

Section 9.2.3.3 addresses the rate elements for basic rate ISDN and DS1 loops. First, DS3 loops have been omitted from the introductory sentences of the Section and must be added. Second, the statement that "these loops should only be requested when the 2/4 wire non-loaded Loop is either not available or the non-loaded Loop does not meet the technical parameters of the CLEC's service" is a curious statement. Qwest is required to provide digital loops regardless of the reason the CLEC may have in ordering them.[57] The CLEC may have business reasons for ordering digital loops. Third, the CLEC should have the option of selecting the transmission technology they desire, if more than one method is being used in the serving area. And finally, the SGAT should be amended to afford CLECs access to ISDN, DS1 and DS loops as well as "Capable" loops for reasons discussed above. This Section should be modified as follows:

> Digital ~~Capable~~ Loops - Basic rate ISDN, DS1 and ~~DS1~~ DS3 ~~capable~~ Loops. Basic rate ISDN, DS1, and ~~DS1~~ DS3 ~~capable~~ Loops ~~should only be requested when the 2/4 wire non-loaded Loop is either not available or the non-loaded Loop does not meet the technical parameters of CLEC's service(s)~~ or ISDN, DS1 and DS3 capable loops may be requested by the CLEC as needed. Unbundled digital Loops are transmission paths ~~capable of~~ carrying specifically formatted and line coded digital signals from the NI on an end user's premises to a Qwest CO-NI. Basic Rate ISDN, DS1 and ~~DS1~~ DS3 or Basic Rate ISDN, DS1 and DS3 capable~~capable~~ unbundled digital Loops may be

[57] *UNE Remand Order*, ¶177.

provided using a variety of transmission technologies including but not limited to metallic wire, metallic wire based digital loop carrier and fiber optic fed digital carrier systems. DS3 capable loops will be provided on a fiber optic transmission technology. ~~Qwest~~ CLEC will determine the specific transmission technology by which the Loop will be provided if alternatives are available. Such technologies are used singularly or in tandem in providing service. DC continuity is not inherent in this service. Charges ~~shall~~ may apply for conditioning of the digital ~~capable~~ Loops, as requested by CLEC, if necessary.

t. Rate Elements for Fiber Loops

Qwest must provide rate elements for fiber loops. Qwest has an obligation to provide unbundled fiber loops to CLECs. The SGAT has omitted any section on rate elements for fiber loops. Qwest must add this rate element.

u. Section 9.2.3.6

Section 9.2.3.6 describes certain "Miscellaneous Charges" to be assessed by Qwest for the provision of unbundled loops and access to unbundled loops. AT&T notes that CLECs have been subjected to numerous additional and "miscellaneous" charges in attempting to secure access to loops. The SGAT should specifically identify the circumstances under which these charges will apply. Furthermore, the law requires that such rates be just, reasonable and nondiscriminatory. AT&T believes that any parallel proceedings accompanying these workshops must consider whether these additional and miscellaneous charges are necessary, just, reasonable and nondiscriminatory.

v. Section 9.2.3.7.1

Qwest has provided language in Section 9.2.3.7 on their out-of-hours installations for unbundled loops. This Section more properly belongs in section

9.2.4 on ordering. From a substantive point of view, the hours that Qwest is offering are too restrictive on evenings and weekends. The hours listed in Section 9.2.3.7.1 do not match with the operational hours given in Section 10.2.10.3, the SGAT section on number portability. A comparison of the two sections is as follows:

> 9.2.3.7.1 For purposes of this Section, Qwest's installation hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. Out of hours installations are only 5:00 p.m. to 10:00 p.m., local time, Monday through Friday and 8:00 a.m. to 12:00 p.m., local time, Saturday.

> 10.2.10.3 CLEC will incur additional charges for the managed cut dependent upon the FDT. The rates are based on whether the request is within normal business hours or out of hours. Normal business hours are 7:00 a.m. to 7:00 p.m., local time, Monday through Friday and the rate is be a standard rate. Out of hours, except for Sundays and Holidays is at the overtime rate. Sundays and Holidays are at a premium rate. Exhibit A of this Agreement contains rates for coordinated out of hours cuts.

As can be seen from these two SGAT provisions, the definition of "normal business hours" is a moving target. Qwest must have a consistent policy that clearly defines their operational hours during the normal business day and after-hours policies.

w. Section 9.2.3.7.2

Section 9.2.3.7.2 requires CLECs to provide forecasts for out-of-hours coordinated installations at least two weeks prior to CLECs placing an order in a given state. This portion of Section 9.2.3.7.2 should be removed from the combination section and put in the forecast section of the SGAT. Because forecasting issues exists in connection with numerous UNEs, AT&T believes that a general section on forecasting should be developed that applies for all sections of the SGAT where forecasting is necessary and that discussion of such a generic provision should be deferred to the workshop where the general terms and conditions are addressed.

x. **Section 9.2.3.7.6**

The third sentence of Section 9.2.3.7.6 states "[t]he FOC does not indicate that Qwest has compatible facilities to fulfill the service order by the requested due date." This is unacceptable. CLECs must be able to rely on the FOC as a commitment that the order will be worked as specified. In addition, this provision is directly contrary to Section 4.24 of the SGAT, which defines "Firm Order Confirmation Date" or "FOC" as:

> . . . the notice Qwest provides to CLEC to confirm that the CLEC Local Service Order (LSR) has been received and has been successfully processed. *The FOC confirms the schedule of dates committed to by Qwest for the provisioning of the service requested.* (Emphasis added.)

AT&T proposes the following replacement language for this sentence:

> The FOC is both an acknowledgement of receipt of a valid order and a commitment that the order will be worked as specified in the FOC and completed by the FOC date.

AT&T is also concerned about the last statement of this Section which states: "[t]he FOC for orders requesting over 24 unbundled loops will be treated on an ICB basis." Please see AT&T's remarks regarding a similar provision in Section 9.2.4.4 below.

y. **Section 9.2.4.1**

Section 9.2.4.1 provides that the ordering processes on unbundled loops are in the SGAT section on OSS. The OSS are being evaluated as part of a separate process in this state. However, the ordering process for unbundled loops involves much more than the OSS interface. AT&T has encountered issues surrounding unbundled loops

that are not associated with the OSS interface. There are problems that occur between the ordering and installation that require more investigation.

z. Section 9.2.4.2

In Section 9.2.4.2, Qwest refers to the Terms and Conditions section of the SGAT for the requirements for Proof of Authorization. That section has not been revised to reflect the new FCC guidelines on Local Proof of Authorization. Qwest must abide by the FCC rules and modify the SGAT accordingly.

aa. Sections 9.2.4.4, 9.2.4.5 and 9.2.4.6

In Section 9.2.4.4, Qwest restricts the number of orders that can be "issued at the same address." We believe that Qwest meant this to read "issued for the same address." The way the sentence is written, it could mean that a CLEC ordering center, located at one address, could only place 25 orders per day. This is clearly not acceptable. However, if Qwest means that orders are limited for a customer location, there are still some issues that must be addressed. It is not clear what is meant by "order" in the Section. Does this mean on one order form? Is an order for a single DS1 counted as one order or 24 orders, etc. The FCC has stated that a "BOC must demonstrate that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors demand and at an acceptable level of quality."[58] Requiring ICB for orders in excess of 24 per location, whatever the interpretation of this language, does not demonstrate a "concrete and specific" legal obligation to furnish loops . . . in the quantities that competitors

[58] *SBC Texas Order*, ¶247.

demand." This limitation should be removed. Indeed, one of the factors that seems to have worked in SBC's favor in the FCC's determination that SBC's hot cut provisioning process met checklist item 4 requirements was a commitment by SBC to "make every effort to accommodate all requested dates and times for [coordinated hot cut] orders."[59] Qwest's provisioning processes and related limitations fall far short of this sort of commitment.

In addition, AT&T has great concern regarding the installation intervals for the various types of loops. Qwest recently lengthened its standard intervals for private line services from 5 days to 9 days. This lengthening of intervals indicates problems with Qwest's ability to deliver new loops in a timely manner. Unbundled loops are identical in many cases to private line services. The loop capacity that is needed is certainly the same. Qwest has removed the provisioning intervals from the SGAT and, instead, cross- references the IRRG. As discussed above, AT&T objects to terms and conditions being set forth in the IRRG rather than the SGAT. See discussion on Section 9.2.2.4, above.

The SGAT should set forth the standard intervals for the provisioning of UNE loops. If these intervals are not in the SGAT, Qwest could unilaterally change the intervals at any time, at its own discretion, without approval of the Commission. In the workshop Qwest should be prepared to discuss the reasons that their intervals are being lengthened for private line and whether they are contemplating lengthening the intervals for unbundled loops.

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[59] *Id.*, ¶260.

bb. Sections 9.2.5.2 and 9.2.5.3

In Sections 9.2.5.2 and 9.2.5.3, Qwest requires the CLEC to pay trouble isolation charges when the trouble is not in the Qwest loop. Qwest does not offer to pay the CLEC for trouble isolation when the CLEC spends time and resources to determine the problem is a Qwest loop issue. Language should be added to the SGAT to include a provision requiring Qwest to pay the CLEC for trouble isolation when the problem resides in the Qwest loop.

Further, the SGAT requires the CLEC to pay trouble isolation charges when the trouble is found to be an inside wire or user terminal problem. This is unreasonable as a large percent of Qwest's loop repair troubles turn out to be problems with end-user equipment. The cost of this trouble isolation work is already built into the loop price. If Qwest charges the CLEC for this type of trouble isolation, the CLEC will be double charged.

cc. Other IRRG Issues.

While AT&T has not done a side-by- side comparison of the IRRG and the SGAT, consistent with the discussion regarding the IRRG above, the IRRG provisions should not be controlling. To the extent the IRRG and the SGAT are inconsistent, the SGAT should control.

In addition, in its IRRG section describing Qwest's UNE loop product, Qwest includes numerous reference to the Single Point of Termination ("SPOT") frame, stating that the UNE loop will be cross-connected to the SPOT frame.[60] AT&T raised concerns regarding Qwest's requirement that 911 and signaling links traverse the

[60] IRRG, pp. 8- 17-18.

SPOT frame in workshop 1.[61] These same concerns apply equally to any requirement that UNE loops traverse the SPOT frame. In response to AT&T's concerns, after lengthy negotiations, Qwest agreed to permit CLECs to bypass the SPOT frame and direct connect to Qwest's COSMIC. The IRRG UNE loop section has not been revised to reflect this agreement and must be amended to permit direct access to UNE loops at the COSMIC.

2. Line Splitting

AT&T has previously filed comments on line splitting in connection with Workshop 3. Specifically, AT&T addressed its issues relative to line splitting in AT&T and TCG Phoenix's Comments filed in the Emerging Services Workshop on August 21, 2000, pp. 22-32 and in AT&T and TCG Phoenix's Supplemental Comments filed in the Emerging Services Workshop on September 29, 2000. (Attached hereto as Attachment A and B.)

B. Network Interface Device (NID)

As is the case with line splitting, AT&T has previously filed comments on the network interface device (NID) in connection with Workshop 4. Specifically, AT&T addressed its issues relative to the NID in AT&T's and TCG Phoenix's Comments on Unbundled Network Element Combinations, Switching, Transport and Enhanced Extended Links filed in Workshop 4 on September 21, 2000, pp. 10, 38-43. (Attached hereto as Attachment C.)

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[61] *See Comments of AT&T and TCG Phoenix on Checklist Items 7 and 10*, dated January 19, 2000 and *AT&T's Supplemental Filing on Checklist Items 7 & 10*, dated July 27, 2000.

C. Local Number Portability

1. Definition and Legal Obligation to Provide Number Portability.

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."[62] 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.[63]

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 depressed. This could well discourage entry by new service providers and thereby frustrate the pro-competitive goals of the 1996 Act.[64]

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 section 251.[65] Section

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[62] 47 U.S.C. § 153(30).
[63] *First Number Portability Order*, ¶ 28.
[64] *Id.* ¶ 31 (citations omitted).
[65] 47 U.S.C. § 271(c)(2)(B)(xii).

251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[66] In order to prevent the cost of number portability from thwarting local competition, Congress enacted section 251(e)(2), which requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."[67]

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."[68] 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.

Qwest does not meet the minimum standards for compliance with Checklist Item 11 for two main reasons. First, as shown below, Qwest's SGAT contains insufficient detail to satisfy Qwest's obligations for providing number portability. AT&T will suggest additional language for the SGAT as well as changes to existing language. Second, AT&T has experienced a high percentage of problems with Qwest number portability. The problems can be grouped into the following categories:

- Loss of outbound and inbound service (caused by premature porting);
- Loss of inbound service (caused by late porting);
- Poor notification of cutovers and cutover problems;

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[66] *Id.*, § 251(b)(2).
[67] *Id.*, § 251(e)(2); *see also BellSouth Second Louisiana Order*, ¶ 274; *Third Number Portability Order*, ¶ 4; *Fourth Number Portability Order*, ¶¶ 1, 6-9.
[68] *BellSouth Second Louisiana Order*, ¶ 276.

- Failure to address problems caused by Qwest features;
- Problems in testing during and after cutover;
- Problems with IMA in ordering number portability;
- Improper billing after cutover; and
- Reassignment of ported numbers.

These problems are indicative of serious Qwest process problems, which must be fixed by changes to the way in which Qwest provisions number porting and the way in which Qwest interacts with the CLEC. The problem will be described as well as the associated processes that must be changed or added to eliminate the cause of the problems. Many of these process changes must be specified in the Qwest SGAT to assure that Qwest uses the most efficient porting methods. AT&T no longer orders Interim Number Portability (INP) and has no comments at this time on Qwest's compliance with FCC requirements for INP.

2. SGAT Analysis – Required Revisions and Additions.

Section 10.2 of the Qwest SGAT contains Qwest's proposal for providing Local Number Portability. Qwest's proposal is only two pages long and, as is shown below, is inadequate for dealing with number portability, which requires more complex and detailed processes and SGAT provisions. First, AT&T will address the problems with the language currently in the SGAT and then recommend suggested revisions and additions.

Section 10.2.1 of the SGAT addresses Qwest's general obligations to provide number portability. This section provides:

10.2.1 U S WEST will provide Local Number Portability (LNP), also known as long-term number portability, in a non-discriminatory manner. U S WEST will coordinate LNP with Unbundled Loop cutovers in a reasonable amount of time and with minimum service disruption.

Section 10.2.1 only addresses coordinated cutovers for number ports where unbundled loops are involved. Qwest also must provide coordinated cutover where the CLEC is self-providing the loop. In many areas, AT&T provides service via its own loops as one of its service offerings. AT&T has concerns with the Qwest processes for coordinated number porting where AT&T provides its own loop over Hybrid Fiber Coax (HFC) facilities. These problems will be described later in this Affidavit. SGAT provision 10.2.1 must be revised to provide for coordinated cutovers for all number ports. SGAT Section 10.2.1 should be amended as follows:[69]

10.2.1 Qwest will provide Local Number Portability (LNP), also known as long-term number portability, in a non-discriminatory manner. Qwest will coordinate LNP with loop cutovers, including both Unbundled Loops and loops that are provisioned by the CLEC in a reasonable amount of time and with minimum service disruption.

Section 10.2.2 provides insufficient detail on Qwest's responsibility to comply with the FCC's rules on number portability. Number portability is governed by a complex set of industry guidelines that require Qwest's compliance. First, Section 10.2.2 should make reference to these industry guidelines by specifying the guidelines of the Industry Numbering Committee of the ATIS Practices.

[69] Where changes to the SGAT are proposed, the SGAT language proposed by Qwest will be shown with proposed additions reflected with underlining and proposed deletions struck through, except where extensive additions are clearly suggested and underlining would be distracting.

Second, additional detail should be added on industry guidelines.

Accordingly, Section 10.2.2 should be amended in a two ways. Existing Section 10.2.2 should be revised to add the following language:

> 10.2.2 Qwest will offer Local Number Portability in compliance with the FCC's rules and regulations and the guidelines of the INC committee of the ATIS Practices. Deployment of LNP will be in accordance with the FCC's implementation schedule. In accordance with industry guidelines, the publications of LNP capable switches and the schedule and status for future deployment will be identified in the Local Exchange Routing Guide (LERG), and the Qwest website at:
>
> www.uswest.com/disclosures/netdisclosure414/index.html.

Next, the following new provisions should be added to Section 10.2.2 of the SGAT to assure that Qwest continues to comply with standards set by the FCC and appropriate standards bodies:

> 10.2.2.1 QWEST and CLEC shall work to implement the LRN-PNP solution in accordance with the relevant FCC rulings and NANC (North American Numbering Council) guidelines specified in Section 10.2.2.3.
>
> 10.2.2.2 QWEST and CLEC shall implement number portability in an end office upon the written request of the other Party in accordance with FCC timelines.
>
> 10.2.2.3 The Parties shall adhere to the generic requirements for LRN-PNP as specified in the following publications and FCC Orders:
>
> 10.2.2.3.1 ATIS, TRQ No. 2. *Technical Requirements for Number Portability - Switching Systems*, April, 1999;
>
> 10.2.2.3.2 ATIS, TRQ No. 3, *Technical Requirements for Number Portability - Database and Global Title Translation*, April 1999;
>
> 10.2.2.3.3 ATIS, TRQ No. 1, *Technical Requirements for Number Portability - Operator Services Switching Systems*, April 1999;

10.2.2.3.4 FCC First Report and Order and Further Notice of Proposed Rulemaking; FCC 96-286; CC Docket 95-116, RM 8535; Adopted: June 27, 1996; Released: July 2, 1996;

10.2.2.3.5 FCC First Memorandum Opinion And Order On Reconsideration; FCC 97-74, CC Docket No. 95-116, RM-8535; Adopted: March 6, 1997; Released: March 11, 1997;

10.2.2.3.6 FCC Second Report and Order, FCC 97-298, CC Docket No. 95-116, RM 8535, Adopted August 14, 1997, Released August 18, 1997; and

10.2.2.3.7 North American Number Council Report from the LNP Administration Selection Working Group, April 25, 1997.

Section 10.2.6 of the SGAT specifies provisioning intervals for number portability with specified delays for large orders. The intervals specified for number ports by Qwest are too long. These intervals seem to be connected with the simultaneous provisioning of UNE loops. As discussed above, Qwest will also be provisioning number ports where the CLEC is provisioning the loop. Shorter intervals should be contemplated for these ports where UNE loops are not involved. In addition, the longer intervals for large orders take effect at thresholds that are too low. It should be noted that these intervals are for number portability, not the provisioning of UNE loops. Number portability is an OSS driven process that should be relatively insensitive to the number of number ports in an order. Number portability requires the customer's number to be disconnected at the Qwest switch (logically, not physically) and appropriate database updates, so that calls to the customer number from Qwest switches and from other switches are accurately routed to complete calls. These actions do not require manual changes to the switch or to

facilities connecting switches. Section 10.2.6 also contains an exception for situations where facilities are not available. This exception should be removed, as there are no facilities issues with number portability. The porting of a number from Qwest to a CLEC frees up facilities. No additional facilities are required. Accordingly, Section 10.2.6 should be modified as follows:

10.2.6 Standard Due Date Intervals. Service intervals for LNP are described below. ~~These intervals apply when facilities and network capacity are available. Where facilities or network capacity are not available, intervals are on an Individual Case Basis (ICB).~~Orders received after 3:00 P.M. are considered the next business day. The following service intervals have been established for local number portability:

	Number of lines	Interval
Simple (1FR/1FB)	1-50	4 business days (includes FOC 24hr interval)
	51or more lines	Project Basis
Complex (PBX Trunks /ISDN)	1-25	5 business days (includes FOC 24hr interval)
	26 or more lines	Project Basis
Centrex	1-20	5 business days
	21 or more lines	Project Basis

In addition to the changes to existing language advocated by AT&T above, the following language, reflecting necessary provisions not contemplated by Qwest's existing language, must be added to the SGAT.

There is no provision relating to managed cutovers for number portability. AT&T has attempted to negotiate with Qwest to establish an out-of-hours-cutover process for over a year without success. Qwest proposed a process for managed

cutovers in its rebuttal testimony. Although establishing a process is a positive step, the provisions Qwest has proposed for managed cuts are inappropriate and insufficient. For example, Qwest has set the hourly rates so high that CLECs could not afford to do these cutovers, especially out of hours, except in extraordinary circumstances.

AT&T proposes that the following Section be added to the SGAT to address managed cutovers:

10.2.10	Managed Cut: A Managed Cut permits CLEC to select a coordinated cut for LNP. The request is offered on a 24 x 7 basis.
10.2.10.1	The date and time for the coordinated cut requires up-front planning and may need to be negotiated between Qwest and CLEC. All requests will be processed on a first come, first served basis and are subject to Qwest's ability to meet a reasonable demand. Considerations such as system downtime, switch upgrades, switch maintenance, and the possibility of other CLECs requesting the same FDT in the same switch (switch contention) are reviewed. In the event that any of these situations would occur, Qwest will negotiate with CLEC for an agreed upon FDT prior to issuing the Firm Order Confirmation (FOC). Because of this up-front coordination and FDT negotiation efforts, the FOC interval will begin upon completion of negotiations between Qwest and CLEC for the frame due time. Otherwise, standard intervals will apply.
10.2.10.2	CLEC shall request a Managed Cut by submitting a Local Service Request (LSR) and designating a Managed Cut in the Remarks section of the LSR form.
10.2.10.3	CLEC will incur additional charges for the managed cut dependent upon the FDT. The rates are based on whether the request is within normal business hours or out of hours. Normal business hours are 7:00 a.m. to 7:00 p.m., local time, Monday through Friday and the rate is a standard rate. Out of hours, except for Sundays and Holidays is at the overtime rate. Sundays and Holidays are at a premium rate. Exhibit A of this

Agreement contains rates for coordinated out of hours cuts.

10.2.10.4 Charges for Managed cuts shall be based upon actual hours worked in 1/2 hour increments multiplied by the number of Qwest personnel actively participating in the cut provided, however, Qwest notifies the CLEC of the number of Qwest personnel actively participating in the cut and CLEC approves the number of Qwest personnel actively participating in the cut.

10.2.10.5 Qwest will schedule the appropriate number of employees prior to the cut, based upon information provided by CLEC. The CLEC will also have appropriate personnel scheduled for the negotiated FDT. If such information requires modification during the cut and, as a result, non-scheduled employees are required, CLEC shall be charged a three hour minimum callout per each additional non-scheduled employee. If the cut is either cancelled, or supplemented to change the due date, within 24 hours of the negotiated FDT, the CLEC will be charged a 3 hour minimum.

10.2.10.6 In the event that the LNP conversion is not successful, the CLEC and Qwest agree to isolate and fix the problem in a timeframe acceptable to the CLEC or the customer. If the problem cannot be corrected within a timeframe acceptable to the CLEC or the customer, the CLEC may request the restoral of Qwest service for the customer. Such restoration shall occur immediately upon request and shall not require the submission of additional orders or otherwise involve any Qwest process designed for new or returning customers that may delay restoring the customer to service.

Next, a new provision should be added to specify the circumstances under which one of the parties may charge for a database dip for number porting. Without this language, CLECs may be incorrectly charged by Qwest. AT&T proposes that the following language be added as a new Section 10.2.11:

10.2.11 For local calls to an NXX in which at least one number has been ported via LRN-PNP at the request of a CLEC, the Party that owns the originating switch shall query an LRN-PNP database as soon as the call reaches

> the first LRN-PNP-capable switch in the call path. The Party that owns the originating switch shall query on a local call to an NXX in which at least one number has been ported via LRN-PNP prior to any attempts to route the call to any other switch. Prior to the first number in an NXX being ported via LRN-PNP at the request of a CLEC, ILEC may query all calls directed to that NXX, subject to the billing provisions of Section 4.1, and provided that ILEC's queries shall not adversely affect the quality of service to AT&T's customers or end-users as compared to the service ILEC provides its own customers and end-users.
>
> A Party shall be charged for an LRN-PNP query by the other Party only if the Party to be charged is the N-1 carrier and it was obligated to perform the LRN-PNP query but failed to do so. Parties are not obligated to perform the LNP-PNP query prior to the first port in an NXX.
>
> On calls originating from a Party's network, the Party will populate, if technically feasible, the Jurisdiction Information Parameter (JIP) with the first six digits of the originating LRN in the Initial Address Message.

Out-of-hours cutovers are a critical component of a CLEC being afforded a meaningful opportunity to compete, especially considering the difficulties that Qwest has encountered with number portability. Absent the ability to cutover customer service on evenings and weekends, CLECs will not be able to win and retain customers. Residential customers want to schedule conversions to meet their own personal life. Business customers want to minimize the impact of cutovers and associated service outages that might occur to their business, by scheduling the conversions on off-hours. Thus, the ability of CLECs to perform these conversions to meet customer needs is crucial.

In addition, language must be added to the SGAT to provide for joint administration of the Service Management Systems (SMS). This language will insure

that Qwest fulfills its obligation to properly update the SMS when a number is ported and to work with the CLEC if problems arise. AT&T proposes that the following language be added as a new Section 10.2.12:

10.2.12 Qwest and CLEC shall cooperate to facilitate the administration of the SMS through the process prescribed in the documents referenced in Section 10.2.3.

Further, additional language needs to be added to the SGAT to better describe the processes involved in ordering LNP. First, language must be added to require Qwest to respond promptly to the CLEC with a Firm Order Confirmation (FOC). The FOC is the acknowledgement by Qwest of when the number will be ported. Qwest has been tardy in its FOC responses to AT&T, leading to uncertainty as to the commitment date and delays in overall processing of orders. AT&T recommends that the following Section be added as a new Section 10.2.13.1:

10.2.13.1 When an LSR is sent to one Party by the other Party to initiate porting via LRN-PNP, the receiving Party shall return a Firm Order Confirmation (FOC) within twenty-four (24) hours.

Second, an additional Section is needed for porting to unassigned numbers at the CLEC's request due to special needs of some customers. Business customers sometimes request this type of arrangement. AT&T proposes that the following Section be added as Section 10.2.13.2:

10.2.13.2 Qwest agrees to port to the CLEC unassigned numbers in Qwest's inventory, if available, when requested by the CLEC. The CLEC will only make such requests in response to a specific customer request for numbers: (1) in a Qwest NXX in which the customer already has numbers or (2) for service in a rate center for which the CLEC does not have assigned numbering resources.

Further, a general section and additional details are needed for number portability on weekends and off-business hours. AT&T has had problems with Qwest's commitment to perform number ports after hours and on weekends. It is critical for the CLECs to have this capability. The following provisions should be added as a new Section 10.2.14:

10.2.14 *At the CLEC's request for Weekend/Off-Business Hour Number Portability in response to a specific customer request or due to other business requirements, Qwest agrees to: process orders, port numbers to the CLEC during off-business hours on weekdays, Saturdays, and Sundays*[70]*, and provide off-business hours technical and operational support to resolve problems that may occur during the number porting process.*

(1) Qwest shall accept orders from the CLEC for weekend and off-business hour due dates on number portability orders. (the CLEC will be able to make LSR entries on this basis, and LSRs transmitted by mechanized feed or otherwise will not be rejected by Qwest if due date fields are completed on this basis.)

(2) Qwest shall apply the 10-digit trigger for all number portability orders. Qwest shall apply the 10-digit trigger and customer translations by no later than 11:59 p.m. (local time) on the business day preceding the scheduled port date, and leave the 10-digit trigger and customer translations in place until 11:59 p.m. (local time) on the next business day following receipt of confirmation from NPAC that the port was activated.

(3) In order to avoid double-billing of end user customer, Qwest must discontinue billing a ported customer at the date and time the port is activated, as reported by NPAC to Qwest.

(4) At the CLEC's request, Qwest shall either (1) transmit the NPAC Port Concurrence to NPAC at the same time that Qwest transmits the LSRC to the CLEC, or (2) transmit the NPAC Port Concurrence to NPAC

[70] Number porting may not be available during certain hours on Sundays due to NPAC maintenance down time.

immediately upon receipt of its copy of the "Create Subscription" message sent by the CLEC to NPAC.

(5) At the CLEC's request, Qwest shall maintain personnel on a standby basis to assist in any emergency repairs or restoration required during the weekend and off-business hour porting process, including at the time that the 10-digit trigger and customer translations are removed.

(6) The CLEC may compensate Qwest, based upon the prices established in Exhibit A of this Agreement for incremental Qwest personnel made available on weekends or outside of business hours by Qwest for purposes of handling troubles related to weekend and off-business hour ports. This would not include Qwest personnel involved in removal of the 10-digit trigger and customer translations or any repairs and restoration required at such time.

(7) Qwest shall ensure that its SOA connectivity to NPAC is available for processing all required number portability activities at all times, other than agreed upon maintenance windows scheduled to be concurrent with maintenance windows scheduled by NPAC.

Additional language needs to be added to the SGAT for the cutover of LNP orders. First, language needs to be added to assure cooperation between the parties to limit service outages for ported subscribers. As will be described in the section on commercial experience, Qwest has not been working cooperatively with AT&T in many situations, causing service outages. The following language should be added as a new Section 10.2.15:

10.2.15 Qwest and the CLEC shall cooperate in the process of porting numbers from one carrier to another so as to limit service outage for the ported subscriber. Qwest shall update its LNP database from the NPAC SMS data within fifteen (15) minutes of receipt of a download from the NPAC SMS.

As the discussion of AT&T's experience below indicates, Qwest's processes for handling number porting do not appear to be working. The following provisions should help improve those processes and should be added to the agreement as indicated:

10.2.16.1 At the time of porting a number via LRN from Qwest, Qwest shall insure that the LIDB entry for that number is de-provisioned if the same LIDB is not being used by the CLEC.

10.2.16.2 Qwest shall not remove the ported number from the end office from which a number is being ported prior to receipt of the download from the NPAC SMS, but will remove the number within thirty (30) minutes thereafter unless the unconditional LRN trigger is set. If the unconditional LRN trigger is set, the ported number must be removed at the same time that the unconditional LRN trigger is removed.

10.2.16.3 Qwest, from whom a number is porting, will set the unconditional LRN trigger at the CLEC's request, either on an individual customer basis or for all customers, at the option of the CLEC.

Similarly, the following provision establishes a process for dealing with excluded numbers. This provision is insurance that certain restricted numbers will not be ported.

10.2.17 Neither Party shall be required to provide number portability for excluded numbers (e.g., 500 and 900 NPAs, 950 and 976 NXX number services, and others as excluded by FCC rulings issued from time to time) under this Agreement.

Also, the following Section should be added for porting of mass calling numbers. Qwest should not restrict the porting of numbers that have been designated as numbers assigned to "choke" network facilities. These are numbers, such as ticket

sales or radio call in shows, where excessive numbers of calls may occasionally overload the local network.

10.2.18 Both parties are required to offer number portability of telephone numbers with "choke" (i.e., mass calling) NXXs in a manner that complies with the LNPA Working Group High Volume Call-In Report to the NANC of February 18, 1998 until such time as these may be modified by the NANC or FCC.

Finally, the following Section should be added for the porting of Direct Inward Dial (DID) block numbers. DID is an important business service. The CLEC must have the opportunity to win part of a customer's DID business and have those numbers properly ported:

10.2.19.1 ILEC and the CLEC shall offer number portability to customers for any portion of an existing DID block without being required to port the entire block of DID numbers.

10.2.19.2 ILEC shall permit customers who port a portion of DID numbers to retain DID service on the remaining portion of the DID numbers.

3. Analysis of Qwest's Alleged Compliance with Checklist Item 11 Based Upon AT&T's Experiences.

As noted above, to be in compliance with Checklist Item 11, Qwest must prove, by a preponderance of the evidence, that it provides number portability in a manner that allows users to retain existing telephone numbers "without impairment in quality, reliability, or convenience" and that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption.

It is AT&T's experience that Qwest does not satisfy these obligations. While Qwest witness Ms. Bumgarner states that Qwest has ported numbers in its region – albeit a fairly small number when compared to the total number of access lines served

by Qwest, she does not detail any of the CLECs' experience for those ports. AT&T has had a great deal of experience ordering and cutting over ported numbers from Qwest. AT&T ports numbers from Qwest with and without UNE loops for both residential and business customers. Based upon this experience, AT&T has identified the following concerns with Qwest's provisioning of number portability and proposes revisions and additions to the SGAT designed to address these areas of concerns that, if properly implemented, may greatly improve Qwest's provisioning of number portability.

a. Loss of outbound and inbound service (caused by premature porting).

When Qwest ports a customer number to AT&T before the loop is ready, the customer loses service. This can happen in two different situations: 1) when AT&T requests a loop for the customer from Qwest; and 2) when AT&T provides its own loop to the customer. This is a serious customer-affecting problem, which can be life-threatening or, if a business customer, can cause loss of business. If this occurs, the customer has no capability to dial 911 or any emergency number during the number porting process. This problem is happening far too often.

In the first situation, when AT&T requests a loop and a number port from Qwest to serve a customer, the cutover of the loop from the Qwest switch to the AT&T switch must be concurrent with the porting of the number. If the number is ported before the loop is cutover, the customer's service is disconnected. The Qwest switch effectively stops providing service to the customer's line before the AT&T switch has dial tone available for the line. The customer will lose dial tone and will be unable to place or receive calls. This condition can be fixed either by successfully

cutting over the loop that is being leased from Qwest or by reinstating service on the Qwest switch, effectively unporting the number.

In the second situation, AT&T provides a new loop to a customer, either via its cable telephony or fixed wireless facilities. This could happen to any CLEC who self-provisions its own loops. When AT&T requests the customer be ported for this new physical loop, if the number is ported by Qwest before the new loop is in place, the customer will lose telephone service. The resulting impact is identical to the situation described above, where the customer completely loses dial tone until the new loop is in place. This condition can be fixed either by successfully cutting over the loop or by reinstating service on the Qwest switch, effectively unporting the number.

In both situations, there must be good communication and coordination between Qwest and the CLEC. This is not happening in many cases. Timing problems between the initiation of the number port and the cutover of the loop can be caused by Qwest, by the customer or by AT&T. If Qwest is late with its part of the loop cutover or early with the number port, service is lost. If the customer requests a delay in activation of service on the new loop and Qwest does not postpone the number port in a timely manner, service will be lost. If AT&T has problems with its part of the loop cutover and Qwest does not postpone the number port in a timely manner, service will be lost.

Qwest must review its processes with AT&T and other CLECs to determine how cases of early porting can be reduced.

b. Loss of inbound service (caused by late porting).

Another source of actual customer problems is where the number is ported later than desired. If a leased loop or self-provided loop is cutover to the customer before the number is ported, the customer will be able to dial out (i.e., place calls) but the customer will be unable to receive calls from any callers other than those callers that are also receiving service from the AT&T switch. Since the vast majority of customers subscribe to Qwest service, effectively very few calls will be completed to this AT&T customer. This problem occurs when the new loop is physically cut over, but the number portability databases are not updated with the correct information. This problem is especially serious for business customers, as they will not receive calls for orders, client contacts, etc.

Late porting is often caused by a lack of coordination in the Qwest processes. The end-user number should be ported at the same time as the loop is cut over. If the loop that is being cut over from Qwest is a leased loop, Qwest has most of the provisioning and porting processes under its control and the coordination that would be the cause of a late number port is mostly internal to Qwest. If AT&T or the CLEC is self-provisioning the loop, the problem of early number porting could be caused by either an internal Qwest coordination problem or a coordination problem with AT&T or the CLEC. In any of these cases, the effect on the end-user is the same, loss of inbound call capability.

Qwest should be required to review its processes with AT&T and other CLECs to determine how cases of late porting can be reduced.

c. Poor notification of cutovers and cutover problems.

Qwest is failing to notify AT&T in a timely manner, and sometimes not at all, of: 1) a cutover that is complete; and 2) problems with the cutover. This is a process and communication problem that must be solved by Qwest in consultation with the CLECs. In addition, Qwest should add SGAT language to require prompt notification to

CLECs for the following:

- Notification of completion of the number portability process for a particular order,
- Notification of in-process problems which require CLEC action to correct,
- Notification of any logistical problems in completing an order,
- Notification of problems within Qwest which are causing problems with the completion of the order,
- Notification of need to delay in completing the order, or
- Notification for any other reason.

d. Failure to address problems with the interaction of Qwest switch features and ported numbers.

Qwest appears to have a serious problem with the interaction of their new redial feature with some ported numbers. Qwest has instituted a new redial feature in some locations. When a Qwest customer dials another Qwest customer and the line is busy, an announcement is received by the caller stating that for 75 cents Qwest will continue to dial the line being called until the line is no longer busy. If the customer originating the call chooses the feature, they will be automatically called back by the

Qwest switch when the line is no longer busy and their original call will be connected.

A problem has arisen with the interaction of this feature with some ported numbers. If AT&T ports a customer to AT&T service and the customer does not select voicemail as an option, the Qwest redial feature is giving Qwest customers a recorded disconnect message of the type, "The number you are dialing has been disconnected" when they try the redial feature to the ported number.

To make matters worse, when the Qwest customers called Qwest to complain about this problem, Qwest told them that the reason this was happening was due to a problem with AT&T and that if their friend would switch back to Qwest, the problem would go away. When AT&T contacted Qwest, Qwest refused to open a trouble ticket on the problem, blaming AT&T for the problem. In fact, the problem is a Qwest problem. The Qwest switch is not checking the SS7 messages and status of the ported numbers correctly. AT&T entered 46 trouble tickets on this problem in the past few weeks. Qwest refused to work the problem, until a Vice President at AT&T threatened to escalate the problem to Vice President level at Qwest. Qwest has temporarily suspended the feature in their switches until the problem can be resolved. It is, however, disturbing that it took several weeks and high-level escalation to get Qwest to address the problem. It is also disturbing that Qwest employees used this as a marketing opportunity against AT&T.

Qwest must institute processes and procedures to quickly address new problems that occur with number portability. There may be additional interaction between number portability and new features as Qwest adds them to their switches.

Qwest must have a better way to address these problems quickly. Qwest should add language to the SGAT to address this type of problem.

e. Problems in testing during and after cutover.

AT&T has encountered problems in testing during number porting with Qwest. These problems have occurred both during normal testing in the cutover process and when a specific problem has been encountered. There have been occasions when no tester was available at Qwest, when the testers at Qwest said that they did not have time to do the testing, and when testing was in progress and Qwest inappropriately terminated the testing. Most of the problems seem to be indicative of a lack of resources at Qwest to do the testing and poor communications by Qwest with the CLEC. The SGAT should be revised to address this testing concern to insure that Qwest will work with the CLEC to adequately test during number porting.

f. Problems with IMA in ordering number portability.

AT&T has encountered problems with the Qwest Interconnection Mediated Access (IMA) system, which is one of the interfaces that Qwest offers CLECs to order number portability.[71] These problems fall into several categories:

- IMA system unavailable;
- IMA system will not allow a change in customer address (on occasion);
- IMA will not provide customer name or address (on occasion); or
- Other miscellaneous problems.

[71] These problems may also exist with the EDI interface, although AT&T's experiences have occurred primarily with the IMA interface.

Hopefully, these problems will be addressed during the systems testing process that is being conducted by Qwest in association with the ROC test.

g. Improper billing after cutover.

AT&T and its customers have experienced problems with Qwest billing processes associated with number portability. The most prevalent problem is when former Qwest customers continue to receive bills for local service from Qwest after the number has been ported to AT&T. An associated problem is the accuracy of the wholesale bill that Qwest sends to AT&T for the loop, when AT&T is leasing facilities from Qwest. AT&T notes this problem now, but will assess performance results and will raise this issue in subsequent workshops to the extent this remains an issue.

h. Reassignment of ported numbers.

In late 1999 and early 2000, Qwest had a process problem with the assignment of phone numbers to new Qwest customers. The problem arose when Qwest ported a number to a CLEC and allowed the number to go back into its pool of numbers available for reassignment. Qwest subsequently reassigned the number to a new Qwest customer or to a new customer line. When this occurred, both the Qwest customer and the AT&T customer had the same phone number, causing confusion and loss of service for one or both customers.

Qwest has described what it has done to remedy this problem and identify the number of reoccurrences of this problem since the beginning of the year and assure us that this problem has been fixed. AT&T will continue to monitor this issue and if

performance indicates this is still a problem we will raise this issue again in later workshops.

4. Conclusion

The commercial experience of AT&T with numbers ported from Qwest indicates that serious process problems exist with Qwest's compliance with Checklist Item 11. In addition, the SGAT is seriously deficient in addressing the needs of CLECs for number portability. Qwest must make extensive amendments to its SGAT and incorporate numerous process changes to ensure that: 1) the CLEC customers are able to retain existing telephone numbers "without impairment in quality, reliability, or convenience" and 2) that number portability is coordinated with loop cutovers in a reasonable amount of time and with minimum service disruption. Until Qwest demonstrates that its processes are fixed through improved performance and the SGAT is amended, Qwest has not and cannot fulfill the requirements of Checklist Item 11.

Respectfully submitted on this 3rd day of November, 2000.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. AND TCG PHOENIX

By: Rebecca B. DeCook

Mary B. Tribby
Richard S. Wolters
Rebecca B. DeCook
Michel Singer Nelson
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6357

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDEL
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238**

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 Mountain States, Inc. and TCG Phoenix to provide expertise on technical matters in Arizona Docket No. T-00000A-97-0238. By this affidavit, I hereby verify the factual assertions as true and correct statements to the best of my knowledge and expertise in regard to AT&T and TCG Phoenix's Comments on Loops, Line Splitting, NID, and LNP.

FURTHER AFFIANT SAYETH NOT.

Dated this 2nd day of November 2000.

Kenneth L. Wilson

STATE OF COLORADO)

) **ss**

CITY AND COUNTY OF DENVER)

SUBSCRIBED AND SWORN TO before me this 2nd day of November, 2000 by Kenneth L. Wilson, who certifies that the foregoing is true and correct to best of he knowledge and belief.

Witness my hand and official seal.

Linda S. Heeren

Notary Public

My commission expires:

01/22/2003

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDEL
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238** **AT&T and TCG Phoenix's Comments**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") hereby submit these Comments for the First Amended Set of Workshops on Advanced Services, Line Sharing, Sub-Loop issues and Dark Fiber.

I. INTRODUCTION

The United States Congress conditioned Qwest Corporation's (formerly known as U S WEST Communications, Inc., hereafter referenced as "Qwest") entrance into the in-region interLATA long distance market on Qwest's compliance with 47 U.S.C. § 271. To be in compliance with § 271, Qwest must "support its application with actual evidence demonstrating its *present* compliance with the statutory conditions for entry."[1]

As AT&T has previously stated in its Comments in this proceeding, the Arizona Corporation Commission is charged with the important task of ensuring that Arizona's local telecommunications markets are open to competition and that Qwest is complying with its

[1] In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State New York, Memorandum Opinion and Order, CC Docket No. 99-295, FCC 99-404 (Dec. 22, 1999) at ¶ 37 [hereinafter "FCC BANY Order"].

Second, Qwest is requiring the CLEC to do a special Mechanized Engineering and Layout for Distributing Frame ("MELD") run for the CLEC's build-out to the COSMIC frame. A MELD run provides information to Qwest OSS as to how connections can be made efficiently on the COSMIC. Qwest does MELD runs for multiple purposes on each of its COSMIC frames. For example, MELD runs would be needed for the inclusion of splitters and DSLAM equipment for Qwest's DSL product. Qwest should simply put CLEC needs for connections to the COSMIC into a planned MELD run and not require the CLECs to fund a separate MELD Run. A MELD run costs thousands of dollars. Requiring CLECs to fund separate MELD runs is not necessary and a barrier to entry.

While SGAT Section 9.4.2.2.3.2 provides for direct connection when the splitter is in the CLEC collocation area, Qwest has not provided for direct connection when splitters are placed in a common area of the central office. Section 9.4.2.3 requires this configuration to use an ICDF. The ICDF is unnecessary in this configuration. Direct connections can be made from the COSMIC/MDF to common splitter bays. This is more efficient for CLECs and more efficient for Qwest.

4. The SGAT on Line Splitting

Qwest has only addressed line sharing in its SGAT. Line sharing, as allowed by Qwest, requires the CLEC to own the splitters and is only available on loops where Qwest is the voice provider. Qwest has made no provision, however, to allow CLECs providing voice service using unbundled elements, specifically UNE-P, to also offer high speed data service on the same loop. The FCC has addressed this issue in its ruling on the Southwestern Bell Telephone 271 application in Texas. In that ruling the FCC acknowledges the importance of "so-called line

splitting," and further requires the ILEC to allow the CLEC to provide high speed data service on lines where the CLEC is using UNE-P.

> [I]ncumbent LECs *have an obligation to permit competing carriers to engage in line splitting over the UNE-P* where the competing carrier purchases the entire loop and provides its own splitter. The record reflects that SWBT allows competing carriers to provide both voice and data services over the UNE-P. For instance, if a competing carrier is providing voice service over the UNE-P, it can order an unbundled xDSL-capable loop terminated to a collocated splitter and unbundled switching combined with shared transport to replace its UNE-P configuration with a configuration that allows provisioning of both data and voice service. SWBT provides the loop that was part of the existing UNE-P as the unbundled xDSL-capable loop, unless the loop that was used for the UNE-P is not capable of providing xDSL service.[33]

This FCC Order validates AT&T's position that CLECs must be allowed to have access to the entire spectrum in a loop when they purchase the whole loop. Qwest has made no provision for line splitting in its SGAT or its testimony in this case. The SGAT condemns the CLEC to voice only over UNE-P configurations. This Commission should require Qwest to own and deploy splitters and make them available on a line-at-a-time basis. The following paragraphs discuss why requiring line-at-a-time splitters, owned by Qwest, makes technical and practical sense.

Access to the HFS of the loop is critical to AT&T so that it, like Qwest, can offer its customers – either on its own or in conjunction with a data provider – DSL services on the same loop used to provide local voice services. As part of providing voice CLECs with access to the HFS of the loop, Qwest should be required to insert (into a local loops) Qwest-owned, deployed and maintained splitters that are provided on a line-at-a-time basis. Although Qwest has not definitively refused to provide access to the HFS of the loop, it has refused to own splitters and provide access to them on a line-at-a-time basis. Qwest's refusal to provide technically feasible

[33] Id. At 325 (emphasis added).

access to splitters, combined with its inaction with respect to allowing UNE-P voice CLECs to access the HFS of their loops has the direct effect of denying residential and small business customers who wish to obtain DSL services, the ability to select anyone other than Qwest as their local voice carrier.

The following paragraphs focus on the lack of any compelling technical reasons for Qwest to reject AT&T's proposal for line splitting.[34] The practical implication of Qwest's current refusal to perform technically feasible line splitting is that for each passing day that UNE-P based voice, CLECs lack the capability to access the HFS portion of their loops, Qwest is further able to lock-up its base of local voice customers and increase the likelihood that customers who want xDSL services will have no choice but to remain with Qwest or to abandon their CLEC-provided local voice service and return to Qwest for such service. The result is a lessening of competition for both voice services and bundled offers of voice and data services. Absent a Commission decision on this issue, only Qwest will be able to offer a complete package of local, toll and Internet access services over a single line. This significant competitive advantage is ill-gained, resulting only from Qwest's refusal to provide straightforward and technically feasible support to its potential competitors.

In order to ensure the development of competition for voice services and bundled offers of voice and data services, the solution for CLECs, customers and competition is simple – Qwest should be required to support access to the HFS by inserting a splitter on UNE-loops employed in the UNE-P combination. As the following discussion will demonstrate, no technical

[34] Line splitting occurs when the ILEC insets a splitter into a UNE-Loop (including those employed in the UNE-P combination) so that a UNE-P CLEC may provide both voice and data services, either on its own or with another CLEC, utilizing a single loop facility terminating at the customer's premises. On the other hand, line sharing occurs when the ILEC provides the underlying voice service and another party provides the data service infrastructure, regardless of which party inserts the splitter. See Texas 271 Order at ¶324.

impediments exist that prevent Qwest from owning splitters and inserting them into loops used in a UNE-P configuration. Moreover, such a requirement would result in beneficial efficiencies and improved customer service. Qwest should therefore be directed to comply expeditiously with AT&T's request.

The Act and the FCC's implementing orders and regulations require that a CLEC be able to obtain all of the features, functions, and capabilities implicit in the UNE so that it can offer any telecommunications service that can be provided by means of that UNE.[35] Accordingly, when a voice CLEC provides service through the UNE-P configuration, the ILEC should be required to perform the technically feasible step of placing a splitter on the loop to allow the voice CLEC to access the broadband functionality of the loop, especially since this is the most efficient way to create access to the broadband functionality of the loop.

a. Technical Feasibility of Line Splitting. Access to the HFS of the loop is accomplished through inserting a splitter into the loop, regardless of whether Qwest is supporting line sharing (where Qwest retains the voice service and retail customer relationship) or is supporting line splitting (where Qwest retains neither the voice traffic nor retail customer relationship). There is no debate that a splitter is a passive electronic device that is added to the loop before the loop terminates upon the switch that is used to provide service to the end user. Inserting the splitter into the loop essentially creates two loops within a single physical outside plant loop facility. The first "loop" carries the voice frequency band transmitted within the facility and the second "loop" carries the high frequency transmission band transmitted within

[35] See 47 C.F.R. Section 51.307(c); *UNE Remand Order* at ¶ 175; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, "First Report and Order," 11 FCC Rcd 15499 (rel. Aug. 8, 1996), aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd., 525 US 366 (1999) ("Local Competition Order"), ¶ ¶ 258, 260, 268. AT&T's written comments will address the legal basis for Qwest's obligation to provide access to the HFS of the loop via a Qwest owned splitter.

the same facility. Each of the two loops created by the insertion of the splitter is cross-connected to the appropriate (voice or data) network for delivery of the specific services sought by the customer.

The derived loop dedicated to the high frequency spectrum (the high frequency output of the splitter) is cross-connected to a data network (generally through collocation where a DSLAM is located). The second derived loop (the low-frequency or analog voice output of the splitter) is cross-connected to the circuit switched network (typically the local switching UNE). There is no question that it is technically feasible to deploy a splitter to create two derived loops. Setting aside who owns or operationally supports the splitter and who owns the space in which it is deployed, the architecture involved in providing access to the HFS of the loop to voice CLECs using UNE-P (i.e., line splitting) involves essentially the same architecture that Qwest uses today to line share with its data affiliate or data CLECs. Stated simply, the work involved in inserting a splitter and the functions the splitter performs are the same regardless of whether the splitter is used to provide line sharing or line splitting.

Given that there is no technical impediment to Qwest deploying a splitter to permit access to the HFS of the loop, the only question that remains is whether Qwest should be required to own and provide splitters on a line-at-a-time basis or be allowed to restrict itself to the Line Sharing options where Qwest retains control of the voice portion of the loop.

b. Line-at-a-time deployment. When splitters are deployed a line-at-a-time, the architecture is as follows: (1) the outside plant facility from the customer's premises is brought to the main distributing frame ("MDF") at the ILEC's serving central office; (2) the outside plant facility is cross-connected from its appearance on the MDF to the splitter input; (3) the HFS output of the splitter (which could have either an appearance on the MDF or be connected to an

intermediate distributing frame) is cross-connected to a CLEC's DSLAM (which, in a central office deployment, is generally within collocation space and would be cabled out to a frame appearance); and (4) the "voice loop" (the low frequency output) of the splitter is cross-connected to the switched network (e.g., the local switching UNE). The outputs from the splitter establish separate paths for the voice and data streams that operate independently from one another, but are carried together within a single outside plant facility.

The technical and economic reasons why access to Qwest owned splitters on a line-at-a-time should be required are simple, and can be best illustrated by a walk- through of Qwest's Scenario C in comparison to the line-at-a-time arrangement advocated by AT&T and other CLECs. As described above, the splitter creates two loop facilities from one single outside plant facility. Within the splitter, a set of filters permits only low frequency transmission to transit one pair of wires. The low frequency splitter output is cross-connected to the circuit switched network, providing a voice loop.

The set of filters in the splitter also permits only the high frequency signals to be directed to the DSLAM. The splitter is cross-connected to the data CLEC's data network, providing a data loop. Under a line sharing option, as proposed by Qwest in its SGAT, the CLEC-owned splitter is connected directly to the CLEC's POT Bay.

Now assume that the customer's data provider is switched out. Because the splitter is owned by, and dedicated to, a single CLEC and hardwired to the CLEC's collocated equipment, disconnection of the data service is achieved by disconnecting the splitter from the customer's outside plant facility's appearance on the MDF. In doing so, the cross-connection for the voice portion of the loop must also be disconnected because it connects the "voice loop" from the old data CLEC's splitter to the voice switch. As a result, the customer's voice service is interrupted

and is not re-established until the cross-connections are made to the new data provider's splitter shelf.

In order to re-establish the customer's data and voice service, the new data provider's splitter input must be cross-connected to the outside plant, and the "voice loop" output of the new data provider's splitter must be cross connected to the ILEC's local switching element. All of this re-wiring would need to occur -- and be coordinated -- at the time of service delivery. Setting aside the fact that a needless voice service disruption occurs, there must also be non-essential work for which the retail customer must ultimately pay. Specifically, the re-wiring to a different splitter (with all its potential for associated service interruption and added cost) must be done for the sole purpose of putting back what was just removed, i.e., the splitter. This requirement is even more nonsensical because the splitter, while essential to subdividing the frequencies on the outside plant facility, does not (and cannot) provide any opportunity for service differentiation among either data or voice providers.

By contrast, the process of switching data providers is far less disruptive and simpler in the line-at-a-time splitter access arrangement. In the line-at-a-time splitter configuration, the data outputs of the Qwest owned splitters are wired to appearances on a distributing frame, as are the input ports of the DSLAMs. The splitter data output and the input port of the DSLAM are then cross-connected. To change the customer's data provider, the only thing that needs to be done is to replace the cross-connect between the frame appearance of the HFS output of the splitter and the original data provider's frame appearance with a cross-connect from the same splitter frame appearance to the frame appearance of the new data provider's equipment. When the cross-connect is disconnected, there is no disruption to the "voice loop" because it remains untouched. Thus, the changing of data providers is virtually transparent to the end-user

customer. Data service is re-established when the new data cross-connection is wired, which is easier and quicker than changing out entire splitters that are owned by and dedicated to one data provider.

Such transparency is important because the retail customer will usually be purchasing a package of complete voice and data services, not a particular company's packet transport. Thus, to the extent the provider of the retail bundle of voice and data seeks to change the supplier of a component of that package (in this case the DSL access), customer satisfaction demands that the change be virtually undetectable to the retail customer. This is similar to the situation that exists today with respect to long distance service. Access is a critical component to the complete retail service, but the retail customer typically is not involved in determining of how such access is provided. Replacement of access arrangements must be seamless, since retail long distance customers have little to no tolerance for service disruptions, even those necessary to reduce cost or improve service quality.

The line-at-a-time splitter arrangement is highly preferable to the shelf-at-a-time wiring configuration involved in line sharing using splitters in common collocation for numerous reasons. Significantly, the line-at-a-time arrangement effectively assigns the splitter to the outside plant facility, rather than being dedicated to a single CLEC. As a result, CLECs share a splitter owned by Qwest, and voice service remains intact when the data provider is changed.

When line-at-a-time splitter deployment is supported, CLECs can pre-wire their data networks (i.e., DSLAMs) to the same frame where the high frequency output of the splitters terminates. Likewise the input terminal for the splitter input (i.e., where the outside plant terminates) and the voice frequency output of the splitter (to the extent the splitter is remotely located from the MDF) can be pre-wired to the MDF. As a result, when initial service is

requested only three cross-connections must be worked: (i) from the outside plant to the splitter input; (ii) from the splitter voice output to the switch port; and (iii) from the splitter data output to the data CLEC's network's appearance on the frame. This involves only one additional cross-connection (connection (iii) above) at the time of service provisioning for line splitting than is required when Qwest engages in line sharing.

The line-at-a-time approach also yields benefits when a customer subsequently terminates individual services. If the customer terminates its data service, but not its voice service, Qwest can remove only cross-connection (iii), which cross-connects the data loop to the data provider's collocation. In such a situation, the customer does not lose voice service. In contrast, if the CLEC owned the splitter, the customer would have to be disconnected from the voice switch when the data provider ceases to perform the splitting function. The customer's voice service would not be reinstated until the facility from the customer's premise was disconnected from the input to the splitter, the switch port was disconnected from the voice output of the splitter and the outside plant facility was re-connected to the switch port. When disconnection of the data service occurs in conjunction with a customer moving, leaving the splitter set up in place seems prudent because it would permit the subsequent occupant to take advantage of the DSL capability of the loop without generating the needless costs associated with splitter re-insertion.

In the unlikely event that a customer disconnects his or her voice service, but not his or her data service, the voice capability could be blocked through translation changes in the switch. While this scenario is not one that is likely to occur, Qwest could avoid (or defer) committing the resources to remove the splitter from the line until the splitter capacity was required for a customer desiring both voice and data on the line, or until it was clear that the customer would not reinitiate voice service on that line.

The numerous operational advantages described above make it clear that Qwest should be required to provide the line-at-a-time option to CLECs. These benefits will only increase as more customers seek to have their voice and Internet access service provided over a single line.

Any claims by Qwest that the benefits of the line-at-a-time approach have been compromised by the initial deployment of splitters consistent with line sharing should be disregarded. DSL is in its infancy and significant increases in demand are expected. For example, the DSL market is estimated to grow to 2.5 million lines by the end of this year.[36] This growing demand will necessitate additional splitter deployment. Thus, requiring that Qwest provide splitters on a line-at-a-time basis now will allow CLECs to switch to this option early on in the deployment of DSL services rather than later.

Moreover, the efficient and non-disruptive ability to change DSL providers is a critical consideration for UNE-P CLECs providing data service via some form of a commercial arrangement with a data CLEC rather than through its own data facilities, as well as for ISPs. The ability to change DSL providers without disrupting voice service allows the UNE-P provider to transition to its own data infrastructure if that becomes an appropriate strategy in the future. In addition, it permits the UNE-P CLEC or the ISP provider (depending on who has the relationship with the data CLEC) to control better the costs charged by and quality of service provided by its commercial data partner. This is so because the ability of UNE-P CLECs or ISPs to change data providers without adversely impacting retail customers encourages data providers to control costs, price their services competitively, and remain at the cutting edge of equipment capabilities to ensure quality service. The real winner here is the retail customer who often has

[36] Business Wire, April 12, 2000, "Three of Nation's Largest Cities to Experience Major New DSL Rollout."

no direct commercial relationship with the DSL provider, and thus is generally powerless to affect the data provider's pricing practices or service quality.

None of this, however, means that CLECs should be denied the ability to deploy their own splitter shelves if this is the route they wish to take. However, Qwest should not be permitted to offer only CLEC owned, shelf-at-a-time splitter deployment since delivery of splitters on a line-at-a-time basis offers CLECs a very efficient and cost effective option that is technically feasible and highly conducive to the development of competition.

C. Unbundled Packet Switching

Qwest must offer packet switching as a UNE under certain specific circumstances. The FCC has stated that packet switching must be offered as a UNE under the following circumstances:

1. Loops are provided via DLC or related technology,
2. CLECs are unable to obtain spare copper loops,
3. CLECs are unable to install DSLAM equipment at the remote terminal,
4. The ILEC has deployed packet switching equipment for its own use.[37]

Qwest has unilaterally decided that these conditions will never exist and is refusing to offer packet switching as a UNE:

> Qwest believes that these four conditions will not be met in Arizona for the foreseeable future. In the event that copper loops are not available, CLECs can utilize the BFR process to request an alternative arrangement that would meet their specific loop needs.[38]

This position plainly violates the FCC's directives on packet switching. The circumstances under which the FCC mandates that ILECs make packet switching available

[37] *UNE Remand Order* at ¶ 313.
[38] Supplemental Affidavit of Karen A. Stewart, Page 42.

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238** **AT&T and TCG Phoenix's Supplemental Comments**

This responds to Karen A. Stewart's Second Supplemental Affidavit dated September 21, 2000. In addition, on September 11, 2000, Qwest Corporation ("Qwest") informally submitted a list entitled "Behavior Matrix Transition scenarios" ("Transition Scenario Matrix") to participants in the Commission's Emerging Services Workshop. AT&T's initial comments on that Matrix are also contained herein.

I. Response to Ms. Stewart's Second Supplemental Affidavit

In AT&T's August 21, 2000 Comments relating to the Emerging Services Workshop, AT&T raised a number of issues relating to Qwest's SGAT provision and its testimony on line sharing and line splitting. AT&T pointed out, among other things, that nowhere in Qwest's testimony or its SGAT did it address its line splitting obligations. During the Emerging Services Workshop, however, Qwest conceded that it is obligated to provide line splitting and agreed to prepare supplemental testimony and SGAT language delineating these obligations. Ms. Stewart's Second Supplemental Affidavit and Qwest's corresponding SGAT language sets forth Qwest's position on line splitting.

This supplementation is insufficient, however, for Qwest to satisfy its legal obligations on this issue.

A. Qwest should be required to own splitters and make them available on a line-at-a-time basis.

AT&T demonstrated in its initial comments relating to this workshop that Qwest is obligated to own splitters and make them available on a line-at-a-time basis. See AT&T Comments at pp. 26-32. As represented by Ms. Stewart's affidavit, Qwest refuses to do so. There is no legitimate technical or operational justification for Qwest's refusal.

Qwest does not dispute that it is technically feasible for UNE-P loops to be conditioned by the addition of a splitter so that a UNE-P CLEC could use those loops to provide not only voice but also data. When a CLEC purchases the unbundled loop, either individually or as part of the UNE-Platform, the CLEC acquires the right to the *entire* loop, which includes both the portion used to provide voice service and the portion capable of providing advanced services. The FCC's rules expressly state that the purchase of a UNE includes "all of the unbundled network element's features, functions, and capabilities," and that the ILEC must allow the acquiring CLEC "to provide any telecommunications service that can be offered by means of that network element."[1] A line splitter is properly considered part of the unbundled loop because it plainly constitutes "attached electronics" inserted on the loop to provide CLECs the ability to take advantage of the full functions, features, and capabilities of the loop.[2] As such, it must be furnished by the ILEC if so requested by the CLEC.

[1] 47 C.F.R. § 51.307(c); See also Local Competition Order at ¶s 258, 260, 268.
[2] UNE Remand Order, at ¶ 175.

Nor may Qwest oppose provision of the splitter on the ground that it constitutes advanced services equipment, which it may generally not own. Unlike a DSLAM, which is used exclusively for the provision of advanced services, a splitter is a passive piece of equipment that – like the loop itself – is necessary to enable a carrier to provide both data and voice services on the same loop. As such, the FCC has already concluded that stand-alone voice splitters are not used exclusively to provide advanced services, and may be owned by the ILEC.[3] Accordingly, such line splitters cannot fall into the category of advanced services equipment. Additionally, the provision of line-at-a-time splitters is consistent with the requirement that ILECs must provision UNEs in a manner that makes them useful to the CLEC.[4] In the context of the unbundled loop, it is the splitter that allows the CLEC to use the high frequency functionality of the loop.

The addition of a standalone splitter to the loop is also akin to the conditioning of loops for DSL service, which the ILEC is required to do.[5] Adding a splitter to a loop involves procedures that are analogous, in all relevant technical respects, to the adding or removing of other loop electronics (such as bridge taps or load coils) that ILECs routinely provide and are obligated to provide as part of loop conditioning.[6] The splitter, therefore, is not a network element in its own right, but an optional functionality of the loop element that is necessary to provide voice service when a customer requests advanced

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[3] See, Memorandum Opinion and Order, Applications of Ameritech Corp., 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, FCC CC Dkt. No. 98-141, 14 FCC Rcd 14,712 ¶ 365 & fn. 682 ("SBC Merger Order") & App. C. at § I(3)(d) ("SBC Ameritech Merger Conditions"), app. pend. sub. nom. Telecommunications Resellers Ass'n v. FCC, Case No. 99-1441 (D.C. Cir.).

[4] Local Competition Order, at ¶¶ 265, 268 (" . . . to the extent PacTel's argument suggests that the 1996 Act does not require unbundled network elements to be provisioned in a way that would make them useful, we find that its statutory interpretation is inconsistent with the statute's goal of providing new entrants with realistic means for competing against incumbents.")

[5] UNE Remand Order, ¶s 172-79; Line Sharing Order, ¶ 83.

[6] Id.

data services on the same line, the very pro-competitive configuration the FCC found necessary to support competition in the Line Sharing Order.

The FCC's Texas 271 Order does not in any way alter the conclusion that the ILEC should be required to own the splitter and provide it on a line-at-a-time basis. In that Order, the FCC noted that it had not yet exercised its rulemaking authority to require ILECs to provide access to splitters, and therefore would not require SWB as a condition of obtaining 271approval, to provide access to splitters.[7] The FCC specifically 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.[8] The FCC decision with regard to SWB'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 FCC intends to address this ILEC obligation again in its reconsideration of the UNE Remand Order. The SWB decision is thus not dispositive of what the FCC may decide at the point in time when Qwest is before the FCC with its application for Section 271 relief.

Nor should the FCC's decision to not yet rule on a requirement that ILECs provide access to ILEC-owned splitters in its review of the SWB Section 271 Application deter the Arizona Commission from imposing such a requirement on Qwest. As noted above, existing federal law provides sufficient support for the Commission to require Qwest to offer this option to CLECs. Nevertheless, it is clear that the Commission is free to establish additional procompetitive requirements consistent with the national framework established by the Act, and the FCC's implementing rules and orders, under

[7] Texas 271 Order, ¶ 328.
[8] Id.

its own authority. For example, Section 251(d)(3) of the Act allows state commissions to enforce regulations, orders or policies that "establish access and interconnection obligations of local exchange carriers."[9]

In sum, Qwest can only fulfill its legal obligation to provide access to all of the features, functionalities and capabilities of the loop if it owns and deploys the splitter.

B. Access to Qwest – owned splitters is also in the public interest.

Deployment of Qwest-owned splitters on a line-at-a-time basis will also serve to advance competition for DSL service and bundles of voice and data service, and as such, is very much in the public interest. As AT&T discussed in its initial comments relating to this workshop, there are several significant benefits to Qwest providing access to splitters on a line-at-a-time basis. 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.

When changing a customer's data provider in the line-at-a-time option, the only re-wiring that needs to occur is replacement of the cross-connect between the frame appearance of the high frequency output of the splitter and the original data provider's POT bay frame appearance with a cross-connect from the same splitter frame appearance to the frame appearance of the new data provider's POT Bay. In such a case, the connection of the outside plant facility to the ILEC-owned splitter and the connection of the voice output from the ILEC-owned splitter to the switch remain in place. By contrast, when splitters are owned by individual data CLECs and not shared, additional rewiring

[9] 47 U.S.C. § 251(d)(3)

and resources are required and the voice service must be disconnected unless the ILEC takes the additional steps and time required for back tapping.

Access to Qwest owned splitters on a line-at-a-time basis also yields benefits when a customer terminates individual services, allows for 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 deploy splitters on a line-at-a-time basis 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-P providers to access the high frequency portion of the loop, this impediment to competition may be avoided.

C. The Texas Public Utilities Commission recently confirmed that the Act and the FCC Rules require ILECs to supply splitters.

The merits of AT&T's arguments on this point are confirmed by a recent decision issued by arbitrators appointed by the Texas Public Utilities Commission. The Texas PUC arbitrators' decision, citing prior rulings of the FCC, acknowledged that a CLEC purchasing UNEs or combinations of UNEs is entitled to "all capabilities of the loop

including the low and high-frequency spectrum portions of the loop . . .."[10] The decision also emphasized the FCC's prior rulings that ILECs must afford CLECs access to "all of the UNE's features, functions, and capabilities, 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. The decision further found (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."[11]

Finally, the Texas decision noted that SWB'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." [12] Thus, the arbitrators found that SWB's approach "significantly prohibits UNE-P providers from achieving commercial volumes."[13] Conversely, they found that requiring the ILEC to provide the splitter not only advances competition but also "promotes more rapid deployment of advanced

[10] Arbitration Award, Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, Docket No. 22315 (September 13, 2000) at 15.
[11] Id. at 17-19.
[12] Id. at 19.
[13] Id.

services to a broader cross section of consumers, as required by Section 706" of the Act.[14]

D. Qwest should not be allowed to disconnect existing Megabit Service for end-users who switch to a CLEC voice provider.

Ms. Stewart's Second Supplemental affidavit confirms a policy decision that Qwest revealed during the Emerging Services Workshop that greatly concerns AT&T. Qwest has made a policy decision to disconnect Megabit service from a customer that decides to change to a CLEC for local voice service.

End users in many areas can subscribe to Megabit DSL service from Qwest. Qwest already has hundreds of thousands of Megabit customers and is adding thousands every week. Qwest has more DSL lines than any other ILEC. Qwest has decided to terminate Megabit service if a customer switches local carriers. In doing so, Qwest has decided to walk away from a lucrative business on a loop that has already been conditioned for DSL and a customer that has already been provisioned and put into service. Qwest justifies this position, not with technical reasons, but simply by stating that it is not required to do so based on the FCC's preliminary determination in the SWB Texas 271 proceeding. The Arizona Commission is not required to reach the same conclusion. In fact, such finding is contrary to the Act, FCC rules and Arizona law that prohibit barriers to entry into the local exchange market.

The *only* reason for Qwest to make this policy decision is to discourage its current monopoly-based customers from switching their local service to a competing local exchange carrier. This Qwest policy is a clear barrier to entry and is anticompetitive.

[14] Id.

Customers with Megabit will be reluctant to switch local providers, knowing that their Megabit service will be terminated. To avoid this barrier, customers should have the option to maintain Megabit or to switch to an alternative DSL provider. The choice of having Megabit should not be eliminated.

II. Comments on the Transition Scenario Matrix

AT&T's and TCG Phoenix's comments submitted on August 21, 2000, AT&T generally observed that Qwest's SGAT does not provide the detail necessary to confirm that all of Qwest's essential processes for advanced services meet the requirements of the Act and the FCC's rules. In the Emerging Services Workshop held September 5 and 6, 2000, AT&T, Qwest and other parties discussed the absence of details specifically related to the transition of end users to and from various voice and data line-sharing and line-splitting alternatives. Qwest's principal response was that many processes continued to be in development. Although AT&T appreciates that Qwest's processes may not yet be finalized, AT&T believes that until such processes have been finalized in sufficient detail Qwest cannot be deemed to have met its requirements under the Act or FCC Rules.

In the Emerging Services Workshop, Qwest disclosed that representatives of Qwest and certain DLECs who were parties to the Interim Line Sharing Agreement dated April 24, 2000 had been meeting to develop the Transition Scenario Matrix, among other things. These transition scenarios listed in the matrix were meant to anticipate, in outline form, the possible transition scenarios implicated under the Interim Line Sharing Agreement. AT&T understands that the Transition Scenario Matrix is a work in progress and that Qwest and certain DLECs intend to hold additional meetings.

AT&T has not participated in these Qwest-DLEC meetings. Accordingly, AT&T cannot comment with full authority on whether all possible transition scenarios implicated under the Line Sharing Agreement have been incorporated in the Transition Scenario Matrix. Further, as AT&T demonstrated in the Emerging Services Workshop, the Line Sharing Agreement does not implicate all potential transition scenarios permitted under the SGAT or, more broadly, under the Act and applicable FCC rules. Accordingly, the Transition Matrix does not adequately address all potential mechanisms needed for all common transition scenarios.

In the Emerging Services Workshop, AT&T presented a non-exclusive and non-exhaustive list of additional transition scenarios. That list was entered into the record as an AT&T exhibit. In that list, AT&T demonstrated that Qwest has failed to develop numerous, important processes. As a general observation, AT&T insists that Qwest develop an enhanced transition matrix reflecting the transitions represented by AT&T's list as well as additional likely transition scenarios. AT&T expressly reserves the right to continue to comment on Qwest's developing processes as well as additional processes developed as a consequence of these workshops.

AT&T has several observations about the Transition Scenario Matrix. Initially, and perhaps most significantly, Qwest's refuses to include in its matrix any transition scenario in which a carrier other than Qwest provides voice services and Qwest provides it ADSL Megabit Services. As discussed above, Qwest has stated firmly on the record that it has made a "business decision" not to provide MegaBit ADSL service where Qwest is not also the voice provider. See Second Supplemental Affidavit of Karen A. Stewart, September 21, 2000, pp. 11-12. AT&T has addressed Qwest's anti-competitive

refusal above. Because Qwest must provide its MegaBit service in conjunction with other voice providers, Qwest must develop transition scenarios that involve these situations.

Second, during the Emerging Services Workshop, Qwest made numerous disturbing suggestions that in the event an end user transitions from Qwest as a voice provider (and a CLEC as a data provider) to another CLEC as a voice provider, Qwest will "disconnect" all services including the existing CLEC's data providers service. Indeed Item 7 of the Transition Scenario matrix makes clear that Qwest intends to disconnect data service when voice service is transferred to another CLEC. Essentially, Qwest disclaimed any responsibility for ensuring that the end user's existing data service not go out of service, ignoring the fact that it would be *Qwest's* affirmative action resulting in such loss of service. Qwest also ignores that it is technically feasible for the voice providers to be changed without disturbing existing data providers. Qwest reasoned that it was the CLEC's concern to arrange for the proper transition and that it had no proper role in managing this transition. Qwest's approach is arrogant and irresponsible. The most conservative, pro-end user approach would be to allow existing data service to continue without interruption. Qwest needs to ensure that appropriate procedures are adopted, if not in the Transition Scenarios Matrix, in some other suitable procedure manual. In addition, the SGAT should be amended to assure CLECs that data service would not be dropped.

Next, AT&T observes that all Qwest responsibilities to provide loss and completion reports are noted as "under development." AT&T, the CLECs and

Commission need, at a minimum, some general description of Qwest's intended, fully developed loss and completion report process.

In addition, Items 3 and 3A in the Transition Scenario Matrix describe situations in which an end user decides to transfer data service from the existing CLEC data provider. Item 3 describes the transfer from one CLEC data provider to another. Item 3A describes the transfer from a CLEC data provider to Qwest Megabit service. Qwest processes to transfer the end user in these scenarios should be identical. The matrix, however, doesn't reveal the specific procedures Qwest follows to process under Item 3A (CLEC data provider to Qwest data provider). A complete and appropriate inquiry into these two processes would reveal whether Qwest is fulfilling its obligations to provide nondiscriminatory access.

Item 8 describes a scenario in which an end user changes its phone number. This Item suggests that an end user is required to advise the DLEC that it has changed its email. After the end user notifications, under Item 8, the DLEC must initiate an LSR advising of number change. AT&T believes that this arrangement creates a materially different obligation on DLECs that Qwest itself enjoys under similar circumstances. Qwest should ensure that this procedure is congruent with the same procedures Qwest benefits from when an end user changes its phone number.

Item 11 describes a number of scenarios in which existing lines have load coils. It is unclear how Qwest's proposals here synchronize with its general obligations under the SGAT to condition loops or perform other work.

III. Conclusion

Qwest must amend its SGAT proposal relating to line sharing consistent with AT&T's comments here. In addition, more work needs to be done with the Transition Scenario Matrix to ensure that all necessary possibilities are addressed and the Act and the FCC rules are followed. Qwest cannot be found to have satisfied its Section 271 obligations unless the recommended changes are made and the noted voids are filled.

Dated this 29th day of September 2000.

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.
Mary B. Tribby
Richard S. Wolters
Michel Singer Nelson

By: _____
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
Telephone: (303) 298-6527

BEFORE THE ARIZONA CORPORATION COMMISSION

CARL J. KUNASEK
Chairman
JAMES M. IRVIN
Commissioner
WILLIAM A. MUNDEL
Commissioner

IN THE MATTER OF U S WEST COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271 OF THE TELECOMMUNICATIONS ACT OF 1996	**Docket No. T-00000A-97-0238** **AT&T AND TCG PHOENIX'S COMMENTS ON UNBUNDLED NETWORK ELEMENT COMBINATIONS, SWITCHING, TRANSPORT AND ENHANCED EXTENDED LINKS**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix (collectively "AT&T") file their comments on checklist item 2 (network elements), including unbundled network element combinations ("UNE-C" and "UNE-P"[1]), checklist item 5 (transport) and checklist item 6 (switching), including the enhanced extended link ("EEL").

I. INTRODUCTION

The United States Congress conditioned Qwest Corporation's (formerly known as U S WEST Communications, Inc., hereinafter "Qwest") entrance into the in-region interLATA long distance market on Qwest's compliance with 47 U.S.C. § 271. To be in compliance with section 271, Qwest must "support its application with actual evidence demonstrating its *present* compliance with the statutory conditions for entry."[2]

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[1] UNE-C will be used to refer to combinations of unbundled network elements ("UNEs") generally. UNE-P refers to the UNE platform, or the combination of UNEs used to provide residential or business local exchange service (loop, switching and transport).

[2] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶ 37 (hereinafter "*BANY Order*").

C. Network Interface Device ("NID")

Section 271(c)(1)(B)(ii) states that a BOC must provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 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 section 251(c)(3).[47]

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."[48] 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 devices used for that purpose."[49] 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."[50]

In addition, the FCC's definition encompasses "smart NIDs" which are devices used on PBX 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.

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[47] Many of the network elements are being addressed in other workshops addressing specific checklist items.
[48] *UNE Remand Order*, ¶ 233.
[49] 47 C.F.R. § 51.319(b).
[50] *Id.*

from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features.

D. Network Interface Device ("NID")

In the *UNE Remand Order*, the FCC added the NID to the list of UNEs that must be provided to CLECs on an unbundled basis pursuant to section 251(d)(2) of the Act. Revised Rule 51.319, in relevant part states:

> (b) *Network Interface Device*. An incumbent LEC shall provide nondiscriminatory access, in accordance with § 51.311 and section 251(c)(3) of the Act, to the network interface device on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service. 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.

In addition, 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."[96] The FCC went on to state that:

> We conclude that the NID definition, for the purposes of our unbundling analysis, should be flexible and technology-neutral. The Commission's rules permit considerable variation in the interconnection facilities between carrier and customer-controlled facilities. Furthermore, evolution in network design and technology will likely cause additional design variations among the hardware interfaces between carrier and customer premises facilities. Accordingly, we define the NID broadly to ensure that competitors will be able to obtain access to any of these facilities as an unbundled network element. Our intention is to ensure that the NID definition will apply to new technologies, as well as current technologies, and to ensure that competitors will continue to be able to access customer premises facilities

[96] *UNE Remand Order*, ¶ 233.

as an unbundled network element, as long as that access is required pursuant to section 251(d)(2) standards.[97]

Section 9.5 of the SGAT sets forth Qwest's proposals for the NID and access to the NID. Section 9.5 is insufficient for numerous reasons.

1. Section 9.5.1

First, in Section 9.5.1, Qwest sets forth the definition of the NID. The definition of the NID in Qwest's SGAT does not comply with the FCC's definition in several respects.[98] Qwest describes the NID as an "interface between Qwest's Loop facility and the end user's inside wire and is considered part of the Unbundled Loop facility."[99] In short, Qwest's provides the NID under its SGAT *only* when a CLEC acquires an unbundled loop from Qwest. Qwest's offer is clearly far short of the FCC's requirement that a NID be available on a stand-alone basis. Qwest must remove the first sentence of the definition.

Qwest's definition is deficient in other respects as well. Section 9.5.1 does not provide access to all of the features of the NID in all cases but instead limits access to residential NIDs.[100] Qwest then restricts the NID to the inside wire terminals, unless there are spare protection modules on the existing NID. This is not compliant. Qwest's SGAT must be expanded to reflect the FCC's requirement. In addition, the FCC's definition encompasses "smart NIDs," which are devices used on PBX trunks and DS1 loops that give some maintenance monitoring for the loop. Qwest must revise its SGAT accordingly. The SGAT must also be expanded to make available the full features and functions of the NID, such as termination devices for ISDN loops.

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[97] *Id.*, ¶ 234.
[98] 47 C.F.R. § 51.319.
[99] SGAT § 9.5.1 (emphasis added).

Qwest's language should be changed to identify all types of NIDs, including those kinds of network terminating devices used in multiple dwelling unit or high-rise buildings or campuses to ensure that all network-terminating devices are included. Further, Qwest must provide additional language that assures that all forms of network terminating devices are covered. AT&T proposes that the following language be substituted for the language Qwest presently provides for Section 9.5.1:

> The NID is defined as set forth in FCC Rule 51.319. Without limiting the foregoing, the NID includes any means of interconnection of customer premises wiring to the ILEC distribution plant, such as a cross connect device, and it includes all features, functions, and capabilities of the device or equipment used to make that connection.
>
> 9.5.1.1 Although the NID provides the connection to the customer premise wiring, it may not always be located at the demarcation point where the customer premise wiring begins. Qwest shall permit CLEC to connect its own loop facilities to on-premises wiring through the Qwest NID, or at any other technically feasible point.
>
> 9.5.1.2 The NID is a single-line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The fundamental function of the NID is to terminate and provide protection to the distribution media and as a connection point to the end user's wiring or equipment.
>
> 9.5.1.3 The NID features at least two independent chambers or divisions that separate the service provider's network from the inside wiring. Each chamber or division contains the appropriate connection points or posts to which the service provider and the end-user customer each make their connections. The NID provides a protective ground connection, and is capable of terminating cables such as twisted pair cable.
>
> 9.5.1.4 The NID may also include test devices such as "smart NID" for DS1 or higher loops.

[100] SGAT, § 9.5.1.

2. Section 9.5.2

Section 9.5.2.1 requires the CLEC to install its own NID when the CLEC provides its own drop (loop distribution). This is not compliant. The FCC specifically determined that it is unreasonable to require the CLEC to provide its own NID, stating that "[t]he record indicates that requiring a requesting carrier to self-provision NIDs for all customers it seeks to serve would materially raise the cost of entry, delay broad facilities-based market entry, and materially limit the scope and quality of the competitor's service offerings" and required incumbent LECs to provide unbundled access to NIDs nationwide."[101] Qwest must remove this requirement in Section 9.5.2.1 and make its NIDs available in accordance with the FCC's requirements.

In addition, Section 9.5.2.1 only gives CLECs access to the NID if space is available on the existing NID. This means that Qwest intends to maintain its existing drop on the NID. This violates the FCC *UNE Remand Order*. Qwest is required to give CLECs access to its NID. If space is unavailable, it appears that Qwest will deny access to the NID, instead requiring CLECs to install their own NID. Refusing to provide CLECs access to the protector side of the existing NID will deny CLECs access to all of the features and functions of the NID, thus negating the intent of requiring Qwest to provide access to the NID. Clearly, the *UNE Remand Order* mandates that Qwest remove its NID connections in order to give CLECs access to the NID. Qwest must eliminate the restriction in Section 9.5.2.1 that CLECs can only access the NID if there is space available or if space can be made through Qwest accommodation.

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[101] *UNE Remand Order*, ¶ 232.

Section 9.5.2.1 also provides that CLECs access the NID only through cross-connections and that CLECs must "isolate the Qwest facility in the NID by unplugging the modular unit." The Act and FCC rules require that CLECs be able to access NIDs at any technical feasible point and manner. CLECs must, at their option, be able to connect loops directly to Qwest's NID enclosures. Qwest should amend this provision of the SGAT to provide for direct access. In addition, AT&T proposes that the SGAT also be amended to specify the following kinds of access to the NID, in order to make Qwest's responsibilities clear:

> 9.5.2.1.1 Qwest shall allow CLEC to connect its loops directly to Qwest's multi-line NID enclosures that have additional space and are not used by Qwest or any other Telecommunications Carrier to provide service to the premise. CLEC agrees to pay for use of the Qwest NID in accordance with the schedules set forth in Part X (Pricing) of this Agreement.
>
> 9.5.2.1.2 Qwest shall allow CLEC to use all the functionality of the Qwest NID if so desired, including any protection mechanisms, test capabilities, or any other capabilities now existing or as they may exist in the future.
>
> 9.5.2.1.3 If a Qwest loop (drop) is being replaced by an CLEC loop (drop) CLEC may use the existing NID connection for the Qwest loop, including all of its capabilities. In such situation, the Qwest loop will be appropriately capped, tied off, or terminated to ground as desired by Qwest.
>
> 9.5.2.1.4 Where environmental conditions permit, either Party may remove the inside wire from the other Party's NID and connect that wire to that Party's own NID; or
>
> 9.5.2.1.5 Enter the subscriber access chamber or "side" of "dual chamber" NID enclosures for the purpose of extending a connecterized or spliced jumper wire from the inside wire through a suitable "punch-out" hole of such NID enclosures; or
>
> 9.5.2.1.6 Request Qwest to make other rearrangements to the inside wire terminations or terminal enclosure on a time and materials cost basis to be charged to the requesting Party (i.e., CLEC, its agent, the building owner or the subscriber). Such charges will be billed to the requesting Party.

Section 9.5.2.1 also describes circumstances in which Qwest will replace NIDs and ambiguously states that a CLEC will be assessed charges for this. Qwest should explain in more detail its requirements for replacing the NID and the charges therefore.

Section 9.5.2.2 states that Qwest will "retain sole ownership of the Qwest NID and its contents on Qwest's side." This provision blatantly disregards the law on access to unbundled network elements and denies CLECs access to the full functions and capabilities of the element and should be eliminated.

Section 9.5.2.2 also states that Qwest's shall not be responsible for multiple "NID change-outs." Section 9.5.3.1 describes rate elements for these replacements. Qwest should clarify these provisions relating to its "change-out" policy as discussed above in AT&T's comments on Section 9.5.2.1.

3. Section 9.5.3

Section 9.5.3.2 references rates for "single tenant NIDs," which are specified in Exhibit A. Because other kinds of NIDs must be made available to CLECs, conforming changes should be made to this section of the SGAT.

4. Section 9.5.4

Section 9.5.4 states that stand-alone NIDs are ordered using the remarks section of the LSR form. To accomplish the stand-alone NID order, the CLEC would have to specifically cancel the loop order in the remarks section as well. However, because LSRs will automatically flowthrough, this procedure will result in the remarks section not being read prior to the LSR flowthrough. Consequently, a loop order will be placed with every stand-alone NID that is ordered. This procedure should be revised.

CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of AT&T and TCG Phoenix's Comments on Loops, Line Splitting, NID, and LNP regarding Docket No. T-00000A-97-0238, were sent via overnight delivery this 3rd day of November, 2000, to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and that a copy of the foregoing was sent via overnight delivery this 3rd day of November, 2000 to the following:

Deborah Scott
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Jerry Rudibaugh
Hearing Officer
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Mark A. DiNunzio
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy of the foregoing was sent via United States Mail, postage prepaid, on the 3rd day of November, 2000 to the following:

Thomas F. Dixon
MCI WorldCom, Inc.
707 – 17th Street, #3900
Denver, CO 80202

Andrew Crain
Qwest Corporation
1801 California Street, Suite 3800
Denver, CO 80202

Douglas Hsiao
Rhythms NetConnections
7337 So. Revere Parkway, #100
Englewood, CO 80112

Thomas H. Campbell
Lewis & Roca LLP
40 N. Central Avenue
Phoenix, AZ 85004

Michael W. Patten
Brown & Bain, P.A.
P. O. Box 400
2901 North Central Ave., Suite 2000
Phoenix, AZ 85001-0400

Darren Weingard
Stephen H. Kukta
Sprint Communications Company L.P.
1850 Gateway Drive, 7th Floor
San Mateo, CA 94404-2467

Michael M. Grant
Gallagher and Kennedy
2600 North Central Ave.
Phoenix, AZ 85004-3020

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402

Bill Haas
Richard Lipman
McLeod USA Telecommunications Services, Inc.
6400 C Street SW
Cedar Rapids, IA 54206-3177

Joyce Hundley
United States Dept. of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Robert S. Tanner
Davis Wright Tremaine LLP
17203 N. 42nd Street
Phoenix, AZ 85032

Steven R. Beck
Qwest Corporation
1801 California Street, Suite 3800
Denver, CO 80202

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, AZ 85067-6379

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Ave., #2600
Phoenix, AZ 85012

Scott S. Wakefield
Residential Utility Consumer Office
2828 North Central Ave., #1200
Phoenix, AZ 85004

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, MD 20701

Karen Johnson
Electric Lightwave, Inc.
4400 NE 77th Ave
Vancouver, WA 98662

Alaine Miller
Nextlink Communications, Inc.
500 108th Avenue NE, Suite 2200
Bellevue, WA 98004

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
1502 Fourth Avenue
Seattle, WA 98101-1688

Richard M. Rindler
Morton J. Posner
Swidler & Berlin Shereff Friedman, LLP
3000 K Street, N.W. – Suite 300
Washington, D.C. 20007-5116

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, AZ 85281

Jeffrey W. Crockett
Snell & Wilmer, LLP
One Arizona Center
Phoenix, AZ 85004-0001

Mark P. Trinchero
Davis Wright Tremaine
1300 SW Fifth Ave., Suite 2300
Portland OR 97201-5682

Gena Doyscher
Global Crossing Local Services, Inc.
1221 Nicollet Mall, Suite 300
Minneapolis MN 55403

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, AZ 85004

Michael B. Hazzard
Kelley, Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Jon Loehman
Managing Director-Regulatory
SBC Telecom, Inc.
5800 Northwest Parkway
Suite 135, Room 1.S.40
San Antonio, TX 78249

Andrea P. Harris
Senior Manager, Regulatory
Allegiance Telecom, Inc.
P. O. Box 2610
Dublin, CA 94568

Bradley Carroll
Cox Arizona Telcom, L.L.C.
1550 West Deer Valley Road
Phoenix, AZ 85027

Diane Bacon, Legislative Director
Communications Workers of America
Arizona State Council
District 7 AFL-CIO, CLC
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Mark Dioguardi
Tiffany and Bosco, P.A.
500 Dial Tower
1850 North Central Ave.
Phoenix, AZ 85004

Lyndall Nipps
Director, Regulatory
Allegiance Telecom, Inc.
845 Camino Sur
Palm Springs, CA 92262