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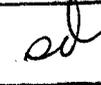
BEFORE THE ARIZONA CORPORATION COMMISSION

MAR 26 P 4 15

**WILLIAM A. MUNDELL**  
Commissioner  
**JAMES M. IRVIN**  
Commissioner  
**MARC SPITZER**  
Commissioner

ARIZONA CORPORATION COMMISSION  
Arizona Corporation Commission  
**DOCKETED**

MAR 26 2001

DOCKETED BY 

IN THE MATTER OF U S WEST )  
COMMUNICATIONS, INC.'S )  
STATEMENT OF GENERALLY )  
AVAILABLE TERMS AND )  
CONDITIONS )

DOCKET NO. T-01051B-99-0068

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

**QWEST'S BRIEF REGARDING IMPASSE ISSUES RELATING TO  
PACKET SWITCHING AND LINE SHARING**

Qwest Corporation ("Qwest") submits this brief regarding impasse issues relating to line sharing and packet switching. There are five packet switching issues and five line sharing issues that resulted in impasse. As demonstrated below, each of these issues should be resolved in Qwest's favor as a matter of law.

**I. PACKET SWITCHING**

**A. Issue PS-4: Qwest has Fully Implemented the FCC's Rule Regarding the Availability of Spare Copper Loops. [SGAT Section 9.20.2.1.3]**

In its *UNE Remand Order*, the FCC modified Rule 319 to require unbundling of packet switching in very limited circumstances.<sup>1</sup> As the FCC has recently confirmed, Rule 319(c)(3)(B) requires an incumbent to unbundle packet switching only if each of the following preconditions is met: (1) the ILEC has deployed a digital loop carrier system ("DLC"), (2) there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer, (3) it has not permitted the requesting CLEC to collocate its DSLAM at the remote terminal, and (4) the ILEC has deployed packet switching capability for its own use.<sup>2</sup>

The parties reached impasse regarding the second of these requirements: "there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer." In order to implement this condition, Qwest literally copied it word-for-word into the SGAT at section 9.20.2.1.2. Nonetheless, AT&T and Covad complain that additional language regarding available copper loops must be included in order to ensure that CLECs can offer the xDSL service they desire. Specifically, AT&T requests that the word "no" be replaced with "insufficient" and that the word "adequately" be added before "supporting," so that the requirement would be revised to read: "there are *insufficient* spare copper loops capable of *adequately* supporting the xDSL services that the requesting carrier seeks to offer." Workshop 3 Tr. Vol. VII 1581:5-17.

The CLECs' arguments fail as matter of law and fact. First, the CLECs are again indisputably seeking to add to the existing legal obligations under the Rule and FCC orders.

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<sup>1</sup> Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696 (rel. Nov. 5, 1999) ("*UNE Remand Order*") ¶ 313.

<sup>2</sup> Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition*

Covad admitted as much during the workshop held in Colorado. Colorado 11/3/00 Tr. 155:17-22.<sup>3</sup> Although AT&T was less than clear on this point in Arizona, it clearly conceded that it was arguing for a new legal obligation in the Multistate 271 proceeding. Multistate 1/18/01 Tr. 253:10-12.<sup>4</sup> The SGAT language tracks the rule's requirements exactly, yet the CLECs seek to revise the SGAT to include more onerous requirements than the Rule. The FCC has already rejected this argument. The identical dispute arose in SWBT's Kansas/Oklahoma proceeding. The FCC held that SWBT had satisfactorily established a sufficient legal obligation because the SGATs at issue "incorporate verbatim the criteria adopted in our *UNE Remand Order* to establish when packet switching will be made available." *Kansas/Oklahoma Order* ¶243 (emphasis added). Thus, the CLECs' arguments fail as a matter of law.

These arguments also fail on the facts. First, inserting "adequately" to modify the requirement that available loops must be "capable of supporting the xDSL services the requesting carrier seeks to offer" adds nothing but vagueness and the potential for conflict.<sup>5</sup> The CLECs' revision would introduce a layer of uncertainty by requiring a factual inquiry regarding the "adequacy" of loop capabilities. The language in the SGAT (and the Rule) unambiguously states the condition: available loops are either capable of supporting the xDSL service the CLEC chooses to offer or they are not. Thus, the CLECs' proposed insertion of "adequately" should be rejected.

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*Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 01-26 (Rel. January 19, 2001) ("*Line Sharing Reconsideration Order*") ¶ 56, citing 47 C.F.R. 51.319(c)(3)(B).

<sup>3</sup> A copy of the relevant excerpt from the Colorado transcript is attached as Exhibit A.

<sup>4</sup> A copy of the relevant excerpt the Multistate transcript is attached as Exhibit B.

<sup>5</sup> The facilitator in the Colorado proceeding agreed: "If you add "adequately" under that circumstance then you have to state what it is you're trying to provide service for. I think you're introducing an ambiguity that would cause problems later." Colorado 12/12/00 Tr. 52:10-13, a copy of which is attached as Exhibit C.

The CLECs' contention that "no" should be replaced by "insufficient" is similarly flawed. Under the Rule, packet switching must be unbundled if there are no spare copper loops capable of supporting the xDSL service the CLEC seeks to offer. This analysis applies on a customer-by-customer basis. If there is an available loop capable of providing the particular customer with the service the CLEC desires to offer, then the condition is not met. If there is no such loop available to support the xDSL service a CLEC seeks to offer to its customer, the condition is met. The concept of insufficiency simply does not apply. Again, the CLECs' proposal would only introduce an additional layer of uncertainty by requiring a factual inquiry regarding the "sufficiency" of available loops. Thus, the CLECs' proposal to replace "no" with "insufficient" should be rejected.

Finally, the CLECs' concern that the availability of copper loops will pose an impediment to their ability to obtain unbundled packet switching is moot as a practical matter. In order for packet switching to be unbundled, Qwest must have remotely deployed a DSLAM. Generally, Qwest will only remotely deploy a DSLAM if the existing loops are too long to support xDSL;<sup>6</sup> thus, as a practical matter, where the fourth condition for unbundling -- Qwest has remotely deployed a DSLAM -- is met, the second condition -- no xDSL capable copper loops -- will also be met.

**B. Issue PS-3: Whether Qwest has Fully Implemented the FCC's Rule Regarding the Availability of DSLAM Collocation. [SGAT Section 9.20.2.1.2]**

This issue revolves around the language of section 9.20.2.1.3, which states that one of the conditions for unbundling packet switching is that "Qwest has placed a DSLAM for its own use in a remote Qwest Premises but has not permitted CLEC to collocate its own DSLAM at the same remote Qwest Premises or collocating a CLEC's DSLAM at the same Qwest Premises will

not be capable of supporting xDSL services at parity with the services that can be offered through Qwest's Unbundled Packet Switching." This language properly implements the FCC's third condition in Rule 319(c)(3)(B)(iii).

Covad and AT&T object to section 9.20.2.1.3, stating that it will never be economically feasible to remotely collocate a DSLAM. Covad Initial Comments at 8; AT&T Comments<sup>7</sup> at 37, 40; Workshop 3 Tr. Vol. VII 1589:24-1590:3; 1590:24-1591:3; 1591:21-1592:7. This contention is clearly beyond the scope of the FCC's rule, which is based solely on the ILEC's refusal to permit remote DSLAM collocation. Covad admitted as much in Colorado. Colorado 11/3/00 Tr. 155:17-22.<sup>8</sup> Such issues are beyond the scope of this proceeding because section 271 proceedings are narrowly focused proceeding to assess whether ILECs are complying with the existing state of the law.<sup>9</sup> The FCC clearly stated in both the *SBC Texas Order* and the *Kansas/Oklahoma Order* that these proceedings are not appropriate forums in which to impose new obligations.<sup>10</sup> Thus, Section 271 proceedings are not the proper forums for adding new legal obligations.

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<sup>6</sup> Colorado 12/12/00 Tr. 50:7-13, attached as Exhibit C.

<sup>7</sup> AT&T and TCG Phoenix's Comments dated August 21, 2000 ("AT&T Comments").

<sup>8</sup> See Exhibit A.

<sup>9</sup> The relevant inquiry is whether a BOC complies with the law in effect at the time its section 271 application is filed. Memorandum Opinion and Order, *Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 (January 22, 2001) ("*Kansas/Oklahoma Order*") ¶ 18; Memorandum Opinion and Order, *Application of 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*, CC Docket No. 00-65, FCC 00-238 (June 30, 2000) ("*SBC Texas Order*") ¶ 27.

<sup>10</sup> *Kansas/Oklahoma Order* ¶ 18 (section 271 proceeding is fast-track, narrowly focused adjudication that is inappropriate for consideration of industry-wide local competition questions of general applicability); *SBC Texas Order* ¶ 23 (a section 271 proceeding is not an appropriate forum for resolution of new and unresolved interpretive disputes regarding an ILEC's obligations to competitors).

Moreover, this argument is analogous to an argument rejected by the Supreme Court in the *Iowa Utilities Board*<sup>11</sup> case. There, the FCC argued that the impairment prong of the test for unbundling was met if

the failure of an incumbent to provide access to a network element would decrease the quality, or increase the financial or administrative cost of the service a requesting carrier seeks to offer, compared with providing that service over other unbundled elements in the incumbent LEC's network.

*Iowa Utilities Board*, 119 S.Ct. 721, 735. The Supreme Court rejected that standard, among other reasons, because it provided a windfall to competitors:

[T]he Commission's assumption that any increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element "necessary," and causes the failure to provide that element to "impair" the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms. An entrant whose anticipated annual profits from the proposed service are reduced from 100% of investment to 99% of investment has perhaps been "impaired" in its ability to amass earnings, but has not ipso facto been "impaired . . . in its ability to provide the services it seeks to offer.

*Id.* The CLEC argument against section 9.20.2.1.3 is as misguided as the FCC's erstwhile impairment test and should be rejected for the same reasons.

Further, as noted above, AT&T admitted in the Multistate proceeding that it is actually arguing for a new legal obligation to unbundle packet switching in all circumstances and that it was not arguing that the SGAT did not comply with the current law. Multistate 1/18/01 Tr. 253:10-12.<sup>12</sup> This proceeding is not an appropriate forum to establish new legal obligations. Section 9.20.2.1.3 fully implements the law regarding the third condition for unbundling packet switching. Accordingly, the CLECs' arguments must be rejected.

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<sup>11</sup> *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999).

<sup>12</sup> See Exhibit B.

**C. Issue PS-6: Whether All Four Conditions for Unbundled Packet Switching Must be Met. [SGAT Section 9.20.2.9]**

The CLECs object to complying with Rule 319's four conditions for unbundled packet switching, incorporated in SGAT section 9.20, on the basis that complying with the Rule would take too long. The CLECs claim that, if they must wait for Qwest to deploy a remote DSLAM before they can submit a collocation application, Qwest will have captured significant market share because the collocation interval is 90 days. Workshop 3 Tr. Vol. VII 1597:10-20. This argument fails on the law and the facts.

First, the FCC has plainly identified the only circumstance under which Qwest is required to unbundled packet switching: all four conditions in Rule 319 must be met. Indeed, the FCC expressly found that these conditions constitute the "one limited exception" to its otherwise complete refusal to order BOCs to unbundle packet switching.<sup>13</sup> The FCC recently confirmed that Rule 319 states the only circumstance under which Qwest is required to unbundle packet switching when it reiterated the four conditions in the *Line Sharing Reconsideration Order*, and sought comment regarding whether this limited obligation should be expanded.<sup>14</sup> Currently, Qwest has no obligation to unbundle packet switching for any reason unless the four conditions are met. Moreover, the FCC has specifically held that "incorporat[ing] verbatim the criteria adopted in our *UNE Remand Order* to establish when packet switching will be made available,"<sup>15</sup> as Qwest has done in its SGAT, satisfactorily establishes a sufficient legal

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<sup>13</sup> *UNE Remand Order* ¶ 313.

<sup>14</sup> *Line Sharing Reconsideration Order* ¶ 63.

<sup>15</sup> *Kansas/Oklahoma Order* ¶243.

obligation. Thus, as a matter of law, Qwest has fully complied with the FCC's packet switching requirements.

In addition, the CLEC complaint is based on a faulty premise -- there is no requirement for CLECs to wait for Qwest to deploy a remote DSLAM in order to apply for collocation or deploy their own DSLAMs. The issue here is really one of timing. If a CLEC were to wait until Qwest deploys its own remote DSLAM and then submit a collocation application, it may take as long as 90 days for the collocation space to be provisioned. This reasoning is based on the faulty assumption that CLECs must wait for Qwest to actually deploy a remote DSLAM before they can submit a collocation application for the remote location. The assumption is flawed in at least two respects. First, Qwest has committed to disclose to CLECs the locations where Qwest has deployed remote DSLAMs and to provide a space availability report that indicates when there is no space at a location. Workshop 3 Tr. Vol. VII 1602:2-23. Further, Qwest agreed at the workshop to revise the SGAT to provide CLECs with additional information regarding Qwest's plans to remotely deploy DSLAMs as follows: when Qwest has made an affirmative decision to deploy a DSLAM at a remote location at a set time, upon request, Qwest will disclose that decision to the requesting CLEC. Thus, Qwest has agreed to provide the CLECs with information to assist them in determining where to submit a collocation application well before Qwest has actually deployed the DSLAM.

**D. Issue PS-1: Whether Qwest is Required to Allow CLECs to Place Line Cards into its Remote DSLAMs.**

The CLECs demand the ability to place line cards into Qwest remote DSLAMs, which is sometimes referred to as "plug and play." Rhythms Advanced Services Comments<sup>16</sup> at 5-7; Covad Initial Comments<sup>17</sup> at 8. This demand has no merit as a matter of both law and fact.

As an initial matter, Qwest has no obligation to allow CLECs to place line cards in Qwest's remote DSLAMs. In fact, the FCC recently requested comments regarding whether this kind of line card collocation is possible: "We also seek comment on the technical feasibility and practical considerations associated with different methods of providing such access . . . includ[ing] . . . the use of "plug in" line cards in remote terminal equipment that perform a function similar to that of a traditional DSLAM."<sup>18</sup> The fact that the FCC is considering whether to create a new obligation confirms that no requirement for Qwest to allow CLECs to install line cards in its remote DSLAMs currently exists.

Thus, this CLEC demand clearly seeks to impose new obligations on Qwest that are not required under the current law. As discussed above, such issues are beyond the scope of this narrowly focused section 271 proceeding. This proceeding is not an appropriate forum in which to impose new obligations. Yet that is exactly what the CLECs attempt to do here. As noted above, Covad admitted as much in the Colorado proceeding, and AT&T admitted as much in the

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<sup>16</sup> Testimony of J. Scott Bonney, Jr. on Behalf of Rhythms Links, Inc. for §271 Workshop - Advanced Services, dated August 22, 2000 ("Rhythms Advanced Services Comments").

<sup>17</sup> Initial Comments of Covad Communications Company Regarding Emerging Services dated January 24, 2001 ("Covad Initial Comments").

<sup>18</sup> *Line Sharing Reconsideration Order* ¶ 13.

Multistate 271 proceeding. Colorado 11/3/00 Tr. 155:17-22;<sup>19</sup> Multistate 1/18/01 Tr. 253:10-12.<sup>20</sup>

Finally, there is no evidence in the record to suggest that "plug and play" is technically feasible without imposing additional obligations on Qwest to unbundle packet switching in situations that are outside of the clearly defined circumstances under which packet switching is required.<sup>21</sup> The FCC has defined packet switching as "the function of routing individual data units, or 'packets,' based on address or other routing information contained in the packets[,] . . . includ[ing] the necessary electronics (e.g., routers and DSLAMs)."<sup>22</sup> Packet switching qualifies as a network element because it includes "all features, functions and capabilities . . . sufficient . . . for transmission, routing or other provision of a telecommunications service."<sup>23</sup>

Plug and play necessitates unbundled packet switching because individual line cards do not have the full functionality required to operate the DSLAM; rather, a line card is merely a sub-component of the DSLAM, with very little stand-alone functionality. As described at the workshops, ADSL line cards provide DSLAM functionality on a shared resource basis, *i.e.*, ADSL line card performs similarly to a modem pool in that DSLAM functions, including packetizing, are provided to end users on a first come, first served basis. Workshop 3 Tr. Vol. VII 1563:1-9. Further, an additional DSLAM card is required to address individual end users of served from the ADSL line card and switch packets from the ADSL line cards to the trunk card

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<sup>19</sup> See Exhibit A.

<sup>20</sup> See Exhibit B.

<sup>21</sup> As more fully discussed in section I.A. above, the FCC requires unbundled packet switching only in certain limited circumstances. *UNE Remand Order* ¶ 313.

<sup>22</sup> *UNE Remand Order* ¶ 304.

carrying data packets back to the ATM switch. This card, generically referred to as the CPU, is shared by all ADSL line cards in a DSLAM, which means that data packets for all users are commingled across the DSLAM platform. Taken together, these cards provide DSLAM functionality combined with addressing and switching. A CLEC's line card must be integrated into the DSLAM and must rely on the functionality of Qwest's DSLAM in order to comprise the features, functions and capabilities necessary to provide DSL service. Thus, plug and play requires unbundled packet switching. Whether providing an individual customer on an ADSL line card to a CLEC or providing an entire ADSL line card to a CLEC, the result is the same—unbundled packet switching.

Thus, allowing CLECs to install line cards in Qwest's DSLAM would effectively provide CLECs access to unbundled packet switching without regard to the limited conditions under which packet switching is required. As discussed above, the imposition of additional obligations is not properly within the scope of this section 271 proceeding. Because the CLEC demand for the ability to place line cards into Qwest remote DSLAMs would amount to unbundled packet switching in situations where packet switching is not required, this demand must be rejected. Qwest has implemented a legal obligation in the SGAT to unbundle packet switching in the limited circumstances required by the FCC. It is not required to unbundle packet switching in any situation other than those limited circumstances.

**E. Issue PS-5: Whether Qwest's Interim ICB Prices for Unbundled Packet Switching Prevent Section 271 Approval. [SGAT Section 9.20.3.4]**

The CLECs contend that Qwest cannot obtain section 271 approval unless it establishes uniform rate schedules for unbundled packet switching. Workshop 3 Tr. Vol. VII 1593:12-15,

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<sup>23</sup> *UNE Remand Order* ¶ 304, quoting *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 (1996) ¶ 262.

1596:8-12. The CLECs base their contention solely upon the existence of rates for packet switching rates that are presently determined on an individual case basis ("ICB"). *Id.* Again, the CLECs' argument has no merit.

As an initial matter, Qwest believes that this impasse issue will be moot. Qwest is currently developing rates for packet switching. Workshop 3 Tr. Vol. VII 1593:19-23. In the interim, Qwest will provide packet switching at ICB rates until the rates are determined. Workshop 3 Tr. Vol. VII 1593:19-23. Qwest believes that it will have established these rates prior to the time it files its section 271 application with the FCC, thus eliminating this issue.

Even if the issue were not moot, the CLECs' argument would fail as a matter of law. The FCC has expressly held that a section 271 application will not be rejected solely because permanent rates are not yet been established.<sup>24</sup> Rather, the mere existence of interim rates "will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set." *SBC Texas Order* ¶ 88. Qwest's interim ICB rates satisfy these requirements. There is no allegation that Qwest's current use of ICB rates is unreasonable under the circumstances. Further, AT&T acknowledged that the rates and rate element issues would be addressed an Arizona cost docket. Workshop 3 Tr. Vol. VII 1594:24-1595:7.

Moreover, Qwest agreed to add a provision to the SGAT specifying that the ICB packet switching rates will be subject to refunds or true-ups once the rates are established. Workshop 3 Tr. Vol. VII 1595:12-1596:7. Covad indicated that including such a provision would largely

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<sup>24</sup> Memorandum Opinion and Order, *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 of New York*, CC Docket No. 99-295, FCC 99-404 (rel. December 22, 1999) ("*BANY Order*") ¶ 258 ("a BOC's application for in-

address its concerns regarding paying ICB rates and would provide the proper incentive for Qwest to develop its packet switching rates. Workshop 3 Tr. Vol. VII 1595:21-1596:4. Qwest added the following new section 9.20.3.4 to the SGAT filed February 12, 2001 to address this concern:

9.20.3.4 The rates for each of the aforementioned Packet Switching rate elements are set forth in Exhibit A. To the extent the Packet Switching rates are interim, the rates will be subject to true up based on either mutually agreed to permanent rates or permanent rates established in a cost proceeding conducted by the Commission. In the event interim rates are established by the Commission before permanent rates are set, the rates in Exhibit A will be modified to reflect any interim rates established by the Commission. No true-up of rates will occur until permanent rates are established, unless mutually agreed to by CLEC and Qwest or otherwise ordered by the Commission.

Thus, there is no legal basis for the CLECs' legal position and Qwest added a provision that addresses the only factual concern the CLECs expressed. Therefore, this issue should be decided in Qwest's favor.

## II. LINE SHARING

### A. Issue LS-9: Whether Qwest is Obligated to Provide Line Sharing Over Fiber. [SGAT Section 9.4.1]

Covad and AT&T seek to impose new obligations, in addition to those the FCC currently imposes, on Qwest to provide line sharing over fiber. Workshop 5 Tr. Vol. 878:6-15 (Covad "hope[s] that the Arizona Commission takes it upon itself to make that change in law" and AT&T thinks "the Arizona Commission would be well advised to follow in the footsteps of the Illinois Commission" in adding new obligations"). Once again, this argument fails because Qwest is complying with its current obligations and this proceeding is not the appropriate forum to add new obligations.

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region interLATA authority should not be rejected solely because permanent rates may not yet have been

In the *Line Sharing Reconsideration Order*, the FCC clarified Qwest's current obligation:

where a competitive LEC has collocated a DSLAM at the remote terminal, an incumbent LEC must enable the competitive LEC to transmit its data traffic from the remote terminal to the central office. The incumbent LEC can do this, at a minimum, by leasing access to the dark fiber element or by leasing access to the subloop element."

*Line Sharing Reconsideration Order* ¶ 12. The CLECs do not dispute that Qwest complies with this current obligation. Qwest provides CLECs with the network elements to transport data from Qwest remote terminals including unbundled dark fiber,<sup>25</sup> DS1 capable loops,<sup>26</sup> and OCN.<sup>27</sup> Qwest also provides CLECs with the ability to commingle its data with Qwest's data.<sup>28</sup>

The FCC then acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent capabilities of the equipment ILECs have deployed. *Line Sharing Reconsideration Order* ¶ 12. Accordingly, the FCC initiated two further notices of proposed rulemaking to request comments to explore the feasibility of additional methods of providing line sharing over fiber fed loops.<sup>29</sup> Clearly, the FCC has not imposed any additional obligations, but has merely begun the process for considering whether to impose any such additional obligations. Nonetheless, the CLECs demand that the Commission impose additional line sharing obligations of the very kind the FCC intends to study through the comments it has requested.

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established for each and every element or nonrecurring cost of provisioning an element").

<sup>25</sup> See SGAT section 9.7.

<sup>26</sup> See SGAT section 9.2.

<sup>27</sup> See SGAT section 9.2.2.3.1. Qwest also offered to add the following sentence at the end of section 9.2.2.3.1: "Qwest shall allow CLECs to access high capacity loops at accessible terminals including DSX, FDPs or equivalent in the Central Office, customer premises or at Qwest owned outside plant structure (e.g., CEV, RT or hut)."

<sup>28</sup> See SGAT section 9.20 (unbundled packet switching).

<sup>29</sup> *Line Sharing Reconsideration Order* ¶ 12 ("For these reasons, we are initiating a Third Further Notice of Proposed Rulemaking today in the Advanced Services docket and a Sixth Further Notice of Proposed Rulemaking in

Specifically, the CLECs demand that Qwest delete a reference to copper loops in SGAT section 9.4.1, which describes Qwest's line sharing offering, and broaden the reference to include other loops.<sup>30</sup> These revisions would expand Qwest's line sharing obligations. As fully discussed above, this section 271 proceeding is not an appropriate forum for imposing new obligations. Moreover, as Qwest's witness explained, the CLEC proposal would render the SGAT's description misleading because Qwest cannot currently offer line sharing over anything other than a copper loop.<sup>31</sup>

Nonetheless, Qwest has offered to add the following language as a new section 9.4.1.1. to the SGAT:<sup>32</sup>

To the extent additional line sharing technologies and transport mechanisms are identified, and Qwest has deployed such technology for its own use, and Qwest is obligated by law to provide access to such technology, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access.

The CLECs refused to accept this offer, claiming that Qwest must do more.

The CLECs rely on a recent decision of the Illinois Commerce Commission ("Illinois Commission"), claiming that the Illinois Commission had ordered unbundling of next generation digital loop carrier.<sup>33</sup> However, the decision does not extend as far as the CLECs suggest. The Illinois Commission did not order Ameritech to provide line sharing over fiber. Instead, it merely ordered Ameritech to provide access to fiber subloops and line sharing over copper loops.

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the Local Competition docket that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.").

<sup>30</sup> Exhibit 5 Qwest 21, excerpt from transcript of Multistate workshop, at 94:6-15.

<sup>31</sup> Exhibit 5 Qwest 21, excerpt from transcript of Multistate workshop, at 90:16-91:6.

<sup>32</sup> The new proposed section 9.4.1.1 appears as the last page of Exhibit 5 Qwest 21, excerpt from transcript of Multistate workshop.

<sup>33</sup> Workshop 5 Tr. Vol. 873:3-874:20, 878:6-15.

The Illinois Commission specifically set out the UNEs it directed Ameritech to provide, including "Lit Fiber Subloops" and the "High Frequency Portion of copper subloops."<sup>34</sup> This decision provides no support for the CLECs' attempt to impose an obligation to require Qwest to provide line sharing over fiber.

Moreover, the Illinois Commission decision was based on the specific architecture deployed by Ameritech in its Project Pronto DLCs. There is no evidence in the record to support application of this fact-specific decision to Qwest's DSLAM architecture. In fact, Covad admitted that the decision does not extend to DSLAMs. Workshop 5 Tr. Vol. 875:13-16. Finally, the *Illinois Arbitration Decision* did not arise from a section 271 proceeding, but instead arose from the rehearing of decisions reached in interconnection agreement arbitrations.<sup>35</sup> As fully discussed above, this proceeding is not the appropriate forum for imposing additional obligations on Qwest. Therefore, there is no basis in law or fact for expanding Qwest's line sharing obligations in this proceeding.

**B. Issue LS-7: Whether Qwest is Obligated to Provide xDSL Service when it is Not the Voice Provider.**

The CLECs claim that Qwest should be required to continue to provide its DSL service to a customer that has decided to obtain voice service from another provider. Workshop 3 Tr. Vol. IV 8670:22-871:1; 871:17-872:10. This contention fails as a matter of law.

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<sup>34</sup> Arbitration Decision on Rehearing, *Covad Communications Company Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues; Rhythms Links, Inc. Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues*, Docket Nos. 00-312/00-313 (consol.), 2001 Ill. PUC LEXIS 205 (February 15, 2001) ("*Illinois Arbitration Decision*"), at \*94-\*95.

<sup>35</sup> *Illinois Arbitration Decision* at \*1.

The FCC recently confirmed that Qwest has no obligation to provide xDSL service when it is no longer the voice provider. *Line Sharing Reconsideration Order* ¶ 26 (ILEC is not required to provide xDSL service when it is no longer the voice provider). Indeed, the FCC left no room for doubt on this issue:

We deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL services in the event customers choose to obtain voice service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement.

*Line Sharing Reconsideration Order* ¶ 16. Thus, the CLECs' argument has no merit.

AT&T's claim that it could be disadvantaged if Qwest does not continue to provide DSL service is equally baseless.<sup>36</sup> AT&T suggested Qwest's termination of retail DSL service when its customer switches voice service to a competitor may present a barrier to switching.

Workshop 3 Tr. Vol. IV 870:22-871:1. This contention makes no sense because such a customer could obtain DSL service from another carrier in a line splitting arrangement with the CLEC voice provider. Moreover, a CLEC in that situation may choose to resell Qwest's DSL service to its voice customer. Workshop 3 Tr. Vol. IV 865:25-866:2. Thus, DSL service poses no barrier to CLEC entry: a CLEC can provide DSL service to its voice customer, or that customer can obtain DSL service from another provider.

**C. Issue LS-1: Whether Qwest must Provide the Burdensome and Costly Testing Requested by CLECs.**

Covad and Rhythms demand that Qwest revise the SGAT to insert an obligation to conduct a data continuity test as part of the line sharing provisioning process. Covad Initial

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<sup>36</sup> Despite the fact that AT&T is the dominant provider in the broadband market with its cable modem product, AT&T avoided responding to a request to commit to do exactly what it demands of Qwest, which is merely a competitor in the broadband market -- to continue to provide data service regardless of whether AT&T provides voice service. Workshop 5 Tr. Vol. IV 815-819. Indeed, after suggesting that it may not have the appropriate witness at the workshop to respond to the inquiry, AT&T flatly refused Qwest's request to take the issue as an action

Comments at 3; Workshop 3 Tr. Vol. IV 750:15-17. Such testing would require test gear that is compatible with the CLEC's chosen xDSL services. Workshop 3 Tr. Vol. IV 7438-744:23.

The FCC has clearly delimited Qwest's obligation regarding testing. Qwest's sole obligation is to provide CLECs access to the loop facility so that they can test for themselves. 47 CFR §51.319(h)(7)(i); *Line Sharing Order* ¶ 118;<sup>37</sup> *Line Sharing Reconsideration Order* ¶ 27. The CLECs have not alleged that Qwest has failed to fully implement this obligation. Instead, Covad demands that Qwest conduct testing that has no basis in the law. Because different CLECs deploy varying DSLAM equipment, this demand would force Qwest to incur the substantial burden and expense of obtaining a range of types of test gear that are compatible with the various CLECs' xDSL services, and making that gear available at various places in the network. Workshop 3 Tr. Vol. IV 743:8-744:23. Again, this demand is clearly beyond the scope of the FCC's current requirements and must be rejected as not appropriately raised in this proceeding.

**D. Issue LS-5: Whether the 10,000 Line Limit in Section 9.4.2.3.1 is Lawful and Appropriate. [SGAT Section 9.4.2.3.1]**

Covad is the only CLEC that takes issue with part (c) of the following sentence in section 9.4.2.3.1:

If CLEC elects to have POTS splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the POTS splitters will be installed in those Wire centers in one of the following locations: (a) in a relay rack as close to CLEC's DS0 termination points as possible; (b) on an ICDF to the extent such a frame is available; or (c) where options (a) and (b) are not available, or in Wire Centers with network access line counts of less than 10,000, on the Cosmic/MDF or in some other appropriate location such as an existing Qwest relay rack or bay.

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item, consult with the appropriate people, and bring back a response: Workshop 5 Tr. Vol IV 819:10-11 (Qwest: "Can we have a take-back on that?" AT&T: "No, I don't think so.").

<sup>37</sup> Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 01-26 (Rel. January 19, 2001) ("*Line Sharing Reconsideration Order*").

In particular, Covad seeks to be able to collocate a splitter on the Cosmic/MDF in every circumstance. Covad Initial Comments at 4.

Covad appears to base its argument solely on a belief that Qwest allowed a CLEC to avoid the 10,000 line limit in a large central office in Colorado.<sup>38</sup> Workshop 3 Tr. Vol. IV 819:3-10. Covad acknowledged that this situation occurred because the frame at issue was an IDF that became an ICDF, which does not face the 10,000 line restriction. Workshop 3 Tr. Vol. IV 819:11-18. Thus, this isolated incident in Colorado does not support Covad's request. More importantly, Covad offered no evidence of any similar situation in Arizona. Workshop 3 Tr. Vol. IV at 827. Thus, there is no factual basis for Covad's claim.

Regardless, this issue should be resolved in Qwest's favor. First, there is no obligation for Qwest to allow Cosmic/MDF splitter collocation in all circumstances. Second, Covad's proposal would preclude Qwest from recovering its legitimate costs that it incurred based on the Interim Line Sharing Agreement. Qwest is entitled to recover its just and reasonable costs of providing CLECs access to its facilities and equipment. *Iowa Utilities Board v. FCC*, 219 F.3d 744, 750 (8<sup>th</sup> Cir. 2000), *cert. granted* January 22, 2001. As Covad conceded at the workshop, the CLECs agreed to the 10,000 limitation in that agreement: "[W]e agreed to limit the places that we would ask for that type of splitter to be deployed to central offices that were under 10,000 subscriber lines." Workshop 3 Tr. Vol. IV 816:19-24. Based on the Interim Line Sharing Agreement, Qwest invested heavily in relay racks and bays for CLEC splitters collocated in a common area. Workshop 3 Tr. Vol. IV 817:21-818:12, 823:10-14. Covad now wants Qwest to

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<sup>38</sup> It is interesting to note that Covad has abandoned its earlier claim that this situation constituted discrimination. Although Covad described the situation as discrimination in the Colorado workshop, Covad made no such claim at the workshop in this proceeding. This about-face is likely attributable to two factors: Qwest's submission of conclusive evidence in the Colorado proceeding that established that there was no factual basis for any such claim, and the complete absence of any facts to support such a claim in the Arizona.

eat that cost. Moreover, Covad admits that the FCC has given Qwest the right to segregate its equipment. Workshop 3 Tr. Vol. IV 827:2-3. Finally, Qwest's position is eminently reasonable: Qwest indicated that it would remove the restriction for situations in which the current line splitter bays and racks have been fully utilized. Workshop 3 Tr. Vol. IV 818:6-12.

Thus, the 10,000 line limit is not only lawful and reasonable, but it is also necessary to ensure Qwest recovers its legitimate costs related to line sharing. Accordingly, Covad's demand must be rejected.

**E. Issue LS-4: Whether Qwest's Five Day Provisioning Interval is Lawful.  
[SGAT Exhibit C]**

Covad contends claims that Qwest's five day line sharing provisioning interval should be decreased to a single day. Again, although Qwest is exceeding its obligations under current law, Covad demands more. Here, Covad's inappropriate demand would result in significant discrimination against Qwest.

Although Covad was less frank in Arizona, Covad's witness was crystal clear in Colorado about Covad's key reasoning for demanding a shorter interval: Covad desires a "competitive edge" over Qwest in the provisioning of retail services using DSL technology. Covad's witness testified as follows:

We have proposed going from the five-day down to a one-day interval over a period of time. I don't think that's totally unreasonable. But the parity issue, no, I don't think that is appropriate. Just because their business plan and their customers are satisfied with the 10-day interval, it doesn't mean that all of the customers in the state of Colorado are satisfied with waiting 10 days for that service to be put in.

One of the things that we would like to offer to our customers is a better quality of service as being maybe one of the *competitive edges* that we can provide in entering in market. And in order to do that, we have to be able to differentiate ourselves.

Colorado 11/02/00 Tr. 37:23-38:11 (emphasis added).<sup>39</sup>

Covad misses the mark. The Act does not require Qwest to provide intervals that ensure CLECs a competitive advantage. This argument, like the CLEC argument against section 9.20.2.1.3, runs afoul of the teachings of the Supreme Court in the *Iowa Utilities Board* case. See section I.B., above. CLECs are not entitled to a competitive edge any more than they are entitled to a maximized profit. Instead, the FCC has clearly established the appropriate standard as nondiscriminatory access, measured by parity with Qwest's retail processes. In the *SBC Texas Order*, the FCC reiterated the standard for provisioning unbundled network elements, as follows:

[F]or those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in “substantially the same time and manner as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is equal to (*i.e.*, “substantially the same as”) the level of access that the BOC provides itself, its customer, or its affiliates, in terms of quality, accuracy, and timeliness.

*SBC Texas Order* ¶ 44. This standard applies where the BOC's “actual performance can be measured to determine whether [the BOC] is providing access to its competitors in ‘substantially the same time and manner’ as it does to itself.” *Id.* at ¶ 45. Only where there is no retail analogue should a different standard apply. *Id.*

The FCC has expressly determined that the retail parity standard applies to line sharing because there is a retail analogue:

As a general matter, the nondiscrimination obligation requires incumbent LECs to provide to requesting carriers access to the high frequency portion of the loop that is equal to that access the incumbent provides to itself for *retail* DSL service its customers or its affiliates, in terms of quality, accuracy and timeliness. Thus, we encourage states to require, in arbitration proceedings, incumbent LECs to fulfill requests for line sharing within the *same interval the incumbent provision xDSL to its own retail or wholesale customers*, regardless of whether the incumbent uses an automated or manual process.

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<sup>39</sup> A copy of the relevant excerpt from the Colorado transcript is attached as Exhibit D.

*Line Sharing Order* ¶ 173 (emphasis added). Thus, the FCC has established that the nondiscrimination standard for line sharing is retail parity and the interval for line sharing should be the same as the xDSL loop interval.

Qwest followed the FCC's directive when it set the line sharing interval at five days. Indeed, Qwest validated that the process flows for line sharing performed for CLECs and for its own DSL service are essentially the same. Stewart 12/5/00 Supplemental Affidavit at 14-15.<sup>40</sup>

Qwest's retail DSL provisioning interval is ten days, yet its line sharing interval is five days. Stewart 12/5/00 Supplemental Affidavit at 15. Thus, Qwest is already providing CLECs with a faster interval than required to comply with the parity standard. This five day interval plainly provides DLECs better than retail parity. Moreover, Covad's responses to discovery requests indicate that it allots only one hour to perform the required tasks after it receives a shared loop from Qwest.<sup>41</sup> Thus, the total provisioning interval for Covad of five days plus one hour would appear to give Covad the competitive advantage it seeks over Qwest's own interval of ten days.

More importantly, Qwest's performance results establish that Qwest is actually providing CLECs with better than parity provisioning intervals for line sharing. Qwest's installation intervals are reported in Performance Indicator Definition OP-4 -- Installation Interval, which is comprised of subparts A through E. Subparts A through C report products provisioned through Qwest's non-design flow and subparts D and E report products provisioned through the design

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<sup>40</sup> The Supplemental Affidavit of Karen A. Stewart, Emerging Services Updates for Colorado Workshop No. 4 on December 12-15, 2000, was filed in this proceeding on January 24, 2001, as Exhibit D to Qwest's Notice of Filing Emerging Services Materials ("Stewart 12/5/00 Supplemental Affidavit").

<sup>41</sup> Stewart 12/5/00 Supplemental Affidavit at 15, referring to Covad's response to discovery request, a copy of which is attached as Exhibit E.

flow.<sup>42</sup> Because line sharing is a non-design product that rarely requires a dispatch, the results for nearly all line sharing orders appear under OP-4C -- Installation Interval (Average Days) - No dispatches. Qwest's current report indicates that its actual provisioning interval for these line sharing orders is approximately five and one-half days.<sup>43</sup> Qwest's retail DSL service (formerly called "Megabit") is provisioned exclusively under the design flow, and is therefore reported in OP-4D and OP-4E.<sup>44</sup> Qwest's current report indicates that its actual provisioning interval for Qwest retail DSL service is approximately ten and one-half days.<sup>45</sup>

Qwest is generally meeting its five day line sharing interval. By Covad's own admission, that five day interval handily positions Covad to deliver finished service in less than six days<sup>46</sup> -- giving Covad a five day competitive edge over Qwest.

Qwest's five day line sharing interval is amply justified by both the law and the facts. Qwest's performance results establish that the line sharing interval Qwest provides to CLECs is approximately half the interval Qwest provides to its retail customers. Thus, as a matter of law and fact, Qwest has met -- and exceeded -- its obligation to provide line sharing intervals to CLECs at parity with the intervals it provides itself. Accordingly, Qwest requests that the Commission enter a finding that Qwest's five day line sharing interval complies with its section 271 obligations on this issue.

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<sup>43</sup> Qwest's performance results for all fourteen states, including Arizona, are posted on its website, at URL [www.qwest.com/wholesale/results](http://www.qwest.com/wholesale/results).

<sup>44</sup> The non-design categories in OP-4A through OP-4C do not contain any data on the actual provisioning of Qwest retail DSL service. However, because the class of service designation changes from POTS to DSL once retail Qwest DSL service is ordered, any provisioning will be tracked in OP-4 results, even though the orders are not actually for DSL service. Most of these orders are for changes to voice service, e.g., PIC and telephone number changes.

<sup>45</sup> See Qwest's performance results are posted on its website, at URL [www.qwest.com/wholesale/results](http://www.qwest.com/wholesale/results).

### III. CONCLUSION

For the reasons stated above, the Commission should find for Qwest on all impasse issues regarding packet switching and line sharing. With regarding to packet switching, Qwest has sufficiently established its legal obligation to provide packet switching in accordance with the law. There are no performance metrics for packet switching, and no CLEC has complained that Qwest is not adequately implementing that legal obligation. There is thus no need for the Commission to attach any conditions to its recommendation regarding Qwest's compliance with this element. With regard to line sharing, Qwest has sufficiently established its legal obligation to provide line sharing in accordance with the law. Qwest's performance measurements establish that Qwest is adequately implementing that legal obligation. Further, there are no unresolved CLEC complaints regarding Qwest's implementation of its line sharing offering.<sup>47</sup> Accordingly, Qwest requests that the Commission unconditionally recommend that Qwest is in compliance with its section 271 obligations regarding these two products.

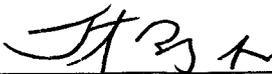
DATED this 20<sup>th</sup> day of March, 2001.

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<sup>46</sup> See Exhibit E.

<sup>47</sup> Rhythms submitted information regarding issues that arose with Qwest in deploying and installing POTS splitters to support line sharing. See Rhythms Links, Inc. Response to Staff's Information Request for Discovery. However, the subsequent investigation by both Rhythms and Qwest revealed that these problems were caused by Rhythms' own errors in splitter wiring and in choosing not to undertake the walk through step of the process. See Qwest's Response to Rhythms' Statement Regarding Line Sharing Performance. If Rhythms had not foregone the walk through step, it would have discovered these errors sooner. Thus, the issues raised by Rhythms did not result from Qwest errors and, in any event, these issues have been resolved.

**Qwest Corporation**

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\_\_\_\_\_

**EXHIBIT A**

1

1       BEFORE THE PUBLIC UTILITIES COMMISSION

2               OF THE STATE OF COLORADO

3               Docket No. 97I-198T

4               TECHNICAL WORKSHOP NO. 3

5 -----

6 IN THE MATTER OF THE INVESTIGATION INTO U S WEST

7 COMMUNICATIONS, INC.'S COMPLIANCE WITH SS 2711(C) OF THE  
TELECOMMUNICATIONS ACT OF 1996.

8 -----

9               PURSUANT TO NOTICE to all parties of

10 interest, the above-entitled matter was held on

11 November 3, 2000, at 116th and Huron Streets,

12 Westminster, Colorado, before Facilitator Hagood

13 Bellinger.

14

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16               APPEARANCES

17               (AS NOTED OF RECORD.)

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1 MR. STEESE: Let me ask a different way:  
2 SPC had a separate subsidiary that all of its services  
3 are provided through --

4 MR. ZULEVIC: They do.

5 MR. STEESE: -- and Project Pronto was  
6 designed for a specific subsidiary and would only  
7 accommodate the SPC DSLAM, correct; it would not  
8 accommodate alternative carrier DSLAMS?

9 MR. ZULEVIC: I do not know that for a  
10 fact that every even closure where they have that  
11 capability would only provide for that. I would think  
12 that some of those cabinets also -- or the equipment is  
13 also located in some CEBs, and so forth, where there  
14 very well may be additional space.

15 I don't know that for a fact, no.

16 MR. STEESE: And so -- one last summary  
17 question: To the extent that what you are asking here  
18 is a requirement to unbundle packet switching, that  
19 would be contrary to the current state of the law at  
20 the FCC, correct?

21 MR. ZULEVIC: Yes, I believe that would  
22 be the case.

23 MR. STEESE: That's all that I have.

24 MR. BELLINGER: Okay.

25 Doug?

EXHIBIT B

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COMMISSION

1

BEFORE THE IDAHO PUBLIC UTILITIES

2

NO. USW-T-00-3

3

IN THE MATTER OF US WEST COMMUNICATIONS, ) CASE

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INC.'S MOTION FOR AN ALTERNATIVE )

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PROCEDURE TO MANAGE THE SECTION 271 )

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PROCESS, )

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And related matters (Continued on )

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BEFORE

CHAIRMAN JOHN ANTONUK

January 18, 2001, 8:51 a.m.  
Workshop No. 2

Double Tree Hotel Riverside  
2900 Chinden Boulevard  
Boise, Idaho 83714

Reported by  
Cindy Leonhardt  
CSR No. T-217  
Volume I

1 to make the unbundling requirements more expansive  
2 for packet switching.

3 MR. STEESE: So just to make sure I  
4 understand, you acknowledge that you're asking the  
5 states here to go beyond that which the FCC has  
6 currently required.

7 MR. WILSON: I think that would be a legal  
8 conclusion from a technical witness.

9 MR. STEESE: And what's the answer from  
10 AT&T's position then? Are you asking us to go  
11 beyond that which the FCC currently requires?

12 MS. SINGER-NELSON: Yes.

13 MR. STEESE: Then with respect to that,  
14 Mr. Antonuk, in the Texas decision, the FCC clearly  
15 stated that 271 proceedings are not the appropriate  
16 place to try and decide policies of general  
17 construction.

18 This is a requirement of the CLECs to  
19 establish through 251-D, that they would be  
20 impaired, and that it's -- and/or it's necessary.  
21 And this is an improper forum for that. And so not  
22 only do we argue -- and one other thing. This is a  
23 SGAT that is supposed to comply with 251.

24 MS. SINGER-NELSON: Right.

25 MR. STEESE: And so the point here is they're

**EXHIBIT C**

BEFORE THE PUBLIC UTILITIES COMMISSION

2           OF THE STATE OF COLORADO

3           Docket No. 97I-198T - Workshop 3

4           \*   \*   \*

5   IN THE MATTER OF THE INVESTIGATION OF US WEST COMMUNICA-

6   TIONS, INC.'S, COMPLIANCE WITH SS 271(c) OF THE TELE-

7   COMMUNICATIONS ACT OF 1996.

8   -----

9           DRAFT TRANSCRIPT

10          Pursuant to continuance, the Technical Workshop

11   was held at 8:45 a.m., December 12, 2000, at 116th and

12   Huron, Westminster, Colorado, before Facilitators Hagood

13   Bellinger and Phil Doherty.

14           APPEARANCES

15   (As noted in the transcript.)

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1 location. You wouldn't make the decision to serve a  
2 neighborhood of 350 customers if you could only, in the  
3 limit, serve 15 of them. That doesn't make sense.

4 MR. STEESE: Qwest is not going to be  
5 willing to accept this change. We're taking the rule  
6 verbatim word for word.

7 The problem with the hypothetical  
8 Mr. Wilson raised is -- he's using the 350 which is the  
9 number that served out of remote deployed DSLAM and if  
10 we're out of remote deployed DSLAM the whole point is,  
11 there are not copper loops that go all the way to the  
12 central office capable of serving. That's the reason  
13 we remotely deploy. When you look at the rule, we have  
14 to have remotely deployed a DSLAM to trigger unbundled  
15 packet. If we remotely deploy, we remotely deployed in  
16 an area without their own deployment we couldn't serve.  
17 That's the whole point.

18 The argument Mr. Wilson is making doesn't  
19 make any sense in light of the fact that he seems to be  
20 suggesting that we would need to unbundle packet  
21 switching out of the central office, when that is never  
22 true. It is only when we have remotely deployed that  
23 such an obligation may be triggered.

24 MS. IZON: I think earlier you stated  
25 that you wouldn't have an issue with the "adequately"

1 being inserted. However, you had some clarifying  
2 questions and now it sounds like you are not accepting  
3 the "insufficient." Is that correct?

4 MR. STEESE: I would say that to keep  
5 things very clean we think the word "capable" and  
6 "adequately" -- the adverb is unnecessary. We think it  
7 says the same thing. To track the language verbatim, we  
8 were trying to see if there was a way we could get to  
9 agreement based on what I hear Mr. Wilson saying. We  
10 think it's contrary to the FCC's UNE remand order and we  
11 want to leave it exactly as it is to track the rule  
12 verbatim.

13 MS. IZON: You changed your position from  
14 when you first started speaking. Didn't you initially  
15 state that you didn't have an issue with "adequately"?

16 MR. STEESE: I think "adequate" is  
17 redundant. We would not have a problem with "adequately"  
18 because the word "capable" says the same thing. But to  
19 be very clear, we're talking the rule. We do not want  
20 to include the word "adequately" either. We would be  
21 willing to add it to close the issue, but we are not  
22 willing to add the word "insufficient," and we see it as  
23 we'll add that word if it will close it but that's all  
24 we'll do.

25 MS. IZON: I'd like to state for the

1 record, Covad takes issue with the word "capable" and  
2 "adequately" being synonymous. Can be incapable of  
3 serving some type of DSL but not the kind -- as the last  
4 section of the 9.20.2.1.2 reads, the XSDL service that  
5 the requesting carrier seeks to offer.

6 MR. STEESE: That would be an additional  
7 reason to reject it if parties think it adds something  
8 new. We think we're confined with the rule; in fact it's  
9 the exact language of the rule.

10 MR. BELLINGER: If you add "adequately"  
11 under that circumstance then you have to state what it  
12 is you're trying to provide service for. I think you're  
13 introducing an ambiguity that would cause problems later.  
14 So if you add "adequately" I think you need to specify  
15 why you wanted to do that.

16 MS. NELSON: AT&T agrees with Covad's  
17 problem and agrees that "adequately" should be added  
18 especially in light of the end of that rule where it says  
19 the point is, what does a CLEC have to offer? Is a CLEC  
20 effectively denied the ability to offer comparable  
21 services to what Qwest could offer?

22 MR. BELLINGER: I think you need to add  
23 something along that line.

24 MR. STEESE: That's exactly what the rule  
25 says and that's exactly what 2.20.1.2.1 says. Supporting

1 the XDSL services the requesting carrier seeks to offer,  
2 not Qwest. Capable of supporting the XDSL service that  
3 you want to offer.

4 MS. STEWART: Which may even be more  
5 technically challenging than ours. Copper loop might  
6 have met our requirements but not meet your requirements.

7 MR. BELLINGER: I think you're better off  
8 with the language that's there, personally.

9 MS. NELSON: I wanted to make a note for  
10 the record too that in paragraph 313 of the FCC order.  
11 The FCC notes that if a requesting carrier is unable to  
12 install its DSLAM at the remote terminal or obtain spare  
13 copper loops necessary to offer the same level of quality  
14 for advanced services, the incumbent LEC can effectively  
15 deny competitors entry into the packet switching market.

16 That's one of the other reasons why we  
17 will not agree to Qwest's language.

18 MR. STEESE: Let's declare an impasse and  
19 we can brief it.

20 MR. BELLINGER: I think that's where we  
21 are.

22 MR. WILSON: One quick response to  
23 Mr. Steese because he challenged my hypothetical.  
24 Let me be briefly clear.

25 There are many situations in Colorado

**EXHIBIT D**

1

1 BEFORE THE PUBLIC UTILITIES COMMISSION

2 OF THE STATE OF COLORADO

3 Docket No. 97I-198T

4 TECHNICAL WORKSHOP 3

5 -----

6 IN THE MATTER OF THE INVESTIGATION INTO U S WEST  
7 COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE  
8 TELECOMMUNICATIONS ACT OF 1996.

9 -----

8

9

10 PURSUANT TO NOTICE to all parties of interest,

11 the above-entitled matter came on for hearing at

12 8:30 a.m, on Thursday, November 1, 2000, at 1100

13 West 116th Avenue, Westminster, Colorado, before

14 Facilitators Hagood Bellinger and Phil Doherty.

15

16

17

18 APPEARANCES

19 (AS NOTED IN THE RECORD)

20

21

22

23

24

25

1 line-sharing the same as New York, maybe this is the  
2 appropriate way to take it. Right now, I have only got  
3 50 percent of my offices in New York City that are  
4 line-sharing enabled. And this is a state that has  
5 already provided 271.

6 I would like to say that since that has  
7 happened, the degree of cooperation has gone straight  
8 down the tubes. So that though we're beyond that, with  
9 respect to line-sharing itself, it is a much simpler  
10 process. You already know who the customer is. You  
11 know what the telephone number is. You know what the  
12 cable pair is. The CLECs provide the -- what other  
13 cross-connect data when they submitted the LSR. And  
14 again, right now, we're looking at a 20-day interval,  
15 is what we're looking at, so far as actually getting a  
16 service turned up on the average. That is totally  
17 unacceptable.

18 And, again, I think by this point, we  
19 should be doing much better, especially here in the  
20 Qwest states, where Qwest took the lead in providing  
21 line-sharing. And I feel it's very reasonable to look  
22 at some sort of a phased-in approach to decreasing the  
23 interval. We have proposed going from the five-day  
24 down to a one-day interval over a period of time. I  
25 don't think that's totally unreasonable. But the

1 parity issue, no, I don't think that is appropriate.  
2 Just because their business plan and their customers  
3 are satisfied with the 10-day interval, it doesn't mean  
4 that all of the customers in the state of Colorado are  
5 satisfied with waiting 10 days for that service to be  
6 put in.

7           One of the things that we would like to  
8 offer to our customers is a better quality of service  
9 as being maybe one of the competitive edges that we can  
10 provide in entering in market. And in order to do  
11 that, we have to be able to differentiate ourselves.

12           MR. BELLINGER: Thor.

13           MR. NELSON: I have two questions that I  
14 will pose. One is to Qwest and one is to the CLECs --  
15 that may be Covad specifically -- to try to understand  
16 this a little bit better.

17           My first question to Qwest is,  
18 appreciating that you have sort of a business practice  
19 of telling customers of a 10-day interval, however that  
20 10 day interval is created, I am wondering whether or  
21 not that is the actual interval that is experienced, or  
22 if the actual interval is different from the 10 days.  
23 That is to say, I could imagine easily it is less than  
24 that. I mean, a lot of intervals that Qwest has for  
25 retail services have a certain number, but the actual

**EXHIBIT D**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO  
DOCKET NO. 97I-198T

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IN THE MATTER OF THE INVESTIGATION INTO US WEST  
COMMUNICATIONS, INC.'S COMPLIANCE WITH § 271(C) OF THE  
TELECOMMUNICATIONS ACT OF 1996

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**COVAD COMMUNICATIONS COMPANY'S CONFIDENTIAL RESPONSE  
TO QWEST'S SECOND SET OF INFORMAL DISCOVERY**

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Pursuant to Rules 26, 33 and 34 of the Colorado Rules of Civil Procedure and Commission Rule 4 CCR 723-1-77, Covad Communications Company ("Covad") submits the following responses to Qwest Corporation's ("Qwest") Second Set of Informal Discovery, dated November 14, 2000.

The responses provided herein are subject to Covad's November 21, 2000 objections and the specific objections and qualifications noted herein. All of the documents being produced are Confidential and will only be supplied to those participants who have signed a Non-Disclosure Agreement.

**DISCOVERY REQUEST NUMBER 1**

1. Please describe each step you must take, after receiving a shared loop from Qwest, in order to provision xDSL service to a retail customer.
  - a. Please include in your description the mean average and median average amount of time required for each step.
  - b. For each step set forth in subsection (a), describe whether the step can be taken concurrently with any other step and, if so, describe the steps that may be taken concurrently.

- c. For each set forth in subsection (a), if the step cannot be performed concurrently with another step, please explain.

**RESPONSE TO DISCOVERY REQUEST NUMBER 1**

Covad incorporates by reference its earlier stated objections. Subject to and without waiving those objections, Covad responds as follows:

The Covad field service technician takes the following steps after Covad receives a shared loop from Qwest:

1. Review work order.
2. Drive to end user premise.
3. Verify telephone number of line sharing order at end user location.
4. Verify that an existing jack is located where end user wants xDSL service.
5. If jack does not exist, install inside wiring and jack to desired location.
6. If jack does exist, determine location and number of other phone jacks that serve the telephone number that contains the line sharing.
7. Install distributed filters on all jacks that have phone equipment behind the jack.
8. Install wall-mounted filters where necessary.
9. If phone equipment is at the same location as xDSL, install y-adapter into phone jack.

10. Install filter into one of the y-adapter ports and install phone equipment into the distributed filter.
11. Install xDSL service on remaining port of the y-adapter by plugging patch cord into jack and then into xDSL modem.
12. Power on xDSL modem and configure it.
13. Install complete.
  - a. Covad allocates one hour per line sharing install per field service technician. Covad has not done any time and motion studies on each of the detailed steps above.
  - b. No steps can be done concurrently.
  - c. All the functions that the field service technician must perform are serial. They cannot be performed at the same time. For example, the technician cannot configure the xDSL modem at the same time as running inside wiring because there will be no jack to plug the modem in until the placement of the wiring and jack is complete.

*See enclosed line sharing training materials provided to field service technicians.*

**DISCOVERY REQUEST NUMBER 2**

2. Please provide any documents that support your answer including, without limitation, process flows and records of retail orders.

**RESPONSE TO DISCOVERY REQUEST NUMBER 2**

Covad incorporates by reference its earlier stated objections. Subject to and without waiving those objections, Covad responds as follows:

Please see attached process flow for Covad's field service technicians. This flow process documents the steps necessary for completing a line sharing installation at the end user premise. See enclosed line sharing training materials provided to field service technicians.

Respectfully submitted,

COVAD COMMUNICATIONS COMPANY

*Laura Izon by: P. Deane*

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