BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman
JAMES M. IRVIN
Commissioner
MARC SPITZER
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'S BRIEF ON DISPUTED ISSUES RELATED TO SUBLOOP

May 21, 2001

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AT&T'S BRIEF ON DISPUTED ISSUES RELATING TO SUBLOOP

AT&T Communications of the Mountain States, Inc. and AT&T Local Services on behalf of TCG Phoenix (collectively "AT&T") hereby submit this brief addressing the impasse issues relating to Subloop.

I. INTRODUCTION

The United States Congress conditioned Qwest's 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 various state commissions participating herein (together referred to as a "Commission") are charged with the important task of ensuring that their state'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,

[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*").

competition in both the local and long distance markets.

Many a local competitor, including AT&T, has invested heavily 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 this brief on the impasse issues relating to the provisions of Qwest's SGAT that address packet switching, line sharing, dark fiber and subloop.

Through workshops, the Commission is conducting its investigation of both Qwest's 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.[2]

To demonstrate compliance with the requirements of section 271's competitive checklist, Qwest must show that "it has 'fully implemented the competitive checklist [item]... .'"[3] 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.[4] Qwest must prove each element by a preponderance of the evidence.[5] Furthermore, the FCC has stated that the most probative evidence is commercial usage along with performance measures providing evidence of quality and

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

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.[6]

The primary objective of the federal Telecommunications Act of 1996[7] (the "Act") was to end almost a century of monopoly control over the local telephone market and bring the benefits of competition to consumers. Foremost among the market-opening tools of the Act was the obligation imposed on incumbent local exchange carriers ("ILECs" or "incumbent LECs") in section 251(c)(3) to open their networks for use by competing carriers. In particular, section 251(c)(3) requires ILECs to provide requesting carriers with nondiscriminatory access to unbundled network elements. In this context, a network element is defined to mean "a facility or equipment used in the provision of a telecommunications service," including all "features, functions, and capabilities that are provided by means of such facility or equipment."[8] Granting competitive LECs unbundled access to the local loop is *paramount* in the effort to foster local competition.[9]

In response to the passage of the Act and the Federal Communications Commission's ("FCC's") implementing rules, AT&T and dozens of other companies invested billions of dollars in new telecommunications facilities and services. These companies took substantial risks in reliance on the promise of the 1996 Act to establish a

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[6] *Id.*, ¶ 47.
[7] 47 U.S.C. §151 *et. seq.*
[8] 47 U.S.C. § 153(29).
[9] *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 3696 ¶ 163 (1999) ("*UNE Remand Order*"); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499 ¶¶ 377 - 378 (1996) ("*Local Competition Order*").

regulatory framework in which they would have a fair chance to compete with the established incumbents. But implementation of the Act has been derailed by the ILECs' guerrilla warfare tactics of foot-dragging, litigation, and general intransigence in dealing with new entrants.

Thus, by all accounts, the ILECs are still monopolists with respect to their primary service offering -- local telephony -- and their local loop remains the quintessential bottleneck facility for competing telecommunications carriers. This indisputable fact has far-ranging consequences for the telecommunications industry, both for traditional voice services and new digital subscriber line ("DSL") services. Indeed, the FCC has recognized that ILECs can use their control over the local loop both to perpetuate their monopolistic dominance of existing voice markets and to dominate the emerging advanced services market, thus reducing CLECs' short-term and long-term viability. As a result, the FCC has consistently found that, absent unbundling of the loop element, the ILECs would retain the ability to use their bottleneck control over the facilities used to provide voice and DSL services to impede competition in both the voice and data market segments.[10]

To achieve the competition that Congress intended, this Commission must stay the course here and assure that CLECs have effective access to all Qwest loops. Consumers are increasingly demanding voice and high-speed services over a single line, and Qwest is already satisfying that demand today by aggressively marketing packaged voice and data offerings to their customers.[11] Critically, Qwest has made it clear that it

[10] *See generally, Local Competition Order* ¶¶ 162 - 201; *Deployment of Wireline Service Offering Advanced Telecommunications Capability,* Third Report and Order, CC Docket No. 98-147 (rel. Dec. 9, 1999) ("*Line Sharing Order*") ¶¶ 13 - 61.
[11] WS2-ATT-KLW-1, Attachment KW-5.

considers the ability to offer bundled voice and data services over a single loop a significant competitive advantage. The ILECs have also responded to consumer demand for bandwidth-rich DSL services through the deployment of next-generation loop architecture, which greatly enhances both the transmission functionality and the economies of their local loop plant.[12] There can be no doubt that the evolving loop architecture, which includes fiber-fed loops attached to digital loop carrier ("DLC") systems housed in remote terminals equipped with next-generation products such as line cards that combine both splitting and transmission functionalities, holds the potential for great consumer benefits. If, however, CLECs cannot access all of the functionalities of the loops that use next-generation transmission equipment, they would be unable to compete for the rapidly increasing number of consumers who are demanding a combined voice/data offering, because consumers will have only one carrier who can meet that demand -- the ILEC.

The ILECs' monopoly control over local loops gives them the incentive and the unique opportunity to use new advances in loop technology as leverage to shut down competition for *all* local telecommunications services, both voice and advanced services alike. Unfortunately for everyone but the ILECs, their efforts thus far have been enormously successful. Over the past year, despite the FCC's rules in the *UNE Remand* and *Line Sharing Orders* which were explicitly designed to encourage competition for advanced telecommunications services, the data CLEC industry has virtually collapsed. Some of those would-be competitors have already declared bankruptcy, and others are perilously close.

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[12] *Id.*

In the recent *Line Sharing Reconsideration Order*, the FCC took some key steps to reduce the incumbent LECs' ability to leverage their monopoly control over the loop in an anticompetitive manner by clarifying that the incumbent LECs' obligation to provide line sharing extends to situations in which the loop is served through a fiber-fed DLC at a remote terminal.[13] In that order, the FCC, rejecting ILEC arguments to the contrary, found that line splitting for CLECs must be available on terms and conditions equivalent to line sharing, without creating discriminatory excess costs or service disruption.[14]

Here, in this Qwest Section 271 investigation, this Commission has the important role of recommending to the FCC that Qwest not be allowed to enter the long distance market until competition is permitted to develop. Competition must not only be allowed to develop with regard to basic local service but also with regard to advanced services. Thus, the Commission must consider these impasse issues with this in mind. The over arching issue that the Commission must consider with regard to each of the following impasse issues is whether Qwest's proposed SGAT language enables competition to develop on a nondiscriminatory basis or whether the language impairs the CLECs' abilities to compete with Qwest.[15] If the language impairs the CLECs' abilities to compete, the Commission must find that Qwest has not satisfied its obligation to provide nondiscriminatory access to unbundled network elements set forth in Sections 251(c)(3) and therefore, Qwest has failed to satisfy Section 271 of the Act.

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[13] *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, FCC 01-26 ¶ 10 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").
[14] *Id.*, ¶¶ 18 - 23.
[15] *Local Competition Order*, ¶ 315.

II. DISCUSSION

A. Subloop

As explained in detail below, there is no more important catalyst to fostering facilities based competition than this Commission mandating efficient and cost effective access to various subloop elements, including unencumbered access to the Network Interface Device ("NID"). AT&T has proffered SGAT language which contemplates the FCC mandates on this issue, as well as provides the necessary protocol to alleviate Qwest's concerns and ensure efficient subloop access.[16] In the Colorado Workshop, which was the last workshop to conclude subloop issues, occurring the week of April 16, 2001, the parties were coming closer to terms relating to subloop access. However, because the workshop had to close before the parties were able to further contemplate a resolution to these issues, Qwest consented that the issues remain at impasse and be briefed while the parties "meet off line to determine if there is any room for negotiation on these issues.[17] The parties continue to negotiate; however, AT&T believes the Commission's insight, including reinforcement of FCC guidelines, will substantially assist on this issue.

The FCC has defined subloops "as portions of the loop that can be accessed at terminals in the incumbent's outside plant."[18] Under the FCC's *UNE Remand Order*, incumbent LECs such as Qwest are required to provide competitive carriers with access to subloops. In that order, the FCC found that "lack of access to unbundled subloops materially diminishes a requesting carrier's ability to provide services that it seeks to

[16] *See* Attachment 1.
[17] *See* Colorado Transcript 04/20/01 at pages 119, line 11 – 120, line 12.
[18] *UNE Remand Order* ¶ 206.

offer."[19] In a general way, the FCC found that access to subloops is an essential means to implementing the goals of the Act because:

> Access to unbundled subloop elements allows competitive LECs to self-provision part of the loop, and thus, over time, to deploy their own loop facilities, and to eventually develop competitive loops. If requesting carriers can reduce their reliance on the incumbent by interconnecting their own facilities closer to the customer, their ability to provide service using their own facilities will be greatly enhanced, thereby furthering the goal of the 1996 Act to promote facilities-based competition.[20]

Similarly, the FCC found that access to subloops is important for the development of emerging services:

> We also conclude that access to subloop elements is likely to be the catalyst that will allow competitors, over time, to deploy their own complimentary subloop facilities, and eventually to develop competitive loops. Lack of access to subloops discourages competitive LECs from attempting to combine their own feeder plant with the incumbents' distribution plant to minimize their reliance on the incumbent's facilities. We also find that lack of unbundled access to the incumbent's subloops would preclude competitors from offering some broadband services.[21]

More specifically, the FCC reasoned that substitutes to subloop access, such as an undivided loop, are not reasonable alternatives for carriers who have their own subloop plant.[22] Accordingly, the FCC stated that greater efficiency will be promoted by required unbundling of subloops because a requesting carrier "will not have to buy the entire loop in order to connect its own facilities with wiring on the customer premises."[23]

In order to provide competitive facility based services to Arizona customers, AT&T requires access to all forms of subloops including, the NID/MPOE Terminal. Specifically, through its hybrid fiber-coaxial ("HFC") network (also known as AT&T's

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[19] *Id.*, ¶ 205.
[20] *Id.*, ¶ 219.
[21] *Id.*, ¶ 205.
[22] *Id.*, ¶ 212.
[23] *Id.*

cable telephony product), AT&T provides competitive telephony service to end user customers and has deployed its own loop facilities in Qwest's 14-state region.[24] In sum, in most cases, AT&T runs its own network all the way to the customer premises and merely needs access to the "on-premises wiring," sometimes owned by Qwest.[25] This wiring is difficult, if not impossible for AT&T to duplicate.

AT&T does not dispute that when Qwest owns the on-premises wiring, it is considered a subloop element. However, AT&T's experience has created great concern about Qwest's ability to afford access to subloops as required by law and, accordingly, has created doubts as to whether Qwest has satisfied its obligations under the Section 271 checklist.

The issues identified by AT&T in the workshops on emerging services fall into two general categories. First are issues related to access of subloops in multi-tenant environments ("MTEs"), where a vast majority of the on-premises wiring issues exist. Second are more generic issues related to access to subloops. The parties' positions on these issues have been suggested in the two separate proposals for Section 9.3 of the SGAT introduced by the parties at the workshop. Qwest and AT&T have been contemplating these issues both in and outside the Arizona workshops. However in part because the parties ran out of workshop time to reach resolution issues which affect the state of facilities based competition in Arizona remain unresolved

[24] AT&T's Comments For The Multistate Workshop II, Dec. 19, 2000 at p. 11.

[25] *See* AT&T Proposal §9.3.3. Such wiring has also been referred to, variously, as "inside wire," "intra-building wire," or "campus wiring." AT&T notes that none of these terms has any settled meaning, although "inside wire" has been discussed by the FCC in numerous orders. See, e.g. 47 CFR 51.319(a)(2)(A). Nonetheless, AT&T's reference to on-premises wiring is deliberately broad and encompasses all wire or cabling of Qwest located on or within a customer premises. As will be discussed in more detail below, Qwest does not dispute that AT&T may obtain access to on-premises wiring, regardless of Qwest's terminology, but impermissibly mischaracterizes such wiring.

AT&T's discussion of most issues will describe the proposals of the parties, discuss the merits of the issues and propose a specific resolution, including a description of modifications required to the SGAT, if any. To assist in a consideration of these issues, AT&T's most recent proposal for access to subloops reflecting compromises and changes in positions (the "AT&T Proposal") is attached (Attachment 1).

1. Whether the SGAT's provisions for access to subloop elements at MTE terminals is consistent with the Act and the rules thereunder.

Qwest's SGAT, as it stands, is not consistent with the Act and the rules thereunder. A CLEC has broad flexibility to interconnect its own facilities at technically feasible points in an incumbent's network.[26] As part of its broad definition of access to subloop elements, the FCC has observed that there are numerous "accessible terminals" at which it may be technically feasible for a competitive carrier to interconnect.[27] The FCC has made clear that:

> "technically feasible points" would include a point near the customer premises, such as the point of interconnection between the drop and the distribution cable, the NID, or the MPOE. Such access would give competitors unbundled access to the inside wire subloop element, in cases where the incumbent owns and controls wire inside the customer premises. It would also include any FDI, whether the FDI is located at a cabinet, CEV, remote terminal, utility room in a multi-dwelling unit, or any accessible terminal.[28]

Such technically feasible points, therefore, include accessible terminals at an MTE--what Qwest has variously called open building terminals, closed building terminals, MTE terminals, etc.--and what AT&T and the FCC have defined as a NID.

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[26] *UNE Remand Order* at ¶¶ 207 and 209.
[27] *Id.*, ¶ 206.
[28] *Id.*, ¶ 210.

The FCC has provided some additional specific guidance in its recent *MTE Order*,[29] which more explicitly described the importance of access to subloops at an MTE. In that order, the FCC defined MTEs to include "apartment buildings (rental, condominium, or co-op), office buildings, office parks, shopping centers and manufactured housing communities."[30] The FCC has stressed just how significant access to MTEs is to assuring robust competition:

> Attention to the unique issues and challenges affecting access to MTEs is important because a substantial proportion of both residential and business customers nationwide are located in such environments. Thus, an absence of widespread competition in MTEs would insulate incumbent LECs from competitive pressures and deny facilities-based competitive carriers the ability to offer their services in a sizeable portion of local markets, thereby jeopardizing full achievement of the benefits of competition.[31]

In a finding that mirrors AT&T's experiences,[32] the FCC made a clear determination that incumbent LECs such as Qwest have used the MTE chokepoint as a means to severely inhibit competition. In the MTE Order the FCC found that "incumbent LECs are using their control over on-premises wiring to frustrate competitive access in

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[29] *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets,* WT Docket No. 99-217; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98; *Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network,* CC Docket 88-57; *First Report and Order and Further Notice of Proposed Rulemaking in* WT Docket No. 99-217, *Fifth Report and Order and Memorandum Opinion and Order in* CC Docket No. 96-98, and *Fourth Report and Order and Memorandum Opinion and Order in* CC Docket No. 88-57. (rel. October 25, 2000) ("*MTE Order*").

[30] *MTE Order* at ¶ 2. MTEs and multiple dwelling units ("MDUs") have been used synonymously in these proceedings, although AT&T notes that technically the term MTE is more expansive. The access that is the subject of the issues set forth in this brief relates to the MTE's in its most expansive sense.

[31] *MTE Order* at ¶ 3.

[32] In a recent Complaint that AT&T was forced to file in Washington State, Qwest actually padlocked its NIDs and pulled AT&T conduit and wiring ceasing facilities based competition in Washington. The Washington Utilities and Transportation Commission was forced to intervene to allow AT&T access to Qwest own NIDs. *See Second Supplemental Order Granting Motion to Amend Answer, Denying Emergency Relief and Denying (Qwest's) Motion for Summary Determination, AT&T Communications of the Pacific Northwest, Inc. v. Qwest Corporation,* UT-3120 (rel,. April 5, 2001).

multitenant buildings."[33] Further, FCC found "that incumbent LECs possess market power to the extent their facilities are important to the provision of local telecommunications services in MTEs."[34] Finally, the FCC recognized that "[i]n the absence of effective regulation, they therefore have the ability and incentive to deny reasonable access to these facilities to competing carriers."[35]

It is in the light of these findings of incumbent abuses that AT&T has raised numerous important issues about the means and mechanisms through which Qwest affords access to subloops in an MTE setting. AT&T's experience in such environments has indicated that Qwest has frustrated access to subloops in MTE settings. It has also suggested the need for a resolution of such issues to promote fair and appropriate access. Qwest has proposed that certain provisions of Section 9.3 afford adequate access to subloops in MTE environments. These provisions do not, and if they are adopted by this Commission, they will result in an inhibition to facilities based competition in Arizona.

Accordingly, AT&T has made appropriate counterproposals in its version of Section 9.3. Since the emerging services workshop, the parties have continued their work to negotiate a resolution of outstanding issues. Despite that work, the following issues remain:

A. Whether the SGAT's provisions for access to subloop elements at MTE Terminals is consistent with the FCC's definition of, and rules regarding access to, unbundled NID.

B. Whether the CLEC must submit LSRs to order subloops.

C. Whether an inventory of CLEC facilities must be created before CLECs may obtain access to subloop elements in an "MTE terminal."

[33] *MTE Order*, ¶ 6.
[34] *MTE Order*, ¶ 11.
[35] *Id.*

D. Whether Qwest must determine whether it owns the intrabuilding cable (or inside wire) before a CLEC may access subloop elements; if so, whether Qwest's processes for determining such ownership are appropriate.

E. Assuming Qwest's processes (including Qwest's determination of ownership, inventory of terminations, FCP and collocation processes) are appropriate, whether the intervals provided by Qwest for such processes are appropriate.

F. Whether CLEC is entitled to the option of having Qwest or CLEC run jumpers necessary to access subloops in MTE terminals regardless of the type of subloop ordered, or is section 9.3.5.4.5 the proper approach.

Without an effective resolution of these issues, Qwest's satisfaction of its obligations under Section 271 of the Act must be denied.

2. Whether the SGAT's provisions for access to subloop elements at MTE Terminals is consistent with the FCC's definition of, and rules regarding access to, unbundled NID.

AT&T has reason to be concerned that Qwest has ignored important distinctions contained in the FCC's rulings regarding access to NIDs and MTEs as described below, placing substantial doubt on whether Qwest's SGAT generally complies with the FCC's rules regarding access to NIDs. Specifically, Qwest completely ignores both the definition and the relevancy of the access to the NID in its current SGAT language and in the workshop.[36] Ultimately, AT&T requests that Qwest make all conforming changes necessary to comply with relevant FCC rulings and to allow simple and unencumbered access to the on-premises wiring. AT&T's proposed SGAT language provides these important changes while taking into consideration Qwest concerns.

Before the *UNE Remand Order*, the FCC considered the NID to be a "cross-connect device used to connect loop facilities to inside wiring."[37] In the *UNE Remand*

[36] *See* AZ Transcript 01/29/01 at pages 572, line 24 and 579, line 17.
[37] *UNE Remand Order* ¶ 230.

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."[38] The FCC specifically redefined the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.[39]

The importance is substantial; until the FCC redefined the NID in its *UNE Remand Order*, the local loop element ended at the NID located at the retail customer's premises.[40] In the *UNE Remand Order*, the FCC redefined the loop to extend from a distribution frame in the incumbent LEC central office to the demarcation point at the customer's premises. The demarcation point is where control of wiring shifts from the carrier to the subscriber or premises owner. Accordingly, the NID is not necessarily the demarcation point.[41] Instead, it is precisely where AT&T requires unencumbered access, a readily identifiable cross-connection point because it is the first cross-connection point after the incumbent LEC distribution plant crosses the property line of the building owner. Generally, for building wiring established after August 13, 1990, the NID will be at the Minimum Point of Entry ("MPOE"), which is either the closest practical point where the incumbent LEC outside plant facility crosses a property line, or the closest practical point where the wiring enters a multi-unit building or buildings. The

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[38] *Id.*, ¶ 233.
[39] *Id.*
[40] *UNE Remand Order*, ¶ 167.
[41] The FCC defined the demarc to mean "the point on the loop where the telephone company's control of the wiring ceases, and the subscriber's control (or in the case of some multi- unit premises, the landlord's control) of wire begins. Thus the demarcation point is defined by control; it is not a fixed location on the network, but rather a point where an incumbent's and property owner's responsibilities meet."

definitional change is largely non-impacting for single unit residential locations.[42] On the other hand, the change is significant for MTEs and was made because the prior loop definition "may not provide the competitor with actual access to the subscriber."[43] The portion that could be missing, in the case of certain MTEs in which the incumbent LEC claims to own the on-premise wiring, is a relatively short segment of wiring that runs between the NID or its functional equivalent and the point where ownership and/or control of the wiring clearly is in the domain of the landlord or building owner.

At the same time, by locating the NID, one does not necessarily define the point where incumbent LEC practical control of the facility ends. In multi-unit 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.[44] Thus, depending on the circumstances, the demarcation point may be located either at the NID, outside the NID, or inside the NID.[45] Accordingly, the FCC modified its definition of the unbundled loop, clearly stating the "revised definition [of the loop element] retains the definition from the *Local Competition First Report and Orde*r, but replaces the phrase 'network interface device'

[42] In a single dwelling unit, where the premises owner has provided the inside wire, the NID and the demarc will generally be at the same location. The same cannot be said for a multi-tenant environment.
[43] *UNE Remand Order,* ¶ 305.
[44] For example, where wiring was done after August 13, 1990, and where it was not the reasonable and non-discriminatory practice of the incumbent LEC to place the demarc at the MPOE, the building owner is responsible for specifying whether there shall be a single demarcation or whether individual demarcation points will be established at each customer's unit, no more than 12 inches within the walls of the unit, or as close as practical thereto.
[45] *UNE Remand Order,* ¶ 169.

with 'demarcation point' and makes explicit that dark fiber and loop conditioning are among the 'features, functions and capabilities' of the loop."[46]

These definitions are significant. In the *UNE Remand Order*, the FCC created a separate distinct section regarding access to the NID.[47] In doing so, the FCC made clear that unencumbered access to the NID is technically feasible and particularly important because denial of access "would materially diminish a competitor's ability to provide the services it seeks to offer,"[48] and "would materially raise entry costs, delay broad facilities-based entry and materially limit the scope of the competitor's service offerings."[49] Accordingly, the FCC indicated that "an incumbent LEC must permit a requesting carrier to connect its own loop facilities to the inside wire of the premises through the incumbent LEC's NID, or any other technically feasible point, to access the inside wire subloop element."[50]

Qwest serves MTEs primarily through one of two means – Option 1 or Option 3 wiring.[51] In the case of Option 1 wiring, the building owner owns and controls the on-premises wire and, as a result, there is no question that Qwest may not legally deny a competitor access to wiring at the premises. This is true because there are no Qwest-owned or controlled facilities used when the competitor directly connects to the building wire. Because there are no unbundled network elements involved, there is nothing to be negotiated with Qwest. In the case of Option 3 wiring, Qwest asserts control, if not ownership, of at least a portion of the wiring on the premises that may be used by the

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[46] *UNE Remand Order* at fn. 303.
[47] *Compare id.*, ¶ 202 *et.seq.*, with *id.* 230 *et.seq.*
[48] *Id.*, ¶ 237.
[49] *Id.*
[50] *Id.*
[51] *See generally*, Qwest's Cable, Wire Service Termination Policy filed as WS2-QWE-KAS-20.

connecting carrier. Because Qwest controls a portion of the facilities, the connecting carrier may in turn use some Qwest-controlled assets that there is no dispute must be unbundled as sub loop unbundled network elements. However, in light of the FCC's definition of NID discussed above, AT&T's access should not be encumbered just because Qwest owns the on-premises wiring.

In viewing the Qwest SGAT as well as its draft "Qwest's Standard MTE Terminal Access Protocol" provided to the parties at the workshop, there is a substantial possibility that Qwest is limiting access if Qwest owns the on-premises wiring. Some of the issues relating to this limitation are discussed below, *e.g.* Qwest is requiring an LSR if Qwest owns the wiring vs. if it does not. However, a brief review of Qwest's SGAT language will illustrate the discriminatory nature of Qwest's access protocol in violation of FCC mandate.

> 1) Section 9.3.5.4.5.1. requires AT&T and others to access Qwest facilities utilizing Qwest Standard MTE Access Protocol. That document as it currently stands substantially limits methods that CLECs can access the NID to capture the on-premises wiring, especially when Qwest owns the internal customer premises wiring. As discussed above, according to the FCC, the CLECs should be able to obtain unencumbered access to on-premises wiring through the NID. A substantially limiting technical access protocol will inhibit the CLEC's ability to access the NID.
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> 2) Pursuant to 9.3.3.5., Qwest must conduct an "inventory" before the CLECs can capture the wiring. (Note that the AT&T SGAT proposal allows for Qwest inventorying utilizing a set 10 day period.) Qwest can seek an unspecified number "extended interval" to conduct the inventory and the CLECs would have to wait for a ruling from the Commission if there is dispute on the extended interval. Thus, CLECs may have to wait for long periods of time to access their customers while Qwest is "inventorying" their NID.
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> 3) Pursuant to 9.3.3.7 and 9.3.5.4.3., Qwest unilaterally will decide if there is space in the NID to access the on-premises wiring. If not, Qwest will have 45 days to rearrange the MTE Terminal at a cost to the CLECs. It is highly unlikely that a CLEC's customers will wait 45 days for Qwest to rewire the NID stifling competition.

4) Pursuant to 9.3.5.4.4., a CLEC must submit an LSR to access the on-premises wiring when Qwest has indicated that it owns such wiring. LSR issues are discussed in detail below.

5) Pursuant to 9.3.6.4., a CLEC will be charged an unspecified non-recurring charge for time and materials for Qwest to inventory its own facilities. Qwest has indicated that these facilities are currently uninventoried, and Qwest does not even know if it owns the internal wiring

In sum, the Qwest SGAT as it stands has the potential to substantially limit competition in Arizona through its limited and narrow access protocols and unspecified costs. This is contrary to FCC intent. AT&T hopes that these issues may be resolved informally or through other workshops, and its proposed SGAT language. However, if there is no movement from Qwest on its current SGAT, facilities based competition will be inhibited in Arizona.

3. Whether the CLEC must submit LSRs to order subloops.

Qwest is required to provide CLECs with nondiscriminatory access to UNEs, including subloops.[52] In providing such access, Qwest must not discriminate among carriers, including itself. Qwest's requirement that a CLEC submit a local service request ("LSR") before obtaining access to a subloop element is a discriminatory practice not permitted by the Act.

Qwest's LSR requirements violate Qwest's nondiscrimination obligations because it creates a materially more burdensome means of access than Qwest affords itself. Before Qwest established a product for access to subloops, it is not clear that Qwest even bothered to keep a record of on-premises wiring that it owned, let alone applied stringent recording and access protocols. Where Qwest is the sole carrier accessing on-premises wiring, Qwest has not employed and, going forward, will not employ any extraordinary

[52] Qwest SGAT §§ 9.3.5.1, 9.3.5.4.4.

mechanism for access. Accordingly, the processes and procedures available to Qwest for access to such facilities are simple.

Such simplicity is appropriate for access to a facility that should be available at peppercorn rent. As will be described below, Qwest's proposal to require an LSR is expensive and relatively complex automated systems that they do not currently possess. AT&T's proposal is much simpler and effectively addresses Qwest's reasonable concerns.

Proposals of the Parties

Qwest's proposal for ordering access to subloop elements at the MTE terminal requires that a CLEC issue an LSR prior to access.[53] This LSR is not the type traditionally used for subloop access, and will cause AT&T to institute additional automated systems and personnel to provide the data base information. In contrast, AT&T's proposal does not contemplate that such information be supplied in LSR format, making it simpler and cost effective for the parties to convey the information. However, AT&T's proposal does represent a modification of AT&T's position articulated in the Emerging Services Workshop. Specifically, AT&T proposes that the CLEC submit to Qwest a statement specifying the cable and pair employed by the CLEC and the address of the MTEs in which AT&T has obtained access.[54] AT&T proposes that such information may be aggregated for all subloops accessed by AT&T at an MTE terminal.[55]

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[53] *Id.*
[54] AT&T Proposal §9.3.8.10.2.
[55] *Id.*

Further, AT&T proposes that such information will be provided by CLECs to Qwest *monthly*. This represents a significant departure from AT&T's earlier position.[56]

Concerns of the parties.

In the Arizona workshop, Qwest articulated a number of reasons why a CLEC should be required to submit an LSR before granting access to subloop elements at an MTE terminal, including concerns about billing and maintenance and repair. To be clear, AT&T believes that Qwest should be supplied the information necessary to be compensated for a CLEC's access and to effectively monitor, repair and maintain Qwest's facilities. The AT&T Proposal allows just that.[57]

However, Qwest asserts that among the detailed information it must obtain from a CLEC is carrier facility assignment ("CFA") field information.[58] It is AT&T's belief that the CFA information required of CLECs is merely the CLEC's cable and pair identification, and the AT&T Proposal specifies that CLEC will provide Qwest with that information.[59] Qwest has asserted cable and pair information must be supplied by a CLEC on an LSR.[60] In support of its assertion, Qwest stated that other incumbent LECs use CFA information to determine a "hand-off" point when accessing other kinds of UNEs. However, Qwest did not suggest that this approach was used universally for access to subloops.[61] Moreover, Qwest suggested that the OBF was creating a document

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[56] AT&T's earlier proposal suggested that a CLEC's statement could be submitted as infrequently as every six months.
[57] AT&T Proposal §9.3.8.10.
[58] Multistate Transcript 02/28/01 at 166, lines 1 - 4. Newton's telecom dictionary provides the following definition of a CFA: "A CFA is the identifier or location where a . . . CLEC . . .will interconnect with the incumbent Telco. It will come in one of three forms: ACTL/CLLI, APOT or tie cable pair." Newton's Telecom Dictionary (17th Ed. 2001).
[59] AT&T Proposal 9.3.8.10.2.
[60] Multistate Transcript 02/28/01 at p. 166, line 9.
[61] Multistate Transcript 02/28/01 at p. 167, lines 8 - 21.

to describe the appropriate protocol for access to subloops and committed to filing such document as a late filed exhibit once it had been finalized.[62] AT&T is unaware that Qwest has in fact filed such an exhibit. Accordingly, AT&T believes it is premature to defer to "industry standards."

Qwest's concerns about billing are two-fold, and principally related to timing and format. However, requiring a CLEC to issue a pre-access LSR is not the most reasonable approach for answering Qwest's concerns. In essence, Qwest believes that in all instances an LSR must be submitted so that Qwest may be assured of being compensated for use.[63] Clearly, however, the information necessary for Qwest to bill for access to subloop elements need not be submitted *before* a CLEC gains access.[64] Furthermore, the information Qwest's suggests must be supplied in an LSR for access to subloops, the CFR, is not necessary for a determination of what Qwest is owed.[65] Although Qwest asserts that the mechanization inherent in the LSR format is necessary, AT&T anticipates that the charges for subloop access at an MTE terminal will be very small[66] and will hardly warrant the expense of issuing an LSR.[67] The AT&T Proposal would allow for aggregation of these small amounts and regular reporting to Qwest. This means of compensation is entirely appropriate for the nature of the parties' access. Even Qwest admits that at least at a specific location, information about subloops can be aggregated.[68]

Like its concerns about billing, Qwest's concerns about repair and maintenance are not appropriately addressed by requiring an LSR. Qwest believes that its concerns

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[62] Multistate Transcript 02/28/01 at p. 169, lines 3 - 8.
[63] Direct Testimony of Karen A. Stewart, 07/21/00.
[64] Multistate Transcript 02/28/01 at 171, lines 17 - 23.
[65] Multistate Transcript 02/28/01 at 204, lines 15 - 23.
[66] Multistate Transcript 02/28/01 at 216.
[67] Multistate Transcript 02/28/01 at 145, lines 5 - 10.
[68] Multistate Transcript 02/28/01 at 175, lines 11 - 15.

about confusion or--more unbelievably--sabotage in service installation would be appropriately addressed by requiring CLECs to submit an LSR whenever a CLEC accesses subloops at an MTE terminal.[69] Fundamentally, all the scenarios articulated by Qwest where a CLEC may cause havoc with Qwest' own provisioning or repair may occur where Qwest does not own the on-premises wiring at all.[70] Yet, Qwest's SGAT only attempts to address these issues where Qwest owns the on-premises wiring. Further, Qwest fails to explain how these circumstances would be ameliorated by requiring CLECs to issue an LSR.[71] As stated above, Qwest will require each LSR to include a CFA field. Identifying the cable and pair to be used by a CLEC (and to be specified in the CFA field) typically involves actual physical access, so it would be difficult and less accurate too establish such information prior to a CLEC's actual access at the MTE terminal.[72] So it is a better practice to report such information after a CLEC has completed access. Keep in mind that AT&T agrees that it will supply the information Qwest desires, but will supply it after the CLEC obtains access--no later than a month in AT&T's most recent proposal.[73] Further, the AT&T Proposal attempts to answer Qwest concerns by requiring that the parties--both the CLEC and AT&T--clearly identify their facilities.[74] Such identification will make the parties' terminations and means of access clear so that a technician in the field can more readily identify and recognize both Qwest and CLEC subloop facilities.[75] Such labeling will be more helpful for resolving Qwest's concern than requiring a CLEC to issue an LSR before it obtains access.

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[69] Multistate Transcript 02/28/01 at 194 - 195.
[70] Multistate Transcript 02/28/01 at 198, lines 21 - 23.
[71] Multistate Transcript 02/28/01 at 195, lines 13 - 18.
[72] Multistate Transcript 02/28/01 at 180, lines 20 - 25.
[73] AT&T Proposal §9.3.8.10.2.
[74] AT&T Proposal §§9.3.8.3; 9.3.8.8.
[75] Multistate Transcript 02/28/01 at 199, lines 9 - 13.

Clearly, Qwest wrongly believes that requiring an LSR before granting access to subloop elements will alleviate all its concerns about access at MTE terminals. Unfortunately, Qwest's proposal to require a pre-access LSR raises definite and serious concerns for CLECs. Among these concerns is that by mandating that CLECs issue LSRs, Qwest will require CLECs to incur significant costs.[76] These costs will be incurred for access to an element that, in most instances, neither requires activity by Qwest to make available nor costs very much. Importantly, requiring a CLEC to issue an LSR before it may access a subloop at an MTE terminal is a significant gating factor that impedes direct and fair competition for customers at an MTE.

AT&T proposed resolution.

Before Qwest is deemed to have complied with Checklist Item 5, AT&T proposes that the Commission adopt AT&T's proposed Section 9.3.8.10, contained in Attachment 1 to this brief, which describes a mechanism for billing and remittance, and Sections 9.3.8.3 and 9.3.8.8, which require Qwest and CLECs to appropriately identify their facilities.

4. Whether an inventory of CLEC facilities must be created before CLECs may obtain access to subloop elements in an "MTE terminal."

AT&T believes that recent work between the parties has resulted in significant clarification and modification of the parties' position on this issue. Nonetheless, although the parties may be closer, significant issues remain which have the possibility of inhibiting CLECs' abilities to provide facilities based competition.

[76] Multistate Transcript 02/28/01 at 149, lines 5 - 10.

Proposals of the Parties.

Qwest's SGAT mandates that Qwest shall "complete an inventory of CLEC's terminations and submit the data into its systems" within five calendar days from a CLEC request.[77] AT&T now understands that the only inventory required by Qwest is of a CLEC's cable and pair terminations, and not as AT&T previously understood, an inventory that would require Qwest to "identify, tag, and determine where demarcation points exist."[78] AT&T previously understood this requirement to mean that Qwest must inventory Qwest's terminations at a terminal block. AT&T now understands that this procedure does not require Qwest or a CLEC to send technicians into the field to complete such inventory. However, Qwest is requiring that AT&T and other CLECs pay an unspecified non-recurring charge for "the time and materials required for Qwest to complete the inventory of CLEC facilities within the MTE such that subloop orders can be submitted and processed.[79] Instead of requiring an inventory, AT&T has recently proposed language that would require Qwest to clearly identify Qwest's facilities, including terminal blocks and cable pair.[80]

Concerns of the Parties

AT&T's concerns have been premised upon AT&T's belief that Qwest would require a CLEC to await an inventory of Qwest's subloop terminations at a connector block. AT&T maintained--and still maintains--that there is no practical purpose served by requiring a CLEC to await Qwest's inventory of subloop terminations. While it is

[77] Qwest SGAT §9.3.3.5.
[78] Multistate Transcript 02/28/01 at 35, lines 23 - 25. The confusion may be related to whether Qwest requires submission of APOT information or merely cable and pair information.
[79] Qwest SGAT §9.3.6.4.1.
[80] AT&T Proposal §9.3.8.3.

possible to inventory on-premises wiring in one of Qwest's local service databases, LFACS, if no such inventory exists now or the inventory is deemed unreliable, then a competitor seeking to use the wiring raises no new compelling reason to justify the undertaking.[81] The only purpose served is to give Qwest information that has operational value only to Qwest while at the same time substantially raising costs and delaying entry by potential competitors. The FCC is clear that Qwest, or any other incumbent LEC, should not be permitted to halt market entry by competitive carriers by seeking to negotiate charges for on-premises wiring based upon over-engineered processes or processes that require needless truck rolls, incumbent LEC oversight of work, "inventory charges" or other steps that simply raise costs, delay service delivery and discourage competition.[82]

AT&T also believes that any termination information, even of AT&T's cable and pair is of limited use to Qwest. As described elsewhere, on-premises wiring is fairly robust, and Qwest cannot demonstrate that inside wire has high rates of failure.[83] AT&T is unconvinced that supplying termination information will provide any significant improvement in Qwest's response to such low rates of failure. Qwest has also stated that it wants to make sure that its field technicians have the appropriate tools to be aware of both CLEC's and Qwest's access at MTE terminals. This awareness, Qwest asserts, will make sure that customers can promptly be provided service, migrated to new carriers and

[81] In fact, it appears that Qwest does employ LFACS to inventory pair assignments already. Multistate Transcript 02/28/01, p. 169. Thus, the need for an inventory can only be taken to mean that Qwest considers the records unreliable and endeavors to have the competitor pay for its database reconciliation.
[82] *MTE Order*, ¶¶ 18 - 19.
[83] Multistate Transcript 02/28/01 at 35, Lines 23 - 25. On very low rates of failure issues see, Multistate Transcript 02/28/01 at 39, Lines 1 - 2. On repair and maintenance issues see, generally, Multistate Transcript 02/27/01 at 215, lines 17 - 23.

not erroneously disconnected.[84] AT&T has proposed a less oppressive solution that would require the parties to clearly label their facilities.[85] AT&T has noted that such identification would be essentially more helpful than a detailed inventory.[86]

Finally, AT&T had concerns that Qwest's inventorying proposal would require the CLEC to pay an unspecified sum for Qwest to develop or augment an inventory system. AT&T notes that Qwest's SGAT does in fact provide that Qwest will charge for developing an inventory, although it makes clear that such charge will be for an inventory of CLEC's cable and pair.[87] Nonetheless, because it is AT&T's understanding that the CLEC shall provide Qwest with the CLEC's cable and pair information and Qwest is charging the CLEC to inventory its own facility, AT&T believes that this charge is unjustified and discriminatory

AT&T's Proposed Resolution

AT&T believes that Qwest should be required to clarify the precise nature of the inventory and the work involved in preparing it. AT&T further proposes that the SGAT be modified to make clear that either no information is required of the CLEC for Qwest to establish such inventory or that any information that may need to be provided by CLEC may be easily provided when CLEC contacts Qwest for a determination of ownership of on-premises wiring. In the alternative, AT&T requests that Section 9.3.8.3 of AT&T's proposal replace the inventory requirements of Sections 9.3.3.5 of the Qwest SGAT. AT&T also believes that any cost passed on to the CLECs so that Qwest can

[84] Multistate Transcript 02/28/01 at 40. Lines 19 - 20.
[85] AT&T Proposal §§9.3.8.3, 9.3.8.8.
[86] Multistate Transcript 02/28/01 at 43. Lines 5 - 9 and p. 54, lines 13, 20.
[87] Qwest SGAT §9.3.6.4.1.

inventory its own facilities is discriminatory. Accordingly, AT&T believes that Section 9.3.6.4.1 of the Qwest SGAT, providing for charge for establishing an inventory, be deleted.

5. Whether Qwest must determine whether it owns the intrabuilding cable (or inside wire) before a CLEC may access subloop elements; if so, whether Qwest's processes for determining such ownership are appropriate.

Like other issues, AT&T and Qwest have made some advances on this issue of how the parties determine ownership of on-premises wiring. However, although the parties have narrowed the gap on disputes over Qwest's processes for determining ownership, there are a few discrete disputes remaining between the parties.

The FCC has provided some guidance on an incumbent LEC's responsibility for determination of ownership. Specifically, in the FCC's *MTE order*, the FCC required the incumbent LEC to move minimum point of entry at an MTE, which would determine the extent of the parties' ownership of on-premises wiring, at the MTE owners request.[88] The incumbent must engage the MTE owner in good faith negotiations for relocating the MPOE that must conclude within 45 days.[89] Finally, an MTE owner may presume that the demarcation point between an incumbent LEC's facilities and the owner's facilities is at the MPOE if the incumbent fails to provide information on such demarcation point within 10 days of an owner's request.[90] Although this guidance was specifically limited to procedures between an incumbent LEC and an MTE owner, the principles underlying them are persuasive in resolving the issues presented here.

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[88] *MTE Order*, ¶ 54.
[89] *Id.*, ¶ 55.
[90] *Id.*, ¶ 56.

Proposals of the parties.

Qwest's proposal sets forth a single alternative for determining ownership of on-premises wiring. Qwest's SGAT allows Qwest to make a determination of whether it owns the on-premises wiring at an MTE within 10 days after CLEC's notification of its intent to provide service at such MTE.[91] The AT&T Proposal is more detailed.[92]

First, AT&T's proposal permits a CLEC to ask the MTE owner whether it owns the on-premises wiring or not.[93] Implicitly, AT&T's proposal allows the CLEC to rely upon an MTE owner's assertion that it owns the on-premises wiring. Where an MTE owner asserts ownership, a CLEC will access the on-premises wiring at the NID or elsewhere as negotiated with the MTE owner. Qwest's involvement in this arrangement is appropriately limited.[94]

If an MTE owner disclaims ownership or fails to respond to a CLEC's request, or if CLEC decides in the first instance to contact Qwest, the CLEC will ask Qwest whether it is the owner of on-premises wiring.[95] AT&T's proposal specifies how long Qwest may take in responding to a CLEC's request.[96] Unlike Qwest's proposal, AT&T anticipates that in some instances the MTE owner and Qwest may dispute ownership, or that ownership may be otherwise unclear. Under such circumstances, AT&T's proposal allows the CLEC to obtain access notwithstanding the dispute.[97] If a CLEC obtains

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[91] Qwest SGAT § 9.3.5.4.1.
[92] AT&T's proposal differs from the language proposed by Qwest during the Multistate Emerging Services Workshop.
[93] AT&T Proposal §9.3.8.2.
[94] AT&T anticipates that the parties will engage in a thorough discussion of access at the NID in an upcoming workshop.
[95] *Id.*
[96] *Id.* The AT&T proposal requires a response in no later than ten days. If Qwest has already confirmed ownership, or if Qwest is aware that another CLEC is accessing Qwest's subloop at the MTE, Qwest shall respond to CLEC within one day.
[97] *Id.* Impliedly, such access would be at the consent of the MTE owner.

access under such circumstances, the AT&T proposal will allow Qwest to begin billing for such access once Qwest settles the dispute.[98]

Finally, AT&T's proposal makes clear that Qwest will not charge a CLEC for its investigation of whether it owns the on-premises wiring.[99]

Concerns of the Parties

AT&T's proposal is designed to accommodate concerns AT&T has about Qwest's ability to confirm ownership of on-premises wiring. Qwest has admitted that its own records are not clear on ownership of on-premises wiring.[100] Qwest also admitted that in some, perhaps most, instances Qwest must actually dispatch a technician to determine ownership,[101] and engage the owner in negotiations for ownership.[102] AT&T's proposals will minimize the effect such uncertainty has on the CLEC's access.

Fundamental to AT&T's proposal is the CLEC's ability to contact the MTE owner directly to determine ownership. The *MTE Order* clearly establishes a presumption that the MTE owner has authority to make determination on ownership of inside wire.[103] Clearly, either party has an equal opportunity to ask the MTE owner about ownership of on-premises wiring.[104] Even Qwest has suggested that it would allow AT&T to make an inquiry of the MTE owner in order to determine ownership of on-premises wiring,[105] although Qwest maintained that the CLEC would have the burden of demonstrating that the MTE owner had a contract that gave the MTE owner ownership of

[98] AT&T Proposal §9.3.8.4.
[99] AT&T Proposal §9.3.8.3.
[100] Multistate Transcript 02/28/01 at 122, Lines 10 - 20 and 123, lines 16 - 19.
[101] Multistate Transcript 02/28/01 at 123, Lines 19 - 22.
[102] Multistate Transcript 02/28/01 at 124, Lines 13 - 16.
[103] *MTE Order,* ¶¶ 54, 56.
[104] Multistate Transcript 02/28/01 at 126, lines 18 - 21.
[105] Multistate Transcript 02/28/01 at 125, lines 12 - 15.

the on-premises wiring.[106] Qwest asserts that if AT&T did not demonstrate some such proof, a CLEC's access would be "conversion", and the CLEC would be presumably criminally or tortuously liable to Qwest.[107]

Qwest's position is clearly in conflict with the effect of and policy behind the *MTE order* and should be rejected.

AT&T's proposed resolution

AT&T proposes that Sections 9.3.8.2 and 9.3.8.4 be included in the Qwest's SGAT in lieu of Qwest's SGAT Section 9.3.5.4.1.

6. Assuming Qwest's processes (including Qwest's determination of ownership, inventory of terminations, FCP and collocation processes) are appropriate, whether the intervals provided by Qwest for such processes are appropriate.

The issue of whether the intervals proposed by Qwest for determination of ownership and conducting an inventory of terminations was premised on earlier positions of the parties. The changes in positions by the parties affect the issue of whether Qwest's proposed intervals are acceptable. Specifically, AT&T's modified proposals for both determining ownership and conducting an inventory now contemplate intervals similar to the ones Qwest has advocated.[108] To the extent that the Commission determines that AT&T's proposals are appropriate, this issue will be moot because such processes contemplate their own intervals. To the extent the Commission decides not to adopt AT&T's proposal, partially rejects them, or recommends another alternative, AT&T

[106] Multistate Transcript 02/28/01 at 125, lines 21 - 24.
[107] Multistate Transcript 02/28/01 at 131, lines 12 - 21.
[108] With respect to determination of ownership, AT&T's proposal allows, in essence, ten days for Qwest to make a determination. AT&T Proposal §9.3.8.2. This interval is the same as the interval set forth in Qwest's SGAT §9.3.5.4.1. However, the activities to be accomplished by Qwest under the AT&T Proposal and Qwest's SGAT in such 10-day interval are different.

requests that he consider the effect of the intervals as part of the totality of such processes.

Assuring that intervals are short is important. As AT&T has suggested, extensive intervals put CLECs at a competitive disadvantage.[109]

Although AT&T proposes that the processes and intervals for determination of ownership and inventorying/stenciling specified in AT&T's Proposal be accepted, to the extent that AT&T's proposals are not adopted, AT&T proposes that Qwest's existing intervals be clarified. AT&T understands that the longest interval for determination of ownership and inventorying by Qwest should not be any longer than 15 days.[110]

7. Whether CLEC is entitled to the option of having Qwest or CLEC run jumpers necessary to access subloops in MTE terminals, regardless of the type of subloop ordered, or is section 9.3.5.4.5 the proper approach.

The issue identified at impasse here is part of a larger category of issues regarding physical access to MTE terminals. It may be necessary for a proper resolution of this issue to consider and evaluate the broader issue of actual physical access at MTE terminals. Accordingly, although AT&T anticipates that the specific issue addressed above will be addressed, the Commission will necessarily review and offer guidance on the larger issue of physical access at MTE terminals. As part of that review, AT&T would expect that the Commission may recommend that AT&T's proposal for physical

[109] Multistate Transcript 02/28/01 at 144 - 148 and 152, lines 3 - 8.

[110] AT&T remains concerned with the language in Qwest SGAT 9.3.3.5 prescribing an unlimited extension of time for Qwest to seek an extension of time to inventory. This section should be stricken. At the same time, this is much shorter than the interval proposed in the Multistate Emerging Services Workshop for open building terminals (no longer than 30 days), Multistate Transcript 02/28/01 at 136, lines 1 - 5; and closed building terminals (no longer than 45 days), Multistate Transcript 02/28/01 at 137, lines 2 - 4.

access at MTE terminals[111] more closely comports with the law and sound policy, or may otherwise instruct the parties to achieve a more workable solution.

As a general matter, the FCC has clarified incumbent LEC unbundling obligations with respect to subloop elements important to MTE access. Basically, the incumbent LEC must provide unbundled access to any portion of the loop facility between two points of technically feasible access. A subloop is generally defined as any portion of the loop (which includes any incumbent LEC owned or controlled on-premises wiring) "that can be accessed at terminals in the incumbent's outside plant."[112] The FCC defined an accessible terminal as "any point on the loop where technicians can access the wire or fiber within the cable without removing the splice case."[113] To provide even further clarity, the FCC stated that an accessible terminal is any location and physical device where the cable and respective pairs are physically fastened in a manner that permits cross-connection to another facility and its pairs.[114]

At least one state commission has determined that an incumbent LEC's obligations to unbundle at any technically feasible point trumped the concerns of the incumbent over maintenance of network records and network security.[115] In this case, BellSouth would not allow MediaOne access to MPOE terminals because BellSouth asserted "it would make it impossible for BellSouth to ensure the safety and security of its network, and would make it equally impossible to maintain accurate records of the use

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[111] The relevant section of AT&T's proposed language for subloop access is 9.3.8.5.
[112] *UNE Remand Order,* ¶¶ 206 and 210.
[113] *Id.,* ¶ 206.
[114] *Id.,* ¶ 206, n. 395.
[115] Georgia Public Utilities Commission did in *In re: MediaOne Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.*; Docket No. 10418-U; *In re:* MediaOne Telecommunications of Georgia, LLC v. BellSouth Telecommunications, Inc., Docket No. 10135-U (rel. December 28, 1999) (hereinafter "*Georgia Order*").

being made of its network by other service providers."[116] The Georgia Commission found that the concerns could be adequately addressed through the implementation of appropriate procedures and that access to the MPOE Terminal/NID to connect with the internal customer premises wiring is technically feasible. Accordingly, the Georgia Commission ruled that MediaOne should be allowed access to the MPOE Terminal/NID to connect its customers.

Proposals of the parties.

As with the other issues considered above, because the language represents Qwest's attempts to more precisely address CLEC concerns, AT&T does not object to asking the Commission to resolve issues related to that language. Importantly, this fact would seem to require that a resolution of these issues be made broadly, rather than narrowly. Other sections of Qwest's SGAT that impinge on the general issue of physical access at MTE terminals are Sections 9.3.1.5, 9.3.3.6, 9.3.3.7, 9.3.3.8 and the Qwest Standard MTE Terminal Access Protocol.

The actual proposals made by Qwest and submitted for resolution vary greatly in some significant respects from Qwest's earlier proposals. Specifically, Qwest has eliminated its untenable distinction between open and closed MTE terminals (also known as building terminals).[117] Further, Qwest has nominally removed the formal requirement that the parties establish a field connection point ("FCP") in the context of MTE terminal

[116] *Georgia Order* at 5.
[117] *See* Qwest SGAT §9.3.3.

access.[118] Such movement, though welcome, indicates that even Qwest may have doubted its initial proposals' lawfulness or appropriateness.

Ignoring its changes in position, Qwest's proposals still generally lack credibility. As Qwest has repeatedly pointed out, although it strongly believes collocation principles apply to MTE terminal access, it has chosen not to apply them to MTE terminal access.[119] Further, Qwest's policies and treatment of different terminals seem arbitrarily rooted in its Standard MTE Terminal Access Protocol and its Cable Wire Termination Policy (in Option 1, one kind of access, in Option 3 another),[120] and Qwest maintains a dubious distinction between NID and certain MTE terminals.[121] It is under the light of Qwest's diminished credibility and the weight of the FCC's findings that Qwest's recent proposals must be evaluated.

Qwest's proposal for actual physical access has several components. Central to Qwest's proposal is the establishment of an MTE-POI in all cases in which a CLEC accesses on-premises wiring.[122] Although Qwest does not clearly describe what an MTE-POI is, AT&T believes that it is a separate cross-connection block. In this respect, the MTE-POI does not seem too different from the FCP.[123] Further, Qwest prohibits "temporary wiring or cutover devices." As indicated by the description of the issue

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[118] The FCP is still a requirement for access to "detached terminals." See Qwest SGAT §9.3.4. Qwest does continue to require the parties to establish and "MTE-POI" as will be discussed below.

[119] Multistate Transcript 02/28/01 at 32, lines 19 - 25 and 32, lines 1 - 9; Multistate Transcript 02/28/01 at 545 lines 23 - 25 (collocation application fee does not apply). AT&T strongly disagrees that collocation principles necessarily apply to MTE terminal access and does not waive any argument it may have in opposition to the applications of such principles. However, because Qwest ignores the application of collocation principles, argument here would be superfluous.

[120] WS2-QWE-KAS-19.

[121] For a general discussion of the importance of the NID definition and Qwest's attempt to avoid the NID definition, *see* Section 2 above. Multistate Transcript 02/27/01 at 204, lines 1 - 12 and 205, lines 10 – 15.

[122] *See* Qwest SGAT §9.3.1.5.

[123] AT&T has suggested that the FCP is in reality a form of SPOT frame which is a discredited form of access to UNEs and interconnection previously proposed by Qwest. FCP= SPOT frame, Multistate Transcript 02/28/01 at 45, lines 18 - 23.

above, Qwest provides that CLECs can only jumper between their own facilities and "intrabuilding cable" at an MTE terminal, but not in any other circumstances. Finally, Qwest proposes that more specific guidance be memorialized in a document entitled "MTE Terminal Access Protocol," which had not been entered into the record at the Emerging Services workshop, nor discussed and only recently provided to AT&T in another jurisdiction.[124]

The AT&T Proposal, Section 9.3.8.5 is, in comparison, the model of simplicity. In short, the AT&T Proposal affords a CLEC direct access. AT&T proposes that existing connector blocks at the MTE terminal may be used by a CLEC, CLECs may install its own connector blocks, and in the rare instances in which it might be necessary, CLECs may access subloop elements through a field splice.[125] Because AT&T's proposal does not require an MTE-POI, the parties need not resolve the issue of jumpering to the MTE-POI. Instead, AT&T's proposal allows the CLEC to perform all necessary jumpering.[126]

Concerns of the parties.

Qwest has raised numerous concerns about CLEC access to subloop elements at MTE terminals. Most of these concerns relate to fears that CLECs will in some way greatly increase the risk that the network will be adversely affected. As a general matter,

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[124] Qwest's proposal contains other provisions that AT&T finds objectionable for reasons outlined below, including Section 9.3.5.4.5.2.3, which mandates that CLEC is solely responsible for "service outages, equipment failures, property damage or any other damages to persons or property." AT&T finds this provision overreaching and redundant given the general terms of the SGAT that govern liability.

[125] In the AT&T Proposal, a field splice would be utilized only where insufficient slack exists to pull on-premises wiring to a CLEC's own terminal block. AT&T Proposal §9.3.8.6.3. *See* also Multistate Transcript 02/28/01 at 96, lines 3 - 16 and 97, lines 9 - 25.

[126] Both AT&T's and Qwest's proposal provides an additional form of access, a single point of interconnection ("SPOI"). *See* Qwest SGAT §9.3.3.7, AT&T Proposal §9.3.8.7. AT&T's proposal allows CLECs to request the establishment of a SPOI. Although Qwest's SGAT is not entirely clear on this point, the testimony of the parties does not reveal that this specific issue is in dispute.

AT&T notes that these concerns are very similar to the unfounded concerns originally voiced by incumbent LECs about affording LECs access to incumbent premises.

Qwest has generally overstated the risks associated with CLEC access to MTE terminals. As discussed previously, Qwest even acknowledges that on-premises wire does not break very often and has very low rates of failure.[127] However, Qwest has asserted that introducing multiple carriers to an MTE terminal "creates more opportunities" for numerous problems.[128] Qwest's assertion is premised on the fallacy that it is solely the CLEC that is "responsible" for such problems. Anytime any carrier works on a terminal, whether Qwest or a CLEC, problems are more likely to occur than if no work were to have occurred at the MTE terminal.[129] The minimal risk associated with multiple carriers accessing an MTE terminal is in a real sense the risk specifically contemplated by the Act. The logical extension of Qwest's reasoning, however, is to restrict all access to the MTE terminal, a result obviously antithetical to the purposes of the Act.

In addition to overstating the risks associated with access to the MTE terminal, Qwest impermissibly shifts the costs associated with such slight risk to the CLEC. In asserting that it may incur the cost of risk associated with CLEC access to MTE terminals, Qwest ignores the fact that CLECs would bear the cost of risk associated with Qwest's access to the same terminals.[130] As the record reflects, the real risk of a carrier's

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[127] Multistate Transcript 02/28/01 at 35, lines 23 - 25; Multistate Transcript 02/28/01 at 39, lines 1 - 2.
[128] Multistate Transcript 02/28/01 at 40.
[129] Multistate Transcript 02/28/01 at 43, lines 6 - 17; Multistate Transcript 02/28/01 at 44, lines 10 - 20. Furthermore, Qwest ignores the fact that the perils of accessing a building terminal exists whether Qwest's owns the on-premises wire or not.; Multistate Transcript 02/28/01 at 47, lines 4 - 10. Confusingly, then, Qwest fails to require similar constraints on access to NIDs where Qwest does not own the on-premises wire or not.
[130] Multistate Transcript 02/28/01 at 64, lines 20 - 25.

work at an MTE terminal is not the risk of damage to Qwest's subloop elements. Rather, the risk is to each carrier's end user customers who may be adversely affected by such work. Both a CLEC's customers and Qwest's customers are equally at risk to each carrier's work. An approach that would involve installation of a new terminal block, although it may minimize some risk, is expensive, and, especially in the early stages, would have an adverse effect on competition.[131]

Regardless, AT&T has agreed that CLECs, just like Qwest, should be required to follow generally accepted engineering principles when accessing MTE terminals.[132] AT&T's own proposal makes clear that AT&T will comply with such principles.[133]

Finally, AT&T believes that the Act mandates that costs for access must allow a competitor a meaningful opportunity to compete.[134] Qwest has stated in a very tentative way that it costs about $500 to $1000 to install a SPOI or separate box.[135] At some threshold the costs of such access limits the ability of a CLEC to gain access to subloop elements because the costs is impermissibly high. Especially in circumstances where, as a new competitor, a CLEC wins only one customer over in an MTE, the costs could be prohibitively expensive. The AT&T Proposal avoids such costs by not requiring additional connector blocks in all circumstances, only where necessary.[136]

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[131] Multistate Transcript 02/28/01 at 66, lines 7 - 16.
[132] Multistate Transcript 02/28/01 at 54, lines 13, 20. Qwest introduced photographs at the Emerging services Workshop that it alleged showed examples of MTE terminals accessed by CLECs. *See* Multi-State Exhibit 2-QWE-KAS-26. Qwest asserted that the photos depicted impermissibly shoddy access. AT&T countered that Qwest's own access to subloop terminals employed similar techniques and was equally suspect. *See* Multistate Transcript 02/28/01 at 43, lines 2, 18, 25. Ignoring the probative value of such testimony for the moment, the argument is moot: AT&T agrees that if the situation depicted in the photos violated generally accepted engineering principles, the situation must be remedied.
[133] AT&T's Proposal §9.3.7.1; last sentence of §9.3.8.6.3.
[134] *NY § 271 Order*, ¶ 269.
[135] Multistate Transcript 02/28/01 at 57, line 16.
[136] Multistate Transcript 02/28/01 at 61, lines 22 - 25.

AT&T's proposed resolution.

To resolve the general issue of physical access to MTE terminals, AT&T proposes that the Commission adopt AT&T's proposal Section 9.3.8.5. This section allows AT&T to use existing terminal blocks to install its own terminal blocks, and in the rare instances in which it might be necessary, to access subloop elements through a field splice. AT&T further proposes that Qwest's concept of an MTE-POI be rejected. Further, AT&T proposes that the onerous and one-sided liability provision of Qwest's SGAT Section 9.3.5.4.5.3.4 be eliminated as unnecessary. AT&T would agree to comply with provisions in the SGAT that mandate that access comply with generally applicable engineering principles, that connections be neatly dressed and the like. Finally, AT&T proposes that Qwest's MTE Terminal Access Protocol be revised to comply with the Commission's decision and, if necessary, that the commissions retain jurisdiction over review of the MTE Terminal Access Protocol to review compliance and monitor its implementation. By adopting such resolution, Qwest will have corrected its failure to provide the concrete and legal obligation to provide access to subloop elements in a nondiscriminatory manner at an MTE terminal. Otherwise, Qwest will fail to satisfy checklist item 5.

B. General Subloop Issues

In addition to those issues directly related to subloop access at an MTE, several general subloop issues remain. These issues had been identified as follows:

A. Whether Qwest must provide access to copper feeder and fiber subloops.

B. Whether it is necessary or appropriate for Qwest to require a separate process (SRP) for requesting additional subloop elements.

C. Whether the rate for loop facilities on a campus, including cabling between buildings, should be the same as distribution subloop or priced as a separate elements.

Of these issues, two have been resolved by a compromise by AT&T described below and are no longer in dispute between Qwest and AT&T. The third remains in dispute, but as the parties have noted, implicates, in part, the pricing proceedings, if any, in each state.

1. Whether Qwest must provide access to copper feeder and fiber subloops and whether it is necessary or appropriate for Qwest to require a separate process (SRP) for requesting additional subloop elements.

AT&T has recently agreed to a compromise which would remove these two related issues as impasse issues between AT&T and Qwest.[137] That compromise involves AT&T's agreement that copper feeder and fiber subloops would be deemed "nonstandard" subloop elements and would be available only through Qwest's "Special Request Process."[138] AT&T continues to believe that access to both copper feeder and fiber subloops are technically feasible and, in some instances, have actually been provisioned by Qwest.[139] Nonetheless, AT&T will not ask that Qwest develop a separate offering for these items at this point.

AT&T anticipates, however, a thorough discussion of Qwest's Special Request process in the General Terms and Conditions Workshop. AT&T's compromised position is premised on the belief that Qwest's Special Request process will be a meaningful,

[137] This compromise was reached at the Colorado Emerging Services Workshop on April 20, 2001.
[138] AT&T notes that in the Colorado Emerging Services Workshop, Qwest and an intervenor, Yipes Transmission, Inc., agreed to a form of access to fiber subloops which will be memorialized by Qwest in the form of SGAT language to be included in Section 9.7, Dark Fiber, of the SGAT. Provided the language is satisfactory among the parties, and in addition to the compromise described in this brief, the issue of access to fiber subloops is no longer in dispute among the parties.
[139] Multistate Transcript 03/01/01, at 17 - 19 (describing access to copper feeder plant in Colorado by Sunwest, Inc. [aka Kings Deer]).

efficient and expedient mechanism for obtaining access to copper feeder and fiber subloops.

2. Whether the rate for loop facilities on a campus, including cabling between buildings, should be the same as distribution subloop or priced as a separate elements.

This issue may deceptively appear as purely a pricing issue. Certainly, AT&T believes that this issue has pricing implications. However, it is important to consider the issue in the context of Qwest's proposed SGAT in order to appreciate the more general, structural issues involved.

In fact, it is probably more accurate to address the deeper issue implicated here -- whether Qwest's zoology of subloop elements makes sense. Qwest establishes two broad categories of subloops: feeder and distribution.[140] In Qwest's view, feeder may originate in a central office and terminate at the FDI or, in some instances, at an MPOE or elsewhere on a customer premises.[141] Distribution may originate at the FDI and terminate on a customer premises.

At the customer premises, however, the orthodoxy of Qwest's approach breaks down. Qwest establishes a third, very specific category of subloop elements--not feeder and not distribution--that Qwest describes as "intrabuilding cable." Such intrabuilding cable originates at a terminal, typically near the MPOE, and terminates at a demarcation point at or near customer premises equipment. Intrabuilding cable is located on a customer premises and may traverse riser and conduit on its journey to the end user's telephone equipment. However, Qwest specifically excludes from this description of "intrabuilding cable" cable that may exist on a customer's premises that may extend from

[140] Multistate Transcript 02/27/01 at 135.
[141] Multistate Transcript 02/27/01 at 138.

or between buildings in a campus setting. Instead, such "intra-campus" wiring is considered merely a type of distribution, no different than the cable from an FDI through a neighborhood to a customer's home.

Qwest's hierarchy of subloop elements is intended by Qwest to rationalize a pricing structure. That pricing structure will demand that a CLEC who acquires "distribution" from a terminal at an MPOE, for example, between two buildings in an office park, to pay the same amount as a CLEC who acquires distribution from the FDI to a customer's home. That structure will also allow a CLEC who accesses "intrabuilding cable" to pay a different, presumably cheaper price for a piece of wire that may extend farther than intracampus wiring. Qwest's distinction is wholly arbitrary and not supported at law. In fact, the FCC reflects a more common-sense approach when it defines "inside-wire" in the *UNE Remand order*:[142]

> Although inside wire typically consists of junction and utility boxes, riser cable and horizontal distribution wiring within and apartment building, it can also include the loop facility within a campus, a commercial park, or a garden apartment complex. We note that Teligent prefers the term "intrabuilding wiring," to emphasize that the plant in question is not always inside the customer premises, but may, especially in multiunit buildings, exist primarily within the landlord's, rather than the subscriber's premises. Yet even the term "intrabuilding wire may suggest limitations that do not apply in some situations because "inside" wire is often out of doors, as in the case in garden apartments ad campuses, among other places."[143]

Qwest has not demonstrated that its proposal to distinguish "intrabuilding cable" from campus wiring is anything but arbitrary.[144] Further, Qwest has never asserted that it is technically infeasible to access campus wiring

[142] *UNE Remand Order,* ¶ 170.
[143] *Id.*
[144] Multistate Transcript 02/27/01 at 144, lines 1 - 18.

without access other portions of Qwest's distribution plant.[145] Qwest attempts to distinguish campus wiring and "intrabuilding cable" because the methods involved in their placement[146] may warrant pricing campus wiring differently than both "distribution" and "intrabuilding cable, but do not warrant requiring CLECs to pay distribution rate elements for campus wiring.[147] Ultimately, if AT&T is required to pay Qwest's "distribution" rate elements for campus wiring, it will pay twice: once for Qwest's distribution plant and once for building its own distribution plant. The FCC has stated very plainly a CLEC cannot and should not be required to do:

> Also, as a rule, requesting carriers that supply their own facilities cannot afford to pay twice—first for the facilities they self-provision and again for the incumbent's loop, including the portion they do not utilize. We agree [that] unbundling subloops provides greater efficiency for the requesting carrier because the carrier will not have to buy the entire loop to interconnect its own facilities with wiring on the customer's premises. If competing carriers that need only a portion of the loop must either pay for the entire loop or forego access to that loop altogether, many consumers will be denied the benefits of competition.[148]

The logic applied by the FCC to the proposed requirement that CLECs gain access to subloops only through acquiring the entire loop applies with equal force here, where Qwest asserts that CLECs must pay for the entire distribution part of a loop when they access only a portion.[149]

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[145] Multistate Transcript 02/27/01 at 138, lines 3 - 25.
[146] Multistate Transcript 02/27/01 at 149, lines 11 - 17.
[147] Qwest has offered testimony that approximately 60-70% of Qwest's loop costs are allocated to distribution. Multistate Transcript 02/28/01 at 89, lines 17 - 18.
[148] *UNE Remand Order,* ¶ 212.
[149] In the Multistate Emerging Services Workshop, the parties put a finer point on the issue of what campus wiring would cost. Using the example of rates set in Utah, Qwest asserted that the rate for the entire loop is $14.41. Multistate Transcript 02/28/01 at 88, lines 9 - 14. Qwest also asserted that in Utah, the price for the distribution element—the price a CLEC would be charged for access to campus wiring--would be $10.66. Multistate Transcript 02/28/01 at 88, line 17.

AT&T's proposed resolution.

AT&T's proposal eliminates the arbitrary approach adopted by Qwest and describes a single category that applies to all wiring owned or controlled by Qwest on a customer premises: "On-premises wiring."[150] Accordingly, on-premises wiring includes Qwest's intra-building cable and also cable between buildings on a customer premises. Not only does AT&T's proposal more closely track the FCC's language, it provides a clearer, more definite approach to access to wiring on a customer premises. Accordingly, AT&T believes such a definition will make clearer the access afforded when AT&T obtains access on a MTE at a building terminal. Further, AT&T's proposal will conform to AT&T's advocacy before the commissions in SGAT cost cases, if any. A less preferable alternative, if only because it would create a separate, but counter-intuitive set of products, would be to establish campus wiring as a separate element.[151] This alternative would nonetheless achieve the goal of not requiring duplicative payments of CLECs.

III. CONCLUSION

If Qwest's SGAT language is not modified to correct the problems outlined in this brief, for the reasons stated, this Commission should find that Qwest has failed to comply with its obligations to provide nondiscriminatory access to unbundled dark fiber (checklist items 2, 4 and 5), to unbundled subloop (checklist items 2, 4 and 5), to unbundled packet switching (checklist item 2) and to provide the unbundled local loop

[150] *See* AT&T Proposed Language Section 9.3.3. AT&T's description of On-premises Wiring is meant to be as expansive as the FCC's definition of "inside wire" in the *UNE Remand Order*. AT&T's desire to use the term "on premises wiring" rather than "inside wire" is meant to avoid any residual confusion Qwest or any other party might attribute to such term.

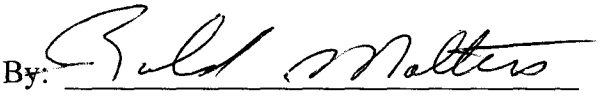
[151] Multistate Transcript 02/27/01 at 196, lines 6 - 12.

(checklist item 4) of Section 271 of the Act.

Dated this 18th day of May 2001.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC., AND AT&T LOCAL SERVICES

By: 

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9.3 Sub-loop Unbundling

9.3.1 Description

9.3.1.1 An unbundled Sub-loop network element is defined as any portion of the Loop for which access is technically feasible. Access is presumed technically feasible at (i) any point on the Loop facility where technicians can access the wire or fiber within the cable without removing a splice case to reach the conductor within case, e.g., a pole, pedestal, Feeder Distribution Interface (FDI), Serving Area Interface (SAI) or Minimum Point Of Entry (MPOE), (ii) at any point that this commission, the FCC or a commission in another state has found technically feasible, or at any point otherwise determined to be feasible or designated as an "accessible terminal" pursuant to Existing Rules, or (iii) any device on the Loop facility that can reasonably accommodate cross-connection or splicing of pairs.

9.3.1.2 Standard Sub-loops available.

(a) Unbundled Distribution Sub-loop

(1) Two-Wire/Four Wire Unbundled Distribution Sub-loop

(2) Fiber Distribution Sub-loop

(3) DS1 Capable Unbundled Distribution Sub-loop

(b) Unbundled Feeder Sub-loop

(1) DS1 Capable Unbundled Feeder Sub-loop

(2) Continuous Copper Unbundled Feeder Sub-loop

(3) Fiber Unbundled Feeder Sub-loop

(c) On-premises Wiring

9.3.1.3 Any Sub-loop not identified in Section 9.3.1.2 shall be made available to CLEC by Qwest upon request of CLEC on the terms and conditions set forth in this Section 9.3.

9.3.1.4 A CLEC may, at its option, access or connect to any on-premises Sub-loop element at any technically feasible point, regardless of whether a Sub-loop Single Point of Interconnection (or SSPOI) exists or is subsequently established at that premises, as provided in Section 9.3.8.

Technically feasible points for access to On-premises Wiring include, but are not limited to, a pre-existing NID, regardless of location, building terminal, regardless of location, or any other cross-connection devices or terminals, regardless of location, provided only that the facilities terminating on at least one side of the device or terminals are owned or controlled by Qwest. Qwest will not, in any manner, restrict or delay CLEC access to such technically feasible points of interconnection and, at its option, the CLEC may either re-terminate the On-premise Wiring connecting to a customer (for which service has been ordered) to the CLEC's facility or request that Qwest do so on its behalf. Qwest's decision to deploy a SSPOI in no manner prevents or limits a requesting CLEC's option of using any other technically feasible connection point at that location

9.3.2 Distribution Loops

9.3.2.1 The Two-Wire/Four-Wire Unbundled Distribution Loop is a Qwest provided facility from an accessible terminal in Qwest's distribution plant, including but not limited to the Feeder Distribution Interface (FDI) located other than on the retail customer's/MTE premises to the demarcation point at the customer's premises. The Two-Wire/Four-Wire Unbundled Distribution Loop is suitable for, but not limited to, local exchange-type services.

9.3.2.1.1 A CLEC may request that the Two-Wire/Four-Wire Distribution Loop be free of load coils, excess bridge taps and loop back devices. Such sub-loops are referred to as conditioned sub-loops. When CLEC requests a conditioned Unbundled Distribution Loop and there are none available, Qwest will verify that the requesting CLEC wants Qwest to "condition" a Sub-loop, if technically feasible. When so directed by the CLEC, Qwest will "condition" the Sub-loop by removing load coils and excess bridge taps (i.e., "unload" the Loop) or any other device that may impair technically feasible transmission.

9.3.2.2 The Fiber Distribution Sub-loop is a Qwest provided fiber facility from an accessible terminal in the distribution plant of Qwest but not on the retail customer's/MTE premises to the demarcation point at the customer's premises. Such a facility will generally be provided unlit. However, at the request of the CLEC and to the extent technically feasible, Qwest will provide the necessary electronics to light the fiber.

9.3.2.3 DS1 Capable Unbundled Distribution Sub-loop is a digital transmission path that is provisioned from an accessible terminal in the distribution plant of Qwest but not on the retail customer's/MTE premises

to the demarcation point at the customer's premises. The DS1 Capable Unbundled Distribution Loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Megabit/second.

9.3.3 On-premises Wiring

9.3.3.1 On-premises Wiring is a Sub-loop element consisting of a Qwest owned or controlled on-premises wiring generally located between and including two technically feasible accessible terminals on a facility wholly located on a single premises, including, but not limited to, an office building, residential apartment building, office campus, or similar environments. One end of the facility will typically be the demarcation point where the control of the on-premises wiring changes from Qwest ownership or control to property owner ownership or control. On-premises Wiring may include, but is not limited to, junction and utility boxes, riser cable, horizontal distribution wiring within an apartment building, and inter-building facilities within a campus, a commercial park, or a garden apartment complex. This Sub-loop element is available only when Qwest owns or controls the on-premises wiring. The term "on-premises wiring" when used in this Agreement and not capitalized shall mean wiring not owned or controlled by Qwest and generally located between and including two technically feasible accessible terminals on a facility wholly located on a single premises.

9.3.3.2 When Qwest neither owns nor controls the on-premises wiring, the CLEC may access the on-premises wiring by cross-connecting to the terminals upon which the on-premises wiring terminates even if the terminals are within an enclosure where Qwest has installed terminal blocks for its own facilities. In such case, Qwest will not limit CLEC access nor will it oppose the CLEC re-terminating a cross-connection associated with a customer request for service by that CLEC, provided that the connections are made in a reasonable manner. When access to such terminals is accomplished through this Section, Qwest shall not charge CLEC for any unbundled network element.

9.3.3.3 Access or connections to on-premises wiring, regardless of whether Qwest is providing the on-premises wiring as On-premises Wiring, shall be made as provided in 9.3.8 whenever Qwest has pre-existing cross-connections to the on-premises wiring at the cross-connection terminal used by the CLEC.

9.3.4 Feeder Loops

9.3.4.1 DS1 Capable Unbundled Feeder Loop is a digital transmission path that is provisioned from a Qwest Central Office Network

Interface, which consists of a DSX-1 panel or equivalent, to the accessible terminal, generally the FDI, regardless of the location of the FDI. The DS1 Capable Unbundled Feeder Loop transports bi-directional DS1 signals with a nominal transmission rate of 1.544 Megabit/second.

9.3.4.2 The Copper Unbundled Feeder Loop is a transmission path that is a continuous, non-multiplexed copper facility provisioned from a Qwest Central Office Network Interface to the accessible terminal in the outside plant of Qwest, generally the FDI, regardless of the location of the FDI. To the extent conditioning of the Copper Unbundled Feeder Loop is desired by the CLEC, Qwest will accommodate the request in the same manner as set forth in Section 9.3.2.2.

9.3.4.3 Fiber Unbundled Feeder Sub-loop is a Qwest provided fiber facility from a Qwest Central Office Fiber Distribution Panel to the accessible terminal at the FDI or other accessible terminals, regardless of the location of the FDI. Such a facility will generally be provided unlit. However, at the request of the CLEC and to the extent technically feasible, Qwest will provide the necessary electronics to light the fiber.

9.3.5 Rate Elements

The rate elements specified in the following section are only applicable to the extent that the CLEC requests that Qwest perform the work encompassed by or the facilities covered by the charges.

9.3.5.1 Sub-loop Non-Recurring Charge - CLEC will be charged a non-recurring basic installation charge pursuant to Exhibit A for each Sub-loop ordered by CLEC.

9.3.5.2 Sub-loop Recurring Charge - CLEC will be charged a monthly recurring charge pursuant to Exhibit A for each Sub-loop ordered by CLEC.

9.3.5.3 Sub-loop Trouble Isolation Charge - CLEC will be charged a Trouble Isolation Charge pursuant to the Support Functions – Maintenance and Repair Section when trouble is reported but not found on the Qwest facility

9.3.6 Ordering/Provisioning

9.3.6.1 Except as provided in Section 9.3.8, CLEC may order a Sub-loop element through Section 12, Access to Operational Support Systems. CLEC will supply the termination information provided on the LSR for Sub-loops when Qwest provides such information to CLEC.

9.3.6.2 Where appropriate and relevant to Qwest supporting the use of the unbundled element, CLEC shall identify Sub-loop elements by NC/NCI codes. No such information will be required by Qwest in the cases where the CLEC uses only the On-premises Wiring.

9.3.7 Terms and Conditions

9.3.7.1 The Parties recognize a mutual obligation to interconnect in a manner that maintains network integrity, reliability, and security.

9.3.7.2 When a CLEC requests connection at the Qwest FDI, the CLEC must identify the size and type of cable that will be terminated in the Qwest FDI location. Qwest will terminate the cable into the Qwest terminal at the FDI if termination capacity is available. If termination capacity is not available, Qwest will expand the FDI at the request of CLEC, and all reconfiguration costs specific to so accommodating the CLEC shall be charged to the CLEC. In this situation only, Qwest shall seek to obtain any necessary authorizations or rights of way required to expand the terminal. Qwest will also seek to resolve obstacles that Qwest may encounter from cities, counties, electric power companies, property owners and similar third parties. The time it takes for Qwest to obtain such authorizations or rights of way shall be excluded from the time Qwest is expected to provision access to a Sub-loop at the FDI. CLEC will be responsible for placing the cable from the Qwest FDI to its equipment. Qwest will perform all of the initial splicing connecting the FDI to the CLEC facilities.

9.3.7.3 CLEC may cancel a request for connection to a Sub-loop at any time prior to the completion of the request by submitting a written request by certified mail to the Qwest Account Manager or through the appropriate OSS order as specified in Section 12. CLEC shall be responsible for payment of all costs incurred by Qwest except where the requested access is not delivered by the committed due date. If the due date is past and the CLEC cancels the order, the amount otherwise payable to Qwest shall be reduced by 5% for every business day past the due date that the access is delayed prior to the CLEC cancellation of the request.

9.3.7.4 Access to unbundled Sub-loop elements may be made as provided in Section 9.3.1. For specified elements, the access point is pre-defined as set forth in Sections 9.3.2 through 9.3.4, above.

9.3.7.5 To the extent that an existing device or terminal does not have adequate capacity to permit direct connection of the CLEC

facility to the existing cross-connection terminals, the CLEC may opt to construct an adjacent structure and Qwest will facilitate interconnecting the existing Qwest structure and the structure deployed by the CLEC.

9.3.8 Multiple Tenant Environment (MTE) Access

9.3.8.1 When the CLEC's access of On-premises Wiring (or any other Sub-loop element consisting of facilities Qwest owns or controls located on private property at a residential or business Multiple Tenant Environment [MTE]) shall be ordered as provided in this Section 9.3.8.

9.3.8.2 CLEC may elect to ask the MTE owner whether it owns or controls on-premises wiring at an MTE. If the owner fails to claim or disclaims ownership or control of such on-premises wiring or if CLEC elects not to ask such MTE owner, CLEC shall request that Qwest make a determination of whether Qwest owns or controls the on-premises wiring (an "MTE Ownership Request"). CLEC shall make an MTE Ownership Request no later than ten (10) days before CLEC begins construction of facilities to provide local services at an MTE. Qwest shall reply to such MTE Ownership Request within (a) ten (10) days, if CLEC's request is the first request for access at such MTE or (b) one (1) day, if Qwest has previously confirmed ownership or control or if any other CLEC has accessed on-premises wiring at such customer premises. Qwest's investigation into its ownership and control of on-premises wiring and Qwest's reply to the MTE Ownership Request shall be at no cost to CLEC.

9.3.8.3 Within ten (10) days after Qwest notifies CLEC that it owns or controls On-premises Wiring, Qwest shall (a) identify all On-premises Wiring and related facilities by stenciling or otherwise clearly and permanently marking the terminal block, each cable on the customer's side of the terminal block, and each pair used to provide service and any related facilities and (b) tag or otherwise clearly identify each cable pair currently used by Qwest to provide operating service to an end user customer at the MTE. Qwest's stenciling, marking and identification of On-premises Wiring and related facilities shall be at no cost to CLEC.

9.3.8.4 If Qwest shall fail to respond to an MTE Ownership Request, or fail to make a determination of ownership or control of on-premises wiring or fails to stencil, mark or tag On-premises Wiring as provided in Section 9.3.8.2 and 9.3.8.3 within twenty (20) days after CLEC submits an MTE Ownership Request, or if ownership or control of on-premises wiring is otherwise unclear or disputed, Qwest will not prevent or in any way delay the CLEC's use of the on-premises wiring to meet an end user customer request for service. If after CLEC has commenced use of the on premises wiring Qwest demonstrates to CLEC's reasonable satisfaction

that the facility used by CLEC is On-premises Wiring, or such determination is made pursuant to Dispute Resolution, then CLEC will compensate Qwest for the use of such On-premises Wiring, according to rates set forth in this Agreement, on a retroactive basis from the date of the Qwest demonstrates compliance with 9.3.8.2 and 9.3.8.3.

9.3.8.5 A CLEC shall have the option to perform all work at or on any device or terminal necessary or desirable to access a Sub-loop at a customer premises or MTE, including but not limited to lifting and re-terminating of cross-connection or cross-connecting new terminations. No supervision or oversight of any kind by Qwest personnel shall be required but Qwest may, at its own cost and expense, observe the CLEC's work provided that such observation does not delay or impede CLEC's work. At the sole option of CLEC, Qwest will perform all necessary work at the device or terminal to provide Sub-loop access .

9.3.8.6 CLECs may access On-premises Wiring in one of the two following methods:

9.3.8.6.1 Where technically feasible, and where existing capacity on the Qwest terminal block exists, CLEC may establish a cross-connection to the On-premises Wiring or on-premises wiring that provides service to the CLEC end-user customer by using a terminal post (or equivalent) on the existing terminal block in a section of the terminal block unused by another CLEC or by Qwest. The CLEC using such terminals shall clearly label the terminals it uses. CLEC wiring will be neatly dressed. Access for CLEC wiring into any boxes enclosing the terminal blocks will be through generally accepted engineering practices, such as using conduit.

9.3.8.6.3 Where technically feasible, CLEC may install its own terminal block in the vicinity of the existing Qwest terminal block where the On-premises Wiring or on-premises wiring terminates. Where the existing terminals are contained within an enclosure or on a panel, and available space exists within the enclosure or on the panel, the CLEC may place the CLEC terminal block within the enclosure or on the panel. If no space exists on the enclosure or panel, the CLEC terminal may be placed at other available space near the Qwest panel or enclosure and the CLEC terminal may be connected to the Qwest enclosure by CLEC using generally accepted engineering practices, such as using conduit. The CLEC may then establish a connection to the On-premises Wiring or on-premises wiring that provides service to the CLEC end-user customer by cross-connecting the separate terminal block to the On-premises Wiring or on-premises wiring. When making a

connection in the manner described in this paragraph, the CLEC may either pull existing On-premises Wiring or on-premises wiring through to its own terminal block where sufficient slack exists in the On-premises Wiring or on-premises wiring or, where insufficient, it may establish a field splice directly to the On-premises Wiring or on-premises wiring so as to permit cross-connection of the CLEC facility and the On-premises Wiring or on-premises wiring connecting to its customer. CLEC wiring will be neatly dressed and attached to cross connects and panels using generally accepted engineering practices.

9.3.8.7 At its option and when requested by a CLEC, Qwest will deploy a Sub-loop Single Point of Interconnection (SSPOI) at a MTE. A SSPOI is a cross-connect device that provides for the termination of multiple carriers' outside plant that serves a particular premises and allow for cross-connection to the On-premises Wiring or on-premises wiring.

The SSPOI so deployed shall be appropriately sized to serve all customers at the location and permit non-discriminatory access to CLECs. The charges for the SSPOI, to the extent not recovered by Qwest from the property owner, shall be recovered on a per-pair basis from all carriers connecting to the On-premises Wiring through the SSPOI. To the extent such charges are applicable, the CLEC may opt to make payments to Qwest in a manner similar to that as provided in Section 9.3.11.

9.3.8.7.1 No CLEC shall be required to use the SSPOI but shall have the option of using any technically feasible point of connection to the premises wiring. To the extent a SSPOI is established after a CLEC begins providing service to a particular location, it shall be at the CLEC's option that its pre-existing wiring be re-terminated to the SSPOI. Furthermore, the CLEC may perform all work or, upon request and subject to applicable time and material charges, Qwest will re-terminate the wiring.

9.3.8.7.2 If a building owner requests that a SSPOI be deployed and Qwest will accommodate the request, Qwest is responsible for providing reasonable and appropriate advance notification to the CLEC that such a change will be made. Upon establishment of the SSPOI, the CLEC shall no longer be responsible to Qwest for any payments of charges for on-going use of On-premises Wiring. The CLEC will be responsible for negotiating terms for use of the on-premises wiring with the building owner or the building owner's agent.

9.3.8.8 When CLEC accesses On-premises Wiring, CLEC shall tag or otherwise clearly identify each cable pair currently used by CLEC to provide service to an end user customer at an MTE.

9.3.8.9 On-premises Wiring Rate Elements

9.3.8.9.1 Where CLEC employs only On-premises Wiring element(s) and such On-premises Wiring is twisted copper pairs, the CLEC shall pay Qwest the lesser of the payments per wire pair Qwest actually makes to the building owner or $0.0___ per pair used, regardless of the specific wiring configuration that may be present at a particular location.

9.3.8.9.2 For On-premises Wiring that is other than twisted copper pair, Qwest and the CLEC shall establish a price schedule for such On-premises wiring through the Special Request Process, but reflecting the direct cost of providing connectivity using the alternative connectivity. During such negotiation, Qwest will not deny or otherwise limit access to On-premises Wiring provided only that, one pricing is established, remittance will be made by CLEC for such On-premises Wiring as provided in Section 9.3.8.10 or otherwise mutually agreed.

9.3.8.9.3 Qwest shall defend and indemnify the CLEC for all costs associated with claims by a building owner, relating to use of the On-premises Wiring.

9.3.8.10 Billing and Remittance of Charges for On-premises Wiring

9.3.8.10.1 If On-premises Wiring is provided in conjunction with other Sub-loop elements (e.g., see 9.3.1.2) or the UNE-Loop or UNE-Platform, the pricing established for those offerings shall include the costs of any On-premises Wiring. In such case, Qwest will not assess a separate charge for On-premises Wiring and will not issue a separate bill for On-premises Wiring.

9.3.8.10.2 Where Qwest has complied with the terms of 9.3.8.2 and 9.3.8.3, preceding, CLEC shall capture and provide on a monthly basis a statement ("On-Premises Wiring Statement") specifying the terminal block, pair and cable used by CLEC to provide service by MTE address where Qwest owns or controls On-premises Wiring. The On-Premises Wiring Statement may, at CLEC's option, report all terminal block, pair and cable used by CLEC in all MTEs in Qwest's service territory. The content, media and format of such On Premises Wiring Statement shall be mutually acceptable to Qwest and CLEC.

9.3.8.10.3 If Qwest fails to make a determination of ownership or control of on-premises wiring or fails to stencil, mark or tag On-premises Wiring as provided in Section 9.3.7.2 and 9.3.7.3, CLEC shall not be required to submit an On-premises Wiring Statement. In such event, CLEC shall not be required to remit any charges or fees to Qwest for Access to On-premises Wiring unless and until Qwest makes a determination of ownership or control of on-premises wiring and stencils, marks or tags On-premises Wiring.

9.3.8.10.4 CLEC shall remit to Qwest rates and charges as determined by the On-premises Wiring Statement.

9.3.8.11 Access to On-premises Rights of Way. A CLEC shall have the right to access equipment rooms, telecommunications closets, risers, laterals, terminal enclosures, conduit and any other defined area that is or has been specifically identified for use or used by Qwest as part of Qwest's transport and distribution network or could otherwise be construed to provide right to use space on or in a property. To the extent that any vacant space exists within any right of way used by or available to Qwest, within private property, such space will be available to a requesting CLEC on a non-discriminatory basis. To the extent Qwest makes direct payments to the building owner for use of or access to on-premises right of way, the CLEC will compensate Qwest for a proportionate share of the right of way space used by the CLEC. Should Qwest believe that its agreement with the building owner imposes any limitation on third party use of the right of way that might prevent the CLEC from using on-premises right of way, Qwest will disclose the limitations imposed by the building owner to the CLEC within 10 days of the CLEC notifying Qwest that it will be placing facilities in the right-of-way. Qwest will also support changes necessary in its agreement with the building owner so as to permit CLEC use of the right of way. Where the CLEC makes payment to Qwest for the use of right of way provided to Qwest by a building owner, Qwest shall defend the CLEC and indemnify the CLEC for all costs associated with claims by a building owner, relating to use of the right of way.

9.3.9 Repair and Maintenance

Qwest will maintain all of its equipment and CLEC is responsible for maintaining all of its equipment, if any, at the terminals.

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Brief on Disputed Issues Relating to Subloop in Docket No. T-00000A-97-0238 were sent by overnight delivery on May 18, 2001 to:

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