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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE WITH
§ 271 OF THE
TELECOMMUNICATIONS ACT OF
1996.

DOCKET NO. T-00000B-97-0238

**QWEST'S BRIEF ON IMPASSE ISSUES FOR LOOPS AND LNP
(Checklist Items 4 and 11)**

Arizona Corporation Commission

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JUN 19 2001

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INTRODUCTION

Qwest Corporation ("Qwest") submits this brief to the Arizona Corporation Commission ("Commission") in support of its compliance with checklist item 4 (unbundled loops) and checklist item 11 (local number portability ("LNP"))¹ of the competitive checklist items in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (the "Act").² As demonstrated in Qwest's testimony, Workshop 5, and this brief, Qwest meets the requirements of checklist item 4 and 11. Qwest has demonstrated that it is legally obligated to provide, and is providing, unbundled loops and LNP to competitive local exchange carriers ("CLECs") in Arizona. In addition, Qwest presented audited performance data demonstrating that it provides unbundled loops at an acceptable level of quality and in a manner that affords an efficient CLEC a meaningful opportunity to compete.³

Several parties filed testimony in this proceeding and participated in Workshop 5 addressing Qwest's compliance with checklist items 4 and 11. Although some CLECs raised isolated performance issues, the information presented was general, largely unsubstantiated, and rebutted by Qwest. Thus, the workshop discussion centered principally on the terms of Qwest's Statement of Generally Available Terms and

¹ Qwest is submitting a separate brief to address impasse issues relating to network interface devices ("NIDs") and linesplitting.

² 47 U.S.C. § 271(c)(2)(B)(iv) and (xi).

³ Most of the loop-related performance measures are now audited. Qwest's performance data is updated monthly and is presented on both a state and regional level. This performance data is available to the Commission at the following web address: www.qwest.com/wholesale/results/index.html.

Conditions ("SGAT") and a few other non-SGAT issues. During the workshop, Qwest made significant efforts to resolve disputes with participating competitive local exchange carriers ("CLECs") regarding these checklist items and has modified its SGAT to accommodate many of its competitors' requests. In several instances, Qwest has agreed to modifications that are unnecessary for compliance purposes, but which avoided disputes or promoted the competitive goals of CLECs. Specifically, Qwest made several important concessions that further demonstrate its commitment to competition. Among the most notable accommodations is Qwest's commitment to share certain facility build plans with CLECs. This commitment is set forth below and with this commitment, the parties successfully closed Loop Issue 6⁴:

9.1.2.1.4 Qwest will provide CLEC notification of major loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds \$100,000 in total cost, the estimated ready for service date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for service dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.⁵

Qwest also has agreed to provide CLECs with emailed versions of Qwest test results and, when integrated digital loop carrier ("IDLC") is present and other methods of providing unbundled loops fail, Qwest has committed to perform hairpinning on more

⁴ May 17, 2001 Tr. at 1893.

⁵ Qwest committed to implement the processes to make this information available to CLECs by August 1, 2001. If it is unable to meet this deadline, it has committed to communicate

than three loops on an interim basis. Furthermore, since the Arizona workshops, Qwest and CLECs agreed upon a simplified provision addressing trouble isolation. Qwest also agreed to modify the SGAT to provide a waiver of the entire installation charge if Qwest fails to perform cooperative testing. To resolve Covad's concerns regarding alleged technician conduct, Qwest issued a detailed memorandum via electronic mail to all network employees reminding them of their obligations under the Act, Qwest's Code of Conduct, and other Qwest policies that prohibit Qwest employees from engaging in behavior that harms competition. Although Qwest believes its current policies clearly address this issue, Qwest acted proactively in response to Covad's allegations. Finally, for checklist item 11, Qwest made the significant concession to implement processes to hold the switch disconnect on a number port until 11:59 p.m. of the next business day.

Although disputes remain, the Commission should note that many of these issues relate to CLEC requests that exceed the requirements of the Act and FCC orders as opposed to the nature of Qwest's compliance with Section 271 of the Act. Section 271 proceedings are not the proper forum for the creation of new requirements under the Act. Therefore, the Commission should approve Qwest's SGAT and decide the disputed issues in Qwest's favor because they comport with the Act, FCC regulations, and Commission rules, even though the CLECs demand more.⁶

with CLECs and work in good faith to complete the implementation process. May 17, 2001 Tr. at 1893

⁶ See Memorandum Opinion and Order, *Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶¶ 22-26 (June 30, 2000) ("*SBC Texas Order*").

Qwest believes that it has drawn the lines properly. Qwest's competitors, however, view Qwest's obligations as limitless, especially regarding access to loop information and AT&T's demand that Qwest use AT&T's preferred "BellSouth solution" for providing number portability. In passing the Act, Congress intended to "open[] up local markets to competition, and permit[] interconnection on just, reasonable, and nondiscriminatory terms."⁷ The FCC has recognized that incumbent LECs and CLECs alike will benefit from competition resulting from operating efficiencies: "We believe they [economies of scale] should be shared in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of cost-based prices."⁸ Congress, however, did not intend to create a vehicle by which new entrants could gain an unfair advantage or seek to impose endless obligations on Qwest by misusing the Act's requirements.

The FCC has clarified that Section 271 proceedings are not limitless in scope. They are narrowly tailored proceedings that focus on the BOC's compliance with existing, defined requirements, not the whims of competitors or novel interpretative disputes.⁹ Qwest submits that, at least with respect to some of the impasse issues, this is precisely what is occurring.

⁷ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 at ¶ 167 (Aug. 8, 1996) ("*Local Competition Order*").

⁸ *Id.* at ¶ 11.

⁹ *SBC Texas Order* ¶¶ 22-26.

Despite the parties' attempts to reach consensus on most issues, several issues have arisen that have eluded resolution. These issues are discussed below. As this brief demonstrates, none of these disputed issues refutes Qwest's showing that it complies with the requirements of checklist items 4 and 11.

DISCUSSION

A. CHECKLIST ITEM 4: UNBUNDLED LOOPS.

1. Impasse Issues

Section 271(c)(2)(B)(iv) of the Act requires Qwest to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."¹⁰ A BOC has the obligation to provide different types of loops, including two-wire and four-wire analog loops, and two-wire and four-wire loops conditioned to transmit digital signals and support advanced services such as ISDN and xDSL services.¹¹

Qwest submitted the pre-filed testimony of Ms. Karen Stewart and Jean M. Liston, testimony at the workshops on March 5-9, 2001 and on May 14-17, 2001, SGAT language, and numerous exhibits demonstrating Qwest's compliance with the requirements of checklist item 4. Despite its efforts to meet the demands of CLECs, the following issues on the final Arizona Issue Log ("AIL") with respect to checklist item 4 remain in dispute:

¹⁰ 47 U.S.C. § 271(c)(2)(B)(iv).

¹¹ Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130 ¶ 121 (rel. Apr. 16, 2001) ("*Verizon Massachusetts Order*").

1. **Loop-2(b):** AT&T claims that Qwest must provide certain unbundled loops in intervals shorter than those set forth in Exhibit C.
2. **Loop 8(b):** CLECs oppose paying for conditioning on loops less than 18,000 feet.
3. **Loop 8(c):** AT&T demands that Qwest refund conditioning costs if it loses the customer within a certain time period.
4. **Loop-9:** Three spectrum management issues: (a) Rhythms opposes providing Qwest with NC/NCI codes; (b) Rhythms requests that Qwest move immediately to create a process for remote deployment of DSL in advance of T1E1 recommendations; and (c) Rhythms demands that Qwest migrate T-1 facilities to new technology in the event of a spectrum dispute despite Qwest's current practice of segregating T-1 facilities.
5. **Loop 10(e):** Covad has complaints regarding Qwest's performance of cooperative testing.
6. **Loop 11(d):** Covad raised allegations regarding the behavior of Qwest technicians.
7. **Loop 24:** AT&T and Covad demand that Qwest create the functionality for CLECs to perform a mechanized loop test ("MLT") on a pre-order basis even though Qwest does not provide that functionality to itself.
8. **Loop 25:** AT&T wants Qwest to redesignate interoffice facilities as loop facilities even though Qwest does not do so for itself and it is technically impracticable.

As set forth fully below, on each of these disputed issues, the Commission should accept Qwest's position as consistent with its obligations under the Act.

2. **Loop 2(b): The Exhibit C Intervals For Loops Are the Product of Consensus, Provide CLECs A Meaningful Opportunity To Compete, And Are More Favorable Than The Intervals Other BOCs Offer.**

Although the final AIL identifies the impasse issue for Loop 2(b) as relating to the ICB, or individual case basis, interval and pricing for OCn loops, the parties reached

consensus on this issue in the Multi-State workshop and in Arizona.¹² The final AIL, however, correctly captures that under Loop 2(b), AT&T has challenged other intervals in Exhibit C.

The following table compares the Exhibit C intervals with AT&T's requested intervals:

Loop Type (1-8 lines unless otherwise noted)	Exhibit C Interval	AT&T Demand¹³
2-wire/4-wire analog loops	Five business days	Three-day Quick Loop with number portability
2-wire/4-wire non-loaded, ISDN BRI and ADSL-compatible loops that do not require conditioning	Five business days	Three business days
DS-1 capable loops	Nine business days (1-24 lines)	Five days for 1 to 8 loops
Loop Conditioning	15 days	10 days
Repair of out of service conditions	24 hours	12 hours

The Commission should reject AT&T's attempts to shorten the Exhibit C intervals for two principal reasons. First, during the workshop, Qwest demonstrated that the intervals in Exhibit C were an integral consideration in the development of the performance indicator definitions ("PIDs") for OP-3 (percent commitments met) and OP-

¹² May 15, 2001 Tr. at 1295-1297; May 16, 2001 Tr. at 1454.

¹³ AT&T requested a five, six, and and seven day interval for xDSL-I loops, and Qwest agreed to revise this interval.

4 (installation interval) in negotiations between Qwest and CLECs in the Arizona Technical Advisory Group ("TAG"). In changing the performance measures for 2-wire analog unbundled loops, 2-wire non-loaded loops, and ADSL compatible loops from retail parity to specific "benchmarks," the intervals in the Qwest Standard Interval Guide ("SIG"), which are mirrored in Exhibit C, formed the basis for the benchmarks. In short, the PIDs were in large part based on the intervals set forth in Exhibit C to Qwest's SGAT, and were developed through a collaborative process with the CLECs, including AT&T. AT&T should not be heard to complain about the intervals now.

Second, neither AT&T nor any other CLEC presented evidence that would support shortening the Exhibit C intervals. Qwest, on the other hand, presented substantial and uncontested evidence that the provisioning intervals contained in Exhibit C are reasonable and more favorable to CLECs than intervals offered by BOCs that have received Section 271 approval. The Commission should approve the loop provisioning intervals contained in Exhibit C to Qwest's SGAT.

**a. PID Benchmarks That Were Established In
Collaboration With The CLECs, Including AT&T.**

During the workshop, Qwest presented evidence that the intervals in Exhibit C were an integral consideration in the development of the PIDs for OP-3 and OP-4. For several unbundled loops, the performance benchmark changed from "retail parity," at the insistence of CLECs, to specific benchmarks. AT&T witness John Finnegan described the process as follows:

[W]e had . . . retail analogs for the loops. The DLECs, particularly Covad, were not happy with the uncertainty on the parity [with retail] issue and were concerned that perhaps parity may not allow them to meet their business objectives.

So they suggested rather than a parity measure or a parity standard, that the standard for the loop ties they were interested in were nonloaded analog, and whatever the other loop was, be converted to a benchmark, and we talked about what the benchmark should be. *Certainly, the standard intervals were reviewed in consideration of the benchmarks.* Also, the actual results that Qwest was obtaining was reviewed in consideration of the benchmarks. The retail results were again at the consideration of the benchmarks, and there's probably some other things I'm forgetting. But from those various sources, we came to resolution on what the benchmarks should be.¹⁴

The benchmarks simply reference, for example, "90 percent [of] commitments met,"¹⁵ with the commitment defined in the Qwest SIG.¹⁶ Exhibit C to Qwest's SGAT mirrors the SIG.¹⁷ Furthermore, the PIDs define the standard interval by referencing the SIG.¹⁸ This interrelation is evident when the benchmarks are compared to Exhibit C. For 2-wire analog loops, non-loaded loops and ADSL compatible loops, the OP-4 benchmark is six days. In Exhibit C, the intervals for these loops are five, six, and seven days, depending on the number of lines ordered. In establishing the benchmark, the parties agreed to use the mid-range interval for nine to sixteen loops, or six days, as a compromise to reach closure.¹⁹ Indeed, Mr. Bellinger, who was involved in both the

¹⁴ May 16, 2001 Tr. at 1636:7-1637:1 (emphasis added).

¹⁵ May 16, 2001 Tr. at 1636.

¹⁶ May 16, 2001 Tr. at 1639:10-20, 1640:1-11.

¹⁷ May 16, 2001 Tr. at 1640:16-18.

¹⁸ May 16, Tr. at 1639-40.

¹⁹ May 16, 2001 Tr. at 1645-46; *id.* at 1647-48 (discussing linkage between PIDs and intervals).

TAG and the workshops, acknowledged that the intervals AT&T is now challenging were not only discussed during the TAG, but were also "pretty reasonable."²⁰

The standard interval guide embodied in Exhibit C to Qwest's SGAT was developed through the give and take of negotiation with the CLECs regarding performance benchmarks. This is particularly evident in the discussion of the benchmark for the 2-wire non-loaded loops and the ADSL compatible loops. As Qwest witness Jean Liston testified, during the negotiation of the benchmark for these loops Qwest agreed to change the standard interval to reach consensus on the benchmark:

. . . [A]lthough the PID measurement on OP-3 and OP-4 don't have that interval when you look at the benchmark, the benchmark was established based on the discussions that occurred around the intervals.

And in particular, . . . at one point in time the intervals associated with the two-wired nonloaded loops and the ADSL loops did not start at five days, they started at six days. And during the negotiations for the benchmarks those intervals were changed to start at a five-day -- five, six, and seven days. So if there was no discussion about whether the interval is valid or not valid, [when] the PIDs were established, that interval would not have been changed.

. . . [I]f you look at [Exhibit] C, it's the first interval is a five-day; from one to eight loops is five days; the middle is six days, and then the next is seven days. It used to be one to eight lines was six days. The middle one was seven days and the following one was eight days.

During the discussions of the benchmarks, and looking at the overall intervals, it was decided that the two-wired nonloaded loop and the ADSL loop should be at the same interval as the analog loop. Qwest agreed to that, changed the intervals, so that it's five, six, . . . and seven, and the benchmarks for two-wired nonloaded and analog are five and six days.

²⁰ May 16, 2001 Tr. at 1634.

... [W]hile all the discussions about the benchmarks occurred, it was based on the intervals, and in the cases where the intervals didn't -- the intervals were discussed and in fact were changed.²¹

Obviously, Qwest could not agree to meet a given loop provisioning interval X% of the time without knowing on what interval the commitment was based. Likewise, in determining a performance benchmark, the parties obviously started with some reference point. That reference point is the SIG. Qwest believes its position in Arizona is also consistent with evidence presented in the Multi-State workshop in which a representative from MTG testified that the PIDs and the intervals in the SIG are integrally related.

Similarly, for OP-3, which measures the percent of due dates met, the Exhibit C intervals are a critical factor in the evaluating performance results. In submitting an LSR, CLECs are permitted to select the minimum due date, which is the standard installation interval, or a longer one. Qwest cannot "change" that due date.²² And, if Qwest misses the due date selected by the CLEC, that miss affects Qwest's results for meeting OP-3.

Nevertheless, AT&T made clear at the workshop that it did not wish "to change the benchmarks, but to revisit the standard intervals" on which they were based.²³ However, where benchmarks are established in the course of collaborative proceedings that permit all interested carriers to weigh in, they are presumed to give carriers a

²¹ May 16, 2001 Tr. at 1643-1644.

²² May 16, 2001 Tr. at 1641-1642.

²³ May 16, 2001 Tr. at 1635:1-9.

meaningful opportunity to compete.²⁴ The FCC recently emphasized this in its *Verizon*

Massachusetts Order:

[W]here, as here, [performance] standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time or manner or in a way that provides them a meaningful opportunity to compete.²⁵

AT&T cannot now be permitted to "revisit" these standards. The Commission should approve the loop provisioning intervals contained in Exhibit C to Qwest's SGAT.

b. The Exhibit C Intervals Are Reasonable, Provide At Least Parity With Retail, And Are Equal Or Superior To The Intervals Provided By BOCs That Have Already Obtained Section 271 Approval.

AT&T claims that regardless of the inextricable link between the PIDs and the Exhibit C intervals, it should be permitted to challenge the loop intervals. However, even if the Commission permits AT&T to undo the Exhibit C intervals, AT&T presented no evidence that would support modifying them. AT&T's demands are based on nothing more than its assertion that they should be shorter. It presented no evidence that the current intervals impede its ability to compete or that Qwest offers its retail customers shorter intervals. Without something more than AT&T's unsupported demands, the Commission should uphold the Exhibit C loop intervals. This is especially true where, as here, Qwest's intervals compare favorably to the intervals other BOCs offer.

²⁴ *Verizon Massachusetts Order* ¶ 13; *Bell Atlantic New York Order* ¶ 55.

²⁵ *Verizon Massachusetts Order* ¶ 13.

For example, Verizon does not offer a three-day product like Quick Loop. Furthermore, Exhibit C to Qwest's SGAT has a five-day interval for 2-wire non-loaded, ISDN capable, and ADSL compatible loops. The interval increase to six days for nine to 16 loops and seven days for 17-24 loops. Verizon offers a six-day interval for one to 5 existing ISDN or ADSL loops, and the interval doubles for six to nine loops. It is ICB for any larger quantity. In addition, Verizon has a "pre-qualification" requirement.²⁶

With regard to conditioned loops, Exhibit C to Qwest's SGAT provides for a fifteen-day interval for conditioning, which is a six-day decrease in the interval from just six months ago.²⁷ This interval compares favorably with Verizon North and South, which require ICB intervals for conditioning even before the loop order can be placed. Only after the conditioning is completed will the loop be provisioned with a five-day interval.²⁸

Qwest also examined the intervals for DSL loops that SBC offers CLECs. Although the SBC intervals were not as clearly presented as those of Verizon, Qwest discovered that SBC offers CLECs a five-day installation interval for DSL loops. This interval, however, is subject to several "add ons." For instance, there is there is a pre-survey requirement before the interval applies. In addition, any required conditioning

²⁶ Ex. 5 Qwest 32.

²⁷ May 16, 2001 Tr. at 1679:24-1681:1.

²⁸ May 16, 2001 Tr. at 1681:2-17.

occurs outside the five-day interval, and causes five days to be added, and if loop makeup must be determined, an additional three days is added to the interval.²⁹

AT&T asked at the workshop why Qwest had not examined the websites of other BOCs and why it had a "fascination" with Verizon.³⁰ Mr. Bellinger also expressed interest in the intervals other BOCs offer.³¹ In response, Qwest examined the intervals offered by BellSouth, and presented that data in the Colorado and Multi-State workshop, and provides that print-out as Attachment 1. The loop intervals Qwest offers in Exhibit C compare favorably to those offered by BellSouth. For example, BellSouth does not offer a three-day interval equivalent to Quick Loop. Although BellSouth offers a four-day interval for one to five 2-wire analog loops that are not designed, the order must be in before 10:00 am.³² If placed later, an additional day is added to the interval. For designed loops, the interval is five days. Qwest offers a five-day interval for one to eight 2-wire analog loops, and the CLEC has until 7:00 p.m. to enter its order. For orders of six to fourteen 2-wire loops, BellSouth's interval for non-designed loops jumps to nine days, and for designed loops to 10 days.³³ For both types, orders of 15 or more loops are provided on an ICB/negotiated basis. Qwest, on the other hand, offers a 6-day interval

²⁹ May 16, 2001 Tr. at 1704:2-1705:6.

³⁰ May 16, 2001 Tr. at 1667.

³¹ May 16, 2001 Tr. at 1683-84.

³² See Assumption 5.

³³ See DDD Calculation 3 ("When a targeted LSR processing interval is listed on the chart it should be added to the Standard interval when calculating the DDD").

for nine to sixteen 2-wire analog unbundled loops and does not reach ICB until the CLEC orders 25 lines to the same end user customer.

For existing 2-wire digital ISDN BRI loops, BellSouth offers a ten-day interval for one to five ISDN loops and a fifteen-day interval for six to fourteen loops. In stark contrast, Qwest's interval for one to eight unbundled loops is only five days, and its interval for nine to sixteen loops is six days.

For ADSL loops, the story is the same: BellSouth does offer a five-day interval for one to five ADSL loops, *provided* the CLEC performs a "service inquiry" before even submitting an LSR. For six to fourteen loops, the interval jumps to 10 days, and is ICB for orders of 15 or more ADSL loops. Qwest offers ADSL-compatible loops in five, six, or seven days, depending on the quantity, and only provides an ICB interval on orders of 25 loops or more. Although BellSouth offers one to 5 DS-1s in five days, the interval jumps to 10 days for six to fourteen lines and is ICB for 15 or more. Qwest offers one to 24 DS-1s in the nine-day interval.

As this discussion amply demonstrates, when compared to the intervals Verizon and BellSouth offer, the intervals in Exhibit C are extremely competitive.

c. AT&T Presented No Evidence to Support Shorter Intervals.

However, even if the Commission permits AT&T to undo the Exhibit C intervals, AT&T presented no evidence that would support modifying them. AT&T's demands are based on nothing more than its bald assertion that the intervals should be shorter. It presented no evidence that the current intervals impede its ability to compete or that Qwest offers its retail customers shorter intervals. Indeed, that the CLECs opposed use of Qwest retail intervals for comparison purposes in establishing the PIDs demonstrates

that they believed they would receive service quicker with benchmarks based on the Exhibit C intervals than under Qwest's retail intervals. Without something more than AT&T's unsupported demands, the Commission should uphold the Exhibit C loop intervals.

At the outset, the Commission should not reach AT&T's demand for Quick Loop with number portability at this time.³⁴ As Ms. Liston testified, Qwest is actively investigating whether it can meet this request for conversion of an existing POTS line to analog unbundled loop with number portability.³⁵ An impasse issue will only develop if Qwest declines to establish this product or does not offer it within AT&T's desired timeframe. Given the system changes required, and Qwest's current good faith attempts to investigate this issue, the Commission should refrain from deciding this issue at this time.

AT&T claims that Qwest should offer 2-wire and 4-wire non-loaded loops, Basic Rate ISDN-capable loops, and ADSL-compatible loops in three days. It claimed that providing these loops was just a process of "jumpering and migration," but provided no support for this assertion.³⁶ The three-day interval that applies to Quick Loop is totally inappropriate for these other loop types. Quick Loop only applies to conversions from an existing POTS service to an analog loop in which Qwest performs a conversion of the service "as is." For non-loaded loops and ADSL-compatible loops, however, it is not a

³⁴ This request is AT&T's only outstanding issue with the intervals for analog unbundled loops. May 16, 2001 Tr. at 1663, 1665-66.

³⁵ May 16, 2001 Tr. at 1663-65.

³⁶ May 16, 2001 Tr. at 1666.

conversion "as is." In addition, because Qwest must determine the compatibility of the loop with the DSL service, it is not the same process as provisioning an analog loop.³⁷ Moreover, while Verizon performs the pre-survey to determine its ability to provide the loop *outside* its standard interval, Qwest's five-day interval includes that pre-survey.³⁸

AT&T's demand to shorten this interval is also inadvisable because of Qwest's current efforts to explore the uniform use of a 72-hour Firm Order Confirmation, or FOC. As discussed at the workshop, Qwest conducted a xDSL FOC trial in Colorado to determine if moving to a uniform 72-hour FOC for xDSL loops would improve Qwest's performance in meeting its due dates for xDSL loops. During the 72 hours before issuance of the FOC, Qwest performs critical activities such as determining whether it can obtain facilities compatible with the DSL service CLEC seeks to provide and whether conditioning will be required.³⁹ Qwest's data shows that the trial has been successful, and Qwest believes a uniform 72-hour would greatly benefit CLECs. Although disagreements may still exist on the trial data, Covad has agreed that a 72-hour FOC is appropriate. If the Commission were to adopt AT&T's demand for a three-day installation interval, however, the benefits of the 72-hour FOC would be lost entirely. Obviously, Qwest would not be able to use a 72-hour FOC with an installation interval of 72 hours.

It is interesting to note that when Qwest agreed to change the interval for the ADSL compatible loop in the TAG to match the existing intervals for 2-wire non-loaded

³⁷ May 16, 2001 Tr. at 1666-67.

³⁸ May 16, 2001 Tr. at 16678-68.

loops, AT&T was satisfied. The 2-wire non-loaded loop requires the same provision process as the ADSL compatible loop. Qwest is hard pressed to understand the AT&T request to shorten this interval other than to make unsubstantiated requests and hope the Commission rules in its favor. The Commission should not support AT&T's arbitrary requests.

AT&T claims that Qwest should offer one to eight DS-1 capable loops in five days. However, the retail interval for these loops is nine days, and DS-1 loops are one of the loop types for which the OP-4 measure is retail parity. Accordingly, as Ms. Lubamersky explained, it is consistent with the retail parity comparison to set the wholesale interval to reflect the Qwest retail interval.⁴⁰ Moreover, Ms. Liston noted that the Arizona performance results showed that CLECs were receiving DS-1s sooner than Qwest retail.⁴¹ AT&T offered no evidence to show that this parity-based interval is inadequate. Qwest's nine-day interval is the same as that of Verizon, a BOC that has received Section 271 approval twice.⁴² Indeed, Qwest's interval for DS-1 loops is more favorable because Verizon North's interval applies to orders for one to nine loops only—

³⁹ May 16, 2001 Tr. at 1666-68.

⁴⁰ May 16, 2001 Tr. at 1669-71.

⁴¹ May 16, 2001 Tr. at 1674-75.

⁴² Exhibit 5 Qwest 53.

the interval is negotiated for any larger order.⁴³ Qwest does not provide for ICB intervals unless the order exceeds 24 DS-1 loops.⁴⁴

Regarding conditioning, no CLEC presented any evidence supporting a shorter interval. AT&T stated only that it and Covad were "interested" in a shorter interval.⁴⁵ Covad presented no evidence whatsoever. Qwest, on the other hand, detailed that it had already shortened the interval from 21 calendar to 15 business days, and its 15-day interval is better than Verizon's (which is ICB).⁴⁶ During the Colorado xDSL trial, Qwest on occasion was able to complete conditioning before the expiration of the 15 days. In those circumstances, Qwest did not require the CLEC to await the expiration of the 15 days, but turned over the loop early if the CLEC was prepared.⁴⁷

With regard to the maintenance intervals, AT&T appears to be throwing numbers out for consideration. In Arizona, for example, it requested a repair interval of 12 hours, and in the Multi-State Workshop, it requested 18 hours. Neither demand has any merit. The primary basis for AT&T's request that the interval be reduced to 12 hours was "[q]uestions about what [Qwest is] providing to [its] retail customers."⁴⁸ The FCC has

⁴³ May 16, 2001 Tr. at 1703:21-24.

⁴⁴ Verizon South offers a thirteen-day interval for one to ten DS-1 loops—above ten loops the interval must be negotiated on an individual case basis ("ICB"). May 16, 2001 Tr. at 1703:25-1704:26).

⁴⁵ May 16, 2001 Tr. at 1679.

⁴⁶ May 16, 2001 Tr. at 1679-81.

⁴⁷ May 16, 2001 Tr. at 1680-81.

⁴⁸ May 16, 2001 Tr. at 1684.

determined that there *is* a retail analog for repair of unbundled loops.⁴⁹ Thus, the repair and maintenance PIDs (MR-3 (out-of-service cleared in 24 hours), MR-4 (troubles cleared within 48 hours) and MR-6 (mean time to restore)) the TAG approved establish a benchmark of parity with retail. This is the same for business customers, AT&T's expressed concern.⁵⁰ Consistent with this standard, the intervals in Exhibit C mirror Qwest's retail repair interval of 24 hours.⁵¹ Again, this mirroring of industry consensus benchmarks demonstrates that CLECs receive a meaningful opportunity to compete.

AT&T claimed that if it is required to provide repair services within 24 hours, it needs Qwest to perform its repair functions before the expiration of those 24 hours so that it can complete its own repair obligations. AT&T's argument, however, misses the mark entirely: if Qwest is providing repair services for AT&T, there is no "additional" work AT&T must do to address the trouble. Furthermore, AT&T did not identify how long it would take it to perform any of its alleged repair responsibilities or even what those responsibilities are. What is clear from analyzing Qwest's performance results is that it consistently provides CLECs with repair service in less than 24 hours.⁵² Thus, there is

⁴⁹ Memorandum Opinion and Order, Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, CC Docket No. 97-137, 12 FCC Rcd 20543 ¶ 140 (1997) ("Ameritech Michigan Order").

⁵⁰ May 16, 2001 Tr. at 1685-86, 1690-91.

⁵¹ May 16, 2001 Tr. at 1685.

⁵² May 16, 2001 Tr. at 1690-92.

ample time for AT&T to perform any of its unenumerated repair functions.⁵³ Finally, the PIDs, which AT&T agreed upon, provide AT&T with assurance of a present and future opportunity to compete: for MR-3, Qwest is obligated to repair out of service conditions in 24 hours, and MR-6 (mean time to restore) assures parity treatment by comparing Qwest's wholesale and retail performance. Thus, to the extent Qwest's repair performance ever slips from its current excellent performance, the slip will be captured in the performance results for these two measures.

As this discussion amply demonstrates, Qwest's proposed intervals were the product of industry collaboration and represent reasonable time-periods providing at least parity with retail offerings. When compared to the intervals other BOCs offer, the intervals in Exhibit C are also on the whole more favorable to CLECs. No CLEC in the workshop presented any evidence to dispute this. The Commission should approve Exhibit C to Qwest's SGAT as complying with checklist item 4.

3. Loop 8(b): Qwest Is Entitled Under The Act And FCC Rules To Recover Its Cost Of Conditioning Loops, Including Those Less Than 18,000 Feet.

Loop conditioning is a one-time activity that Qwest undertakes at the request of the CLEC. A fundamental premise of the Act is that incumbent LECs will be compensated for providing interconnection and UNEs to CLECs.⁵⁴ With respect to loop conditioning, the FCC has been crystal clear that incumbent LECs are entitled to recover

⁵³ AT&T claims that since Qwest exceeds its performance requirement, it should reduce the repair interval. It ignores, however, that the TAG established the 24-hour repair interval. The workshop process is inappropriate for revising the PIDs, which AT&T appears to be attempting despite its concurrence with them.

⁵⁴ 47 U.S.C. § 252(d)(1); *Iowa Utils. Bd. I*, 120 F.3d at 810.

these costs, regardless of the length of the loop. The FCC first addressed this issue in the *Local Competition Order*, where it held:

Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus, we reject BellSouth's position that requesting carriers "take the LEC networks as they find them" with respect to unbundled network elements. *As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3). The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning.*⁵⁵

In the *UNE Remand Order*, the FCC specifically addressed the issue of recovery of costs for conditioning loops less than 18,000 feet and held that incumbent LECs are entitled to recover these conditioning costs. Significantly, it ordered this cost recovery over the arguments of CLECs that loops in a so-called "forward-looking network" would not have had load coils and bridge taps:

We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. *Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.*⁵⁶

⁵⁵ *Local Competition Order* ¶ 382 (emphasis added).

⁵⁶ *UNE Remand Order* ¶ 193 (emphasis added).

Thus, the FCC has already rejected the arguments of some CLECs that Qwest should not be permitted to recover these costs because bridge taps or load coils should not have been placed in the network in the first place. Although CLECs may disagree with the FCC's reasoning, in this Section 271 proceeding, the only relevant inquiry is whether Qwest's position is consistent with FCC pronouncements. It unquestionably is.

To Qwest's knowledge, only one federal court has addressed whether incumbent LECs are entitled to recover their costs of conditioning loops less than 18,000 feet, and that court held that the *UNE Remand Order* "mandates" cost recovery.⁵⁷ Finally, the FCC's Section 271 Orders also recognize that incumbents are entitled to recover their costs of loop conditioning on behalf of CLECs.⁵⁸ Given this overwhelming weight of authority, the Commission should hold that Qwest is entitled to recover the costs of conditioning loops less than 18,000 feet.

Finally, as discussed in Ms. Liston's prefiled testimony and at the workshop, Qwest has voluntarily undertaken a bulk deloading project to deload loops less than 18,000 feet in those Arizona wire centers in which DLECs are concentrating their activities. Ms. Liston testified that approximately 90 percent of the wire centers in Arizona where CLECs are ordering unbundled loops have been deloaded as part of this

⁵⁷ *US WEST Communications, Inc. v. Hix*, Civil Action No. 97-D-152, Order at 9-10 (D. Colo. June 23, 2000) ("The FCC's [*UNE Remand Order*] is dispositive on USWC's claim and mandates that the CPUC permit USWC cost recovery").

⁵⁸ *E.g., SBC Texas Order* ¶ 248 ("In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, *with the competing carrier bearing the cost of such conditioning*") (emphasis added).

project.⁵⁹ Qwest has undertaken this task without seeking cost recovery from CLECs. By performing the bulk deloading, there are fewer instances that require conditioning to occur for loops less than 18,000 feet. Thus, Qwest is already absorbing the lion's share of the costs for deloading shorter loops. Where the CLEC requests that Qwest go beyond this voluntary deloading, the Act and FCC orders permit it to recover its costs.

4. Loop 8(c): AT&T's Refund Proposal Is Unworkable.

Because conditioning is an activity Qwest undertakes in response to a CLEC request, Qwest believes that it is entitled to recover its costs of conditioning loops, regardless of whether the end user ultimately receives DSL service from the CLEC who requests conditioning.

AT&T, however, seeks to avoid the costs of competition and require Qwest to provide a refund of conditioning costs under various scenarios. AT&T has made several passes at trying to draft language for the SGAT that gives it a refund for these one-time loop conditioning costs undertaken on their behalf. In the first Arizona workshop, AT&T proposed language that required only Qwest to refund conditioning costs if a CLEC lost its customer within one year, regardless of why the customer left and regardless of whether another CLEC wooed the end user away from the CLEC who requested conditioning. Realizing the one-sidedness of this language, AT&T attempted in Colorado to require *all* CLECs to refund conditioning costs to the carrier that paid for it when the CLEC or Qwest entices an end user away from AT&T. This proposal met with even more disfavor, as several CLECs (such as New Edge and Covad) vigorously

⁵⁹ Mar. 5, 2001 Tr. at 18.

opposed it. These carriers, and Qwest, reasoned that if AT&T is concerned about its customers leaving AT&T after it has paid for conditioning, the proper mechanism is a Termination Liability Assessment ("TLA") between the carrier and the end user, not a refund that inhibits competition.

In the Multi-State workshop, AT&T reverted back to a variation of its original proposal, again imposing the obligation to refund conditioning costs *only* on Qwest if the end user left the CLEC within four months. While AT&T's language may have satisfied some of its CLEC opponents,⁶⁰ it was patently unfair and unreasonable to Qwest. AT&T's proposed language would have given the CLEC a refund of conditioning costs that Qwest undertook solely because the CLEC asked for it if the end user simply decided to go to another CLEC or not pursue DSL service at all, through no fault of Qwest. AT&T candidly admitted that its language "presumed" that if the customer left the CLEC it was Qwest's fault. AT&T presented no evidence whatsoever to support this "presumption." Furthermore, as with its original proposal, AT&T's proposal in the Multi-State workshop was patently unfair, as it required Qwest alone to provide a refund of conditioning costs even if another CLEC took the customer from the paying carrier.

In the Arizona follow up workshop, AT&T presented its most recent proposal on this issue, which, though more reasonable than its previous proposals, suffers from implementation issues. AT&T proposed language states that Qwest will refund loop conditioning costs if the customer never receives xDSL service from the CLEC, experiences "unreasonable delay" in provisioning or experiences "poor quality of service" due to Qwest fault. The basic problem with AT&T's proposal is the drafting and

implementation. AT&T seeks to have a stand-alone, self-executing refund, but the circumstances under which a refund could be due are variable and subject to interpretation. For example, as Ms. Liston explained, certain DSL services are susceptible to voltage or the equipment the CLEC puts on its side of the network.⁶¹ Furthermore, it is not uncommon for CLECs to push the technological envelope when providing xDSL service. Determining "fault," or the reason for the end user's "poor quality of service," with these variables requires some sort of process, which AT&T's proposal lacks entirely. Furthermore, the type of performance problems that may trigger a request for a refund may not occur immediately after the conditioning is performed, making an "automatic" refund even more difficult to administer.⁶² In addition, terms such as "poor quality," and "unreasonable delay" are subject to myriad interpretations that do not lend themselves to the self-executing refund AT&T seeks. In other words, there is no way to make a determination of "fault" to trigger a refund without some sort of process for addressing the dispute.⁶³

⁶⁰ New Edge, in particular, expressed concern with AT&T's proposal.

⁶¹ May 16, 2001 Tr. at 1536-37.

⁶² May 16, 2001 Tr. at 1539. Thus, this situation is starkly different than Qwest's agreement to waive coordinated installation charges if Qwest does not perform the coordinated installation within 30 minutes or its going-forward agreement to waive the installation charge up front if it does not perform cooperative testing. These situations are bright-line, and the determination of why the coordinated installation or testing did not occur is made immediately. *Id.* at 1538-1539.

⁶³ Ms. Liston noted that there also are instances for held orders in which Qwest conditions a loop for a CLEC, and the CLEC never provides a due date for when Qwest should put the facility in service. Qwest has performed the conditioning and not been paid. If that order is cancelled, the next carrier that requests that facility obtains the benefit of that conditioning. May 16, 2001 Tr. at 1542.

Qwest is not opposed to inserting language in the billing provisions of the SGAT that would entitle a CLEC to a credit of conditioning costs if Qwest failed to perform the conditioning in a workmanlike manner or significantly missed its due date for conditioning due to Qwest fault. Qwest asserts that to the extent a carrier believes it is entitled to a credit because of Qwest's poor performance, that issue necessarily needs to be addressed in the context of a billing dispute to permit a determination of fault. This is the solution Qwest proposed in the Multi-State workshops.⁶⁴ AT&T's newest proposed language simply cannot be implemented without a process for determining the reason the end user did not receive xDSL service or the reason for the "unreasonable delay" or "poor quality" service. If AT&T opposes the current billing dispute language in the SGAT, or does not believe it addresses this situation, then it should present those concerns at the General Terms and Conditions workshop.

5. Loop 9: The Commission Should Adopt Qwest's Spectrum Management Positions.

Spectrum management concerns loop plant administration and deployment practices that are designed to result in spectrum compatibility or to prevent interference between services and technologies that use pairs in the same cable. In the past, issues of spectrum were not of significant importance. The advent of advanced services, such as DSL, however, has brought this issue to the fore as signals in the same binder group could interfere with each other. The FCC outlined its national policy for spectrum

⁶⁴ May 16, 2001 Tr. at 1539.

management in the *Line Sharing Order*⁶⁵ and *Line Sharing Reconsideration Order*.⁶⁶ In these orders, it established general rules regarding spectrum management and turned to the Network Reliability and Interoperability Council ("NRIC"), with advice from industry bodies such as T1E1.4, to make recommendations regarding spectrum management and spectrum policy.

During the workshop, the participants agreed to incorporate the record from the Multi-State 271 proceeding, as well as the impasse issues, for Loop Issue 9. The three issues that remain in dispute between the parties are fairly straightforward. On each, Qwest has proposed SGAT language that meets both the letter and spirit of the FCC's guidelines. Moreover, Qwest agrees to follow the final recommendations of the standards-setting bodies that are currently advising the FCC. The Commission should approve this language.

The Commission should not accept the invitation to supplant the industry standards-setting bodies or to use this Section 271 proceeding to establish their overall spectrum management processes. Spectrum management is far too important an issue that is in its early developmental stages to make ad hoc judgments before designated

⁶⁵ Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, 14 FCC Rcd 20912 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

⁶⁶ Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, 16 FCC Rcd 2101 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

industry experts on the subject have had an opportunity to act.⁶⁷ The net effect of Rhythms proposal is dramatic because it could result in many customers out of service for a period of time. It is precisely because the ramifications are so large and the issues so complex that the FCC referred spectrum issues to industry experts in the first instance. This proceeding is limited in its scope and industry groups continue to work through these important issues. Accordingly, the Arizona Commission should not reach out to address novel issues that are not necessary to determine Qwest's compliance with current and existing FCC rules.

- a. **Loop 9(a): The FCC has rejected Rhythms' claim that it need not provide Qwest with NC/NCI codes. The FCC recognized that the codes permit Qwest to anticipate and respond to potential disturbances.**

T1E1.4 recently issued its first set of recommendations, T1.417, in which, among other things, it recommended the use of nine spectrum classes to identify types of advanced services. T1E1 then charged the Common Language Group with establishing NCI codes to match the nine spectrum classes.⁶⁸ Network Channel/Network Channel Interface ("NC/NCI") codes are standard industry codes that indicate the type of service deployed on a loop.⁶⁹ NC/NCI codes have been a standard field on Local Service Requests ("LSRs"), and Rhythms uses them today.⁷⁰ The only difference now is that

⁶⁷ May 1, 2001 Multi-State Tr. at 276. Qwest believes the standards process will be completed in approximately one year.

⁶⁸ May 1, 2001 Multi-State Tr. at 228-29.

⁶⁹ May 1, 2001 Multi-State Tr. at 230.

⁷⁰ May 1, 2001 Multi-State Tr. at 302-03.

Qwest is in the process of implementing the NC/NCI codes established by the Common Language Group for spectrum management purposes.⁷¹

In both the Arizona and Multi-State workshops, however, Rhythms opposed the use of NC/NCI codes to order advanced services. Rhythms claimed it was unnecessary to provide Qwest with this standard information so long as every carrier operated within spectrum guidelines. To implement its position, Rhythms presented SGAT language providing that "all carriers" -- presumably including those who are not parties to the SGAT -- would simply agree to "deploy services that in compliance with T1.417 and other applicable FCC requirements."⁷² According to Rhythms, if all carriers agree to be good spectrum citizens, Qwest has no need to be informed of the technology CLECs intend to deploy.

Contrary to Rhythms' optimism regarding the good behavior of all carriers, the FCC has already anticipated that some carriers may not agree to comply with industry spectrum guidelines. In addition, new types of DSL service may be deployed that are especially susceptible to disturbance or that create disturbances. To respond to both possibilities, the FCC determined that incumbent LECs need information regarding the advanced services deployed on their networks. In fact, it has rejected the very position Rhythms advances in this workshop and required CLECs to disclose to incumbent LECs information on CLEC deployment of DSL technology so that incumbents can maintain accurate records and resolve potential disputes:

⁷¹ May 1, 2001 Multi-State Tr. at 230-31; *id.* at 241-42.

⁷² Multi-State Exhibit WS6-RHY-VLK-2.

Some incumbent LECs argue that they require certain information on a requested deployment in order to be able to assess properly the prospects of the deployment significantly degrading the performance of other services.

* * *

Consistent with the information disclosure requirements that we applied to incumbent LECs in the *Advanced Services First Report and Order*, we agree that competitive LECs must provide to incumbent LECs information on the type of technology that they seek to deploy, including Spectrum Class information where a competitive LEC asserts that the technology it seeks to deploy fits within a generic PSD mask. We further agree that competitive LECs must provide this information in notifying the incumbent LEC of any proposed change in advanced services technology that the carrier uses on the loop, so that the incumbent LEC can correct its records and anticipate the effect that the change may have on other services in the same or adjacent binder groups.⁷³

The FCC codified this requirement in 47 C.F.R. § 51.231(b) and (c).⁷⁴ Contrary to the assertions of Rhythms at the workshop,⁷⁵ these rules remain in effect and have been neither overturned nor superseded by T1E1.4 or any other industry body. Accordingly, the requirement that CLECs inform Qwest of their deployment of advanced services technology is not optional. It is a requirement of the FCC's national spectrum policy.

Qwest does not seek this information so that it can micromanage spectrum utilization by CLECs or use NC/NCI codes for its own marketing purposes, as AT&T

⁷³ *Line Sharing Order* ¶ 204 (footnotes omitted) (emphasis added).

⁷⁴ See 47 C.F.R. § 51.231(b) ("A requesting carrier that seeks access to a loop or a high frequency portion of a loop to provide advanced services must provide to the incumbent LEC information on the type of technology that the requesting carrier seeks to deploy."); 47 C.F.R. § 51.231(c) ("The requesting carrier also must provide the information required under paragraph (b) of this section when notifying the incumbent LEC of any proposed change in advanced services technology that the carrier uses on the loop").

claims.⁷⁶ Rather, it requires this information in the event of an allegation of disturbance and to determine if a service can be provided on a specific binder group.⁷⁷ As Qwest explained, providing this information will help all carriers understand what is happening within a particular binder group.⁷⁸ Without information on the types of advanced technology deployed on its network, Qwest cannot fulfill its FCC mandated responsibilities⁷⁹ and will be unable to provide carriers information in the event of a spectrum dispute.

Rhythms claims that this information is proprietary and, therefore, it should not be required to share it with Qwest. The FCC rejected this argument as well:

We emphasize that incumbent LECs must protect the proprietary rights of deploying carriers, and may use this information for network purposes only, without disclosing who is deploying what advanced services technologies on particular binders. We believe that the benefits of applying such information disclosure requirements to competitive LECs

⁷⁵ May 1, 2001 Multi-State Tr. at 244.

⁷⁶ May 16, 2001 Arizona Tr. at 1559, 1554 ("Mr. Hubbard to Mr. Wilson...I'd just like to address the other thing you happened to say. That Qwest would use the NCI codes in their marketing scheme, I think is totally false and not appropriate to be addressed since the NCI codes....were established by NRIC 5, which was established by the industry. So I think for you to say the Qwest would use them in their marketing is totally wrong.")

⁷⁷ May 1, 2001 Multi-State Tr. at 247-48.

⁷⁸ May 1, 2001 Multi-State Tr. at 250-251 ("Mr. Steese: . . . will the NCNCI codes information allow us to proactively help the CLECs cure and understand exactly what's on the binder group? Mr. Boudhaouia: It helps everyone. It helps Qwest and whoever wants to play in that DSL field, understand the loop, how it is, what's running on the loop, and what's on the binder group itself. So in terms of there is no T1s, no disturbers on that binder group, the NCI -- the NCNCI code will help us determine six months from now or a year from now, if there is a problem, who is the disturber, how to identify it, and send the information to the CLECs as far as this is what we have in the binder group and here's the disturber").

⁷⁹ May 16, 2001 Arizona Transcript at 1561.

outweigh any burdens, particularly because we believe that the provision of such information is integral to a claimed presumption of acceptability anyway. Moreover, we anticipate and expect that the provision of such information by carriers will minimize conflicts over whether the proposed deployment falls within the presumption of acceptability.⁸⁰

Disclosure of NC/NCI codes is as important in preventing disturbance as in resolving disturbance disputes. With respect to T1 facilities, Qwest testified that its technology is (and has been for some years) HDSL. However, if it were to deploy T1 facilities, and had no information regarding other services in the binder group, it may inadvertently disrupt service.⁸¹ More important, putting T1 facilities aside, as new types of DSL services are deployed, new disturbers will inevitably be identified. Thus, Rhythms' claim that disclosure of NC/NCI codes can be avoided if Qwest agrees not to deploy technology that is a "known disturber," is not valid because neither Qwest nor Rhythms can have any assurance that the next CLEC (or new variety of DSL service) to come along will comply. Accordingly, as FCC rules require, the Commission should recommend that Qwest's proposed SGAT language requiring CLECs to inform Qwest of the NC/NCI codes for the advanced services they offer is appropriate. Qwest commits to maintain the confidentiality of this proprietary information in accordance with FCC rules and provisions of the SGAT addressing protection of proprietary information.

⁸⁰ *Line Sharing Order* ¶ 204 (footnotes omitted).

⁸¹ May 1, 2001 Multi-State Tr. at 291, 301-02 (discussing the need to know what CLECs have deployed to avoid disrupting their service).

b. Loop 9(b): It is unreasonable to require Qwest to move immediately to create a process to manage spectrum from remote terminals in advance of T1E1 recommendations.

In order to encourage deployment of innovative technologies and allow competitors to deploy advanced services in a multi-provider, multi-service environment, the FCC established general ground rules concerning what technologies can be deployed and who has the final say on various deployment issues. The FCC specifically turned to the industry, through its standards-setting bodies, to develop spectrum compatibility standards and spectrum management practices on an ongoing basis.⁸² In the *Line Sharing Order*, the FCC "reiterate[d] [its] general belief that industry standards bodies can, and should, create acceptable standards for deployment of xDSL-based and other advanced services."⁸³ The FCC concluded, "the standards setting process must include the involvement of a third party to advise the [FCC] on spectrum compatibility standards and spectrum management practices."⁸⁴ The FCC then designated the NRIC to fulfill that advisory function.⁸⁵ Moreover, because the FCC recognized the continuous nature of spectrum compatibility standards and spectrum management practices development, it instructed NRIC to submit reports to the FCC on standards and practices development issues as NRIC or the FCC deemed necessary but, in any event, promptly after NRIC has received appropriate input from industry standards bodies, such as the T1E1.4. The FCC

⁸² *Line Sharing Order*, 14 FCC Rcd 20912 (rel. Dec. 9, 1999).

⁸³ *Line Sharing Order* ¶ 183.

⁸⁴ *Line Sharing Order* ¶ 184.

⁸⁵ *Line Sharing Order* ¶ 184.

stated that "[t]his expectation reflects [its] continued confidence, shared by an overwhelming majority of commenters in this proceeding, that T1E1.4 is well equipped to develop future PSD masks and other spectrum compatibility standards."⁸⁶ NRIC's final report to the FCC is due in January, 2002.⁸⁷ With respect to remote deployment of DSL, the parties widely acknowledge that T1E1 continues to discuss this issue, and NRIC has not yet made a final recommendation to the FCC.⁸⁸ In fact, Rhythms does not dispute that there are no industry standards on deployment of intermediate devices or remote deployment of xDSL. Ironically, Rhythms recently resigned from the Focus Group 3 addressing this issue.

Nevertheless, Rhythms claims that the Arizona Commission should short-circuit this deliberative, industry standards-setting process and order Qwest to implement *draft* recommendations on remote deployment of DSL. However, there is no reason to rush to judgment on this issue or to require Qwest to implement proactively draft proposals that remain under discussion in industry forums

Qwest asserts that it is premature and an enormous waste of resources to require it to develop processes for a draft proposal that remains under discussion, and therefore subject to change, in industry forums. If NRIC were to adopt a different recommendation than the drafts currently under discussion, Qwest will have expended significant

⁸⁶ *Line Sharing Order* ¶ 186.

⁸⁷ May 1, 2001 Multi-State Tr. at 228.

⁸⁸ May 1, 2001 Multi-State Tr. at 237-38. Rhythms believes that the T1E1 may not resolve this issue for at least 5 years. *See*, Rhythms Brief (Errata) Regarding Loop Impasse Issues, Utah PSC Docket No. 00-049-08 at 9.

resources to develop obsolete processes with no benefit to CLECs or itself. To avoid this wasteful exercise, Qwest believes it is entirely proper and prudent to wait until NRIC makes a final recommendation on remote deployment issues.

Exercising caution will harm no carrier. Rhythms' concern centers on the alleged remote deployment of DSL problems that may have been caused by other incumbent LECs:

Mr. Steese: In the remote deploy issue, you said in a year or so if someone starts to remote deploy this could be a concern, fair?

Mr. Riley: I don't know if Qwest is currently in the realm of deploying those, but other incumbents are today doing that.⁸⁹

When Qwest deploys remote DSL, it locates the remote DSL further out in its network than central office-based ADSL will work. Therefore, Qwest's deployment of remote DSL will not cause an interference problem for central office-based ADSL. Qwest will place its remote DSL further out in the network until NRIC has developed spectrum management guidelines for remote deployment of DSL services. Thus, it is inaccurate to suggest that Qwest is taking no action. Given the speculative nature of Rhythms' concerns, there is no reason to require Qwest to implement draft proposals before the standards-setting bodies reach a final determination. Importantly, Qwest is not saying that it will not follow industry consensus on remote deployment of DSL. It will once those recommendations are final. Thus, once NRIC makes a final recommendation on remote deployment of DSL, Qwest has committed in SGAT § 9.2.6.1 to implement that recommendation.

Rhythms argues that Qwest should implement the proposal still under consideration at T1E1.4 because standards-setting bodies take a long time to issue recommendations. The fact that industry bodies will necessarily take time to deliberate on these complicated issues is no reason to flash-cut to Rhythms' proposed solution. The FCC expressly recognized that "the standards development process is by nature lengthy."⁹⁰ In this regard, the FCC explicitly declined to intervene in the standards-setting function absent a clear abuse by T1E1.4:

We are reluctant to intervene in spectrum compatibility and management matters except in cases . . . where industry standards bodies have failed to encourage expeditious and competitively neutral deployment of innovative technologies. Not only will NRIC enhance the Commission's role through the advice, recommendations and reports that it provides to the Commission, but it also will be able to identify issues for consideration by industry standards bodies, based on issues that the Commission believes need to be addressed. Through the recommendations and reports that we receive from NRIC, we will evaluate whether T1E1.4 and other industry standards bodies are acting in a manner consistent with the policies that we have determined should underlie spectrum compatibility standards-setting and formation of spectrum management rules and practices.⁹¹

Given the FCC's unmistakable reliance on NRIC to make recommendations regarding spectrum management issues, it would be particularly inappropriate for the Arizona Commission to short circuit that process further by ordering Qwest to implement draft recommendations that have not even been fully addressed by the industry groups whose task it is to advise the FCC.

⁸⁹ May 1, 2001 Multi-State Tr. at 236.

⁹⁰ *Line Sharing Order* ¶ 190.

Rhythms admits that there are no current FCC requirements or industry standards regarding repeatered services or remote deployment of DSL services.⁹² Because this Section 271 proceeding looks only to whether Qwest satisfies the requirements of Section 251, 271, and existing FCC rules, the Commission should not reach out to decide an issue that remains under discussion by the industry experts designated by the FCC to address it and that is now only a potential problem for Rhythms.⁹³ For these reasons, the Commission should approve Qwest's spectrum management language for Section 9.2.6 and reject Rhythms' request that Qwest prematurely implement draft guidelines for spectrum management associated with remote deployment of DSL.

c. Loop 9(c): Qwest properly manages T1 facilities and its proposed SGAT appropriately addresses any potential interference.

In the *Line Sharing Order*, the FCC identified analog T1 as a "known disturber" that can and should be segregated from other advanced services.⁹⁴ Rhythms and AT&T have broadly interpreted this language to mean that Qwest should immediately eliminate deployment of future T1s and transition to less disruptive technologies. However, in the *Line Sharing Reconsideration Order*, the FCC was more balanced and only rejected an "approach to resolving interference disputes that favors incumbent LEC services in a

⁹¹ *Line Sharing Order* ¶ 191 (footnotes omitted).

⁹² May 1, 2001 Multi-State Tr. at 239. *See also, See, Rhythms Brief (Errata) Regarding Loop Impasse Issues*, Utah PSC Docket No. 00-049-08 at 8. ("Both Rhythms and Qwest agree that.... deployment of intermediate devices such as repeaters and remote deployment of xDSL, there are currently no standards adopted by T1E1 that would bind Qwest to deploy in a spectrally compatible manner.")

⁹³ *See SBC Texas Order* ¶¶ 22-26.

manner that *automatically trumps, without further consideration*, innovative services offered by new entrants."⁹⁵ In addition, the FCC also authorized state commissions to determine the disposition of known disturbers.⁹⁶ In describing the different permissible approaches to disposition of known disturbers, the FCC held that states "could allow for segregation of the disturber by the incumbent LEC."⁹⁷ Contrary to any suggestion by the CLECs, Qwest is complying with this FCC policy and is appropriately managing its T1s in a way that considers the innovative technology needs of CLECs by appropriately segregating disturbers. Qwest's services are not automatically taking precedence over new entrant services and, accordingly, there is no basis to require further dislocation of T1 facilities.

As Qwest explained at the workshops, its practice is to place repeatered T1 services in binder groups by themselves.⁹⁸ Qwest's method for deployment of T1 facilities is to place the T1s in a separate binder group from other DSL services.⁹⁹ Qwest places the transmit and receive sides of the T1 service in separate binder groups on separate sides of the cable.¹⁰⁰ In Qwest's feeder network, large cables are made up of

⁹⁴ *Line Sharing Order* ¶¶ 213-214.

⁹⁵ *Line Sharing Reconsideration Order* ¶ 54(emphasis added).

⁹⁶ *Line Sharing Order* ¶ 218.

⁹⁷ *Id.*

⁹⁸ May 16, 2001 Arizona Tr at 1561.

⁹⁹ May 1, 2001 Multi-State Tr. at 288.

¹⁰⁰ *Generally* May 1, 2001 Multi-State Tr. at 249. A T1 requires a transmit and a receive cable pair each to operate the T1.

100 pair binder cables. In an 1800 pair cable, there will be 18 binder groups. Qwest places T1s in the outside binder groups and separates transmit and receive to opposite sides of the cable to decrease potential interference. Thus, Qwest's policy for treatment of T1 facilities is consistent with FCC guidance to the states.

Both Rhythms and AT&T claim at the workshops that Qwest installs T1s that knock CLECs out of service and prohibit the implementation of DSL in the future. Qwest disagrees with these assertions. As Mr. Hubbard explained at the Multi-State and Arizona hearings, Qwest's engineering guidelines provide that its first choice is to deploy HDSL, a service specifically considered by TIE1, and not to place new T1 span lines out in the field.¹⁰¹ If Qwest does place a T1 that somehow disturbs the service of another carrier, then Qwest commits in SGAT Section 9.2.6.5 to change that to an HDSL facility wherever possible. As Mr. Hubbard testified "Where technically possible, . . . we're willing to move that out to a HDSL."¹⁰² Rhythms, however, seeks even more. Rhythms' witness suggested that despite Qwest's commitment to segregate T1 facilities in binder groups and deploy HDSL whenever possible, Qwest must commit to Rhythms' suggested technology deployment.¹⁰³ Qwest, however, is not required to deploy Rhythms' preferred technology so long as the technology Qwest deploys is properly managed, and Qwest commits to move to a less interfering technology whenever possible. As the Multi-State Facilitator aptly noted, Rhythms appears to be

¹⁰¹ May 1, 2001 Multi-State Tr. at 282; *See also* May 16, 2001 Arizona Tr. at 1560, 1561.

¹⁰² May 1, 2001 Multi-State Tr. at 298-99.

¹⁰³ May 1, 2001 Multi-State Tr. at 299.

demanding this commitment without any commitment on its own part to even seek to deploy DSL service on Qwest's network.¹⁰⁴ Qwest should not be required to implement Rhythms' preferred technology based upon this inadequate foundation.

SGAT Section 9.2.6.5 is purposefully crafted to apply to any technology and any carrier that causes a disturbance. In addition, consistent with the FCC's focus on industry resolution of spectrum issues, Section 9.2.6.5 provides that the parties themselves, and particularly the alleged disturber, will cooperate to resolve the spectrum dispute. Qwest believes that the issues are far too complicated and Rhythms' fears too remote to require Qwest to do more to manage T1 facilities.

To demonstrate the supposed evils of existing T1 facilities deployed in an incumbent LEC network, Rhythms introduced a diagram of what it claimed was a "not untypical" configuration of T1 facilities in a binder group.¹⁰⁵ The placement of T1 facilities in this diagram, however, was designed to maximize their potential disturbance. Moreover, the diagram has nothing whatsoever to do with Qwest's deployment of T1 facilities. Rather, Pac Bell presented it to Rhythms in 1998 to support Pac Bell's position at the time that Rhythms could not receive loops past 12,000 feet.¹⁰⁶ Qwest testified that it affirmatively did not deploy T1 facilities in the configuration depicted in the diagram. Instead of using the inside of the binder group for T1 facilities, as Rhythms' exhibit showed, Qwest uses the outside of the sheath and deploys a second

¹⁰⁴ May 1, 2001 Multi-State Tr. at 299-300.

¹⁰⁵ Multi-State Exhibit WS6-RHY-VLK-4.

¹⁰⁶ May 1, 2001 Multi-State Tr. at 286.

binder group, if necessary, to avoid creating unwarranted interference.¹⁰⁷ Most important, however, Qwest segregates its T1 facilities onto separate binder groups, unlike the rather dated Pac Bell diagram.¹⁰⁸ As set forth above, this is precisely what the FCC instructed states to require for managing known disturbers.

Rhythms countered that its real concern is not with the large binder groups depicted in the diagram, but in distribution facilities far from the central office. However, as Qwest demonstrated, this is a non-issue because if facilities extend far from the central office, Rhythms will not be able to provision DSL service anyway.¹⁰⁹ Moreover, in the remote chance that this situation arises, there is a dispute resolution mechanism in the SGAT that will allow the parties to obtain a prompt resolution of the issue.

Qwest believes that its commitment and practice to segregate T1 facilities on separate binder groups and to move T1 facilities to other technology wherever possible is reasonable and consistent with FCC guidelines. To the extent Rhythms seeks more, this Section 271 proceeding is not the proper forum to advance its claims.

Finally, during both the Arizona and Multi-State workshops, the participants discussed the language in Sections 9.2.6.4 and 9.2.6.5, and the appropriate metric for determining the management of "known disturbers". During the Multi-State workshop, the parties came to agreement on the language of the sections, except for a cross-

¹⁰⁷ May 1, 2001 Multi-State Tr. at 287-89.

¹⁰⁸ May 1, 2001 Multi-State Tr. at 289.

¹⁰⁹ May 1, 2001 Multi-State Tr. at 298-99.

reference that establishes the metric against which Qwest's compliance will be measured. This language was left blank.

During the Arizona workshop, the parties agreed that subject to resolution of the impasse issue, Qwest would supply the missing language.¹¹⁰ Accordingly, Qwest proposed that in § 9.2.6.4 the words "the T1E1" should be substituted for "its". In addition, Qwest proposed that § 9.2.6.5 should read: "Upon notification, the causing carrier shall promptly take action to bring its facilities/technology into compliance with *industry standards*."¹¹¹

6. Loop 10(e): Qwest Has Agreed To Waive The Costs of Installation If It Does Not Perform Cooperative Testing, And Qwest Hopes To Have The Opportunity To Work Through The Identified Operational Issues With Covad.

Covad alleged that Qwest has failed to perform cooperative testing with Covad on certain orders. During the workshop, however, it became clear that there were operational issues that were impacting the processes that each carrier applied to Covad orders. For example, one issue that surfaced is that Covad wanted basic installation with cooperative testing, but its contract with Qwest did not provide this option. As a result, the parties were attempting to address Covad's request as one for coordinated installation with cooperative testing by entering the same time for performance of the test on all of its orders. However, since Covad and Qwest were not actually performing a coordinated installation, the arbitrary time entry on the order appeared to be creating operational

¹¹⁰ May 16, 2001 Arizona Tr. at 1556-1557. *See also* AT&T Post Workshop Brief on Loops, Line Splitting and NIDs, Utah PSC Docket No. 00-049-08 at. 27.

¹¹¹ May 17, 2001 Tr. at 1794-1795.

issues.¹¹² As a result, Qwest suggested that Covad amend its contract to obtain the option of basic installation with cooperative testing.¹¹³ It also appeared that the parties may be mis-communicating regarding the proper process to employ for Covad orders or providing conflicting instructions for those orders.¹¹⁴ Finally, it also appeared that Covad and Qwest employees may have implemented "work arounds" that not only disrupted the standard processes but distorted the number of times that Qwest allegedly did or did not perform testing.¹¹⁵

Covad stated that its principle desire was "to get some sort of a process or procedure in place that will facilitate the fact that cooperative testing takes place in the first place rather than on the back end of waiving charges."¹¹⁶ Accordingly, the parties agreed to work off-line to resolve the issue, and Ms. Liston committed to attend a Covad-Qwest call to work toward resolution of the operational issues between the carriers.¹¹⁷ In early June, Ms. Liston attempted to participate in the Qwest-Covad account call. However, two things immediately became clear: Covad had not yet signed an amendment to its agreement that would permit it to obtain basic installation with cooperative testing, and Ms. Liston's participation in the call was not acceptable to the

¹¹² See May 16, 2001 Tr. at 1579.

¹¹³ May 16, 2001 Tr. at 1579-80.

¹¹⁴ See, e.g., May 17, 2001 Tr. at 1709, 1711-12, 1743-46.

¹¹⁵ May 17, 2001 Tr. at 1911-13.

¹¹⁶ May 16, 2001 Tr. at 1578.

¹¹⁷ May 16, 2001 Tr. at 1582; May 17, 2001 Tr. at 1913-14.

Covad participant. In fact, the Covad participant informed its Qwest account manager that Ms. Liston should not participate in future Covad account calls.

Qwest and counsel for Covad have since communicated, and Qwest is hopeful that this initial resistance was a result of a miscommunication. Qwest remains committed to work through the Covad-Qwest operational issues to ensure that the process runs smoothly for both carriers.

As a result, Qwest and Covad have not yet been able to complete offline discussions on this issue. However, Qwest is hopeful that now the parties have communicated, Qwest will be able to follow up on its commitment to work off line with Covad.

In addition to these efforts, however, Qwest has made several changes to its SGAT to address the requests of CLECs. Qwest believes these commitments should resolve any outstanding issues on this score. First, Qwest has always kept records in WFA of Qwest's test results;¹¹⁸ Qwest is now also tracking if it performed cooperative testing with the CLEC. Second, Qwest committed in several sections of the SGAT to provide CLECs with emailed results of Qwest performance tests within two business days of performance of the test.¹¹⁹ Thus, to the extent Covad believes Qwest is not performing its performance tests, it can seek to add this commitment to its contract. Finally, Qwest recently modified its original offer regarding waiver of charges.

¹¹⁸ May 17, 2001 Tr. at 1754.

¹¹⁹ See SGAT §§ 9.2.2.9.2.2, 9.2.2.9.2.3, 9.2.2.9.3.1, 9.2.2.9.3.2, and 9.2.2.9.5.1. CLECs are required to designate a single email address for receipt of the test results. Qwest anticipates implementation of this process in August 2001.

Originally, Qwest stated that it would waive the installation fee if Qwest fails to perform cooperative testing due to Qwest fault and the CLEC ultimately elected to forego cooperative testing. Qwest has agreed on a going-forward basis to waive the entire cost of the coordinated installation if it fails to perform cooperative testing with the CLEC based on Qwest fault, *regardless* whether the CLEC elects to forego cooperative testing. Thus, it has agreed to waive not only the costs of the cooperative test, but the installation as well. With these commitments, Qwest has a powerful incentive to perform both its performance and cooperative testing, and CLECs can obtain the hard-copy results of Qwest's performance tests. Based upon these commitments and Qwest's continuing agreement to work through Covad's operational issues, the Commission should find that this issue does not affect Qwest's compliance with checklist item 4.

7. Loop 11(d): Qwest Has Made Significant Efforts To Address Covad's Allegations Of Anti-Competitive Conduct.

Covad alleges that Qwest technicians engage in anti-competitive behavior when they are performing services on behalf of Covad. In response to these allegations, Qwest requested that Covad produce documentation or information in support of those allegations. In response, Covad provided information about alleged incidents of behavior it deemed anticompetitive. Qwest does not agree that the instances of behavior identified amount to "anti-competitive" behavior. In addition, the information Covad provided on these allegations was at least a year old, and it was not complete enough to permit Qwest to perform an investigation of the specific alleged incidents.

Nevertheless, Qwest takes Covad's allegations extremely seriously. As Ms. Liston explained, Qwest has a Code of Conduct, referred to in the workshop as the Asset Protection Policy, that prohibits employees from engaging in conduct that is disparaging

of CLECs or otherwise anti-competitive. Employees are required to sign this Code of Conduct as a condition of employment and violation of the Code is punishable by discipline up to and including termination.¹²⁰ In addition, managers are responsible for their employees attesting to this Code of Conduct. Qwest introduced documentation from the highest levels of the company emphasizing the importance of compliance with this policy.

Covad has suggested that Qwest has not made sufficient efforts to enforce and reinforce this policy. Qwest respectfully disagrees. For example, Qwest introduced a January 2, 2001 letter from Joseph Nacchio requiring all Qwest employees to review the Code of Conduct and acknowledge reading it. If the employee does not acknowledge review of the Code, neither the employee nor his or her supervisor would be eligible for second quarter bonus.¹²¹ Qwest also introduced its instructions to supervisor for distributing and emphasizing the Code of Conduct with occupational employees.¹²² Qwest introduced a confidential exhibit that identified the number of terminations in Arizona for violation of the Asset Protection Policy.¹²³ Qwest further presented evidence on its video training of technicians, which included reminders on the Code of Conduct as it applies to those employees.¹²⁴ When Qwest learned of a recent Covad complaint, it took corrective action to address the issue with the employee and informed Covad that

¹²⁰ Ex. 5 Qwest 48.

¹²¹ Ex. 5 Qwest 46; May 16, 2001 Tr. at 1595.

¹²² Ex. 5 Qwest 47

¹²³ Confidential Ex. 5 Qwest 50; May 16, 2001 Tr. at 1597.

Qwest had acted.¹²⁵ Covad suggested concerns that Qwest Account Managers were unfamiliar with the process for investigating or instituting an investigation of an allegation of anti-competitive behavior. Qwest disagreed and described its processes. Qwest also responded immediately by issuing a memorandum describing the process for investigating allegations of anti-competitive behavior to its Emerging Services Sales Executives, Major Markets Sales Executives, and Wholesale Service management.¹²⁶

Despite the fact that Qwest has full processes in place to address Covad's concerns, Qwest did not stop with these efforts. After the Arizona workshop, Qwest issued a two-page memorandum to all of its network employees, which is attached to this brief as Attachment 2, that described in detail Qwest's policy for compliance with its obligations under the Act and its intolerance of anti-competitive behavior. To ensure that these employees were aware of specific conduct that was prohibited, Qwest listed examples of prohibited conduct in the email. In Colorado, Covad counsel indicated that this memorandum went a long way to resolving concerns regarding this issue.

Qwest's policies and procedures comply with both the letter and the spirit of the Act. Despite its appropriate existing policies and procedures, Qwest has gone the extra mile and attempted to meet every demand of Covad to resolve this issue. The Commission should find that this issue is closed.

8. Loop 24: Qwest Has No Obligation To Create The Functionality To Permit CLECs To Perform A Pre-Order MLT.

¹²⁴ 5 Qwest 49; May 16, 2001 Tr. at 1596, 1604.

¹²⁵ May 16, 2001 Tr. at 1606, 1608-09. Qwest believes the incident was a simple mistake.

¹²⁶ Ex. 5 Qwest 57.

Loop Issue 24 centers on AT&T and Covad's demand that Qwest create the functionality to allow CLECs to perform a metallic loop test ("MLT") on a pre-order basis. As more fully discussed below, Qwest opposes this demand because (i) Qwest retail representatives cannot perform an MLT on a pre-order basis, (ii) MLTs are performed as a part of repair, (iii) a MLT is an invasive test that takes the customer's service down for a period of time, (iv) a MLT is a switch-based test that requires the loop to be connected to Qwest's switch, (v) no other BOC provides CLECs with a pre-order MLT, and (vi) Qwest has already given CLECs non-discriminatory access to MLT information through the Raw Loop Data ("RLD") tool.

The FCC first addressed an incumbent's obligation to provide loop makeup information in the *UNE Remand Order*. There, the FCC held that "an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install."¹²⁷ The incumbent is not to "digest" loop information or pre-qualify the loop for the CLEC, but instead, must provide the underlying information on the makeup of the loop.¹²⁸ At a minimum, the incumbent LEC must provide requesting carriers "the same underlying

¹²⁷ *UNE Remand Order* ¶ 427.

¹²⁸ *Id.* ¶ 428.

information that the incumbent LEC has in any of its own databases or other internal records."¹²⁹ Examples of the information incumbent LECs must provide are:

- the composition of the loop material including, but not limited to, fiber or copper;
- the existence, location and type of any electronic or other equipment on the loop, such as digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, and pair-gain devices;
- loop length, including the length and location of each type of transmission media;
- wire gauge(s); and
- electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

Qwest provides all of this information in its RLD tool. The information contained in the RLD tool is the same raw loop information that is utilized to qualify Qwest's retail DSL service.¹³⁰ As Ms. Liston demonstrated at the initial Arizona workshop, the Raw Loop Data tool provides the following loop information:

- Telephone number
- Address
- Common Language Location Identification (CLLI)
- Metallic Loop Test (MLT) distance
- Terminal ID
- Cable Name
- Pair Gain Type
- Pair Number
- Load Type
- Number of Load Coils
- Bridge Tap Offset by Segment

¹²⁹ *Id.* ¶ 427.

¹³⁰ May 17, 2001 Transcript at 1764.

- Cable Gauge by Segment.¹³¹

Covad, an active DLEC, told the FCC in an *ex parte* submission, that the Qwest RLD tool met the FCC's loop makeup requirements.¹³² Although incumbents are required to provide loop makeup information, they are not required to create an automated OSS database if one does not exist.¹³³ Furthermore, loop qualification information must be provided to CLECs only in substantially the same time and manner that it is provided to the incumbent LEC's retail operations.¹³⁴

AT&T and Covad's demand that Qwest create the functionality to perform a pre-order MLT exceeds all requirements in the Act. There are many compelling reasons why the Commission should reject this demand. First, a MLT is a switch-based test, which means the specified loop must be connected to the Qwest switch to perform the MLT.¹³⁵ If this condition exists in a *pre-order* situation, then the CLEC does not "own" the end user, as the CLEC does not "own" the end user until an actual order is placed and processed. In an unbundled loop situation, once the CLEC order is processed, the end user is no longer connected to Qwest's switch. It is connected to the CLEC switch.

¹³¹ Exhibit 5 Qwest 10.

¹³² Exhibit 5 Qwest 54.

¹³³ *UNE Remand Order* ¶ 429.

¹³⁴ *Id.* ¶ 430.

¹³⁵ May 17, 2001 Transcript at 1758.

Furthermore, no other BOC is providing CLECs with the ability to perform a MLT on a pre-order basis.¹³⁶ Covad claimed at the March workshop session that a BOC was permitting it to run MLTs. Upon investigation, Qwest determined that the BOC referenced only provided CLECs the ability to perform MLTs as a *repair* function, the same functionality Qwest provides; it did not permit them to perform MLTs on a *pre-order* basis.¹³⁷ This clarification makes sense, since an MLT is a switch-based test that requires the loop to be connected all the way to the Qwest switch.¹³⁸ Accordingly, AT&T and Covad are demanding that Qwest create functionality that the FCC has not ordered and that no other BOC provides.

In addition, a MLT is an invasive test. If the test is performed when an end user is on the line, it disconnects them.¹³⁹ On a pre-order basis, Qwest or the CLEC serving the end user would have no idea why the end user was experiencing the disconnect.¹⁴⁰ Thus, permitting any curious CLEC to perform random pre-order MLTs could lead to customer disruptions and needless repair calls. Thus, multiple CLECs performing pre-order MLTs on other carriers loops for market investigation purposes could significantly deteriorate customer satisfaction. In this highly competitive market, where trouble-free call quality is many times the singular distinction between carriers, multiple intrusive MLTs, which

¹³⁶ May 17, 2001 Tr. at 1757.

¹³⁷ *Id.* at 1763.

¹³⁸ *Id.*

¹³⁹ Attachment 3, Multi-State May 1, 2001 Tr. at 5, 6-7, 10.

¹⁴⁰ Attachment 3, Multi-State May 1, 2001 Tr. at 13.

may unexpectedly disconnect a customer mid-call, could sabotage the selected carrier's ability to provide superior service.

Moreover, Qwest does not perform MLT tests for itself on a pre-order basis; the test is used in repair situations to test the loop.¹⁴¹ Thus, Qwest retail sales employees do not have the ability to perform pre-order MLTs and do not even have access to MLT information. In fact, they have less access than CLECs to loop makeup information because Qwest retail sales representatives do not have access to raw loop data or the MLT distance.

Ironically, an MLT is not the panacea AT&T and Covad believe it is.¹⁴² For example, AT&T and Covad claim that they need MLT information because of alleged concerns with Qwest's efforts to improve the quality of the information in the databases.¹⁴³ As Ms. Liston testified, however, the MLT length is not the most accurate loop length available in the RLD tool. An MLT provides an estimated loop length based upon the resistance on the line.¹⁴⁴ To the extent the customer has multiple telephones off the loop, the MLT will show the loop length to be longer than it actually is. In fact, a MLT may overestimate loop length by as much as 20 percent.¹⁴⁵ Accordingly, the MLT

¹⁴¹ May 17, 2001 Tr. at 1757-56, 1763.

¹⁴² May 17, 2001 Tr. at 1763 (other pre-order information is more robust).

¹⁴³ Qwest notes that when Qwest asked Covad for information regarding Covad's allegation that it encounters loops during installation that are longer than represented in RLD, Covad reported that it had no documents or specific data that it had retained on this issue.

¹⁴⁴ *Id.* at 1766; Mar. 5, 2001 Tr. at 44-45.

¹⁴⁵ Mar. 5, 2001 Tr. at 45-46, 67, 89.

does not provide more accurate or reliable information regarding loop length; the information derived may actually be misleading. As Ms. Liston testified, the loop length information in the ADSL tool and the information on loop segments in the RLD tool provide a more accurate picture of the actual loop length.¹⁴⁶ Additionally, MLTs can only be performed on copper loops, not fiber or pair-gain.¹⁴⁷ Furthermore, if the CLEC is provisioning services such as SDSL, which is particularly susceptible to voltage, the MLT will not capture voltage.¹⁴⁸

The Commission should not order Qwest to create this functionality out of a concern that Qwest is not working to improve the quality of the information in the underlying databases. Qwest is committed to updating the LFACs loop information that feeds the RLD tool as well as Qwest retail tools.¹⁴⁹ As Ms. Liston explained, Qwest has made a concerted effort to update the database, and the quality and quantity of information in the database has grown dramatically over the past year.¹⁵⁰ Furthermore, as part of its ongoing efforts to improve the data that both Qwest and CLECs use, it is Qwest's practice that as errors in the underlying LFACS database are discovered during

¹⁴⁶ Mar. 5, 2001 Tr. at 44-46, 67-68, 73.

¹⁴⁷ May 17, 2001 Tr. at 1764.

¹⁴⁸ May 17, 2001 Tr. at 1766.

¹⁴⁹ Qwest retail MegaBit tool uses the same underlying loop make up information as the RLD tool. The RLD tool, however, provides far more detailed information than the MegaBit tool that Qwest retail uses. Mar. 5, 2001 Tr. at 69, 85-86, 87-88.

¹⁵⁰ Mar. 5, 2001 Tr. at 62-63.

the assignment process, they are reported.¹⁵¹ The updates to LFACs are then passed to the loop qualification database that supports both RLD and the Qwest retail MegaBit tool so that the updates to both occur simultaneously.¹⁵² Qwest also is completing the process of loading all distribution segments into the database,¹⁵³ and committed as part of the xDSL trial in Colorado to examine the accuracy of the RLD tool.¹⁵⁴ These commitments go far to addressing CLEC concerns regarding the quality of the RLD tool and negating a need to create a functionality to perform a pre-order MLT.

Furthermore, Qwest has already populated the RLD tool with MLT information on copper loops in Qwest's 14-state territory. This one time sweep was intended to provide basic loop information for the Raw Loop Data tool, while minimizing customer inconvenience. Qwest's prior MLT run to populate the RLD tool distinguishes Qwest from other BOCs, such as Verizon, that must perform such tests on a manual basis with a three-day turn around.¹⁵⁵ In the RLD tool, CLECs have access to this information on a real-time basis. Thus, the information Qwest provides not only meets AT&T and Covad's demands, but it exceeds what is available from other BOCs and even what Qwest's own retail sales operations receive.

¹⁵¹ Mar. 5, 2001 Tr. at 61, 51-52. In the follow up workshop and later in Colorado, Qwest revised the form that technicians use to update and correct the database.

¹⁵² May 17, 2001 Tr. at 1733-34.

¹⁵³ Mar. 5, 2001 Tr. at 61.

¹⁵⁴ The results of the xDSL trial will be submitted in Arizona. The trial is over, and Qwest's final data shows that the trial was successful. Qwest and Covad have not yet completed data reconciliation efforts in Colorado.

¹⁵⁵ *Verizon Massachusetts Order* ¶ 58.

AT&T and Covad claim that providing CLECs with the ability to perform pre-order MLTs is essentially a "parity" issue.¹⁵⁶ The *UNE Remand Order* requires BOCs to provide the same *information* available to their retail operations to CLECs in a non-discriminatory manner.¹⁵⁷ The *UNE Remand Order* does not require the BOCs to create functionalities that do not currently exist. MLTs are a repair function. Creating the functionality to perform MLTs on a pre-order basis would require significant resources,¹⁵⁸ and no CLEC (certainly not AT&T or Covad) committed on the record to pay the costs of creating that functionality. As Qwest reiterated in the workshop, it does not perform MLTs as a pre-order function to provide MegaBit.¹⁵⁹ CLECs and Qwest retail use the same underlying information, including MLT information, to provide qualify a loop. To the extent the database is updated, it is updated for both Qwest and CLECs alike in the same manner and timeframe.¹⁶⁰ If anything, CLECs enjoy superior access because they can view the MLT information directly in the RLD tool, but Qwest retail sales representatives cannot. Thus, there is no "parity" concern here.

AT&T has cited that fact that Qwest performed a single sweep of MLTs through its 14-state region to populate its loop database used for both Megabit and RLD tool as a reason to require it to create the functionality for CLECs to perform a pre-order MLT.

¹⁵⁶ May 17, 2001 Tr. at 1765, 1767.

¹⁵⁷ *UNE Remand Order* ¶ 427.

¹⁵⁸ May 17, 2001 Tr. at 1760-61.

¹⁵⁹ May 17, 2001 Tr. at 1760.

¹⁶⁰ May 17, 2001 Tr. at 1765-66.

As set forth above, the information derived from that MLT sweep is provided to the CLECs in the RLD. However, that Qwest performed the test once to populate the database in no way supports the multiple, continuous running of MLTs by CLECs. Rather, it demonstrates that CLECs already have MLT information available to them. In addition, there is no requirement that individual CLECs provide one another (or Qwest for that matter) with loop data. Thus, if CLECs perform pre-order MLTs on Qwest loops without restriction, multiple CLEC may perform the same MLT to derive the same information with no accrued benefit to other carriers or long-term benefit to the RLD that all CLECs share. Qwest's current database provides stability for the customer and parity for all carriers. Finally, an MLT cannot be performed on unbundled loops that Qwest has provided to CLECs. Once the loop is unbundled from the Qwest switch and transferred to the CLEC switch, Qwest no longer has the ability to perform a MLT.¹⁶¹ Thus, if the Commission were to order Qwest to provide the ability to perform a pre-order MLT, CLECs would be performing those tests only on *Qwest* switch-based loops, and could not perform them on other CLECs' loops. This is unfairly one-sided, since it permits the CLECs to take down and investigate only Qwest's lines, but it also demonstrates the inadequacy of MLTs for broad-based information: CLECs will have no ability to perform MLTs on any unbundled loop that has been provided to another CLEC.

AT&T and Covad presented no evidence demonstrating that Qwest performs MLTs on a pre-order basis for itself, or that any other carrier provides this functionality. Qwest, on the other hand, presented overwhelming evidence that AT&T and Covad's

¹⁶¹ See May 17, 2001 Tr. at 1758.

request is unprecedented and not a requirement of the Act. Accordingly, the Commission should find that Qwest need not create the functionality for CLECs to perform MLTs on a pre-order basis.

9. Loop 25: AT&T's Demand That Qwest Redesignate Interoffice Facilities As Loop Facilities Is Excessive.

AT&T requests in both the Arizona and Colorado workshops that Qwest include language in the SGAT providing that, upon the exhaustion of distribution or loop facilities, Qwest will reassign interoffice facilities ("IOF") to make them available to CLECs for use as loops.¹⁶²

AT&T's demand is both unfounded under the Act and unreasonable in terms of the technical configuration of Qwest's network. The FCC has emphasized that Section 271 proceedings are not a forum for CLECs to demand their "wish list" from BOCs. CLECs are not free to lodge every conceivable demand and then contend that the BOC cannot achieve 271 approval unless they meet each of them. Section 271 proceedings are not limitless in scope and are not the proper forum for the creation of new requirements under the Act.¹⁶³ This latest request by AT&T is a perfect example of the abuses of the process the FCC discouraged.

¹⁶² *Id.* at 1770. See also May 25, 2001 Colorado Loop Workshop Tr. at 110. Relevant portions of the transcripts of the Colorado Loop Workshop are attached as Attachment 4.

¹⁶³ See Memorandum Opinion and Order, *Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, 15 FCC Rcd 18354 at ¶¶ 22-26 (June 30, 2000) ("*SBC Texas Order*").

In Loop Issue 25, AT&T baldly claims that Qwest is obligated to redesignate interoffice transport facilities as loops "because they could do that for themselves."¹⁶⁴ AT&T presented no evidence whatsoever to support this blanket assertion. It could not because, in fact, Qwest does not redesignate interoffice facilities as loops for itself. Thus, AT&T's attempt to create a "discrimination" issue fails from the outset. Because Qwest does not redesignate IOF as loop facilities for itself, it is not obligated to do so for the CLECs.¹⁶⁵

Beyond unreasonable, AT&T's request is extraordinarily burdensome. IOF have a different appearance with the central office than exchange fiber. The IOF fiber is normally at the center of the sheath and has to be continuously spliced in an inside concealed compartment or "waffle case" to the next central office or exchange.

Therefore, it is not available for redesignation.¹⁶⁶ Meanwhile, exchange fiber is spliced on the outside of the waffle case, drops off, tapers down and is peeled off in manholes between central offices and is not part of the contiguous fibers that go from one central office to another.¹⁶⁷

In response to Qwest's evidence regarding actual network use and functionality, AT&T speculates that "it is far easier to utilize IOF designated facilities than dig up the ground below or dig up the street to put in new facilities which could then be used as

¹⁶⁴ May 17, 2001 Arizona Tr. at 1770.

¹⁶⁵ *Id.* ("Mr. Orrel: And Qwest's issue--position is that we don't do it for ourselves, so we are not willing to do that for the CLECs.")

¹⁶⁶ Attachment 4, May 25, 2001 Colorado Loop Workshop Tr. at 110-111.

¹⁶⁷ May 17, 2001 Arizona Tr. at 1771.

loops."¹⁶⁸ As Qwest demonstrated in Colorado during discussion of this issue, most of the time, the IOF cable is of a coarser gauge than is required for loop facilities and is not generally suitable for reassignment.¹⁶⁹

Notwithstanding AT&T's unreasonable demand, it is Qwest's general practice and part of its engineering process to transition IOF to loop facilities when an entire IOF copper plant is retired and replaced by fiber. It is and has been Qwest's practice to "reuse" these IOF facilities whenever the entire plant is in good enough shape to use as loop facilities.¹⁷⁰

AT&T presented no evidence demonstrating that converting IOF to loop facility on an *ad hoc* basis is technically advisable given Qwest's plant configuration for IOF. In addition, AT&T presented no evidence that Qwest is treating CLECs differently than it treats itself for purposes of IOF reassignment. In contrast to AT&T's pie-in-the-sky demands, Qwest testified that it does not redesignate working IOF as loop facilities for itself, Qwest stated that will meet the only reasonable component of such a demand by reassigning IOF when Qwest transitions an entire copper cable to fiber because, unlike AT&T's other demands, this practice makes good engineering sense. Accordingly, the Commission should deny AT&T's demand that Qwest convert working IOF to loop facilities.

¹⁶⁸ Attachment 4, May 25, 2001 Colorado Loop Workshop Tr. at 112.

¹⁶⁹ *Id.*

¹⁷⁰ However, Qwest will not redesignate IOF on an individual loop basis. *Id.* at 112-114.

10. WorldCom's ICB Arguments.

As set forth above, the parties closed on the ICB interval for OCn facilities in the Arizona workshop. Though present, WorldCom ("WCom") raised no issue with the resolution of this issue by the amendments to Section 9.2 and Exhibit C. Loop Issue 2, which WCom purports to brief, relates only to intervals for installation of loop types and a resolved issue regarding ADSL. It has no bearing on construction of OCn facilities. Furthermore, with Qwest's "generous offer" to share build information with the CLECs, the parties also closed AIL Issue 6, the only issue that remotely implicates an obligation to build facilities, as reflected in the Final AIL distributed by Staff. There also is no issue on the AIL that relates to WCom's claim that Qwest must build high capacity loop facilities for it. Nevertheless, WCom has briefed this issue, and although Qwest does not believe this is a disputed issue in Arizona, to protect its rights, it will respond. By doing so, Qwest in no way waives its claim that WCom's argument is improperly raised.

With respect to the ICB interval, Qwest provides OCn facilities to its own retail customers in all but two states (not Arizona) on an ICB basis. Thus, this interval is consistent with its retail interval. Furthermore, Qwest has no demand from CLECs for OCn facilities. Regardless, Qwest has committed in SGAT Section 9.2.2.3.1 to provide OC3, OC12, OC48 and OC192 loops and to provision them on a non-discriminatory basis. Where there is no reasonably foreseeable demand for this loop type, Qwest believes that offering OCn facilities on an ICB basis is consistent with its obligations under the Act.

Under Section 9.1.2.1, Qwest has agreed that it will construct loop facilities that are required to fulfill Qwest's obligations as a provider-of-last-resort (referred to as

"POLR obligations") or as an eligible telecommunications carrier ("ETC") for universal services. Nevertheless, WCom demands that Qwest go beyond this commitment and construct high capacity loops for it on demand.

Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms of the [parties' interconnection] agreement and the requirements of this section and section 252" ¹⁷¹ Of course, nothing in Sections 251, 252 or 271 of Act states that an incumbent LEC must build a network for CLECs. Consequently, when the FCC issued its first order implementing the Act it made clear that an incumbent's obligation to unbundle facilities applies only to the incumbent's *existing* network:

[W]e conclude that an incumbent LEC must provide unbundled access to interoffice facilities between its end offices, and between any of its switching offices and a new entrant's switching office, *where such interoffice facilities exist.* ¹⁷²

The Eighth Circuit, the court charged with reviewing the FCC's *Local Competition Order*, reached the same conclusion and expressly held that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's existing network--*not to a yet unbuilt superior one.*" ¹⁷³ Clearly, when no facilities exist, a

¹⁷¹ 47 U.S.C. § 251(c)(3).

¹⁷² *Local Competition Order* ¶ 443 (emphasis added).

¹⁷³ *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 812 (8th Cir. 1997), *aff'd in part, rev'd on other grounds, sub nom, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*Iowa Utils. Bd. I*") (emphasis added). The Eighth Circuit reaffirmed its decision to vacate the FCC's "superior quality" rules as inconsistent with the plain language of the Act in *Iowa Utils. Bd. v. FCC*, 219 F.3d 744, 757-58 (8th Cir. 2000), *cert. granted*, 121 S. Ct. 877 (2001). *See also MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 328 (7th Cir. 2000) ("Section

demand that Qwest construct those facilities constitutes not only a demand for "superior" service, but imposes an unlawful requirement that Qwest unbundle something other than its "existing" network.

In the *UNE Remand Order*, the FCC made this point again, even more emphatically:

Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. *In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use.* Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, *we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.*¹⁷⁴

WCom's position is also inconsistent with FCC pronouncements that facilities-based competition by CLECs is a critical means of bringing competition to the local telecommunications market. According to the FCC, facilities-based competition will bring "the greatest long-term benefits to consumers" because facilities-based competitors "have the greatest ability and incentive to offer innovative technologies and service

251 of the Act requires incumbent LECs to allow new entrants to interconnect with *existing* local networks, to lease elements of *existing* local networks at reasonable rates, and to purchase the incumbents' services at wholesale rates and resell those services to retail customers.") (emphasis added).

¹⁷⁴ Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696, ¶ 324 (Nov. 5, 1999) (emphasis added) ("*UNE Remand Order*").

option to the consumers."¹⁷⁵ In fact, the FCC believes facilities-based competition "offers the best promise of ultimately creating a comprehensive system of competitive networks"¹⁷⁶ Thus, the Act and the FCC encourage CLECs to construct their own networks.

WCom cites no rule that requires Qwest to construct facilities or to take the even more extraordinary step of construction OCN facilities on demand.¹⁷⁷ The simple reason for their failure is that the Act does not impose any such obligation on incumbents. Where facilities are not already in place, CLECs are in just as good a position as Qwest to construct the new facilities. Qwest presented studies showing that CLECs, including AT&T and WorldCom, are routinely building such facilities and, in fact, have a larger share of some segments of the high-capacity market than Qwest.¹⁷⁸ There is no "economy of scale or scope" that Qwest can share with the CLEC.

¹⁷⁵ 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, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, FCC 00-366, ¶ 4 (rel. Oct. 25, 2000) ("*MTE Order*").

¹⁷⁶ *Id.*

¹⁷⁷ WCom has cited 47 C.F.R. § 51.309(c) as supposedly encompassing this obligation. This provision, however, is patently inapplicable. This provision simply states that when an incumbent leases a particular UNE to a CLEC, the incumbent still has the duty to maintain, repair, or replace that specific network element that it leased to the CLEC. It in no way suggests that incumbents must build the UNE or loop facility in the first instance. Likewise, the generic statements in 47 C.F.R. § 51.313(b) simply state that "where applicable," the terms and conditions under which the incumbent LEC provide access to network elements must be no less favorable than terms and conditions under which the incumbent LEC offers the UNE to itself. The rule plainly addresses *existing* network elements. Furthermore, there is no retail analogue to provisioning unbundled loops. Thus, the rule is not applicable to loops.

¹⁷⁸ *See* Ex. 5 Qwest 44.

WCom has also claimed in its brief that "any other holding" than requiring Qwest to build OCN facilities on demand for CLECs "would allow Qwest to deny a CLEC's request for a UNE and then build the network element itself to provide the service to the same customer."¹⁷⁹ WCom, however, completely ignores that it or any another CLEC is fully capable of building that same network element itself on any terms and conditions it deems appropriate. Qwest does not construct facilities such as high capacity loops on demand for its retail customers. Thus, for CLECs as for Qwest retail, when OCN facilities do not exist, a special construction request is required, and Qwest has discretion to determine whether it will build the requested facilities. The bottom line is that where facilities do not exist, Qwest enjoys no competitive advantage. *Any* carrier can build the requisite loop or UNE facilities. WCom further provides no evidentiary support whatsoever for its assertion that Qwest somehow recovers the cost for constructing high capacity facilities in its rates.

Importantly, Qwest is not saying that it will *never* construct loop facilities for CLECs. Section 9.1.2.1 provides that Qwest will construct loop facilities to meet its POLR obligations. Additionally, if there is a construction job pending that would meet the CLEC's requirements, then Qwest will notify the CLEC and hold the order until the construction job is completed. Furthermore, CLECs can request construction under the special construction provisions of the SGAT,¹⁸⁰ and Qwest will consider those requests. Thus, to the extent a CLEC wishes Qwest to construct loop facilities for it, it may request that Qwest undertake the construction on the CLEC's behalf.

¹⁷⁹ WCom Brief at 4.

Qwest is not required to accede to WCom's loop construction demands to obtain Section 271 approval. The FCC's Section 271 orders are clear that a BOC need only comply with the Act and settled FCC rules to obtain Section 271 approval. A BOC is not required to agree to every demand of its competitors, nor are CLECs permitted to "doom" a BOC's application by raising dubious issues of industry-wide implication.¹⁸¹ Because the CLECs cannot point to any provision of the Act or FCC order that mandates that Qwest construct high capacity, or other loop facilities, on demand for them, this dispute has no bearing on Qwest's compliance with checklist item 4.

It also bears repeating that the SGAT is Qwest's standard contract offering. A Commission's approval of it will not alter Qwest's duty to negotiate and arbitrate an interconnection agreement with any requesting CLEC.¹⁸² Accordingly, where disputes center on an issue that is not a requirement of federal or state law, Qwest should be permitted to determine its own standard contract offering. To the extent a CLEC believes it has some legal right to require Qwest to act as its construction arm, a claim Qwest plainly disputes, it can seek that right in an arbitration under the Act. Qwest notes, however, that its position is consistent with those of other BOCs. Qwest presented excerpts from the Bell Atlantic SGAT, the SBC T2A and BellSouth's template

¹⁸⁰ See, e.g., SGAT § 9.19.

¹⁸¹ Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 at ¶ 230 (rel. Jan. 22, 2001) ("*SBC Kansas-Oklahoma Order*") ("As we have found in past section 271 proceedings, the section 271 process simply could not function if we were required to resolve every interpretive dispute about the precise content of an incumbent LEC's obligations to its competitors, including fact-intensive interpretive disputes"); *SBC Texas Order* at ¶ 23-26.

interconnection agreement, and each contract expressly limits the BOC's commitment to construct facilities for CLECs.¹⁸³ Thus, to Qwest's knowledge, no BOC is providing what WCom seeks.

Finally, as mentioned above, Qwest made a significant accommodation to CLECs that undercuts any claim that Qwest somehow enjoys an unfair advantage by declining to construct loop facilities on demand for CLECs. In the workshop, CLECs claimed that if Qwest would not build loop facilities for them on demand, it should share its own build information with CLECs to enable CLECs to determine where facilities may be placed and adjust their planning strategies accordingly. Qwest offered to share this information with CLECs as set forth in proposed SGAT § 9.1.2.4, quoted above. All participants in both Arizona and Colorado workshops agreed to this provision, and the issue closed in Arizona.

Thus, Qwest has not only agreed to build facilities where required to meet its POLR obligations, it has also agreed to hold an order if there is a pending job that would satisfy the CLEC request, and it has offered to share certain build information with CLECs. Given these important concessions, WCom's claim that Qwest must go farther and build other loop facilities on demand is unreasonable and unwarranted.

B. CHECKLIST ITEM 11: LOCAL NUMBER PORTABILITY

Section 271 (c)(2)(B)(xi) of the 1996 Act requires Qwest to comply with the number portability regulations the Commission has adopted pursuant to section 251 of

¹⁸² 7 U.S.C. § 252(f)(5).

¹⁸³ Ex. 5 Qwest 52.

the 1996 Act.¹⁸⁴ Section 251(b)(2) of the 1996 Act requires Qwest "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."¹⁸⁵ The 1996 Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another,"¹⁸⁶ which the Commission has incorporated into its rules.¹⁸⁷

Section 271(c)(2)(B)(xi), checklist item 11, provides: "Until the date by which the Commission issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations." Once long-term number portability ("LNP") has been deployed in an area, then interim methods ("INP") may no longer be used. Qwest legally obligates itself to fulfilling these provisions through numerous interconnection agreements approved by the Arizona Commission, and through its Statement of Generally Acceptable Terms ("SGAT"), as well as the bona fide request ("BFR") process.

¹⁸⁴ 47 U.S.C. § 271(c)(2)(B)(xi).

¹⁸⁵ 47 U.S.C. § 251(b)(2).

¹⁸⁶ 47 U.S.C. § 153(30).

¹⁸⁷ 47 C.F.R. § 52.21(k). Section 251(e)(2), requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission. See generally, *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20757 (citing 47 U.S.C. § 251(e)(2) and *In the Matter of Telephone Number Portability*, Third Report and Order, 13 FCC Rcd 11701, 11702-11704, para. 4 & nn.4, 7, 9, 12 (1998) (*Third Number Portability Order*)). See also *In the Matter of Telephone Number Portability*, Fourth Memorandum Opinion and Order on Reconsideration, CC Docket No. 95-116, RM 8535 at paras. 1, 6-9 (June 23, 1999) (*Fourth Number Portability Order*).

Qwest has implemented the terms of the SGAT through a series of processes described herein. Qwest has converted 100 percent of its access lines in Arizona to LNP, as of October 2, 2000.¹⁸⁸ Qwest has continued to evolve and improve its LNP provisioning and repair processes, including the offering of out-of-hours coordinated cutovers (i.e., "Managed Cuts") for provisioning of LNP.

Because all of Qwest's access lines in Arizona are now LNP capable, comments and discussion during the Workshops focused on LNP, as opposed to INP.¹⁸⁹

Unlike most provisions of the Act in which the FCC and state commissions have joint authority over the issue, the FCC has exclusive authority over LNP. The express language of Section 251(b)(2) so states: all LECs shall have the "duty to provide, to the extent technically feasible, number portability *in accordance with requirements prescribed by the Commission.*" In its Third and Fourth Orders on Telephone Number Portability, the FCC itself recognized that it has primary jurisdiction over LNP.¹⁹⁰ Thus, state commissions are not free to impose LNP obligations beyond FCC rules.

In the Supplemental, Supplemental Direct, and Rebuttal Testimony of Margaret S. Bumgarner, Qwest demonstrated its compliance with the FCC's number portability requirements and that it has implemented these requirements in its SGAT and Commission-approved interconnection agreements. Qwest has made substantial revisions to its SGAT provisions relating to LNP to accommodate most of Cox, AT&T's

¹⁸⁸ Supplemental Affidavit of Margaret S. Bumgarner, June 30, 2000, pg. 2.

¹⁸⁹ FCC regulations required LNP deployment in the 100 largest metropolitan statistical areas (MSAs) according to a phased implementation schedule that extended through December 1998. The FCC's LNP schedule included ten MSAs in Qwest's region. 47 C.F.R. § 52.23(b)(1). For exchanges outside the top 100 MSAs, beginning January 1, 1999, LECs were to make LNP available within six months after a bona fide request was received. 47 C.F.R. § 52.23(c).

¹⁹⁰ Fourth Memorandum Opinion and *Order on Reconsideration, In the Matter of Telephone Number Portability*, 14 FCC Rcd 16459 at ¶ 9 n.31 (stating that the FCC determined in Third Memorandum Opinion and Order that it had exclusive jurisdiction over long term number portability).

and WCom's suggestions. A couple of issues, however, remain at an impasse. However, unless these impasse issues demonstrate that Qwest does not comply with FCC number portability rules, that should be the end of the matter.

1. LNP Issue 1: Disconnection of Qwest Service on the Date of the Number Port (SGAT §§10.2.2.4; 10.2.5.3.1).

Number portability, unlike most checklist items, is in large part the responsibility of the CLEC. To port a number when the CLEC is providing the loop, all Qwest must do is preset an AIN trigger on the telephone number in its switch effectively notifying the network that the number is about to port. The CLEC must then connect its loop to the customer's inside wire and then activate the number port by sending a message to the regional database administered by NeuStar so calls will then be routed to the CLEC's switch to terminate to the customer. In essence, the capability to port numbers is pre-provisioned by Qwest, and Qwest relies on the CLEC to provide its service on time.

Everything after that, up until the time of the removal switch translations (i.e., disconnect of Qwest's service), is in the hands of the CLEC. The CLEC sets the day on which it intends to perform its work and port the number. It has been Qwest's practice to remove the switch translations and complete the service order in operational support systems very late (i.e., 11:59 pm) on the same day as the CLEC's due date. This is an industry-accepted practice and ensures that updated information is sent to the 911 database, avoids double billing the customer, and updates other operational support systems in a timely manner. One key purpose of LNP is to mechanize the number porting process so number changes flow through Qwest's systems thereby eliminating human error. It is for this reason that CLECs must notify Qwest of their inability to port the number before 8:00 p.m. of the due date because Qwest will have to manually intervene and stop the mechanized process.

Nevertheless, CLECs and AT&T in particular, raised several related issues with respect to the appropriate time and manner to disconnect the original Qwest switch translations. AT&T's primary argument was that the disconnect should occur at 11:59 p.m. the *day after* the disconnect, instead of 11:59 p.m. the *day of* the disconnect. Qwest's LNP disconnect process has worked well for all carriers that complete their end user customer's service provisioning and activation of the number porting on time. Qwest's practice has also worked well for carriers that promptly notify Qwest – any time before 8:00 p.m. – that CLEC will not complete its scheduled work on the due date. The industry-accepted practice requires at least a minimum of four hours to stop both the processing of the disconnect service order and also stop the removal of the switch translations which disconnect the Qwest-provided service. This is exactly what Qwest provided. It is only CLECs that fail to complete their work as scheduled **and** fail to timely notify Qwest, that may have their customer disconnected from Qwest before the number porting is complete. This occurs only one to two percent of the time.

Nonetheless, to address problems that in Qwest's opinion are strictly CLEC-created (i.e. failing to provide the loop itself by the CLEC-committed time, and then further failing to notify Qwest of that failure by 8:00 p.m.), Qwest has agreed to hold the switch disconnect until 11:59 pm of the *next business day after* the scheduled port. This additional delay should accommodate AT&T's request, and provide CLECs with more than adequate additional time to notify Qwest if they cannot complete their provisioning, i.e., need to delay the due date or cancel the order.¹⁹¹ Qwest's voluntary concession in this sense goes well beyond the Section 271 requirements. This change is reflected in Qwest's SGAT § 10.2.5.3.1 and has resulted in consensus in Arizona [LNP-2] and other jurisdictions. This approach has been specifically endorsed in the Washington Utilities

¹⁹¹ Testimony of Margaret Bumgarner, Workshop Transcript May 17, 01 at 1831.

and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 ("Washington Draft Order").

AT&T, however, apparently remains unsatisfied with Qwest's efforts to provide a failsafe mechanism for AT&T's problems, and has also requested some form of automated query or test system by the Qwest switch to verify that AT&T has in fact done its job.¹⁹² The approach is unprecedented, it has not been adopted by any other ILEC, and technologically, is not even available in the market.¹⁹³

Recognizing the complete absence of any support for its position, AT&T later proposed using what it has called "the BellSouth solution." As AT&T is well aware, however, BellSouth uses a different vendor's LNP database (i.e., the LSMS/SCP) and service order processors. Attempting to force this "solution" upon Qwest would require a complete service order processing system change for Qwest's entire LNP operations. Such a "solution" is neither practical nor warranted under the circumstances.

In the first instance, it is important to keep in mind that Qwest simply cannot be held responsible for the failings of the provisioning process of two CLECs, as the

¹⁹² Specifically, AT&T has proposed language in SGAT Section 10.2.2.4 that would make Qwest responsible to ensure that AT&T has completed the cutover of its loop before allowing the service order to complete. AT&T does not seriously contend that a manual process could accomplish this, which would be incredibly burdensome given the average of 4000+ ports per day. In other state workshops, AT&T has conceded that as of today, the notion of an automated testing process is simply the figment of its expert's imagination. Colorado Transcript, October 23, 2000 at 97-100.

¹⁹³ Multi-State Transcript, Margaret S. Bumgarner's Testimony, February 26, 2001 at 105. ("The take away issue that we had was for Qwest to investigate some kind of a test process to determine if the cut-over had been completed before processing the disconnect of the switch translation. The due date and time of the cut are set by the CLEC on a service order, and our technical support group investigated testing procedures. There are no switch or operations support type system testing capabilities to do this. *We also took the issue to the national local number portability administration working group. No one had this capability or is aware of any vendor product to do this.* I feel Qwest follows the industry's accepted practices from the FCC's LNPA working group, and its operations working group.") (emphasis added).

Washington Draft Order clearly noted.¹⁹⁴ Moreover, AT&T's continued insistence that Qwest offer more than can possibly be provided technologically has been clearly rejected elsewhere. For example, the *Washington Draft Order* recognized the impracticability of AT&T's demands.¹⁹⁵ Similarly, other Section 271 Applications have been approved without *any* changes in procedures to accommodate problems caused by CLECs.¹⁹⁶ Requiring Qwest to develop entirely different service order processing capabilities thus would in essence reward two CLECS, out of over 60 which port numbers in Qwest's region, for the inefficiencies of those two CLECs, and in the process penalize the other 60 by forcing them to underwrite the cost of such new system development.¹⁹⁷ This

¹⁹⁴ Washington Utilities and Transportation Commission, Docket No. UT-003022 & 003040, February 22, 2001 ("*Washington Draft Order*") ¶ 212 ("...The BOC can be responsible only for its own processes, not how the CLEC provisions the loop or if the CLEC customer fails to keep an appointment."); *See also Second Report - Workshop I*, May 15, 2001 at pg. 105 ("...Qwest does not cause the things that prevent CLECs from completing their work as scheduled. Moreover, some of them, like weather and the failure of customers to present for premise visits, are the very same kind of problems that cause work difficulties and inefficiencies for all carriers, including Qwest. Therefore, care must be taken to assure that the resolution of this issue does not improperly serve to transfer CLEC-caused costs to others. For example, if a CLEC falls behind on its new-service work, how much of the obligation should it bear in the form of overtime to finish work on time, as opposed to the obligation that Qwest must bear if it is to be asked to provide manual intervention at its own expense? . . .The evidence does not support a finding that Qwest can provide the coordination that AT&T wants through simple, inexpensive changes in its service-order system or by automated querying of Qwest's switches.").

¹⁹⁵ *Washington Draft Order*, at ¶ 214 ("Developing such a verification or test query system will likely improve both Qwest's and AT&T's performance in provisioning loops while porting numbers. However, given that they do not yet exist, having such systems in place is not a requirement for finding Qwest in compliance with Checklist Item No. 11. Qwest need not amend SGAT section 10.2.2.4 to include such a requirement"); *see also, id.* at ¶ 212 ("[Qwest] can be responsible only for its own processes, not how the CLEC provisions the loop or if the CLEC customer fails to keep an appointments").

¹⁹⁶ *See* footnote 17 below.

¹⁹⁷ *See Second Report - Workshop I*, May 15, 2001 at pg. 105 ("What is reasonable is, however, more than a matter of what is technically feasible. If a particular form of coordination or management of cutovers imposes demonstrably greater costs, it is reasonable to expect those CLECs requesting them to pay them. Otherwise, responsibility falls to Qwest or must be picked up by other CLECs who require a less burdensome form of coordination. Neither of those two alternatives is appropriate. Nor would it be correct to attribute the costs here to number porting;

burden shifting is not only unfair, but also unprecedented in the context of the FCC's Section 271 approvals of Verizon in New York and Massachusetts, and for SBC in Texas, Kansas and Oklahoma.

Finally, it is important to reiterate that Qwest has already gone well beyond any requirements of Section 271 in providing a full-day delay of the switch translation disconnect, which should be more than adequate to compensate for a CLEC's inability to provision its loop or even notify Qwest of the CLEC's failure. Demanding more is neither legally required nor technically feasible with Qwest's systems.

This does not mean, however, that Qwest is unwilling to work with a CLEC that, for whatever reason, is experiencing difficulties in its operations.¹⁹⁸ In those instances where it is critical that close coordination occur between Qwest and the CLECs to ensure the number has ported before the disconnect occurs, Qwest offers a "managed cut." The managed cut process requires Qwest technicians to coordinate with the CLEC technicians during the porting process. Thus, the managed cut offers CLECs a manual process that guarantees the loop cut-over is completed and the number port activated prior to disconnect. AT&T's basic complaint here, however, is that it does not want to pay Qwest

they are a function of the service disconnection process. That number porting may add complexity to the disconnection process is not determinative.

Therefore, if there are material cost differences in the activities necessary to minimizing service disruptions where CLECs provision their own loops, they should be chargeable to those CLECs that use the more resource intensive process.")

¹⁹⁸ Qwest worked with AT&T to develop a different process for AT&T to communicate with Qwest's center regarding the orders that either needed to be held for a later due date or needed to be cancelled. To that end, Qwest participated with AT&T in a LNP trial in Utah from February 26 thru June 9, 2001. That LNP trial has reduced the original 2-3% disconnect percentage substantially. The resulting process allowed AT&T to send a list of orders to be held at 4:00 p.m. each day then to update Qwest by 12:00 p.m. (noon) the next day whether it had actually completed some of the orders, needed to confirm new due dates, or needed to cancel some of the orders from the previous day's list. The LNP trial proved that AT&T could track its orders and notify Qwest by 4:00 p.m. on the due date of orders that it would likely not be able to complete.

for the additional work required to perform the managed cut. Once again, AT&T's demands are not supported anywhere in the Act, nor have such demands been accepted by the FCC for purposes of Section 271 approvals.¹⁹⁹

2. LNP Issue 3: Issues Concerning Rescinding A Local Service Request ("LSR") After A Firm Order Commitment ("FOC") Has Been Provided Are More Properly Addressed In The OSS Test.

While Qwest does not believe that the issues presented on this question by Cox are anything more than isolated and anecdotal, two important points must be noted. First, this issue is not a Checklist Item 11 concern, but rather relates more directly to the ongoing OSS testing process. Qwest respectfully submits that any issues relating to the timing of LSRs and FOCs can, and will, be addressed there.²⁰⁰

Second, Qwest is working diligently with Cox to address any concerns it may have as a practical matter on this issue. Qwest has made changes to its processes to address the kinds of problems that Cox may have encountered. These issues have been discussed as part of the change management process that Qwest participates in with all

¹⁹⁹ The FCC has given Section 271 Approval both to Bell Atlantic and SBC, neither of which provided dedicated coordination in circumstances involving a CLEC-provided loop. *Bell Atlantic New York Order*, Appendix E, LNP Process, notes: "Scenario 2 – PORT OUT of the Bell Atlantic number NOT associated with an Unbundled Loop HOT CUT: . . . Since no hotcut is involved, once the 10 digit trigger is added to the BA telephone number, the CLEC has control of the porting activity and there should be no customer service interruption if the CLEC completes their work by 11:59 p.m. on the confirmed due date. . . Basically the 10 digit trigger mitigates the need to closely co-ordinate the disconnect of the line with the CLEC, BA activates the 10 digit trigger at least 1 day prior to the porting due date; it is deactivated when the TN translations are removed from the switch. The 10-digit trigger has no other network purpose." Likewise, *SBC Texas Order*, Affidavit of Gary A. Fleming, Page 13, ¶ 24 states: "Specifically, SWBT has agreed to utilize an unconditional 10-digit trigger (UCT) feature for LNP porting orders. . . This eliminates the need to coordinate SWBT's disconnect translation with the new service provider's switch translations and with any physical loop work that may be required." This same language was contained in the Affidavit of Gilbert Orozco in the recently approved Section 271 applications for Kansas and Oklahoma at pg. 13, ¶ 23.

²⁰⁰ See e.g., *Second BellSouth Louisiana Order*, 13 FCC Rcd at ¶ 128 (discussing average interval time for returning FOCs); *SBC Texas Order* FCC-0238 at ¶ 286 (discussing timely manner of completing competing carrier FOCs).

CLECs in the form of regularly scheduled meetings and calls, and documentation of the revised definitions for handling the LSR problems has been distributed through this process.

3. LNP Issue 4: Restoration of Service When the CLEC Fails to Complete Its Work

Cox has demanded that the SGAT contain an accelerated interval for Qwest to restore service when the CLEC has failed to provide service, has also failed to notify Qwest even after 24 hours have expired, and Qwest has accordingly disconnected the switch translation pursuant to the CLEC's original request. Qwest respectfully submits that while it appreciates the significance of the concern for the customer, placing Qwest at risk because of a complete failure on the part of the CLEC is unreasonable and inappropriate. Once again, it is important to keep in mind that what Cox is demanding is an extraordinary measure by Qwest in response to a failure by Cox to provision the loop, and then another failure by Cox to notify Qwest of the first failure within 24 hours. Qwest believes the most that should be required for an interval is parity, both as a matter of fairness as well as practicality; requiring Qwest to respond within two hours to address a situation that the CLEC has allowed to exist for days, and sometimes even weeks, is neither fair nor practical, especially if critical information for the restoration is no longer available to Qwest because of delays by the CLEC.

As discussed at length above regarding loops, the current repair interval for CLECs is set at parity with Qwest retail. During the TAG, all participants agreed upon this parity measure. The FCC has also established that repair is provided on a parity basis. Thus, it is entirely inappropriate for Cox to seek now to change that consensus determination.

Further, even assuming that the appropriateness of some accelerated interval might be something to consider under such circumstances, a point with which Qwest

respectfully but strongly disagrees, at most it should be considered in the proper context, which would be Qwest's performance measures. In that context, the Commission could consider all of the factors that might go into determining whether such an accelerated interval is even warranted in the first instance – such as the time the CLEC has taken to notify Qwest of the problem,²⁰¹ the number of lines and features involved, etc. – before determining whether specific time interval is appropriate, and if so, what that treatment should be, and what exceptions should be allowed. This level of discussion and detail is not appropriate for resolution via SGAT provisions. Qwest understands that AT&T and Cox will be providing proposed measures to the Technical Advisory Group as noted in the Workshop with regard to LNP-5.²⁰²

CONCLUSION

Qwest has demonstrated that it meets the requirements in the Act and FCC orders for compliance with checklist items 4 and 11 in the direct and rebuttal testimony of Jean M. Liston and Margaret S. Bumgarner. The CLECs who commented on these checklist items cannot rebut Qwest's *prima facie* showing of compliance. Accordingly, Qwest requests that the Commission verify Qwest's compliance with Section 271(c)(2)(B)(iv) and (xi) of the Act.

²⁰¹ For example, as Ms. Bumgarner has testified, AT&T has waited over 20 days to notify Qwest in some situations, in which case the required account information could not begin to be reconstructed on short notice. Testimony of Margaret Bumgarner, Workshop Transcript May 17, 01 at 1830 ("And how late in the day are we getting notified and the fact that at least in terms of AT&T's, we're getting notified on 70 percent of them the day after, not on the due date, not even late on the due date, but the day after. And in December, you [AT&T] had 43 of them that you called 20 days later to tell us to work them back.")

²⁰² Qwest understands that LNP-5, concerning a PID for disconnect concerns, will be deferred to the TAG for implementation.

DATED this 19th day of June, 2001.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I here certify that the ORIGINAL AND 10 of the foregoing were filed this 19th
day of June, 2001 with:

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1200 West Washington
Phoenix, AZ 85007

And that ONE COPY of the foregoing was hand-delivered this 19th day
of June, 2001 to:

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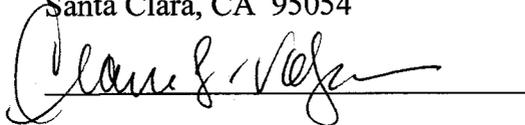
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A handwritten signature in black ink, appearing to read "K. Megan Doberneck", is written over a horizontal line.

Attachment

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CG-INTL-001**Issue 4B-February 2001****CHAPTER 5.0 - Unbundled Network Elements**

5.1 Unbundled Network Elements

The Unbundled Network Elements Interval Table consists of the following Terms and Definitions:

Term	Definition
Product	BellSouth product or service.
Quantity	Number of lines, trunks, circuits, or points
Standard Interval	The number of days required for provisioning of the requested service type. This is the number of days from the time the service order is entered into the service order processing system until the order is completed.
Targeted LSR Processing Interval	The number of days from receipt of request to processing Local Service Request (LSR).

Assumptions

1. These tables apply to all applicable ACT Types except ACT=D.
2. ACT=D Desired Due Date (DDD) should reflect the day that the CLEC is requesting service to be disconnected. Billing will be stopped as of the DDD.
3. For LSRs submitted electronically and qualifying for flow through/electronic processing, the targeted LSR processing interval will be the same business day.
4. (*) Following Product means - Product requires a Service Inquiry which is required before submitting the LSR to the LCSC.
5. When targeted LSR processing interval is not indicated and the LSR is submitted manually or electronically and requires manual intervention, the LSR will be processed as follows: (a) LSR submitted before 10:00 am - targeted for same business day; (b) LSR submitted after 10:00 am - targeted for next business day.
6. The Before and After 10:00 am time indication is based on the time zone of the Center receiving the LSR.
7. Negotiated - The BellSouth Project Manager will negotiate with the New Service Provider, for all targeted intervals.

DDD Calculation

1. For LSRs submitted electronically and qualifying for flow through/electronic processing, the CLEC should reflect the Standard Interval as the Desired Due Date (DDD).
2. For LSRs submitted manually or electronically that require manual intervention and no targeted LSR processing interval is indicated on the chart: (a) LSR submitted before 10:00 am - use standard interval for DDD; (b) LSR submitted after 10:00 am - add one day to standard interval to calculate DDD.
3. When an targeted LSR processing interval is listed on the chart it should be added to the Standard interval when calculating the DDD.

4. In all cases, a due date later than the standard interval can be selected as the DDD.

UNE Interval Table

Product	Quantity	Standard Interval	Targeted LSR Processing Interval
Unbundled Loops			
2 Wire analog voice grade loop non-designed (SL1)	1-5	4 business days	See Assumption # 5
	6-14	6 business days	3 business days
	15+	Negotiated	Negotiated
2 Wire analog voice grade loop designed (SL2)	1-5	5 business days	See Assumption # 5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated
4 Wire analog voice grade loop	1-5	5 business days	See Assumption # 5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated
2 Wire ISDN digital loop	1-5	10 business days	See Assumption # 5
	6-14	12 business days	3 business days
	15+	Negotiated	Negotiated
Unbanded Digital Channel (UDC)	1-5	10 business days	See Assumption # 5
	6-14	12 business days	3 business days
	15+	Negotiated	Negotiated

4 Wire 2.4, 4.8, 9.6, 19.2, 56 OR 64 Kbps digital loop	1-5	5 business days	See Assumption # 5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated
DS1 Loop	1-5	5 business days	See Assumption #5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated
Dark Fiber	1+	Negotiated	Negotiated
Line Sharing	1-4 TNs	3 business days	See Assumption #5
	5-9 TNs	5 business days	See Assumption #5
	10 +	Negotiated	Negotiated
ADSL-2 Wire asymmetrical digital subscriber line loop*	1-5	5 business days	See Assumption #5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated
HDSL-2 Wire & 4 Wire high bit rate digital subscriber line loop*	1-5	5 business days	See Assumption #5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated
Unbundled Copper Loop*	1-5	5 business days	See Assumption #5
	6-14	7 business days	3 business days
	15+	Negotiated	Negotiated

Unbundled Network Terminating Wire*	1+	Negotiated	Negotiated
Loop Concentration (inside plant)			
Unbundled Loop Concentration (ULC) System*	1	Negotiated	Negotiated
Sub Loops (outside plant)			
Unbundled Sub-loop Distribution*	1+	Negotiated	Negotiated
Unbundled Sub-loop - INC*	1+	Negotiated	Negotiated
Network Interface Device (NID)			
NID to NID cross connect	1-5	5 business days	See Assumptions #5
	6-10	7 business days	3 business days
	11+	10 business days	5 business days
NID	1-5	5 business days	See Assumptions #5
	6-10	7 business days	3 business days
	11+	10 business days	5 business days
Non Channelized Transport			
Local Channel DS1*	1	23 business days	7 business days
Local Channel DS3 / STS1*	1	Negotiate	Negotiated
Local Loop DS1	1	23 business days	7 business days
	2 +	Negotiated	Negotiated
Local Loop DS3 /STS1*	1 +	Negotiated	Negotiated
Dedicated interoffice 2 wire / 4 wire voice grade	1-5	5 business days	See Assumptions #5
	6-14	7 business days	3 business days
	15 +	Negotiated	Negotiated

Dedicated interoffice DS0 IOF and loop	1-5	5 business days	See Assumptions #5
	6-14	7 business days	3 business days
	15 +	Negotiated	Negotiated
Dedicated interoffice DS1	1-5	20 business days	See Assumptions #5
	6-14	22 business days	3 business days
	15 +	Negotiated	Negotiated
Dedicated interoffice DS3 / STS1*	1-5	25 business days	See Assumptions #5
	6-14	27 business days	3 business days
	15 +	Negotiated	Negotiated
Channelized Transport			
Unbundled Channelization (MUX) DS1*	1-5	20 business days	See Assumptions #5
	6-14	22 business days	3 business days
	15 +	Negotiated	Negotiated
Unbundled Channelization (MUX) DS3 / STS1*	1-5	25 business days	See Assumptions #5
	6-14	27 business days	3 business days
	15 +	Negotiated	Negotiated
Unbundled Local Switching (Port)			
2 Wire analog line port (Reqty F)	1-10	3 business days	See Assumptions #5
	11-25	5 business days	See Assumptions #5

	25+	Negotiated	Negotiated
Enhanced Extended Links (EELs)			
Voice Grade 2 Wire/4 Wire EELs	1-5	5 business days	See Assumptions #5
	6-14	7 business days	3 business days
	15 +	Negotiated	Negotiated
DSO EELs	1-5	5 business days	See Assumptions #5
	6-14	7 business days	3 business days
	15 +	Negotiated	Negotiated
DS1 EELs	1-5	20 business days	See Assumptions #5
	6-14	22 business days	3 business days
	15 +	Negotiated	Negotiated
DS3 EELs*	1-5	25 business days	See Assumptions #5
	6-14	27 business days	3 business days
	15 +	Negotiated	Negotiated
Non Switch Combinations			
Voice Grade 2 wire/4 wire	1-5	5 business days	See Assumptions #5
	6-14	7 business days	3 business days
	15 +	Negotiated	Negotiated
DSO	1-5	5 business days	See Assumptions #5

	6-14	7 business days	3 business days
	15 +	Negotiated	Negotiated
DS1	1-5	20 business days	See Assumptions #5
	6-14	22 business days	3 business days
	15 +	Negotiated	Negotiated
DS3*	1-5	25 business days	See Assumptions #5
	6-14	27 business days	3 business days
	15 +	Negotiated	Negotiated
Open AIN (OAIN)			
OAIN tool kit*	1	45 calendar days	10 calendar days
OAIN service management system*	1	45 calendar days	10 calendar days
CCS7 Signaling Transport Service			
A-Link signaling	1	60 business days	12 business days
D-Link signaling	1	60 business days	12 business days
STP-signaling transfer point	1	60 business days	12 business days
O/S and D/A UNEs			
Operator call processing-OPCH, FACH, BLV, EI,ECT	1	30 calendar days	7 calendar days
Operator call processing- facility based OPCH, FACH, ECT	1	30 calendar days	7 calendar days
Operator call processing-facility based BLV, EI	1	30 calendar days	7 calendar days
Inward operator services	1	30 calendar	7 calendar days

		days	
Directory assistance access service (DAAS)	1	30 calendar days	7 calendar days
Directory assistance call completion (DACC)	1	30 calendar days	7 calendar days
Directory assistance number services intercept (DANSI)	1	30 calendar days	7 calendar days
Directory assistance transport	1	30 calendar days	7 calendar days
Directory assistance database service (DADS)	1	30 calendar days	7 calendar days
Direct access to DA service (DADAS)	1	30 calendar days	7 calendar days
Customized Call Routing (selective routing-LCC)			
1-5 LCC	1-5	30 calendar days	7 calendar days
6-25 LCC	6-25	60 calendar days	15 calendar days
25 LCC	25+	Negotiated	Negotiated
Unbundled Access to OSS			
Preorder*	1	30 calendar days	N/A
Order/ Provisioning*	1	30 calendar days	N/A
Maintenance/ Repair*	1	30 calendar days	N/A
Access to Databases			
800 database	1	10 calendar days	3 calendar days
Line information database (LIDB)	1	60 calendar days	7 calendar days

Attachment

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Date: 05/24/01 Time: 13:15:33
Subject: Policy - CLEC Customer Relations

(M)

MEMORANDUM

DATE: May 24, 2001
FOR: All Local Network Employees
FROM: Augie Cruciotti - EVP Local Networks
RE: Policy - CLEC Customer Relations

As you know, Local Network is committed to doing its part to ensure successful long distance re-entry in the 14 local service states. To support this commitment, it is critical that we re-address previously communicated policies regarding our relationships with Competitive Local Exchange Carriers (CLECs), and their end-user customers. Because of the importance of this issue, it is my expectation that you share the information below in face-to-face meetings with your teams as soon as possible.

In today's environment we have both retail and wholesale customers. Both of these customer groups are extremely important to our success, and it is critical that all Local Network employees understand that both are to be treated with equal regard and levels of service. We in Local Network continue to be the primary delivery tool for both our Retail and Wholesale services. As we have in the past, Local Network most often leaves the final and most lasting impression of Qwest's commitment to service and quality.

Many of our Interconnect customers tell us that our employees do not give them the same respect or fair treatment our retail clients receive. Specific cited claims include:

- Making negative and/or disparaging comments about CLECs and/or their products and services to the CLEC's end-user customers
- * Knowingly disconnecting CLEC circuits resulting in service outages for their end-user customers
- * Proactively discussing the virtues of Qwest's products and services with the CLEC's customers
- * Attempting to persuade the CLEC's customers to convert to Qwest

Please note that each of the above examples is a clear violation of Qwest's Code of Business Ethics and Conduct policies, and are subject to the appropriate discipline practices, up to and including dismissal.

It is the policy of Qwest to comply with the Telecommunications Act of 1996 and with all applicable Federal Communications (FCC) Regulations and Orders, and to lawfully compete in the marketplace. This commitment to fairness includes respecting the rights of our competitors and abiding by all applicable laws in the course of competing. It is Local Network's policy to treat all of our customers with respect regardless

of the type or class of service provided, and to provide non-discriminatory levels of service to customers of all CLECs, as well as Qwest end-user customers.

If you have any questions regarding this policy, please contact your manager.

Please share this information with employees who do not have email.

Attachment

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION
Case No. USW-T-00-3
In the Matter of US WEST Communications, Inc.'s Motion
for an Alternative Procedure to Manage the Section 271
Process.

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD
Docket No. INU-00-2
IN RE: US WEST COMMUNICATIONS, INC.

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA
Docket No. D2000.5.70
IN THE MATTER OF the Investigation Into US West
Communications, Inc.'s, Compliance with Section 271
of the Telecommunications Act of 1996.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION
Case No. PU-314-97-193
US West Communications, Inc., Section 271 Compliance
Investigation.

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH
Docket NO. 00-049-08
In the Matter of the Application of US West
Communications, Inc., for Approval of Compliance with
47 U.S.C. ss 271(d)(2)(B).

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING
Docket No. 70000-TA-00-599
In the Matter of the Application of US West Corporation
Regarding 271 of the Federal Telecommunications Act of
1996, Wyoming's Participation in a Multi-State Section
271 Process, and Approval of Its Statement of Generally
Available.

BEFORE THE NEW MEXICO REGULATION COMMISSION
Utility Case No. 3269
IN THE MATTER OF Qwest Corporation's Section 271
Application and Motion for Alternative Procedure to
Manage the Section 271 Process

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WORKSHOP 6

Pursuant to continuation, Technical Workshop 6
was held at 8:00 a.m., May 1, 2001, at 3333 Quebec,
Denver, Colorado, before Facilitators John Antonuk and

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1 We've done some investigation, found out the services
2 that Qwest has in place for MLT does mirror what the
3 other ILECs are doing and that is, it's available for
4 switched services that are connected to an ILEC's
5 switch, in this case the Qwest switch, and that on a
6 preorder basis we didn't find any other ILEC that's
7 doing MLT on a preorder.

8 One of the problems and concerns that
9 you get into is that it is an invasive test. When we
10 say invasive, if someone is on-line and you go to do
11 the test, you'll actually disconnect them, put them out
12 of service. If you did it on a preorder basis and you
13 did not own that customer already, you may be putting
14 another customer out of service momentarily as you did
15 the test.

16 All of the ILECs, including Qwest, only
17 allows MLT when you already own the customer.
18 Primarily it's been used as a repair tool.

19 MR. ANTONUK: But its availability even
20 for repair is dependent upon connection to the Qwest
21 switch?

22 MS. LISTON: That's correct. Also
23 dependent on you owning the customer.

24 MS. BEWICK: What information -- if
25 Qwest or another CLEC was to have access to the MLT

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1 test for preorder or whatever, let's say Sprint, and
2 they put in a telephone number of -- say it's a New
3 Edge customer at that point in time for preorder
4 purposes, what information do they have access to or
5 would they have access to of the CLEC customer? There
6 was a lot of discussion in Colorado around the fact
7 that there may be some kind of testing that would be
8 available once a gateway is developed but that Qwest
9 didn't have a gateway. What's available if there's no,
10 quote, fire wall-type situation?

11 MS. LISTON: There's a couple different
12 things. We talked about the MLT test and also about
13 the LFAC data base.

14 On the MLT test that's strictly going
15 in and testing the actual loop. You can find your --
16 you can do a basic dial tone test on MLT to see if
17 there's dial tone on the line. There's some basic
18 tests that are done for repair. You can also get your
19 loop length in directly through an MLT test. The MLT
20 test gives you the ability to go in and run some

21 performance metrics, so to speak, against that loop.

22 When you talk about other pieces of
23 information -- in that scenario, if we use MLT, then
24 they would be able to access your line, they would find
25 out the overall lay, the quality of the line, and they

7

1 may put your customer momentarily out of business
2 because they did an invasive test.

3 We had quite a bit of discussion around
4 LFAC issues and I'm not sure if that's something else
5 you were thinking of in terms of you would have access
6 to. I wanted to make sure I answered the question with
7 the MLT.

8 MS. BEWICK: You did.

9 MS. KILGORE: I'm a little confused.
10 I thought I heard in Colorado that Qwest does an MLT
11 test on a regular basis. It's part of your network
12 maintenance that you do; is that right?

13 MS. LISTON: I did some additional
14 investigation on the MLT since the Colorado workshop.
15 What I've found is that for the way Qwest currently
16 uses the MLT is strictly on a repair process for our
17 own services. We're using MLT for repair.

18 We did have discussion in Colorado

19 around the MLT information that's in the loop called
20 data base. If you look at the raw loop data tool
21 available through IMA, there's an MLT distance reported
22 for copper loops.

23 As I ask more questions around that
24 MLT information, what I did find out is that it was
25 a special study that was done to populate that

10

1 ILECs are doing MLT but doing it in the same fashion as
2 Qwest and that is for repair purposes or once you own
3 the customer. So once you own the customer, if you're
4 a switched service out of the Qwest switch you would
5 still have access to MLT.

6 MS. KILGORE: When you say it's
7 invasive, to clear this up, is it momentarily out
8 of service, ten seconds, ten minutes? Is there
9 any idea how long it takes the line down?

10 MS. LISTON: For as long as you're
11 doing the testing. If you're doing the testing and you
12 wind up doing -- there's multiple tests that can be
13 done. So if you're doing four different MLT tests,
14 that circuit will be down the whole time you're working
15 on it.

16 MS. KILGORE: Any idea how long, let's
17 say, the generic MLT test would take? Just the basic.

18 MS. LISTON: I don't know.

19 MR. STEESE: With the explanation of
20 the fact that we're doing exactly what the other Bell
21 operating companies are doing with respect to MLT, does
22 that close this issue?

23 MS. HOOPER: Is an MLT ever used in an

24 cross box environment where the F2 facility would be
25 tested from the cross box to the customer's premises?

13

1 now is that because it is an invasive test and it truly
2 is set up as a repair process tool, that it is not
3 available to be used on a preorder, and to have access
4 to other providers' services -- it could be a situation
5 where it was a resale service and another CLEC is
6 currently having -- it's currently serving that
7 customer, and AT&T goes in and does a test on it to see
8 what the overall loop length is on it, it could put the
9 customer out of service, Sprint's or WorldCom's or
10 whoever's, and then what we wind up with is a customer
11 problem and we repair; have no way of knowing somebody
12 else went in and did an MLT test and put that customer
13 out of service ahead of time.

14 Qwest just doesn't believe it's
15 appropriate. None of the other ILECs are doing it, no
16 one is doing preorder and allowing access to loops for
17 a test without the company owning or controlling the
18 circuit.

19 MS. KILGORE: Are you saying no other
20 ILEC is doing any preorder testing on loops, whether
21 they call it MLT or something else?

22 MS. LISTON: I'm saying that no other
23 ILEC that we've found is doing a preorder MLT where

24 they allow the CLECs access to switch-based services to
25 do an MLT test without having responsibility for that

Attachment

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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF COLORADO

Docket No. 97I-198T - Workshop 5

* * *

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

Wadsworth

Pursuant to continuation, the Technical Workshop
5 was held at 8:35 a.m., May 25, 2001, at 3898
Bouldevard, Lakewood, Colorado, before Facilitators
Hagood Bellinger and John Schultz.

APPEARANCES

(As noted in the transcript.)

1 loop facilities -- probably be DS1 or higher --

2 MR. BELLINGER: Wait a minute. Start
3 over. When CLEC --

4 MR. WILSON: You want a description of
5 the issue?

6 MR. BELLINGER: Yeah, maybe. I don't
7 know. What do you want to do with it? I guess I will
8 ask you that before I --

9 MR. WILSON: I think it would be an
10 impasse issue.

11 MR. BELLINGER: Okay.

12 MR. WILSON: I could describe it, the
13 exact issue, first.

14 MR. BELLINGER: Go ahead and describe it,
15 then we'll write it, okay?

16 MR. WILSON: The issue is when the CLEC
17 makes a request for loop facilities, DS1 or above, and
18 we are -- the response is no facilities available,
19 there may be situations where, in fact, Qwest has
20 facilities that could be used, but they are designated
21 as interoffice facilities.

22 And, so, the requirement that we would
23 like to see in the SGAT would be the redesignation of
24 IOF into facilities available for use as loops. So I
25 think the issue would be, succinctly, the redesignation

1 of facility type from IOF to loop -- to facilities
2 available for loops when there is no other capacity
3 available.

4 MR. HUBBARD: Ken, in response to that,
5 it's not quite as easy as just redesignating fiber on a
6 frame with toll or trunk fibers, IOF, if you will.
7 Some -- most of the time they have a different
8 appearance with a Central Office than an exchange
9 fiber, possibly on another floor, or another fiber
10 distribution panel, for sure, in another part of the
11 Central Office, other than the exchange fiber that
12 exists.

13 As you run out through the plant, the IOF
14 fiber in splice cases is normally center of the sheath,
15 if you will, and they would be spliced in a -- what we
16 call waffle case, in an inside compartment. The
17 exchange fiber would be spliced in a splice case on the
18 outside of this basically concealed compartment within
19 the waffle case. So, you really don't have access to
20 them there. As you run out through the route, Ken, the
21 exchange fiber basically drops off and tapers down.
22 The IOF fiber is continuously spliced all of the way
23 through to the next Central Office or exchange. So you
24 don't really have the availability to redesignate that
25 fiber, as you say that you could, or to have use of it.

1 MR. WILSON: Maybe I should make the
2 request a little more generic then. Something like,
3 use of previously designated IOF facilities for -- as
4 UNE loops or UNE loop facilities. And I think, as we
5 discussed off the record yesterday, this could be
6 either fiber or copper. There may be copper facilities
7 that could be used as loops that are currently
8 designated as fiber facilities or as IOF facilities.

9 The whole point is if there are no
10 facilities available for loops, it's far easier, in
11 most cases, to utilize IOF-designated facilities then
12 to dig up the ground below or dig up the street to put
13 in new facilities, which could then be used as loops.
14 It also would make the out-of-facilities condition a
15 little less likely. So, I think it's a reasonable
16 direction to go for -- in some circumstances.

17 MR. HUBBARD: Ken, I can address that.
18 As we transition a lot of our IOF facilities from
19 copper over to fiber, as those facilities become
20 available, basically, the whole cable -- whole copper
21 cable has become vacant. We have transitioned those
22 over to exchange type of services, where the cable is
23 still in good enough shape to use. Most of the time
24 the trunking cable or IOF cable is of a coarser gauge,
25 like 22- or 19-gauge, to transport IOF facilities. So,

1 where it is available, we have done that. And we, you
2 know, continue, as we relieve the old copper cables
3 with the fiber, to go ahead and transition those, if
4 they are in good enough shape, to the exchange type.
5 And I have done this several times myself.

6 MR. WILSON: Well, I think that's
7 excellent. And I think that's basically all we're
8 asking for, the ability to have it done.

9 MR. HUBBARD: And to clarify that that is
10 Qwest's, you know, normal engineering practice, and
11 that is Qwest's ability to do when the cables, you
12 know, are relieved -- when the old copper cables are
13 relieved, not for AT&T to designate what is going to be
14 relieved.

15 MR. WILSON: Well, it wasn't suggested
16 AT&T do the work. What I am suggesting is that -- I am
17 sure we will pay for the work. I have no doubt of
18 that. What I am suggesting is that when a CLEC
19 requests loop facilities, that before Qwest responds by
20 a, well, a new response, I guess, is to reject the
21 order, saying no facilities available, that before they
22 do that, they would look at the IOF facilities to see
23 if the IOF facilities could be used to provide the loop
24 capacity.

25 MR. HUBBARD: And, Ken, what I said, in

1 our fiber and -- fiber-designated IOF and
2 copper-designated IOF are our facilities that are
3 interoffice facilities. If they are in use, and even
4 if they are not in use, they are still designated as
5 IOF, and they are basically not available. But as I
6 stated, if we have an old exchange -- an old IOF cable,
7 that we see that's copper cable, that we have
8 transitioned over for a fiber IOF, we do redesignate
9 that as exchange cable.

10 MS. LISTON: I think, really, what we're
11 really trying to say is we're not going to designate --
12 we're not going to redesignate IOF for unbundled loops.
13 However, our general practice is, to the extent that
14 IOF copper is replaced by fiber, part of the
15 engineering process makes that IOF now available for
16 use, the old copper IOF available. We're not going to
17 be redesignating on an individual loop basis IOF
18 facilities for unbundled loops.

19 MR. BELLINGER: What I have is the issue
20 is when the CLEC makes a request for loop facilities,
21 and they are not available, the CLEC would request, if
22 designated IOF facilities are available, they may be
23 made available as loop facilities.

24 MR. WILSON: I think that hits the issue
25 squarely.