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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

IN THE MATTER OF QWEST)
CORPORATION'S COMPLIANCE WITH)
§ 271 OF THE TELECOMMUNICATIONS)
ACT OF 1996)
_____)

DOCKET NO. T-00000A-97-0238

**QWEST'S LEGAL BRIEF
REGARDING IMPASSE ISSUES RELATING TO LINE SPLITTING AND
NETWORK INTERFACE DEVICES**

June 19, 2001

Arizona Corporation Commission

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**QWEST BRIEF ON LINE SPLITTING AND
NID IMPASSE ISSUES**

[#1196460 v1 - NID-Line Splitting Brief]
PHX/1196460.1/67817.150

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NID IMPASSE ISSUES - ii**

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I. INTRODUCTION

Qwest Corporation ("Qwest") submits this brief to the Commission in support of its compliance with its obligations to provide competitive local exchange carriers ("CLECs") with the ability to engage in line splitting arrangements and access to network interface devices ("NIDs").

As it has in other states, Qwest has made significant efforts to resolve disputes with participating CLECs regarding these issues in Arizona, and has modified its Statement of Generally Available Terms ("SGAT") to accommodate many of its competitors' requests. In many instances, Qwest has agreed to modifications that were unnecessary for compliance purposes, but which accommodated CLEC concerns or eliminated disputes. Despite Qwest's concessions regarding line splitting and NIDs, the parties could not reach agreement regarding four issues relating to line splitting and five issues relating to NIDs. As demonstrated below, each of these issues should be resolved in Qwest's favor as a matter of fact and law.

Although disputes remain, the Commission should note that many of these issues relate to the CLECs' desire to impose new obligations on Qwest rather than to Qwest's compliance with its present obligations under section 271 of the Telecommunications Act of 1996 (the "Act"). Such issues are not appropriate for consideration in this proceeding. Section 271 proceedings are narrowly focused proceedings to assess whether ILECs are complying with the existing state of the law.¹ In its recent *Massachusetts Order*, the FCC reiterated that the section 271 process is not intended to resolve

¹ The relevant inquiry is whether a BOC complies with the law in effect at the time its section 271 application is filed. Memorandum Opinion and Order, *Application of Verizon New*

disputes over an incumbent LEC's precise obligations to its competitors that our rules have not addressed and that do not involve *per se* violations of self-executing requirements of the Act. As the Commission has explained in prior orders, the section 271 process simply could not function as Congress intended if we resolved all such disputes as a precondition to granting a section 271 application.²

Thus, a section 271 proceeding is not an appropriate forum in which to consider or impose new obligations on an incumbent local exchange carrier ("ILEC").³ Because this section 271 proceeding is not the proper forum for the creation of new legal requirements under the Act, the Commissions should reject CLEC requests to do so. Further, because, as demonstrated below, Qwest has established that the SGAT satisfies its current obligations, the Commission should approve Qwest's SGAT.

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 (April 16, 2001) ("Verizon Massachusetts Order") ¶ 10; Memorandum Opinion and Order, Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (Jan. 22, 2001) ("SBC Kansas/Oklahoma Order") ¶ 18; Memorandum Opinion and Order, Application of SBC Communications, Inc. Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, FCC 00-238 (June 30, 2000) ("SBC Texas Order") ¶ 27.

² *Verizon Massachusetts Order* ¶ 10.

³ *SBC Kansas/Oklahoma Order* ¶¶ 18-19 (section 271 proceeding is fast-track, narrowly focused adjudication that is inappropriate for consideration of industry-wide local competition questions of general applicability); *SBC Texas Order* ¶¶ 23-27 (a section 271 proceeding is not an appropriate forum for resolution of new and unresolved interpretive disputes regarding an ILEC's obligations to competitors).

II. LINE SPLITTING AND LINE SHARING

Qwest was the first ILEC in the country to offer line sharing to CLECs.⁴ As the FCC noted in its *Line Sharing Reconsideration Order*, line sharing is limited to those instances in which the incumbent LEC provides voice service on the particular loop to which the CLEC seeks access.⁵ In other words, a competing carrier seeking to provide xDSL service using the unbundled high frequency portion of the loop can do so only if the same loop is used by the incumbent LEC to provide voice service to an end user.⁶ Line splitting, on the other hand, occurs where both the voice and data service are provided by competing carriers over a single loop.⁷ While Qwest is unaware of any other ILECs that currently provide a similar offering, Qwest will offer "loop splitting," where a CLEC purchases an unbundled loop from Qwest and, by itself or in partnership with a data LEC ("DLEC"), provides both voice and data service on the same loop.⁸

The parties reached impasse on four issues: (1) whether Qwest is required to provide access to Qwest's POTS splitters; (2) whether Qwest must offer its retail DSL service on a

⁴ Workshop 3 Tr. at 176:14 – 179:18.

⁵ Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 01-26 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*") ¶ 17.

⁶ *Line Sharing Reconsideration Order* ¶ 17; Workshop 3 Tr. at 430:3-20.

⁷ *Line Sharing Reconsideration Order* ¶ 17; Workshop 5 Tr. at 1124:17-23.

⁸ Workshop 5 Tr. at 1125:8 – 1128:16; SGAT section 9.24.

stand-alone basis when a CLEC provides the voice service over UNE-P; (3) whether Qwest must provide line splitting on all types of loops and resold lines; and (4) whether Qwest is obligated to provide line sharing over non-copper loops as well as copper loops. As demonstrated below, each of these issues should be decided in Qwest's favor as a matter of law.

A. Issue LS-4: Whether Qwest is required to provide access to Qwest's POTS splitters. (SGAT Section 9.21.2.1)

AT&T claims that Qwest should be required to purchase, own, and provide access to Qwest's POTS splitters on a line-by-line basis in order to provide CLECs with the full functionality of loops.⁹ The FCC has specifically rejected this contention on more than one occasion. AT&T's demand must be rejected as a matter of law and fact.

AT&T made the identical argument against Southwestern Bell Telephone Company ("SWBT") in its section 271 proceeding. Specifically, AT&T argued

that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter. AT&T alleges that this is "the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive." Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of the loop, including electronics attached to the loop. AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.¹⁰

The FCC rejected AT&T's argument:

We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the

⁹ AT&T's Supplemental Comments (Sept. 29, 2000) at 2.

¹⁰ *SBC Texas Order* ¶ 326 (footnotes omitted).

UNE-P. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, and incumbent LECs therefore have no current obligation to make the splitter available.¹¹

This position is further supported by the *Line Sharing Order*, which is the basis for the line splitting requirement. In that order, the FCC held that ILECs have the option of providing line splitters themselves or, in the alternative, allowing CLECs to place their splitters in the ILEC's central offices.¹² Thus, the FCC has specifically held, not once but twice, that ILECs are not required to own and install splitters for CLECs on a line-at-a-time basis.

AT&T itself concedes that the FCC has "not yet exercised its rule-making authority to require ILECs to provide access to splitters" and that such access is therefore not a condition of obtaining 271 approval.¹³ AT&T nevertheless argues that this Commission should order Qwest to provide access to Qwest's splitters because it would be convenient for CLECs and no different from an ILEC's obligation to condition loops. AT&T is incorrect. Loop conditioning is significantly different from installing POTS splitters. Owning, installing, inventorying and maintaining POTS splitters in a central office is significantly more burdensome and involved than adding or removing load coils in outside plant.¹⁴

¹¹ *SBC Texas Order* ¶ 327 (emphasis added).

¹² Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*") ¶ 146.

¹³ AT&T Supplemental Comments (Sept. 29, 2000) at 4.

¹⁴ Exhibit 4 Qwest 6, Rebuttal Affidavit of Karen A. Stewart (Oct. 6, 2000) at 5.

Moreover, while the FCC has ruled that ILECs must condition loops, the FCC has explicitly ruled that ILECs do *not* need to provide access to splitters.

AT&T argues that the Texas Public Utility Commission ("Texas Commission") has decided this issue in its favor. As an initial matter, decisions of the Texas Commission do not control over FCC orders with respect to this 271 proceeding. In addition, the Texas Commission decision does not stand for the broad proposition AT&T asserts. The Texas Commission considered a situation where SWBT utilized non-integrated outboard splitters as part of a managed data service it offered. The Texas Commission required SWBT to provide the outboard splitters to CLECs. However, the Texas Commission expressly limited this finding to the facts before it: "The Commission clarifies that this finding applies only to 'stand-alone' splitters, as requested by AT&T in this docket. *This does not apply to a splitter that has been incorporated into a DSLAM.*"¹⁵

Covad and AT&T appear to acknowledge this limitation, arguing only that Qwest should provide access to its *outboard* splitters, to the degree it has any.¹⁶ Unlike SWBT, Qwest does not currently provide non-integrated POTS splitters. The only splitters used in Qwest's central offices are those that are integrated into the DSLAM unit because of the hardwiring between the splitter card and DSLAM.¹⁷ Within the DSLAM platforms used by Qwest, there is a separate shelf for the splitters. However, the DSLAM shelves are

¹⁵ Order Approving Revised Arbitration Award, *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications, Inc. Pursuant to Section 252(b)(1) of the Federal Telecommunications Act of 1996*, PUCT Docket No. 22315 (March 1, 2001) at 9 (emphasis added).

¹⁶ Workshop 5 Tr. at 784:18-21, 787:12-16, 788:5-19.

¹⁷ Workshop 5 Tr. at 781:6-782:10, 1176:14-16, 1177:14-15, 1917:9-1918:6.

connecterized directly to the back of the data ports of the splitters with amphenol connectors.¹⁸ Because of the critical need to maintain voice service if a DSLAM card fails or is removed for maintenance purposes, Qwest's current architecture for DSLAM and splitter deployment does not call for circuit board integration. However, the integration of DSLAMs and splitters is not defined solely by circuit board integration.

From a design and provisioning perspective, the DSLAM modems and POTS splitters are a single unit. This translates into a single point of demarcation between the shared loop and the splitter/DSLAM port combinations. The interface to the ATM switch also constitutes a single demarcation point. Moreover, the equipment bays that house the splitter and DSLAM units are ordered from the manufacturer as a single EF&I ("Engineered, Furnished, and Installed") unit, with a one-to-one relationship between splitters and ports.¹⁹ Thus, if Qwest were required to deconstruct the DSLAM/splitter unit to provide access to a splitter, the DSLAM availability would be stranded.²⁰ Finally, Qwest's technicians do not have access to the cable between the splitter and the DSLAM for testing.²¹ Testing is performed at the MDF. Therefore, it is impossible to for Qwest to provide access for another provider to the Qwest-owned splitter.

Thus, neither the facts nor the law supports the CLECs' demand for access to Qwest's POTS splitters. The Multistate Facilitator agreed with Qwest's argument and refused to

¹⁸ See Colorado May 22, 2001 Tr. at 141:18-25; 142:5-9; 143:9-13 (attached hereto as Exhibit 1).

¹⁹ See Colorado May 22, 2001 Tr. at 142:5-19; 143:21-144:8.

²⁰ See Colorado May 22, 2001 Tr. at 144:13-19.

²¹ See Colorado May 22, 2001 Tr. at 141:23-25; 143:9-13.

require Qwest to purchase and own POTS splitters on behalf of CLECs.²² The Arizona Commission should do likewise.

B. Issue LS-6: Whether Qwest must offer its retail DSL service on a stand-alone basis when a CLEC provides the voice service over UNE-P.

Qwest offers a retail DSL product (formerly called "MegaBit") along with its voice services. Qwest only offers DSL to retail customers if Qwest is also the underlying voice provider. Qwest also offers its DSL service on a resale basis where the underlying voice service is provided by Qwest on a retail basis or by a competing carrier providing Qwest service on a resale basis. The Qwest DSL offering is based on utilizing a Qwest voice line and associated telephone number.²³ AT&T claims that Qwest should be required to continue to provide its DSL service to a customer that has decided to obtain a UNE voice service from another provider.²⁴ This contention fails as a matter of law.

The FCC has expressly rejected AT&T's argument in its *SBC Texas Order*:

We reject AT&T's argument that we should deny this application on the basis of SWBT's decision to deny its xDSL service to customers who choose to obtain their voice service from a competitor that is using the UNE-P. *Under our rules, the incumbent LEC has no obligation to provide xDSL service over this UNE-P carrier loop....* In sum, we do not find this conduct discriminatory.²⁵

²² Report on Emerging Services (June 11, 2001) ("*Multistate Facilitator's Report*") at 4, 15.

²³ Workshop 3 Tr. 477:13-19.

²⁴ AT&T's Supplemental Comments (Sept. 29, 2000) at 8-9.

²⁵ *SBC Texas Order* ¶ 330 (emphasis added, citations omitted).

Indeed, in the context of denying AT&T's motion for reconsideration on this very issue, the FCC recently confirmed that Qwest has no obligation to provide xDSL service when it is no longer the voice provider.²⁶ The FCC left no room for doubt on this issue:

We deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL services in the event customers choose to obtain voice service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement.²⁷

AT&T claims that, even though the FCC plainly rejected its motion for reconsideration on this issue, some of the FCC's language in the *Line Sharing Reconsideration Order* could be construed to mean that the FCC did not actually consider this issue in the underlying *Line Sharing Order*.²⁸ In the *Line Sharing Reconsideration Order*, the FCC stated:

Although the *Line Sharing Order* obligates incumbent LECs to make the high frequency portion of the loop separately available to competing carriers on loops where incumbent LECs provide voice service, *it does not require that they provide xDSL service when they are not [sic] longer the voice provider*. We do not, however, consider in this Order whether, as AT&T alleges, this situation is a violation of sections 201 and/or 202 of the Act. To the extent that AT&T believes that specific incumbent behavior constrains competition in a manner inconsistent with the Commission's line sharing rules and/or the Act itself, we encourage AT&T to pursue enforcement action.²⁹

²⁶ *Line Sharing Reconsideration Order* ¶ 26 (ILEC is not required to provide xDSL service when it is no longer the voice provider).

²⁷ *Line Sharing Reconsideration Order* ¶ 16.

²⁸ Workshop 5 Tr. at 805:1-15.

²⁹ *Line Sharing Reconsideration Order* ¶ 26 (emphasis added).

Reduced to its essence, this passage says: "We do not require it. We will not consider your argument here. Take it to another forum." At the workshop, AT&T suggested that this passage indicates that the FCC actually did not consider an incumbent's obligation to provide xDSL service when it is no longer the voice provider.³⁰ It is difficult to imagine how AT&T teased such a construction out of the FCC's plain statement that the *Line Sharing Order* "does not require that [ILECs] provide xDSL service when they are not [sic] longer the voice provider." The first sentence quoted above cannot reasonably be read to support AT&T's suggestion.

However, the FCC did clearly state in the *Line Sharing Order* that it did not consider AT&T's allegation that an incumbent's decision not to offer xDSL service violates sections 201 and/or 202 of the Act because those issues should be raised in a separate enforcement proceeding. Thus, section 201/202 issues were not appropriately raised in that proceeding, in which the Commission considered section 251 line sharing obligations. Because the line splitting obligations at issue here arose from that line sharing proceeding, the FCC's determination that AT&T's section 201/202 arguments were not within the appropriate scope of that proceeding applies equally to this proceeding. Moreover, given the FCC's repeated refusal to consider extraneous issues in section 271 proceedings, AT&T's section 201/202 arguments are even less appropriately raised in this section 271 proceeding. Having refused to consider AT&T's section 201/202 concern because it was not appropriately within the scope of the proceeding, the FCC encouraged AT&T instead to pursue a different type of action -- a section 201/202 enforcement action -- if AT&T believes that specific ILEC

³⁰ Workshop 5 Tr. at 805:1-15.

behavior constrains competition. Thus, AT&T's tortured construction of the FCC's statement is wholly without merit.

AT&T's claim that it could be disadvantaged if Qwest does not continue to provide DSL service is equally baseless. AT&T has not presented even a scintilla of competent evidence from a witness qualified to testify regarding competitive harm or barrier to market entry. Instead, AT&T offered only the speculation of its non-marketing technical witness that Qwest's termination of retail DSL service when its customer switches voice service to a competitor could be "an inhibition" for customers in changing carriers.³¹ Even if AT&T had presented competent evidence regarding its claim, the claim must be rejected as a matter of law because the FCC has already determined that no such barrier exists:

[T]he UNE-P carrier has the right to engage in line splitting on its loop. As a result, a UNE-P carrier can compete with SWBT's combined voice and data offering on the same loop by providing a customer with line splitting voice and data service over the UNE-P in the same manner. *In sum, we do not find this conduct discriminatory.*³²

A CLEC may provide DSL service to its voice customer or choose to resell Qwest's voice and DSL service to its voice customer, or the customer can obtain DSL service from another provider. Thus, DSL services poses no barrier to CLEC as a matter of law.

Finally, it bears noting that Qwest retail DSL is merely a competing product in the broadband market dominated by cable modem service. This lack of market power in the broadband market further requires the conclusion that Qwest's policy and the FCC's rule are pro-competitive.

³¹ Workshop 5 at 814:18-815:9.

³² *SBC Texas Order* ¶ 330 (emphasis added).

This Commission should reject AT&T's well-worn argument.

C. Issue LS-1: Whether Qwest must provide line splitting on all types of loops and resold lines. (SGAT Section 9.21.1)

Qwest believes that it has no obligation to provide loop splitting and is unaware of other ILECs that are currently providing loop splitting. Nevertheless, Qwest has agreed to develop a standard offering for loop splitting and has offered SGAT language, Section 9.24, to implement the offering.³³ Accordingly, the impasse exists only with regard to EELs and resold lines.³⁴ As more fully discussed below, Qwest will work with CLECs who request "EEL splitting" on a special request basis. However, Qwest will not offer line splitting over resold lines.

1. "EEL splitting."

As an initial matter, the concept of "EEL splitting" is counterintuitive because EEL is a combination of loop and transport that was originally designed to eliminate the need for collocation in the serving wire center. Thus, it is not truly possible to split an EEL because splitting would break the EEL loop and transport combination with insertion of collocation.³⁵ Both the voice and data streams would then be directed to the DLEC's collocation area. The voice service would be routed to the IDF to connect to the transport UNE. Thus, the voice portion is not an EEL combination of loop and transport; instead, it is loop and transport separated by collocated equipment. Similarly, the data would be routed on a loop to the CLEC splitter and DSLAM, which may require a separate (unshared)

³³ Workshop 5 Tr. at 1125:8 – 1128:17; SGAT section 9.24.

³⁴ See Workshop 5 Tr. at 1146:10-15.

³⁵ Workshop 5 Tr. at 1130:11-20.

transport UNE from Qwest for delivery to the ISP. Thus, a split EEL would no longer be an EEL.

Qwest has no obligation to provide EEL splitting. Nonetheless, Qwest has agreed to provide EEL splitting on a special request basis.³⁶ Qwest will not, however, create a standard product offering for EEL splitting. Qwest is only required to offer products where there is a current or "reasonably foreseeable" demand for such products.³⁷ There is currently no demand for EEL splitting.³⁸ Given the lack of demand, the significant investment of time and effort required to develop a standard product is not warranted. Developing a standardized product would require Qwest to define methods, and procedures, build OSS functions for ordering, define LSR information that can flow through Qwest's databases and onto billing statements.

AT&T raised concerns that the lack of appreciable demand may not be attributable to the absence of CLEC interest in such a product. This concern should be allayed by Qwest's

³⁶ Workshop 5 Tr. at 1130:21 – 1131:1

³⁷ See Memorandum Opinion and Order, *Application of BellSouth Corp., et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to provide In-Region, Inter-LATA Services in South Carolina*, CC Docket No. 97-208, FCC 97-418 (rel. Dec. 24, 1997) ¶ 181; Memorandum Opinion and Order, *Application of Bell South Corp. Bell South Telecommunications, Inc. and Bell South Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, FCC 98-271 (rel. Oct. 13, 1998) ¶¶ 108, 116, 139; *SBC Texas Order* ¶ 98.

³⁸ Workshop 5 Tr. at 1130:13-14. The absence of any demand for EEL splitting is also demonstrated by the CLECs' failure to produce a single document evidencing any such demand in response to Qwest's document requests.

agreement to revisit its decision not to create a standard offering if demand for EEL splitting increases sufficiently.³⁹

AT&T has claimed in other state commission workshops that Qwest's lack of a standard product may cause it competitive harm because it intends to become a facilities-based DLEC. In order for AT&T to provide both voice and DSL to the customer, AT&T would be required to collocate in the serving wire center. Thus, becoming a facilities-based DLEC would eliminate AT&T's need for the intended benefit of EEL, which is to eliminate collocation in the serving wire center.

2. Splitting Resold Lines.

Qwest will not agree to offer line splitting over resold lines. First, Qwest has no obligation to provide combinations of unbundled network elements with resale products. Further, as described above, the FCC requires ILECs to provide access to checklist items to only meet "reasonably foreseeable demand." There is no evidence of any demand for splitting resold lines. The absence of any such demand is confirmed by the CLECs' failure to produce any documents evidencing any demand for splitting resold lines in response to Qwest's document requests.⁴⁰ Finally, any need for such a product could be satisfied with Qwest's existing offerings by simply converting the resale voice grade line to UNE-P voice, at which point UNE-P line splitting is available.⁴¹

³⁹ Workshop 5 Tr. at 1130:23-25.

⁴⁰ Workshop 5 Tr. at 1136:25 – 1137:5.

⁴¹ Workshop 5 Tr. at 1131:9-13, 1132:19 - 1133:5.

Because Qwest has no obligation to offer line splitting on resold lines and, in any event, Qwest already provides an equivalent offering, AT&T's request that the Commission impose a new obligation to provide line splitting on resold lines must be denied.

D. Issue LS-19: Whether Qwest is obligated to provide line splitting over non-copper loops as well as copper loops. (SGAT Section 9.21.1)

As described above, Qwest was the first ILEC in the country to offer line sharing to CLECs, and will offer "loop splitting." However, at this point, the only technically feasible way to share a loop is over a clean copper loop. When a loop is provisioned over Digital Loop Carrier (DLC) or fiber, sharing the loop would garble the signals. There does not appear to be any dispute on this point. Nonetheless, the CLECs seek to require Qwest to "line split" over fiber. This same issue was raised in the Emerging Services workshop when discussing line sharing. As Qwest described there, this is simply not technically feasible at this time. The Multistate Facilitator agreed with Qwest and approved the SGAT language offered by Qwest here.⁴²

In the *Line Sharing Reconsideration Order*, the FCC clarified that ILECs such as Qwest must allow CLECs to "line share" the distribution portion of the loop where the signal is then split, and then allow the CLEC's data to be carried over fiber to some different location. Specifically:

where a competitive LEC has collocated a DSLAM at the remote terminal, an incumbent LEC must enable the competitive LEC to transmit its data traffic from the remote terminal to the central office.

⁴² *Multistate Facilitator's Report* at 4, 18-19.

The incumbent LEC can do this, at a minimum, by leasing access to the dark fiber element or by leasing access to the subloop element.⁴³

The CLECs do not dispute that Qwest complies with this obligation. Qwest provides CLECs with the network elements that can transport data from Qwest remote terminals; these include dark fiber,⁴⁴ DS-1/DS-3 Capable Loops,⁴⁵ and OCN Loops.⁴⁶ Qwest also provides CLECs with the ability to commingle their data with Qwest's data over the same facility when certain conditions are satisfied.⁴⁷

The FCC then acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent capabilities of the equipment ILECs have deployed.⁴⁸ Accordingly, the FCC initiated two further notices of proposed rulemaking seeking comments on the technical feasibility of "line sharing" over fiber fed loops.⁴⁹ Clearly, the FCC has not imposed any additional obligations. It has merely

⁴³ *Line Sharing Reconsideration Order* ¶ 12.

⁴⁴ See SGAT section 9.7.

⁴⁵ See SGAT section 9.2.

⁴⁶ See SGAT section 9.2.2.3.1. Qwest has added the following sentence at the end of section 9.2.2.3.1: "Qwest shall allow CLEC to access these high capacity Loops at accessible terminals including DSXs, FDPs or equivalent in the Central Office, customer premises, or at Qwest owned outside plant structures (e.g., CEV, RT or hut) as defined in Section 9.3.1.1."

⁴⁷ See SGAT section 9.20 (unbundled packet switching).

⁴⁸ *Line Sharing Reconsideration Order* ¶ 12.

⁴⁹ *Line Sharing Reconsideration Order* ¶ 12 ("For these reasons, we are initiating a *Third Further Notice of Proposed Rulemaking* today in the Advanced Services docket and a *Sixth Further Notice of Proposed Rulemaking* in the Local Competition docket that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.") (footnotes omitted).

begun the process for considering whether to impose any such additional obligations. Indeed, in its *Massachusetts Order*, the FCC specifically noted that "the issue of line sharing over fiber-fed loops is the subject of a *Further Notice of Proposed Rulemaking* at the Commission."⁵⁰ Nonetheless, the CLECs demand that the Commission impose additional line sharing obligations of the very kind the FCC intends to study through the comments it has requested.

The CLECs' demand that Qwest delete a reference to copper loops in SGAT section 9.21.1, which describes Qwest's line splitting offering, and broaden the reference to include other loops, would expand Qwest's line splitting obligations and would create a false impression that CLECs can "line share" over any type of facility. The loop splitting methodology described in Section 9.21 requires use of a Central Office Splitter. This technically will not facilitate line sharing over fiber. Thus, removing references to copper simply does not work. As fully discussed above, this section 271 proceeding is not an appropriate forum for imposing new obligations. Moreover, the CLEC proposal would render the SGAT's description misleading because it is not technically feasible for Qwest to offer line sharing over anything other than a copper loop.⁵¹

At the workshop, Covad suggested that the Commission consider the Illinois Commission's position on this issue.⁵² This is a reference to a recent decision of the Illinois Commerce Commission ("Illinois Commission"), which the CLECs have relied upon to

⁵⁰ *Verizon Massachusetts Order* at n.512 (citing the *Line Sharing Reconsideration Order* ¶ 12).

⁵¹ Exhibit 5 Qwest 21 at Multistate Tr. pp. 87:9-19, 90:11-24, 92:4-10.

⁵² Workshop 5 Tr. at 873:25-874:8.

claim that the Illinois Commission ordered line sharing over fiber. However, the decision does not extend as far as the CLECs have suggested. The Illinois Commission did not order Ameritech to provide line sharing over fiber. Instead, it merely ordered Ameritech to provide access to fiber subloops and line sharing over copper loops. The Illinois Commission specifically set out the UNEs it directed Ameritech to provide, including "Lit Fiber Subloops" and the "High Frequency Portion of copper subloops."⁵³ This decision provides no support for the CLECs' attempt to impose an obligation to require Qwest to provide line sharing over fiber. To the contrary, it describes exactly what Qwest offers to CLECs today.

Moreover, the Illinois Commission decision was based on the specific architecture deployed by Ameritech in its Project Pronto DLCs. There is no evidence in the record to support application of this fact-specific decision to Qwest's DSLAM architecture. Finally, the *Illinois Arbitration Decision* did not arise from a section 271 proceeding, but instead arose from the rehearing of decisions reached in interconnection agreement arbitrations.⁵⁴

Qwest is and has been proactively offering line sharing to CLECs throughout its region for over a year. To date, throughout Qwest's region, CLECs are offering service to customers over a substantial number of shared loops. Qwest has been proactive in meeting

⁵³ Arbitration Decision on Rehearing, *Covad Communications Co. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues*; *Rhythms Links, Inc. Petition for Arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Tel. Co. d/b/a Ameritech Illinois, and for an Expedited Arbitration Award on Certain Core Issues*, Docket Nos. 00-312/00-313 (consol.), 2001 Ill. PUC LEXIS 205 (Feb. 15, 2001) ("*Illinois Arbitration Decision*"), at *94-*95.

⁵⁴ *Illinois Arbitration Decision* at *1.

in industry forums to create best practices and methods for line sharing deployment. On this issue, however, Qwest simply does not have a technical solution that will allow "line sharing" over fiber. The FCC's recent NPRM supports this view, as it seeks comments on whether line sharing over fiber is technically feasible. It is illogical to assume that the FCC ordered ILECs to offer line sharing over fiber when the FCC is not even sure it can be done. Qwest is meeting its obligations.

III. THE UNBUNDLED NID

The FCC's *UNE Remand Order* requires ILECs to unbundle subloop elements and NIDs.⁵⁵ Because the parties' disputes regarding the SGAT provisions relating to NIDs are firmly rooted in AT&T's objections to the SGAT provisions relating to subloop unbundling, some context regarding subloop unbundling is required.

The FCC requires Qwest to provide the CLECs access at any "accessible terminal" in Qwest's outside plant to unbundled distribution subloops, feeder subloops, and subloops in accessible terminals in Multiple Tenant Environments ("MTEs"). The parties have no dispute regarding Qwest's provisions for unbundling subloops that are not located in MTEs. However, the parties are in substantial disagreement as to how Qwest must provision subloops in an MTE environment.

At the heart of the NID impasse issues is AT&T's desire to obtain immediate, unfettered access to any accessible terminal in an MTE, regardless of its function in Qwest's network or the impact such access may have on Qwest's obligations and Qwest's customers.

⁵⁵ See 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, FCC 99-238 (rel. Nov. 5, 1999) ("*UNE Remand Order*") ¶¶ 202-229 (subloop) & 230-240 (NID).

Because of their operational functions in Qwest's network, Demarcation Point⁵⁶ terminals and other accessible terminals are subject to different procedures for CLEC access. Demarcation Point terminals mark the end of Qwest's network; accordingly, the SGAT provides the CLECs with easy access to these terminals. Accessible terminals, on the other hand, sit within Qwest's network and, because CLEC activity in these terminals affect Qwest's network, the SGAT contains processes for access to these terminals that also provides Qwest with essential information it needs to adequately maintain the network.⁵⁷ Given the legitimate difference in procedures, Qwest initially proposed to designate the terminals in such a way as to eliminate any confusion: a NID was a demarcation point; an MTE Terminal was not and, therefore, involved subloop elements. Through the course of 271 workshops, Qwest agreed to revise its definition of NIDs to include terminals that are not demarcation points.⁵⁸ However, Qwest has maintained that differences in access to these operationally distinct terminals cannot be entirely ignored. CLEC access to an MTE NID requires Qwest to first determine if the NID is the Demarcation Point or an accessible terminal for sub-loop access. Without taking this essential step, the CLEC would not know if they were accessing customer wire or a Qwest subloop.

AT&T, however, seeks to expand the NID definition in a manner that would permit it to avoid the FCC rule that provides that access to subloops is subject to the FCC's

⁵⁶ "Demarcation Point" is defined in Section 9.2 of the SGAT.

⁵⁷ See Workshop 5 Tr. at 1223:16-1224:9, 1225:12-1226:16.

⁵⁸ Exhibit 5 Qwest 5, Rebuttal Affidavit of Jean M. Liston (Feb. 19, 2001) at 28-31; SGAT section 9.5.1.

collocation rules⁵⁹ and the SGAT's subloop access provisions, which include processes designed to provide Qwest with information it needs to manage its network. In short, AT&T seeks to access all terminals through the NID section of the SGAT, regardless of whether they constitute Demarcation Points.

Thus, the parties remain at impasse on the following issues: (1) whether CLECs are entitled to stand-alone access to the NID when Qwest owns the inside wire; (2) whether CLECs should have access to a NID cross-connection field other than the protector side or the on-premises wiring side, without complying with subloop procedures; (3) whether CLECs may remove Qwest's wires from protector field of the NID; (4) whether Qwest retains ownership of the cross-connect blocks and cross connects of a NID; and (5) whether CLECs may gain access to MTE inside wire through Qwest's protection field when no other access is available, without paying Qwest for the NID. As set forth below, each of the NID impasse issues should be decided in Qwest's favor as a matter of fact and law.

A. Issue NID-1(b): Whether CLECs are entitled to stand-alone access to the NID when Qwest owns the inside wire. (SGAT Sections 9.5.1 and 9.5.2.1.1)

AT&T contends that it should be able to purchase the NID and the inside wire separately, as two separate elements, where Qwest owns the inside wire.⁶⁰ Contrary to AT&T's suggestion, this is not a dispute about access to NIDs. AT&T can access NIDs that are attached to inside wire owned by Qwest through SGAT section 9.3, which governs subloop unbundling. AT&T is pressing the issue of stand-alone access to NIDs in the

⁵⁹ See 47 C.F.R. 51.319(a)(2)(D) ("Access to the subloop is subject to the Commission's collocation rules").

⁶⁰ Workshop 5 Tr. at 1380:5-1382:10.

context of SGAT section 9.5 in the hopes of avoiding the application of the subloop access rules.

AT&T's contention has no merit as a matter of law. When a CLEC orders access to inside wire owned by Qwest, it is requesting access to subloops. The subloop it obtains includes the features and functionalities of that subloop which, in the case of inside wire, includes the features and functionalities of the NID. It would be redundant to order inside wire subloop and a NID. Moreover, stand-alone access to the NID where Qwest owns the inside wire would ignore Qwest's ownership of facilities beyond the NID, and Qwest's legitimate need to maintain records and procedures with respect to those facilities.

In the *UNE Remand Order*, the FCC described the NID as follows:

*In the Local Competition First Report and Order, the Commission defined the NID as a cross-connect device used to connect loop facilities to inside wiring. We modify that definition of the NID to include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism. Specifically, we define the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.*⁶¹

The FCC indicated that it was establishing a particular definition for the NID unbundled network element: "[T]he NID definition, *for purposes of our unbundling analysis*, should be flexible and technology-neutral."⁶² The FCC then reiterated that this discrete unbundled NID definition includes any variation in "the hardware interfaces

⁶¹ *UNE Remand Order* ¶ 233 (emphasis added).

⁶² *UNE Remand Order* ¶ 234 (emphasis added).

between carrier and customer premises facilities,"⁶³ i.e., the demarcation point. Thus, the FCC plainly defined the unbundled NID as the demarcation point at which the customer premises facilities begin, regardless of the technology the NID employs or the design of a particular NID.

In defining the unbundled NID, the FCC expressly "decline[d] to adopt parties' proposals to include the NID in the definition of the loop."⁶⁴ Instead, the FCC carefully distinguished the unbundled NID Demarcation Point from the *functionality* of the NID. Because competitors "acquire the *functionality* of the NID for the subloop portion they purchase," the FCC determined that there is "no need to . . . include the NID as part of any other subloop element."⁶⁵ Thus, the FCC created a distinction between the unbundled NID, which is defined as the Demarcation Point, and the functionality of the NID, which is included in the subloop elements CLECs purchase. Accordingly, "*[c]ompetitors purchasing a subloop at the NID . . . will acquire the functionality of the NID for the subloop portion they purchase.*"⁶⁶

Qwest's NID provisions are in full compliance with the FCC's rulings on this issue. Indeed, Qwest's SGAT definition of NID incorporates much of the FCC's language verbatim:

The Qwest NID is defined as any means of interconnection of end user customer on-premises wiring and Qwest's distribution plant, such

⁶³ *UNE Remand Order* ¶ 234 (emphasis added).

⁶⁴ *UNE Remand Order* ¶ 235 (emphasis added).

⁶⁵ *UNE Remand Order* ¶ 235.

⁶⁶ *UNE Remand Order* ¶ 235 (emphasis added).

as a cross connect device used for that purpose. Specifically, the NID is the interface or cross connection device attached to the building between the end user customer on-premises wiring and Qwest distribution plant. . . . The NID carries with it all features, functions and capabilities of the facilities used to connect the Loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism.⁶⁷

This definition includes terminals that are not Demarcation Points.

At the workshop, AT&T stated that it may only wish to access inside wire at the NID without using the features and functionality of the NID.⁶⁸ But access to inside wire through the SGAT's NID provisions rather than subloop provisions would permit AT&T to avoid the FCC rule that provides that access to subloops is subject to the FCC's collocation rules⁶⁹ and the SGAT's subloop access provisions, which include processes designed to provide Qwest with information it needs to manage its network.

AT&T also requested that Qwest revise the SGAT to completely separate the NID from subloop, so that AT&T would order a NID in addition to the attached subloop.⁷⁰ AT&T's position directly contradicts the FCC's mandate that the functionality of the NID is included as part of a subloop.⁷¹ Pursuant to the *UNE Remand Order*, a CLEC seeking access to a subloop and attached NID would order only the subloop, because the functionality of the NID is included.

⁶⁷ SGAT section 9.5.1.

⁶⁸ See, e.g., Workshop 5 Tr. at 1386:13-17; 1387:16-18.

⁶⁹ 47 C.F.R. 51.319(a)(2)(D) ("Access to the subloop is subject to the Commission's collocation rules").

⁷⁰ Workshop 5 Tr. at 1369:21-1370:24; 1380:11-1381:8.

⁷¹ *UNE Remand Order* ¶ 235.

If a CLEC seeks to access a subloop element connected to a NID in addition to the NID itself (or instead of the NID), rather than simply a standalone NID, the CLEC must comply with the SGAT's provisions for accessing subloop elements. Thus, section 9.5.1 provides as follows:

If CLEC seeks to access a NID as well as a Subloop connected to that NID it may do so only pursuant to Section 9.3. If CLEC seeks to access only a NID (i.e., CLEC does not wish to access a Subloop connected to that NID), it may only do so pursuant to this Section 9.5.

This provides access to MTE Terminals under the provisions of section 9.5 when the MTE Terminal is also the Demarcation Point and the NID. However, as mandated by the FCC, the SGAT provides that section 9.3 applies when the MTE Terminal is not the Demarcation Point, but rather access to a subloop element.

The SGAT's provisions regarding the definition of and access to the NID preserve the distinction the FCC so deliberately drew between the unbundled NID and the functionality of the NID that accompanies a subloop element connected to the NID. Therefore, AT&T's attempt to obtain stand-alone access to NIDs connected to Qwest's inside wire must be rejected as a matter of law.

B. Issue NID-10: Whether CLECs should have access to a NID cross-connection field other than the protector side or the on-premises wiring side, without complying with subloop procedures. (SGAT Section 9.5.4.2)

For some MTE NIDs, there are intermediate cross-connect fields within the NID other than at the protector side or the on-premises wiring side of the NID. AT&T believes it should have access to those cross-connect fields within the NID.⁷²

⁷² Workshop 5 Tr. at 1436:10-1437:19, 1442:21-1443:1.

As the Facilitator recognized, CLEC access to customers or the network is not the issue with respect to this impasse.⁷³ By casting this dispute as a NID issue, AT&T seeks to gain such access without being subject to the procedures or costs associated with access to subloops. Access to cross-connection fields within a NID under such terms is not appropriate.

If a CLEC is unable or does not wish to access the on-premises wiring side of a NID, it may submit an LSR to Qwest, access the protector side of the NID, and perform its own wiring to make the connection. In an MTE situation, Qwest must first determine if the MTE NID requested by the CLEC is a Demarcation Point. If the NID is also the Demarcation Point, then the CLEC must submit an LSR to access the protector field of the NID. Then the CLEC can directly wire its facilities on the protector field of the NID.⁷⁴ However, if the MTE is not the Demarcation Point, then the CLEC must comply with Section 9.3 of the SGAT, Sub-loops.⁷⁵ The FCC has clearly stated that in some situations, access to a subloop will be via a NID.⁷⁶ The Commission should reject AT&T's request.

C. Issue NID-7: Whether Qwest retains ownership of the cross-connect blocks and cross connects of a NID. (SGAT Section 9.5.2.2)

AT&T takes the position that Qwest does not own the cross-connections or cross-connect block in the NID, and that it is instead owned by the customer or building owner. In

⁷³ Workshop 5 Tr. at 1442:21-1443:5.

⁷⁴ Workshop 5 Tr. at 1437:19-1438:7.

⁷⁵ Workshop 5 Tr. at 1439:3-1440, 1441:13-20, 1443:21-1444:6; SGAT Sections 9.5.4.2, 9.5.4.3.

⁷⁶ *UNE Remand Order* ¶ 235.

raising this issue, AT&T seeks through yet other means to avoid having to comply with Qwest's protocols for access to the NID and subloops.

However, just as in any other case of access to UNEs, Qwest retains ownership of its facilities even though a CLEC may lease a UNE from Qwest or obtain access to inside wire at a Qwest NID.⁷⁷ Qwest owns the entire NID, including the block, the cross-connections, and the bridge clip, and the customer or building owner's ownership begins only at the inside wire.⁷⁸ The only exception to Qwest's ownership is in limited cases where a builder has installed its own blocks.⁷⁹ Even in such limited cases, Qwest owns the cross connects.⁸⁰ The Commission should reject AT&T's attempt to divest Qwest of ownership of its facilities.

D. Issue NID-9: Whether a CLEC may gain access to MTE inside wire through Qwest's protector field when no other access is available and when the CLEC has provided its own protector, without paying Qwest for the NID. (SGAT Section 9.5.2.5)

AT&T argues that if it provides its own protector and also accesses the Qwest protector field of the NID, it should not be charged for access to the protector field of the NID.⁸¹

If a CLEC connects on the protector side of the wire, it is accessing a customer through Qwest's NID. CLECs should not be permitted to use Qwest's facilities without

⁷⁷ Workshop 5 Tr. at 1395:11-16.

⁷⁸ Workshop 5 Tr. at 1396:24-1397:8, 14-16; 1401:24-1402:9; 1406:20-23.

⁷⁹ Workshop 5 Tr. at 1398:2-11.

⁸⁰ Workshop 5 Tr. at 1405:23-1406:11.

⁸¹ Workshop 5 Tr. at 1245:11-1246:2.

paying for them. If the CLEC elects to install its own NID, even in circumstances where it will need to access the protector field of the NID, that is the CLEC's decision. Once the protector field is accessed, that NID access is no longer available for Qwest or another CLEC's use. The CLEC is essentially leasing the Qwest equipment and therefore Qwest is entitled to reimbursement. There is no support for the proposition that Qwest should provide access on its side of the NID, but then not receive payment for the CLEC's presence on and through Qwest's facilities.⁸² This runs counter to the most fundamental concept of the Act – that Qwest gets paid TELRIC rates for providing access to its UNEs.

E. Issue NID-4: Whether CLECs may remove Qwest's wires from the protector field of the NID. (SGAT Sections 9.5.2.1 and 9.5.2.5)

AT&T has requested that CLECs be permitted to remove Qwest's wires from the protector field of the NID.⁸³ However, that would leave Qwest's distribution facility unprotected, in violation of the National Electric Safety Code and the National Electric Code.

The NID provides protection against voltage surges caused by lightning and inadvertent contact between commercial power cable and telephone cable.⁸⁴ Removing Qwest's distribution facilities from the protector field of the NID would violate electrical safety codes, which require surge protectors or over voltage protectors on communications

⁸² Workshop 5 Tr. at 1247:7-1250:17.

⁸³ Workshop 5 Tr. at 1244: 6-20.

⁸⁴ Exhibit 5 Qwest 2, Supplemental Affidavit of Karen A. Stewart (July 21, 2000), at 119:21-120:2; Workshop 5 Tr. at 593:25-594:4.

conductors.⁸⁵ It would also create risks to the network and to employees working on the terminal. The removal of the ground protection creates a potential fire hazard that could impact the network, the building and individuals in the building.⁸⁶ CLECs should not be permitted to remove Qwest's wires from the NID.

AT&T's position is that the CLECs should be permitted to disconnect the Qwest distribution facilities from the protector field of the NID and "cap off" the facility. AT&T has relied on a 1969 Bell System practice, documentation of which was allegedly stored in an AT&T witness's attic, to support this position. Qwest is hard pressed to understand how AT&T can believe that the Commission should rely on a 1969 Bell System practice written by AT&T rather than the current National Electric Safety Code to resolve this issue. AT&T is essentially asking the Commission to order a situation that would place Qwest's network in violation of safety codes, and potentially cause serious harm to individuals and property in Arizona.

Qwest strongly urges the Commission to reject AT&T's request and rather abide by the national electric safety codes that require voltage protectors on all telecommunications facilities.

⁸⁵ Workshop 5 Tr. at 622:5-17, 1231:2-1232:1, 1418:11-18, 1419:6-11, 1431:6-1433:10; Exhibit 5 Qwest 35, National Electrical Safety Code ("NESC"), §315 (protection required where communications apparatus is handled by other than qualified persons); Exhibit 5 Qwest 36, National Electric Code ("NEC") §800-30(a) ("[A] listed primary protector shall be provided on each circuit...located within the block containing the building served so as to be exposed to accidental contact with electric light or power conductors operating at over 300 volts to ground. In addition, where there exists a lightning exposure, each interbuilding circuit on a premises shall be protected by a listed primary protector at each end of the interbuilding circuit.")

⁸⁶ Workshop 5 Tr. at 1231:2-1232:1.

IV. CONCLUSION

For the reasons stated above, Qwest should prevail on all impasse issues regarding line splitting and NIDs. Accordingly, Qwest requests that the Facilitator recommend and the Commission verify Qwest's compliance with its obligation to provide access to line splitting and NIDs pursuant to section 271(c)(2)(B)(ii) of the Act.

DATED this 19th day of June, 2001.

Respectfully submitted,



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QWEST BRIEF ON LINE SPLITTING AND
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[/#1196460 v1 - NID-Line Splitting Brief]
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**QWEST BRIEF ON LINE SPLITTING AND
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[/#1196460 v1 - NID-Line Splitting Brief]
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**QWEST BRIEF ON LINE SPLITTING AND
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**QWEST BRIEF ON LINE SPLITTING AND
NID IMPASSE ISSUES - 34**

[/#1196460 v1 - NID-Line Splitting Brief]
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**QWEST BRIEF ON LINE SPLITTING AND
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[/#1196460 v1 - NID-Line Splitting Brief]
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QWEST BRIEF ON LINE SPLITTING AND
NID IMPASSE ISSUES - 36

[/#1196460 v1 - NID-Line Splitting Brief]
PHX/1196460.1/67817.150

EXHIBIT 1

1

1 BEFORE THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF COLORADO
3 Docket No. 97I-198T - Workshop

4 * * *

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

8 -----
9 Technical Workshop 5 was held at 8:40 a.m., May 22,
10 2001, at 3898 Wadsworth Boulevard, Lakewood, Colorado,
11 before Facilitators Hagood Bellinger and John Schultz.

12 APPEARANCES

13 (As noted in the transcript.)

2 MR. BELLINGER: Okay. Should we go to
3 the issue list? Can you make that an issue, if it
4 wasn't previously.

5 MS. LISTON: There is an issue on when
6 will Qwest provide loop-splitting. It's No. 6.

7 MR. BELLINGER: Okay. Well, I would note
8 that when we get there then. Okay.

9 MS. LISTON: I stand corrected. This is
10 just will we, not when will we. But we can expand it.

11 MR. BELLINGER: Okay. Let's go to
12 Line-Splitting-1.

13 MS. LISTON: Line-Splitting-1 has to do
14 with access to the POT splitters. And it's on the
15 one-by-one basis. If there's outboard splitters --
16 Qwest currently does not provide outboard splitters. I
17 know we have had quite a bit of discussion on this in
18 the line-sharing environment, and in other
19 jurisdictions. We have, if I remember correctly, we
20 have gone to impasse on this issue, on both
21 line-sharing, and in other jurisdictions, for
22 line-splitting.

23 MR. BELLINGER: So you wanted to take
24 this to impasse as stated?

25 MS. LISTON: Yes.

1 MR. BELLINGER: All right. Any comments
2 by CLECs?

3 MR. WILSON: Two comments from AT&T.
4 AT&T feels that Qwest should provide line-at-a-time
5 splitters when Qwest provides splitters to itself that
6 are not integrated with the DSLAM. And I understand,
7 now, from more discussion on the particular splitters
8 and DSLAMs that Qwest uses, that while the splitters
9 are not built onto the same board as the DSLAM, they
10 are hard-wired to the DSLAM in Qwest's implementation,
11 at least that was the representation that Mr. Orrel
12 made in Arizona.

13 But, be that as it may, AT&T still feels
14 that the SGAT should allow CLECs to order splitters a
15 line at a time when splitters are provisioned by Qwest
16 such that they would need to do jumpering themselves in
17 order to access the splitters.

18 MR. HUBBARD: I can respond to that. On
19 our D-SLAMs and our splitters, they are
20 amphenol-connected to each other, on the back plain of
21 both the DSLAM and the splitters. There is no wire
22 connection. I went out and looked at a bunch of them
23 since we have been in Arizona. So, there is absolutely
24 no means to access those. They are all
25 amphenol-connected. They are not hard-wired, as

1 Mr. Orrel -- or wire-wrapped, as we talked about.

2 MR. WILSON: Okay. So it's
3 connecterized.

4 MR. HUBBARD: Connecterized.

5 MR. WILSON: There would be like a shelf.
6 Splitters would be connecterized to the DSLAM. Is that
7 what you are saying?

8 MR. HUBBARD: Yes. On a one-to-one
9 basis, yes.

10 MR. WILSON: Like, you mean, like a shelf
11 of splitters to a DSLAM or individual splitters?

12 MR. HUBBARD: No. Shelf.

13 MR. WILSON: Shelf. So, do you know how
14 many splitters are on the shelf?

15 MR. HUBBARD: I didn't count them when I
16 was out there. I don't -- no, I don't. My
17 understanding is they are on a one-to-one basis for
18 one -- basically one port of this DSLAM, there's one
19 splitter assigned. There's no extra ones.

20 MR. BELLINGER: Covad, do you have any
21 comments on that?

22 MR. ZULEVIC: I have a question about
23 your proposed architecture for remote deployment of
24 DSLAMs.

25 MR. BELLINGER: Is that part of this?

1 MR. ZULEVIC: Well, it is, in that we're
2 talking about splitters, and whether or not they should
3 be provided on a port-at-a-time basis. Do those
4 splitters that you will be deploying, are they outboard
5 type of splitters? Are they also, as you represented,
6 your CO-based DSLAM, an integrated type or hard-wired
7 splitter?

8 MR. HUBBARD: Mike, I haven't seen any of
9 the actual installs in the field. The pictures I have
10 seen, and the drawings I have seen, they are
11 amphenol-connected together, the same as in the Central
12 Office. That's my understanding of it. There's no
13 actual appearance of wires.

14 MR. ZULEVIC: Now, I would just like to
15 add that, to the extent that Qwest does deploy outboard
16 type of splitters, we would agree with the AT&T
17 position that we should be able to have access to those
18 on a port-at-a-time basis, whether they be located in
19 the Central Office or whether they are at the remote
20 terminal.

21 MR. BELLINGER: But the issue is -- let
22 me clarify this issue. You don't provide outboard
23 splitters, am I right?

24 MR. HUBBARD: Yes. That is our
25 contention. We do not provide outboard splitters. All

1 of the splitters are on a one-to-one basis. One port
2 DSLAM for one splitter. We don't have extras in there.

3 MR. BELLINGER: Okay.

4 MR. ZULEVIC: Well, so we're saying that
5 you don't have the ability to provide them technically
6 on a one-at-a-time basis because of the way it's
7 configured.

8 MR. HUBBARD: That is correct.

9 MR. WILSON: But theoretically you could
10 provide a shelf at a time if it's connecterized.

11 MR. HUBBARD: You could do anything
12 theoretically. I mean --

13 MR. WILSON: Well, I mean practically. I
14 mean, you could lease the existing splitters you have a
15 shelf at a time if the CLEC had a connector of the same
16 type.

17 MR. HUBBARD: Theoretically, you would
18 strand any availability out of the DSLAM to provide
19 service if you did that.

20 MR. WILSON: Well, if you provision a
21 shelf more than you would -- I mean, it's just --
22 that's just a provisioning question. In other words,
23 if you don't order more shelves of DSLAMs, then that's
24 true. If you order another shelf of splitters, that's
25 not true.

1 MR. HUBBARD: I guess that's a true
2 statement, Ken. I don't know. Do you have a question
3 in there?

4 MR. WILSON: No. I was just, given that
5 we initially -- my initial understanding was that the
6 splitter was built onto the same board. Now, that's
7 not true. We have come to where the splitters are on
8 one shelf and DSLAMs on another shelf, and they are
9 connecterized between the two. It leads to maybe not a
10 port at a time, but a shelf at a time, such that if a
11 CLEC had enough volume -- say if there are 24 splitters
12 on a shelf, if you are running 24 orders a day, for
13 instance, it would be a shelf of splitters a day.

14 MR. BELLINGER: Okay. I think we are
15 pretty much at impasse. I don't know if there's
16 anything to add.

17 MS. DOBERNECK: Actually, I just -- I
18 don't have a question. I had one thing to add.
19 Getting back to this outboard splitter, the
20 unintegrated DSLAM splitter. And the reason it
21 matters, from our perspective, is that there is a
22 recent order that came out of the Texas PUC, in the
23 SWBT/AT&T arbitration, in which the commission made
24 clear that where you have a standalone splitter or
25 splitter that is not integrated with the DSLAM, that

1 that is -- that you have to -- that that splitter
2 functionality is included in the definition of the
3 loop, that has to be made available to CLECs.

4 So, I understand your position saying we
5 own -- have integrated DSLAMs out there. I think, to
6 the extent they are deployed in the future or something
7 arises where it's an outboard splitter, as Mike was
8 talking about, there's a legal obligation on the part
9 of Qwest to make that available.

10 MR. HUBBARD: I think that is basically a
11 different type of marketing that's done in Texas that
12 we are not doing, where they were actually using a --
13 selling a port at a time as a product, and then were
14 ordered to basically, then, unbundle that. And Qwest
15 does not have that as a product.

16 MS. DOBERNECK: I guess I am confused,
17 then, because the language of this particular order is
18 fairly clear. I mean, it is limited to standalone
19 splitters, but the distinction the PUC -- Texas PUC
20 raises is that the standalone splitter is independent
21 from a splitter that has been incorporated into a
22 DSLAM. So, I, you know, I think that's pretty
23 consistent with what we're advocating here.

24 MR. BECK: I understand where we're going
25 with that, maybe. We've talked about this order

1 before, and as you know, it's Qwest position that is
2 directly contrary to what the FCC has said in its order
3 that the line-splitter is not part of the loop, not
4 part of the feature/functionality of the loop. They
5 were asked to decide that directly, and they have said
6 "no" on a couple of occasions.

7 MS. DOBERNECK: I think the Texas PUC
8 obviously would disagree. They specifically address
9 that order and they make the distinction, and they
10 recognize what the order says, and yet, nonetheless,
11 include appropriately, we believe, that the outboard
12 splitter should be made available to CLECs. So, I
13 mean, if that is your position, that this decision is
14 wrong, then I guess we remain at impasse, but I think
15 it's pretty clear.

16 MS. LISTON: I think, if I remember
17 right, on that Texas order, there was an -- if I
18 remember all of the pieces correctly, they were in a
19 situation where the ILEC basically had an affiliate,
20 and within their affiliate company, they were doing
21 line-at-a-time-POT splitters. And the Texas order
22 addressed this issue that said, if you are doing it
23 with your affiliate on line at a time, you will also be
24 doing it with CLECs line at a time. And that was my
25 understanding within the Texas order, that had to do

1 with, there had been a provision made already for the
2 equivalent of selling line at a time to their own
3 affiliate company. And that was part of the decision
4 from the Texas -- within the Texas ruling, was because
5 they were doing it within their affiliate, that that
6 was my understanding, also, as part of the order, was
7 included -- that was part -- that was part of what went
8 into the decision-making.

9 MS. DOBERNECK: Well, it's not reflected
10 in the order I am looking at, which is not to say that
11 you are not correct, but certainly what you are
12 describing is not part of the discussion of this
13 particular order. And I think it's probably -- we
14 would obviously consider it to be a standalone, and it
15 says what it says.

16 MR. BECK: I think this does go into the
17 briefs. Unless we have something more factual on this
18 issue, we should move on.

19 MR. BELLINGER: I think we're briefing it
20 right now.

21 MR. DIXON: You asked if there are any
22 other comments. WorldCom addresses, in their
23 testimony, 5-WorldCom-13, beginning on page 19, for
24 several paragraphs thereafter -- I won't go through
25 that again. It's in the record. We're ready to move

1 on.

2 MR. WILSON: I have one more --

3 MR. BELLINGER: Okay.

4 MR. WILSON: -- technical comment. I
5 guess, again, my new understanding of how the Qwest
6 splitters and DSLAMs are configured, it would be my
7 opinion that they are indeed outboard from the DSLAM.
8 The fact that they are connecterized is not a technical
9 impediment. It will be easy to break out the splitters
10 by merely attaching an amphenol plug to the splitter
11 shelf, and running it to the cross-connect, and
12 breaking it out, making splitters available line at a
13 time.

14 MR. BELLINGER: Okay.

15 MR. ZULEVIC: If I can just also briefly
16 add to this. I totally agree with what Ken just said.
17 It's my understanding of the Cisco 6100 platform, it
18 gives you that flexibility in that you can offer
19 different flavors of DSL off of that same basic
20 equipment, depending on what types of cards, and so
21 forth, you put in. And that if you're offering the
22 aDSL type of product, then you would order enough of
23 the shelves of the splitters to be able to accommodate
24 what you are offering.

25 So, I would also like to say that the

1 splitters that we currently have in place, upon a
2 virtual basis, with Qwest, are also connecterized using
3 the same type of amphenol connector that you just
4 characterized your splitters as requiring. So, I would
5 totally agree that that would definitely look like an
6 outboard splitter application, even though you may
7 dedicate those on port -- on amphenol at a time, or
8 shelf at a time, directly to your DSL products.

9 MR. BELLINGER: Okay. I think we've got
10 it on record.

11 MS. QUINTANA: Just a question. There
12 seems to be a second part of this Line-Splitting-1
13 issue on the COIL; that's the location of the splitter
14 in relation to the MDF was raised by WorldCom, it says.
15 Should we make that a separate issue? It doesn't seem
16 to be part of this impasse issue, and is it still an
17 issue?

18 MR. DIXON: Yes. That's part of the
19 testimony. This is Tom Dixon. That's part of the
20 testimony to which I was referring. And I don't
21 believe we're alone. I just think --

22 MR. BELLINGER: Want to make that a
23 separate --

24 MR. DIXON: I don't know. I don't care
25 if it's separate or not. I would be happy to, for your

1 convenience.

2 MR. BELLINGER: I am going to leave it
3 like it is, unless --

4 MS. LISTON: Should we just make it A and
5 B?

6 MR. BELLINGER: We can do that. You vote
7 for A and B. Fine with me. A and B. So, following
8 the comma on the last sentence -- no, I guess the last
9 sentence.

10 MS. JENNINGS-FADER: Starting with,
11 "WorldCom also states. . ."

12 MR. BELLINGER: Yes.