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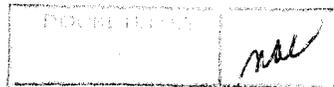
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IN THE MATTER OF QWEST
CORPORATION'S COMPLIANCE WITH
§ 271 OF THE
TELECOMMUNICATIONS ACT OF
1996.

DOCKET NO. T-00000B-97-0238

**QWEST'S SUPPLEMENTATION OF THE RECORD REGARDING
CHECKLIST ITEM 4 (UNBUNDLED LOOPS)**

Qwest Corporation ("Qwest") submits these comments and the attached materials to supplement the record on Checklist Item 4 pursuant to Staff's September 14 Notice of Filing and Reopening of the Record. Qwest attaches additional information regarding the following eight issues:

- **Coordinated Installation Performance**
- **Cooperative Testing Performance**
- **FOC Performance for xDSL Loops**
- **Raw Loop Data Tool Accuracy**
- **Construction of Loop Facilities**
- **Held Orders**
- **Qwest Policies Regarding Alleged Anti-Competitive Conduct**

- **Re-designation of Inter-Office Facilities as Loop Facilities**

To the extent possible, Qwest has supplemented the record with exhibits and testimony presented in other workshops where CLECs had the opportunity to question Qwest's witnesses and present their views.

1. Coordinated Installations

The Staff expressed concern that Qwest had not presented sufficient evidence to rebut AT&T and Covad's claim that "they were having substantial problems with coordinated conversions. . . ." Report at ¶237. Qwest has made two performance data filings in Arizona in the past few weeks that establish Qwest's current outstanding level of performance. Qwest will restate that performance here.

As the Staff Report indicates, Qwest opened a new center in Omaha in late March 2001 to manage all coordinated cut-overs (the largest percentage of loops ordered). The Omaha Center also made a number of process improvements. Since its opening, performance results have been outstanding. Qwest's on time performance for analog loops improved from 88.54% in March to 98.98% in July, better than the 95% Arizona TAG benchmark. *See Qwest.com/wholesale/results/index.html, Performance Data Report at 141, OP-13A.* For all other loops, Qwest's on time performance improved even more, from 64.10% in March to 97.84% in July, again surpassing the benchmark. Specifically, data over the past four months shows:

Coordinated Cut-Over Data by PID Number	April	May	June	July
Analog Loop Coordinated Cuts Completed On Time (OP-13A)	86.48%	91.67%	96.02%	98.98%
Other Loop Coordinated Cuts Completed On Time (OP-13A)	69.51%	89.47%	96.68%	97.84%

This data shows an improving trend to the point that Qwest has exceeded benchmarks in each of the last two months.

The length of time it takes Qwest to complete coordinated cutovers have correspondingly improved. For analog loops, the coordinated cut interval shrunk from seven minutes in March to three minutes in July. *Id.*, OP-7. The FCC has suggested this level of performance is adequate.¹ Qwest also has improved its coordination with CLECs. In April through June, Qwest started at least 97.55% of all coordinated cuts with CLEC approval. *Id.* at 139, OP-13B. In July, Qwest commenced 100% of coordinated cuts – an amazing number – with CLEC approval.

The FCC has given guidance on when analog loop performance is sufficient to meet 271 standards. In its *Bell Atlantic New York Order*, the FCC concluded that a BOC satisfies its hot-cut obligations if it meets 90% of its installation commitments, less than 5% of loop installations result in a service outage, and less than 2% of all loops in service experience trouble.² Qwest meets the FCC's standard. Over the past three months combined, Qwest has met 95.7% of its analog loop commitments and 93.9% of all other coordinated cut commitments. *See* Performance Results website at 141, OP-13A. In Arizona, approximately 90% of all loops in service are analog (voice) loops or 2-wire non-loaded (DSL) loops. AT&T orders analog loops and Covad orders 2-wire non-loaded loops. As to these two types of loops, Qwest installed 95.2% of analog loops without service troubles over the past three months and 96.6% of 2-wire non-loaded loops without service troubles, in both instances exceeding the FCC standard of 5.0% or less of new installations with service troubles. *Id.* at 93, OP-5. Finally, for these same types of loops, over the past three months CLECs experienced a 2.01% trouble rate for analog loops and 1.45% trouble rate for 2-wire non-loaded loops, again at or better than the FCC's standard.

¹ Memorandum Opinion and Order, Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, 13 FCC Rcd 20599 ¶ 197 (1998) ("*BellSouth Louisiana II Order*").

² Memorandum Opinion and Order, *Application of Bell Atlantic New York* for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, 15 FCC Rcd 3953 ¶309 (1999).

Id. at 216, MR-8. Thus, the FCC has provided guidance on what level of performance is adequate and Qwest has consistently met or exceeded those standards on coordinated cut-overs. The Commission should find that Qwest's coordinated cut-over performance is adequate, subject to ongoing good performance.

2. Cooperative Testing

The Staff stated that "Covad and AT&T have raised serious concerns based upon actual experience with Qwest's provisioning of loops in Arizona." Report at ¶232. The Report discusses two types of concerns raised by CLECs: (1) problems in obtaining coordinated installations on time, and (2) problems with cooperative testing. The former is discussed in the prior section of this supplement to the record. With respect to cooperative testing, Staff stated:

[T]he failure of Qwest to deliver a good loop in all cases has not been resolved to Staff's satisfaction. Staff believes that one way to rectify this is to require Qwest to waive the charge where it does not do the testing as promised; but to require Qwest to go ahead and do the testing later (within the first 30 days after the customer receives service) at its own expense. Staff is concerned with the number and seriousness of the issues raised by the CLECs in this Workshop. In Staff's opinion, Covad and AT&T have raised some very serious issues with respect to Qwest's provisioning of loops to which Qwest has not effectively responded on the record.

Report at ¶207.

As an initial matter, as Covad itself recognized, Qwest does waive charges and perform cooperative testing at its expense when Qwest misses the test due to its own fault. Report at ¶ 202; SGAT §§ 9.2.2.9.3 & 9.2.2.9.5.3. Therefore, Qwest already satisfies the terms of the Staff's Report. Moreover, Covad agreed in Washington to defer this issue to the OSS Test for final resolution. Covad has also suggested to Qwest that we defer this issue to the Arizona OSS test. *See* Attachment 6.³ There is nothing more to resolve in the workshop process.

³ The Washington workshop transcript discussing cooperative testing is also attached for Staff's convenience and to fill out the record.

Nonetheless, it is appropriate to reaffirm that Qwest has implemented a system to track when cooperative testing is requested by CLECs and performed by Qwest. This data shows that Qwest routinely and consistently performs requested cooperative testing on CLEC's behalf:

- Between July 23, 2001 and September 23, 2001, Qwest received 1,502 loop orders that requested coordinated installation with cooperative testing.⁴ Of these initial orders, CLECs declined the cooperative testing on 123 orders, or 8.2% of the time. Thus, Qwest was asked to perform coordinated installation with cooperative testing on 1,379 loops. Qwest met its cooperative testing obligations on 1,303 loops or 94.5% of the time.
- Qwest's data shows an improving trend from August to September. Specifically:
 - ✓ In August, Qwest completed cooperative testing on 94.5% of the 708 loop orders received.
 - ✓ In September, to date Qwest has completed 96.8% of the 407 loop orders received.

In summary, the evidence shows that CLECs have agreed to defer cooperative testing to the OSS test. Moreover, the current data shows that Qwest is routinely and consistently performing cooperative tests as requested.

3. FOC Performance for xDSL Loops

The Staff expressed concern that "there were serious issues raised regarding FOCs and Qwest's policies with respect to [FOCs]." Report at ¶ 234. The Staff also noted that "there were serious concerns raised regarding the accuracy of various loop qualification databases." *Id.* The Staff noted that "Qwest committed to bring the Colorado data back into the Arizona record and the changes it would be making to its processes to improve overall performance on FOCs and database accuracy. *Id.*

⁴ This includes all loop types, whether they be analog loops, 2-wire non-loaded loops or any other loop type.

On September 18, 2001, Qwest supplemented the record in this proceeding with the record from the state of Colorado. As presented before in Arizona workshops, Qwest conducted a two month trial to determine the propriety of moving from a 24-hour FOC to a 72-hour FOC for xDSL loops (2-wire non-loaded loops, ISDN Capable loops, ADSL Compatible Loops and xDSL-I Loops). The data from the two month trial is described in the materials submitted on September 19, and show that Qwest submitted well in excess of 90% of FOCs on time for xDSL type loops. The Arizona TAG set a 90% benchmark for such FOCs. While Covad disputes these percentages, Covad agrees with Qwest that the 72-hour FOC is appropriate. The majority of CLECs purchasing DSL loops from Qwest are already receiving a 72-hour FOC under their interconnection agreements. By formally changing this process, all xDSL orders will be included in the FOC performance measure. Additionally, a 72-hour FOC allows Qwest adequate time to verify the existence of appropriate facilities and, if no such facilities are readily available, to determine through an 11-step process whether Qwest can find alternate facilities to accommodate the CLEC's request. Qwest is prepared to bring the process improvements from the FOC trial to Arizona as well.⁵ This should satisfy the Staff's stated concern as set forth in Paragraph 233 of its Report.

4. Raw Loop Data Tool Accuracy

As a result of the Colorado xDSL FOC Trial, Qwest has made substantial progress on improving the quality of the information in its loop qualification databases. During the course of the trial, Qwest learned that information in the tools is extremely accurate. However, at the time of the trial, there were primarily two instances when the tool did not have information populated in the database for either wholesale or retail users. First, the Raw Loop Data ("RLD") tool did not recognize information for facilities associated with non-published and non-listed telephone

⁵ The formal FOC Trial document was presented during the March 5-9 loop workshop in Arizona. The 11-Step process, which describes the process improvements Qwest has brought to Arizona as well, is appended to this document. See Arizona Workshop Exhibit 5 Qwest 9 (March 6, 2001).

numbers. Second, RLD tool relied on data that was stored in the loop qualification database which could have been up to 30 days old and may have resulted in a false reporting of "No Working TN." Third, spare or unassigned facilities, including subsegments were not included. A detailed description of this information is contained in Qwest's brief on the xDSL FOC trial filed with the Colorado Public Utilities Commission on July 18, 2001. That brief is attached hereto as Attachment 4. In Arizona, Qwest reported that approximately 35% of the time CLECs would receive a "No Working TN" response from the Raw Loop Data ("RLD") tool. During the Arizona workshop, Qwest was also requested to recalculate the accuracy of the RLD tool in terms of false positives and false negatives. The information provided in the Colorado xDSL trial brief, and attachments thereto, provide that information. Thus, the historical record is complete.

Nonetheless, since the close of the workshop and completion of the xDSL FOC trial, the RLD tool has been significantly enhanced to include:

- Loop make up information for facilities associated with non-published and non-listed telephone numbers.
- RLD will access real-time data from LFACS for working telephone numbers. Thus, for working telephone numbers, RLD uses the most current LFACS information available.
- Spare or unassigned facilities including sub-segments.

Additionally, Qwest has verified that the RLD tool provides CLECs with loop make up for facilities that have a geographically ported telephone number. This functionality is not available for Qwest retail DSL qualification. CLEC training materials have already been updated to ensure that CLECs are aware of and trained in how to recall this type of information. *See Attachment 5.* In addition, since the Arizona workshops, New Edge has requested that Qwest meet with Pacific Bell to assist Pacific Bell with improving its loop qualification tools. New Edge's experience was that the Qwest tool was superior regarding the reliability of the data.

5. Held Orders and Construction of Loop Facilities

In paragraphs 235-236 of Staff's Report, Staff requests that Qwest provide additional information regarding its treatment of CLEC orders, including held orders, and Qwest's policies regarding construction of facilities for CLECs. The issue of held orders and the treatment of orders is integrally related to Qwest's position that federal law does not require it to construct CLEC networks for them. Accordingly, Qwest addresses these issues in tandem.

Qwest believes that because the Arizona Issues Log reflected the issue of held orders (AIL 6) as "closed" at the conclusion of the Workshop process, and because the Workshop discussion of held orders focused heavily on Qwest's commitment to provide CLECs with information on loop construction jobs on the Qwest ICONN database, Staff may not have been provided full information on Qwest's construction position and its held order policy. Accordingly, Qwest supplements the record regarding these issues with the following information.

A. Construction of Loops for CLECs.

Staff's Report reflects a misimpression on Qwest's commitments to build facilities to meet CLEC demand. Staff appears to believe that Qwest will never construct facilities to meet CLEC demand. This is untrue.

Qwest's network build position is reflected in its proposed SGAT language for Section 9.1.2.1. There, Qwest commits to build facilities to an end user customer if Qwest would be obligated to do so to meet its COLR obligation under Arizona law to provide basic Local Exchange Service or its Eligible Telecommunications Carrier obligation to provide primary basic Local Exchange Service. Qwest also commits to follow the same assignment process it would for an analogous retail service to determine if facilities are available. If available facilities are not readily identified through the normal assignment process, but can be made ready by the requested due date, Qwest will take the order. Qwest also commits in Section 9.1.2.1.2 to perform incremental facility work to make facilities available. This work includes:

conditioning, placing a drop, adding a network interface device, adding a card to existing equipment at the central office or remote locations, adding central office tie pairs, and adding field cross jumpers.⁶ This work may well require Qwest to dispatch a truck or technician to perform the work.

If, during the normal assignment process, no available facilities are identified, Qwest will look for existing engineering job orders that could fill the request. If an engineering job currently exists, Qwest will take the order, add CLEC's request to that engineering job, hold the order, and return an FOC with the anticipated completion date of that growth job. If facilities are not available and no engineering job exists that could fill the request in the future, Qwest will take the order and initiate an engineering job if the order would fall within Qwest's COLR or ETC obligations.

Additionally, if the requested unbundled loop is provisioned with Integrated Digital Loop Carrier ("IDLC") technology, Qwest will accept the order even if there are no readily available facilities.⁷ Only if none of these conditions apply will Qwest reject the LSR. However, CLECs may still request that Qwest construct facilities on their behalf under the special construction provisions of the SGAT. As set forth below, Qwest now commits in SGAT § 9.19 to consider CLEC requests for special construction using the same assessment criterion as Qwest considers for construction of facilities for itself.

Staff suggests that Qwest has unilaterally changed its policy to accept CLEC forecasts for unbundled loops.⁸ However, Qwest agreed to eliminate forecasting requirements for CLECs because CLECs in workshops across Qwest's region uniformly and vigorously opposed providing any type of forecast information to Qwest. Eventually, Qwest bowed to those

⁶ SGAT § 9.1.2.1.2.

⁷ Qwest unbundles loops provisioned over IDLC in accordance with FCC requirements.

⁸ Staff Report ¶ 168.

objections and eliminated most forecasting requirements from the SGAT. No CLEC has complained. Moreover, with respect to unbundled loops, CLEC forecasts are generally not reliable. For example, CLEC forecasts tend to be at the wire center level. However, if a CLEC informs Qwest that it will need fifty unbundled loops in the Phoenix Main exchange, that forecasts does not permit Qwest to know where CLECs need specific end-to-end facilities. Because loop planning requires far more specific information on end-to-end needs to a particular address, to be even marginally useful, forecasts must be provided at the distribution area level. Qwest has never required forecasts at the distribution area level, as such an assessment would be burdensome on CLECs. Thus, Staff is incorrect that held orders are "more important" as a record of demand in a particular area as a result of Qwest's agreement to eliminate forecasting requirements. Rather than relying exclusively or even heavily on held orders, Qwest relies principally upon predictions of economic factors and community growth patterns and plans for planning its construction.

In Workshop 5, in direct response to CLEC concerns regarding its held order/build policy, Qwest made a significant accommodation to CLECs that provides them with precisely the information Covad requested. Qwest's commitment, which it negotiated with Covad, is set forth in SGAT § 9.1.2.1.4:

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.

Covad claimed that this commitment still did not go far enough because it excluded information on deployment of digital loop carrier. However, in Washington loop workshops, Qwest clarified that it provides information regarding where it has deployed or plans to deploy

its DSLAMs and remote terminals.⁹ This information is available to CLECs today upon request. Qwest also has committed to post on the ICONN database the CLLI codes associated with remote terminals where digital loop carriers exist along with the distribution areas. In other words, CLECs will know that there is a digital loop carrier at a specific CLLI code and will know if and where Qwest is deploying remote DSLAMs.¹⁰ With this information, CLECs will know where Qwest has constructed and plans to construct loop facilities and can adjust their marketing plans accordingly.

On August 10, 2001, Qwest issued the notification to CLECs regarding this update to the ICONN database. That notice states that as of September 30, 2001, Qwest will notify CLECs of outside growth jobs that exceed \$100,000. *See* Attachment 1. The disclosure will inform CLECs of the number of copper pairs or fiber strands placed per distribution area in the wire centers, an estimated ready for service date, and final completion date. The information will be updated on a monthly basis on the first Monday of the month, and jobs will be deleted 30 days after the actual completion date is announced. Although this notice states that the loop construction information will be available on September 30, it is actually available today. At the website www.qwest.com/iconn/, CLECs can obtain a wealth of network information to assist them with determining where and when they can provide service. For example, in addition to the outside plant jobs, the ICONN database provides the following information:

- NXX Activity Reports
- Switch Features (lists the USOCs on an individual switch basis and is updated monthly)
- Switch Exhaust (confidential; password required)
- Switch Conversions and Upgrades

⁹ Washington July 11, 2001 Workshop 4 Tr. at 4216-20.

¹⁰ *Id.*

- Switch Replacements
- Switch Generic Changes
- Service Order Switch Embargo Dates
- Loop Data (lists the wire centers for a particular state along with the number of loops in service, and available), and the number of loops with Digital Loop Carrier and Pair Gain.
- Usage Data
- Digital Loop Carrier (DLC) Remote Terminal (RT) Equipment Cabinets by Area (DA)

Staff questioned how Qwest would ensure that CLECs are able to place their orders in parity with Qwest once facilities are built. This database provides CLECs the advance notice they need to place their orders. It also is important to remember that if the CLEC's order relates to a customer request that would fall within Qwest's COLR obligations or falls within a pending construction request, the CLECs order will be held and ultimately filled, not rejected. For those orders that do not meet that criteria (i.e., orders for loops that do not fall within COLR obligations and for which a construction job is not even planned), Arizona CLECs will be informed on a monthly basis of the planned construction and can submit orders that will be held by Qwest. Thus, CLECs will have substantially the same notice that Qwest would have regarding planned construction jobs.

Thus, Qwest has agreed (1) to build facilities where required to meet its COLR obligations; (2) to perform incremental facility work to permit the CLEC to take advantage of deployed facilities; (3) to hold an order if there is a pending job that would satisfy the CLEC request and to add the CLEC's order to that request; (4) to apply the same assessment criteria to CLEC construction requests as for retail construction requests, and (5) to share loop construction plans with CLECs.

In addition to this information, since the parties filed their briefs in Workshop 5, the FCC has issued two orders that support Qwest's position on its construction obligations. In addition,

the multi-state Facilitator, the Colorado Hearing Commissioner, and Colorado Staff have issued reports addressing this issue. Qwest supplements the record with these materials, as discussed below.

1. FCC Verizon Pennsylvania Order

On September 18, 2001, the FCC approved Verizon's application to provide interLATA service in Pennsylvania.¹¹ The *Verizon Pennsylvania Order* specifically addresses Verizon's construction policies and whether they comply with Section 271. As the following discussion makes clear, Qwest's construction policies are virtually identical to those of Verizon in Pennsylvania, and the FCC concluded that construction of UNEs for CLECs is not a Section 271 requirement.

In the *Verizon Pennsylvania Order*, the FCC addressed CLEC complaints that Verizon refused to provide high capacity loops as UNEs unless all necessary equipment and electronics were present and at the customer's premises.¹² The CLECs claimed that Verizon's policy violated FCC rules because, among other things, they claimed Verizon would not provision high capacity loops unless the CLEC ordered them out of the special access tariff and Verizon would not convert special access circuits to unbundled loops.¹³

Verizon responded that it provides unbundled high capacity loops when all facilities, including central office and end-user equipment and electronics, are currently available.¹⁴ Furthermore, Verizon explained that if facilities are unavailable, but it has a construction

¹¹ Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, FCC 01-269 (rel. Sept. 19, 2001) ("*Verizon Pennsylvania Order*").

¹² *Id.* ¶ 91.

¹³ *Id.* & n. 311.

¹⁴ *Id.* ¶ 91.

underway to meet its own future demand, it provides the CLEC with a an installation date based upon the expected completion date of the job. This is virtually identical to Qwest's commitment in SGAT § 9.1.2.1.3. Moreover, when electronics, such as line cards, have not been deployed but space exists for them, Verizon will order and place the line cards to provision the loop.¹⁵ Again, this is the same as Qwest's policy in SGAT § 9.1.2.1.2. Verizon will also perform cross connection work between multiplexers and the copper/fiber facility running to the end user.¹⁶ Qwest makes the same commitment in SGAT § 9.1.2.1.2. However, if spare facilities or capacity on facilities is not available, Verizon does not provide new facilities "solely to complete a competitor's order for high-capacity loops."¹⁷ Again, Qwest's policy is the same.

The FCC disagreed with CLEC claims that Verizon's policies and practices violate the FCC's unbundling rules.¹⁸ Accordingly, it determined that the CLECs' allegations had no bearing on Verizon's compliance with Section 271.¹⁹ Qwest's policies are the same, if not more CLEC-friendly, than Verizon's. Under the FCC's most recent guidance, those policies are consistent with Qwest's obligations under Section 271.

2. FCC Collocation Remand Order

On August 8, 2001, the FCC issued its *Collocation Remand Order*.²⁰ Although this Order, as its name suggests, focuses on collocation issues, the FCC took the opportunity in its

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* ¶ 92.

¹⁹ *Id.*

²⁰ Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 01-204 (Aug. 8, 2001) ("*Collocation Remand Order*").

Order to reemphasize the importance the Act and FCC places on facilities-based competition by CLECs using their own networks. Specifically, the FCC stated that "[t]hrough its experience over the last five years in implementing the 1996 Act, *the [FCC] has learned that only by encouraging competitive LECs to build their own facilities* or migrate toward facilities-based entry *will real and long-lasting competition take root in the local market.*"²¹ The FCC also confirmed that Congress did not intend to create a vehicle by which new entrants would gain an unfair advantage by misusing the Act's requirements. Rather, the Act was intended to provide CLECs nondiscriminatory access to the existing and deployed networks of incumbent LECs while encouraging CLECs to develop their own networks:

[W]e have previously recognized that, in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology over another. Rather, Congress set up a framework from which competition could develop, one that attempted to place incumbents and competitors on generally equal footing, so that each could share the efficiencies of an *already ubiquitously-deployed local infrastructure* while *retaining independent incentives to deploy new, innovative technologies and alternative infrastructure.*²²

According to the FCC, "the greatest long-term benefits to consumers will arise out of competition by entities *using their own facilities.*"²³ In addition, the FCC states that "[b]ecause facilities-based competitors are less dependent than other new entrants on the incumbents' networks, they have the greatest ability and incentive to offer innovative technologies and service

²¹ *Collocation Remand Order* ¶ 4.

²² *Collocation Remand Order* ¶ 7.

²³ 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*").

options to the consumers."²⁴ Thus, whereas the Act and the FCC *encourage* CLECs to construct their own networks, an order requiring Qwest to construct loops would *discourage* facilities-based competition by eliminating any incentive that CLECs construct their own competing networks.

3. Multi-State UNE Report

The multi-state Facilitator issued his report on checklist items 2, 4, 5, and 6 on August 20, 2001.²⁵ Among other loop issues, the multi-state UNE Report addresses whether Qwest must construct unbundled network elements, including loops, for CLECs. Qwest and the CLECs in the multi-state workshop, Colorado, and Arizona presented the same arguments on the obligation to build issue. The Facilitator determined that the answer is clear: "Qwest should not generally be required to construct new facilities to provide CLECs with UNEs."²⁶

The multi-state Facilitator reasoned that requiring Qwest to be a construction company for CLECs at TELRIC rates inappropriately shifts all investment risk to Qwest while CLECs are only subject to a month-to-month obligation to pay for the unbundled network elements that they have requested be constructed.

First, there is a substantial risk that Qwest will not recover actual costs in the event that AT&T's proposal is accepted. AT&T is not correct in arguing that UNE rates are compensatory for the installation of new or enhanced electronics on dark fiber. UNE rates are monthly in nature and generally without minimum term commitments. They can be said to compensate Qwest for investments that it has already made for its own purposes; at least that is a conceptual underpinning of the FCC's pricing approach for UNEs. However, a CLEC that requires a new investment altogether should have more than an obligation to pay month-to-month. Absent a term commitment, Qwest could be significantly under-

²⁴ *Id.*

²⁵ Qwest refers to this report in its brief as the "Multi-State UNE Report." Qwest has filed this Report with this filing.

²⁶ Multi-State UNE Report at 25.

compensated in cases where CLECs abandon UNEs before new investment is recovered.²⁷

The multi-state Facilitator also found that requiring Qwest to construct UNEs for CLECs is "tantamount to requiring Qwest to take investment risk in new facilities. Nothing in the Act or in the rulings of the FCC suggests that promoting competition requires altering the risks of new investments."²⁸

Like the FCC *Collocation Remand Order*, the multi-state Facilitator also underscored the importance of facilities based competition and the distinction between existing and new facilities:

A key premise of the Act and of the FCC's implementing actions with respect to it is the development of facilities-based competition. For existing facilities, it is correct to place the burden on Qwest to show why access to them is not appropriate. For new facilities, the burden should be on Qwest's competitors to show why access to them is appropriate.

There is no evidence of record to support any claim that Qwest has a monopoly position with respect to new facilities. In fact, circumstances would suggest that all carriers competent enough to have a future in the business have the capability either to construct new facilities themselves, or to contract with third party construction experts (much as incumbents do themselves on occasion) who do.²⁹

In conclusion on the general obligation to build question, the multi-state Facilitator ordered that:

Thus there is not a clear basis for concluding that the failure to require Qwest to undertake the obligation to construct new facilities will significantly hinder fulfillment of the Act's general objectives, let alone its specific requirements. Even were there some demonstrated basis to so conclude, one would have to consider the goal of promoting facilities-based competition. Requiring Qwest to serve indefinitely and

²⁷ *Id.* at 24.

²⁸ *Id.*

²⁹ *Id.* at 25.

ubiquitously as both a financing arm (by taking investment risk under month-to-month UNE leases to CLECs) and as a construction contractor (by being forced to perform the installations required) is not appropriate. Not only will it not promote the goal, it may well hinder it. If CLECs can transfer the economic risks of new construction to Qwest, there is little reason to expect that they will have an incentive to take facilities risks or develop efficient installation capabilities.³⁰

Commission Staff for Idaho, New Mexico, and the Utah Division of Public Utilities acting as Advisory Staff to the Utah Commission all agree with the multi-state Facilitator's conclusion on this issue.

4. Colorado Hearing Commissioner Decision.

On August 16, 2001, the Colorado Hearing Commissioner issued his decision on checklist items 2, 5 and 6 and, adopting many of Qwest's arguments, held that Qwest has no obligation to build UNEs on demand for CLECs.³¹ For example, addressing the CLECs' claims that *Iowa Utils Bd. I* has no bearing on whether Qwest must construct UNEs for CLECs, the Hearing Commissioner agreed with Qwest regarding the meaning and significance of the Eighth Circuit's decision:

AT&T and WCom correctly point out that [the] *Iowa Utilities Board* decision invalidated FCC rules that would have required ILECs to provide superior network elements when requested. However, the Eighth Circuit's rationale was based upon the premise that section 251(c)(3) requires unbundled access *only* to an incumbent LEC's *existing* network.³²

Furthermore, the Hearing Commissioner rejected AT&T's claim that FCC rules requiring incumbent LECs to repair or replace UNEs leased to CLECs are "essentially the same thing" as

³⁰ *Id.*

³¹ Decision No. R01-846, *Investigation into U S WEST Communications, Inc.'s Compliance with § 271(c) of the Telecommunications Act of 1996*, Volume 4A Impasse Issues Order at pp. 8-10 (Aug. 16, 2001) ("Decision No. R01-846"). Qwest has filed this Decision with this filing.

³² *Id.* at 9 (emphasis in original).

requiring incumbent LECs to construct UNEs on demand. He reasoned that "[t]here is a fundamental difference between repairing or replacing that which you are legally obligated to provide in the first place and building that which you are not legally obligated to provide at all."³³ The Hearing Commissioner also rejected AT&T's reading of paragraph 324 of the *UNE Remand Order* as "disingenuous:"

AT&T's argument that the *UNE Remand Order* requires ILECs to construct facilities by negative implication is disingenuous. The FCC has never expressly imposed construction requirements in all circumstances on ILECs. One would surmise that the Commission would have directly imposed this potentially burdensome responsibility on ILECs in unequivocal terms.³⁴

The Colorado Hearing Commissioner concluded as follows:

The Eighth Circuit emphasized that nondiscriminatory access to unbundled elements does not lead to the conclusion that 'incumbent LECs cater to every desire of every requesting carrier.' *Qwest, simply put, is not a UNE construction company for CLECs. Qwest should not be required in all instances to expend the resources in time and manpower, at an opportunity cost to itself, to build new facilities for competitors who have the option of constructing those facilities at comparable costs.*³⁵

Arizona Staff expresses concerns in paragraphs 235 and 236 regarding Qwest's construction policies for CLECs and questions whether Qwest provides parity treatment of Arizona CLECs with respect to construction. In Colorado, the Hearing Commissioner determined that to ensure that Qwest provides UNEs to CLECs in a nondiscriminatory manner, Qwest should amend Section 9.19 of the SGAT to include the sentence: "Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself."³⁶ In

³³ *Id.*

³⁴ *Id.* at 10 (footnote omitted).

³⁵ *Id.* at 9 (emphasis added).

³⁶ *Id.* at 10.

Colorado, Qwest agreed to include this language and commitment in its SGAT and to implement it as a policy. Qwest hereby agrees to include the same commitment in its Arizona SGAT. Thus, with this amendment, Section 9.19 of the Arizona SGAT provides:

Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself. Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest end user customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest end user customer. If Qwest agrees to construct a network element that satisfies the description of a UNE contained in this agreement, that network element shall be deemed a UNE.

Qwest notes that although AT&T and Covad both filed comments/exceptions to the Hearing Commissioner's decision, neither carrier challenged this resolution. Qwest is aware of no other CLEC that has challenged it.

5. Colorado Staff Draft Impasse Report on Checklist Item 4.

On September 10, 2001, Colorado Staff issued its draft report on the impasse issues relating to checklist items 2 (NIDs), checklist item 4 (unbundled loops and line splitting), and checklist item 11. Addressing the issue whether Qwest must construct loop facilities for CLECs, Colorado Staff issued the following recommendation:

The Telecom Act of 1996 and subsequent FCC guidelines do not require ILECs to build facilities in order to provide a CLEC with an unbundled loop, when no facilities currently exist. Rather, CLECs are encouraged to construct their own networks.

Staff is of the opinion that local competition will be enhanced by CLECs building their own loop facilities. *When a CLEC wants facilities where none currently exist, it appears that a CLEC, as holder of a Certificate of Public Convenience and Necessity from this Commission, is in just as good a position as Qwest to build those facilities.* Also, consistent with

previous Staff recommendations, Qwest is obligated, when considering whether to build new facilities or not, to treat CLEC requests for UNEs using the same criteria that it uses in making a decision to build for itself. Qwest has added § 9.1.2.1.4 to provide notification to CLECs of outside plant jobs to communicate availability of future facilities vis-à-vis the ICONN database, reflecting "funded" jobs that have been authorized.

Since SGAT § 9.1.2.1.4 does not modify Qwest's obligation to build loops, and other UNEs, for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers), but merely is a form of notification to CLECs, Staff recommends that no change be required to this section.

Draft Volume VA Impasse Issues, Commission Staff Report on Issues That Reached Impasse During The Workshop Investigation Into Qwest's Compliance with Checklist Items 2 (NIDs), 4 (unbundled loops and line splitting) and 11 (number portability) at 9-10 ("*Colorado Draft Volume VA Report*") (footnotes omitted; emphasis added); *id.* at 27 ("Qwest has made a decision not to cancel orders when there is a pending build and further it is willing to share information with CLECs in order to help them decide whether or not adequate facilities are in place to accommodate their request. This is an adequate policy and does not need to be revised").

B. Held Orders

Earlier this year Qwest had a large backlog of orders that it had "held" for lack of facilities or customer reasons. Qwest realized that to permit CLECs to manage customer expectations and properly address, up front, instances in which facilities are unavailable to fulfill an order, it should establish a uniform policy for held orders and order rejections. This issue was discussed in Arizona, but was also fully discussed in the subsequent Colorado follow up workshop. To supplement the record, Qwest submits the Colorado discussion of held orders. As Ms. Liston explained in Colorado, CLEC orders had been held typically for one of three reasons:

1. All facilities were exhausted.
2. Facilities were available but were not compatible with the facilities requested. For example, a CLEC may have ordered a 2-wire, non-loaded loop, which requires a copper facility, but the community that it was

serving was completely served by pair gain and Qwest had no copper running to the community.

3. The order was held for customer (CLEC) reasons, such as the CLEC's failure to respond to an inquiry from Qwest.

On March 22, 2001, Qwest distributed to the CLECs through the CICMP process its position statement on held orders and build requirements for unbundled loops.³⁷ This document explained Qwest's policy concerning the construction of facilities for wholesale customers as well as Qwest's policy for addressing held orders and orders for which facilities are not available. Qwest notified the CLECs that upon expiration of the 30-day CICMP notice period, Qwest would begin reviewing pending held orders. If the CLEC did not respond with instructions on how to treat its pending held orders, Qwest would start canceling the orders after 30 days. The position statement said:

Existing Requests in the CLEC Delay Status: Within 30 business days, Qwest will begin reviewing requests currently in CLEC delay status. The notification process defined above will apply. If the request is not addressed by the CLEC the LSR will be rejected (the CLEC will receive a Reject Notice) and the Service Order will be cancelled.

The CLECs were encouraged to tell Qwest how to handle their pending held orders, and if any CLEC believed that the cancellation was inappropriate, it could resubmit the order. Qwest incorporated this held-order policy in SGAT Section 9.1.2.1.3.2.

Qwest initiated the policy in response, among other things, to CLEC requests that Qwest provide them with more accurate information up front on Qwest's ability to fill their orders. For example, in Washington workshops addressing this issue, Covad's witness Ms. Minda Cutcher stated that the previous policy of holding orders was damaging to CLECs and that she "applaud[s] Qwest's new build policy and sort of the honesty up front in terms of the ability to

³⁷ This notice was marked as Exhibit 5-Covad-4 in Arizona.

provision"³⁸ In Colorado, none of the representatives of the CLECs present at the hearing was aware of any objection by their company to Qwest's build policy posted through the CICMP process.³⁹

The alternative to Qwest's current policy would be for Qwest to keep CLEC orders on hold indefinitely, even though the requested service is incompatible with the existing network, *i.e.*, a request for a copper loop in a neighborhood served by pair gain technology, or Qwest had no intent or obligation to construct the facility at issue (*i.e.*, a third ISDN line to a residence or copper loops to a residence served by pair gain). Moreover, this is the *former* policy that CLECs, such as Covad, vigorously opposed. It would appear that the only policy CLECs would approve would be an agreement to build all loop facilities CLECs request. Qwest will not go so far and, in fact, the FCC has not required this extreme result.

Qwest's held order/LSR rejection policy is consistent with the obligations each carrier has to determine whether it can provide service. Many CLEC orders were "held" for facilities reasons because the CLEC was seeking to provide DSL service, which requires a copper loop, and there were no copper facilities in the community and no plans to provide copper in that community. Thus, in this situation, the order is held not for reasons of exhaust, but incompatibility. When discussing this issue in Colorado, AT&T recognized that rejecting orders in these circumstances would be "valid."⁴⁰ Qwest has developed several loop qualification tools, described in detail in SGAT § 9.2.2.8, which permit CLECs to know up front whether they will encounter this incompatibility problem. Thus, CLECs are not in a position of having to place orders to determine if they can provide service; the ability to make that determination is provided at the front end.

³⁸ Washington July 11, 2001 Workshop 4 Tr. at 4251 (attached to this filing).

³⁹ Colorado Workshop 5 Transcript, May 24, 2001, at 174-76.

⁴⁰ Colorado Workshop 5 Transcript, May 24, 2001 at 126.

In its Report, Staff noted the CLECs' claim that Qwest developed this policy solely to improve its performance results.⁴¹ Arizona, however, has not adopted a held order measure equivalent to the Regional Oversight Committee ("ROC") PID OP-15. Therefore, this concern is not applicable to Arizona. In addition, Qwest will still have held orders for analog orders that meet COLR requirements, where construction jobs are in progress, and for loops served over IDLC. Because all of these orders will be held for CLECs, Qwest is not creating a "false impression" that is filling CLEC orders. To supplement the record, Qwest submits its regional data on ROC PID OP-15. Attachment 3. The OP-15B results show the number of loops held in the region for facility reasons dropped from 2719 in September 2000 to 134 in July 2001 for analog (voice) loops and from 1841 to 45 to 2-wire non-loaded (DSL) loops.

CLECs and Staff suggest that it is improper for Qwest to exclude orders held for lack of facilities reasons from its performance results. Qwest's performance measure for OP-6, Delay Days, indicates for all orders that Qwest misses the due date commitment the number of days beyond the due date that the order was held. This measure separates out orders that were missed for facility reasons. So, Qwest does include held orders in its performance measures. In the *Verizon Connecticut Order*, issued after briefing in Workshop 5, the FCC considered this question. In that Order, the FCC did not even consider the "held order" measure other than as "diagnostic."⁴² Moreover, the FCC accepted Verizon's claim that the held order measure was *unreliable* precisely because Verizon's measure *did* include orders held for lack of facilities. In the *Verizon Connecticut Order*, the FCC noted that although Covad urged the FCC to rely upon the held order measure in evaluating Verizon's performance, Covad had provided no "persuasive

⁴¹ Staff Report ¶ 167.

⁴² *Application of Verizon New York, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, FCC 01-208 ¶ 19 (rel. Jul. 20, 2001) ("*Verizon Connecticut Order*").

reason" to suggest departure from the FCC's primary reliance on two other measures: (i) the percent missed appointments and (ii) average installation interval measures.⁴³ Indeed, the FCC noted that Verizon had argued that the FCC had never relied on the held order measure and that the measure was flawed and unreliable because it includes "orders that could not be provisioned due to a lack of facilities."⁴⁴ The FCC found this explanation both reasonable and unexceptional since it relied upon it in discounting the held order measure. By excluding orders held for lack of facilities that do not fall into one of the categories that Qwest agrees to provision, therefore, Qwest *increases* the reliability of its performance measures by focusing solely on Qwest's *actual performance* in providing unbundled loops to CLECs.

Staff also appears to believe that Qwest is treating CLECs differently than its retail customers. However, Qwest is holding the same orders for CLECs (those that fall within COLR obligations) that it traditionally has been required to hold and report to the Commission for its retail customers. For example, under Qwest's Service Quality Tariff Plan in Arizona, Qwest is required to report held orders, fill such orders, and pay penalties for delayed installations for retail customer orders for "basic local exchange service" as defined in the Tariff. The Tariff defines basic local exchange service as follows:

The telecommunications service which provides a local dial tone, access line and local usage necessary to place or receive a call within the an exchange area. This includes initial service (first line) and one additional line (second line). In cases where a business line is being established at a residence location that already has a residence line then, the business line will be considered initial service for purposes of determining alternative service and bill credits in 2.4.3 of this Tariff (business line and residence line refers to the class of service provided by the company).⁴⁵

⁴³ *Id.*

⁴⁴ *Id.* n. 44.

⁴⁵ Qwest's tariffs are publicly available on its website at the following address: www.qwest.com/wholesale/ under the tab "resources."

Under SGAT § 9.1.2.1, these are the same orders that Qwest agrees to take and hold for CLECs and for which it commits to construct facilities:

9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an end user customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an end user customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

The most vocal CLEC on the issue of held orders in Arizona has been Covad. Indeed, it is the only CLEC that introduced any evidence on the topic. However, Covad does not provide basic local exchange service; it is a DLEC. In contrast to orders for basic local exchange service, Qwest is neither required to hold under its Tariff nor report to the Commission orders relating to retail requests for DSL service. In other words, just as Qwest is not required to hold orders for its retail customers for DSL service, it should not be required to hold these orders for CLECs. Finally, as noted above Covad's witness has praised this policy as providing "the honesty up front." Having heard all of the evidence on Qwest's held order policy, Colorado Staff recommends no changes to Qwest's policy or SGAT.⁴⁶

6. Qwest Policies And Procedures To Prevent Anti-Competitive Behavior And Respond To Allegations Of Anti-Competitive Conduct.

The Arizona Workshop was the first workshop at which Qwest and Covad discussed this issue. In subsequent workshops, Qwest and Covad discussed this issue at length, and Qwest provided additional information to respond to Covad's concerns. In its Report, Staff does not appear to be aware of these developments. At paragraph 213 of its Report, Staff questions whether certain processes and procedures were introduced into the record and that Qwest provide

⁴⁶ *Colorado Draft Volume VA Report* at 24.

process for following up on complaints in the record. To supplement the record, Qwest submits the transcripts from Washington, the most recent loop workshop, of the discussions of Qwest's policies to address anti-competitive conduct.

At paragraph 212, Staff suggests that employees should be required to sign an Affidavit that they will not and have not engaged in any violations of conduct guidelines or engage in anti-competitive conduct. At the workshop, Qwest provided its Code of Conduct, also referred to as the Asset Protection Policy, that prohibits employees from engaging in conduct that is disparaging of CLECs or otherwise anti-competitive.⁴⁷ If this was not clear in the record, Qwest now clarifies that employees are required to sign the Code of Conduct as a condition of employment and violation of the Code is punishable by discipline up to and including termination. Because of union contract requirements, however, Qwest cannot "force" all of its employees to sign the Code. This does not mean, however, that union employees are not governed by the Code. They are. If an employee refuses to sign the Code, the employee is still required to sign a statement that it attended the session on the Code, and the employee is still held to the terms of the Code.⁴⁸ Qwest's union contracts also set forth a process for investigating allegations of misconduct.⁴⁹ Network training for managers also includes training on allegations of misconduct, and Qwest has investigation processes through its security department.⁵⁰ In addition, managers are responsible for their employees attesting to this Code of Conduct.

Qwest introduced in Arizona and other states documentation from the highest levels of the company emphasizing the importance of compliance with this policy. For example, Qwest

⁴⁷ Ex. 5 Qwest 48.

⁴⁸ Washington July 11, 2001 Workshop 4 Tr. at 4390-91.

⁴⁹ *Id.* at 4387-88; *see also id.* at 4393.

⁵⁰ *Id.*

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.⁵¹ Qwest also introduced its instructions to supervisor for distributing and emphasizing the Code of Conduct with occupational employees.⁵² Qwest further testified regarding its video training of technicians, which included reminders on the Code of Conduct.

Staff also suggests that Qwest Account Managers may be unfamiliar with the process for investigating or instituting an investigation of an allegation of anti-competitive behavior, and that Qwest failed to provide the process for its Account Managers to investigate such claims, a topic discussed at the May 16 session.⁵³ However, the next day, the parties discussed this issue again, and Qwest introduced a memorandum describing the process for investigating allegations of anti-competitive behavior that was sent to its Emerging Services Sales Executives, Major Markets Sales Executives, and Wholesale Service management.⁵⁴ This memorandum, assigned Exhibit 5-Qwest-57, instructs Account Managers as follows:

With our recent reorganization and job responsibility changes, Qwest would like to assure all sales executives and service managers are clearly aware of processes to employ if you should receive a complaint(s) from CLEC's regarding actions of Qwest employees.

When you receive this type of notice from our CLEC customer, please ask for the following detailed information:

- Qwest Employee Name
- Date & Time of occurrence

⁵¹ Ex. 5 Qwest 46.

⁵² Ex. 5 Qwest 47.

⁵³ Arizona May 16, 2001 Transcript at 1612.

⁵⁴ Ex. 5-Qwest-57; Arizona May 17, 2001 Transcript at 1887-90.

- Brief description of occurrence
- Order #, Circuit ID, etc. if appropriate
- Other factors of importance

Once you have documented this information, please refer this onto the individual's management team. Appropriate discipline will be the responsibility of the direct manager for the employee.

As discussed at the May 17 workshop session, although Qwest believed it had met all of Covad's demands, Qwest continued its efforts to address Covad's concerns. To demonstrate its commitment to ensuring that its policies prohibiting anti-competitive conduct are understood, on May 24, 2001 Qwest issued a two-page memorandum (by electronic mail and in hard copy) to *all* of its network employees from the Augie Cruciotti, the Executive Vice President of Local Networks, that described in detail (and "plain English") 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 memorandum:

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 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 appropriate discipline practices, up to and including dismissal.

Qwest attaches this memorandum as Attachment 2. When presented with this memorandum in Colorado workshops, counsel for Covad expressed her appreciation for Qwest's efforts. Accordingly, Qwest has addressed Staff's concern that Qwest establish guidelines on acceptable and unacceptable conduct in "Plain English" for its employees to ensure that they understand their obligations when acting on behalf of CLECs.

Staff also stated that Qwest Account Managers should be required to "follow through" on investigations and inform CLECs of their resolution. As Staff and the parties are aware, Covad sought to supplement the record on this issue regarding an alleged incident of theft of equipment from two central offices in Colorado. Although Covad claims that the recent unfortunate incident is further evidence of "anti-competitive" conduct, Qwest and Staff disagree with this characterization.⁵⁵ To the contrary, this unfortunate incident provides a current, real world example that Qwest has polices in place to address CLEC allegations of "anti-competitive" conduct and follows through on such allegations.

For example, during the follow up Washington loop workshop on August 1, 2001, Qwest and Covad discussed this incident as well as Qwest's response to it. Ms. Liston testified that upon learning of the Colorado incident from Covad, Qwest took the following action:

- Qwest investigated the incident internally.
- Ken Beck, Executive Director Wholesale Customer Service Operations, kept Covad apprised of the investigation throughout its course via emails and telephone messages to Ms. Cutcher.
- Qwest met with Covad in mid July 2001 to discuss the investigation and Qwest's findings.
- On July 17, 2001, Mr. Beck sent Ms. Cutcher a letter (one of the documents Covad sought to add to the record in Arizona) that informed Covad of the disciplinary action Qwest had taken in response to the incident. As Mr. Beck stated, Qwest has suspended the alleged

⁵⁵ Staff Report at 59 n. 4.

suspect pending completion of the investigation by law enforcement authorities.

- In his letter, Mr. Beck informed Ms. Cutcher of the steps Qwest will take to prevent future occurrences and requested that Covad provide its suggestions for improving security in Qwest central offices.⁵⁶

As this evidence demonstrates, (1) Qwest has policies that prohibit misconduct, including alleged "anti-competitive" conduct by its employees; (2) even though Qwest cannot force its employees to sign the Code, they are held to it even if they do not sign it; (3) Qwest has processes in place to investigate CLEC allegations and inform the CLEC of the results of the investigation; (4) Qwest has informed its employees in "plain English" of their obligations to CLECs under the Code; (5) Qwest takes appropriate corrective action in response to allegations of misconduct; and (6) institutes corrective action to prevent future incidents. In other words, in the course of investigating this incident, Qwest demonstrated that it met all of Covad's requirements for assuring that Qwest does not condone "anti-competitive" or other misconduct. Although Covad had claimed at the initial workshop that Qwest did not communicate effectively with it regarding its allegations, at the conclusion of this discussion at the Washington follow up loop workshop, counsel for Covad acknowledged that Qwest had properly kept Covad apprised of Qwest's investigation and the disciplinary action Qwest took and that Covad appreciated Qwest's request for suggestions on improving security.⁵⁷

Colorado Staff considered all of this evidence, including the testimony of the parties, and decided this issue as follows:

One of the principal goals of the Act is to provide CLECs a meaningful opportunity to compete within the local exchange market. To further this

⁵⁶ Washington August 1, 2001 Workshop 4 Tr. at 5612-14.

⁵⁷ Washington August 1, 2001 Workshop 4 Tr. at 5614 ("We do very much appreciate the fact that Qwest did respond to us and that Qwest did, in fact, keep us apprised during this unfortunate episode. So I certainly don't disagree with Ms. Liston on that point.")

goal, the Act requires a § 271 applicant to show that it offers "non-discriminatory access to network elements," such as the local loop. The FCC has interpreted this to mean that a BOC must deliver the unbundled local loop to a competing carrier within a reasonable time frame, with minimal service disruptions, making sure it is of the same quality as it would be for its own customers. It is Staff's opinion that this obligation also includes ensuring the loops are not delivered in an anti-competitive manner. A technician who makes disparaging comments regarding a CLEC while provisioning its loops provides service that is discriminatory and anticompetitive, in direct violation of the Act. Staff finds this type of conduct intolerable.

Having said this, it is Staff's opinion that Qwest's policies and procedures are sufficient to ensure that it meets this obligation. As described above, Qwest has instituted a Code of Conduct that explicitly prohibits employees from engaging in conduct that is disparaging of CLECs. This is a company wide policy that originates from the highest levels of Qwest management. Furthermore, Qwest has implemented a number of procedures to ensure that the code is properly understood. This includes providing video training to its technicians and issuing a two-page memorandum to all network employees describing, in detail, Qwest's policy and its obligations. Finally, Qwest has instituted appropriate disciplinary procedures for violations of the code, which include possible termination of employment.

Covad argues that the Code of Conduct is insufficient to prevent misconduct, pointing to a couple of alleged incidents that have occurred since the Code put into effect. *It is Staff's opinion that the alleged incidents are not enough to show a pattern of anti-competitive behavior. The reality of the situation is that Qwest is a large corporation. While it is Qwest's obligation to ensure that misconduct does not occur, it cannot control the actions of every person within the organization at all times. Put simply, there is not much more Qwest can do beyond instituting a Code of Conduct, ensuring that its employees understand it, and providing disciplinary action for violations.*

As an additional measure, Covad asks for verified assurance that appropriate personnel have taken corrective action for every incident reported by Covad. Qwest does not contest this request. *On the contrary, Qwest has taken every step necessary to ensure that Covad is kept informed on all investigations into alleged misconduct.*

In conclusion, Staff recommends that the Commission find Qwest's SGAT language is in compliance with regard to this issue.⁵⁸

Colorado Draft Volume VA Report at 29-31 (footnotes omitted; emphasis added).

7. Redesignation of Interoffice Facilities As Loop Facilities.

In paragraph 228 of its Report, Staff concurred with Qwest that it is not required to redesignate interoffice facilities ("IOF") as loops for CLECs. However, Staff also stated that it "would like more in the way of an explanation from Qwest as to why it is not technically feasible" to redesignate IOF facilities. Qwest and AT&T discussed this issue after the Arizona workshop in Colorado, Washington, and Oregon. Qwest provides the transcript excerpts to supplement the record and provide the additional information Staff seeks. As Qwest explained in these workshops, 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.⁵⁹ 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.⁶⁰

DATED: September 24, 2001

⁵⁸ Like Arizona Staff, Colorado Staff found the additional information with which Covad sought to supplement the record irrelevant. .

⁵⁹ Washington July 11, 2001 Workshop 4 Tr. at 4407, 4413.

⁶⁰ See May 25, 2001 Colorado Tr. at 110-14 (discussing identical issue in the Colorado loop workshops).

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1227501/67817.150

Index of Attachments

1. ICONN Build Notice
2. 5Q74 – Memorandum dated May 24, 2001
3. Performance results dated August 27, 2001
4. Qwest's Legal Brief Regarding Loop Issue 24, xDSL FOC Trial
5. IMA –Raw Loop Data
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8. Colorado – Volume 4A (Impasse Issues Order)
9. Multi-State Unbundled Network Element Report
10. Various Transcripts



August 10, 2001

Announcement Date: August 10,2001
Effective Date: September 30, 2001
Document Number: NETW.08.08.01F.00038.OSBuild Disclose
Notification Category: Network
Target Audience: CLEC, Reseller
Subject: Release of Outside Plant Network Build Disclosure

Beginning September 30, 2001, Qwest will begin to notify CLECs on outside plant growth projects in accordance with Code of Federal Regulations (CFR47 ss 51.325-51335).

The Network Build Disclosure will notify the CLEC community of OSP growth jobs that exceed \$100,000 in expense growth. The disclosure will consist of the following:

- The number of copper pairs or fiber strands placed per distribution area in wire centers
- An estimated ready for service date
- A final completion dates when jobs are complete

Qwest will reserve the right to cancel jobs due to business decisions and will not be held liable for cancellations.

This disclosure will continue on a monthly basis. In addition, jobs will drop from the list 30 days after the actual completion date is announced.

CLECs will also be able to view the latest information regarding Qwest's growth and major expansions in Qwest local serving areas. This will aid in identifying locations where additional facilities will be available for growth.

You will find more information regarding this disclosure on the Wholesale web site located at URL <http://www.qwest.com/iconn>. You are encouraged to provide feedback to this notice through our web site. We provide an easy to use feedback form at <http://www.qwest.com/wholesale/feedback.html>. A Qwest representative will contact you shortly to discuss your suggestion.

The Qwest Wholesale Web Site provides a comprehensive catalog of detailed information on Qwest Products and services including specific descriptions on doing business with Qwest. All information provided on the site describes current activities and process.

Prior to any modification to existing activities or processes described on the web site, wholesale customers will receive written notification announcing the upcoming change.

If you have any questions or would like to discuss this notice please contact your Qwest Sales Executive. Qwest appreciates your business and we look forward to our continued relationship.



5Q74

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.

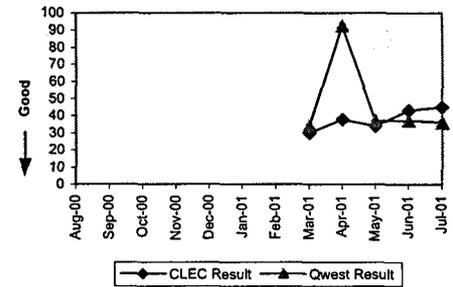
If you have any questions regarding this policy, please contact your manager.

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

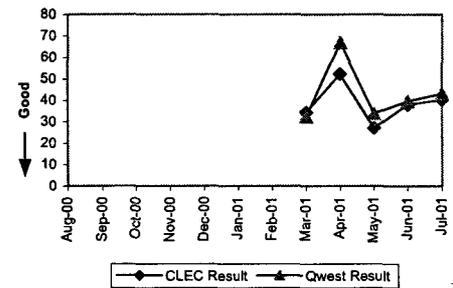


OP-15A - Interval for Pending Orders Delayed Past Due Date

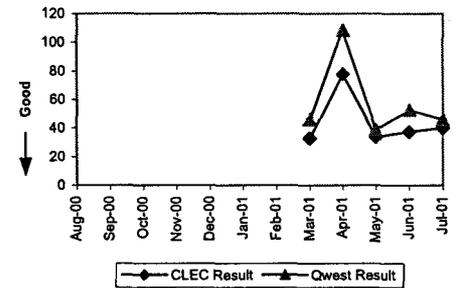
Residence									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	3706	123	30.13	27.08	284941	8345	34.15	-1.4	-1.85
Apr-01	9938	263	37.79	54.45	1429137	15428	92.63	-9.13	-6.55
May-01	3843	113	34.01	41.55	347643	9430	36.87	-0.71	-1.43
Jun-01	4579	106	43.20	48.09	431394	11590	37.22	1.14	-0.3
Jul-01	5146	114	45.14	56.77	638138	17717	36.02	1.94	0.18



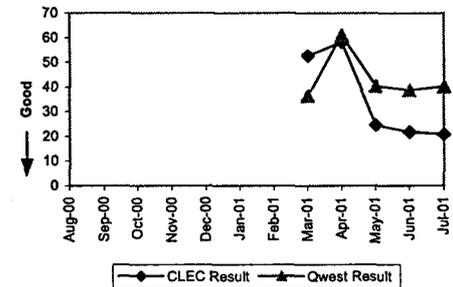
Business									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	2616	76	34.42	28.97	90129	2788	32.33	0.59	-0.64
Apr-01	5226	100	52.26	54.71	270371	4038	66.96	-1.91	-2.16
May-01	2356	87	27.08	36.55	98540	2909	33.87	-1.51	-1.92
Jun-01	3233	85	38.04	45.67	122725	3092	39.69	-0.29	-1.18
Jul-01	3234	80	40.42	47.94	151508	3508	43.19	-0.46	-1.28



Centrex									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	7461	228	32.72	27.60	7329	159	46.09	-3.4	-3.07
Apr-01	29816	383	77.85	67.72	32602	300	108.67	-4.14	-3.52
May-01	8316	245	33.94	40.64	7627	196	38.91	-0.97	-1.59
Jun-01	9199	246	37.39	42.57	9444	180	52.47	-2.53	-2.54
Jul-01	12619	315	40.06	47.30	11940	260	45.92	-1.18	-1.72

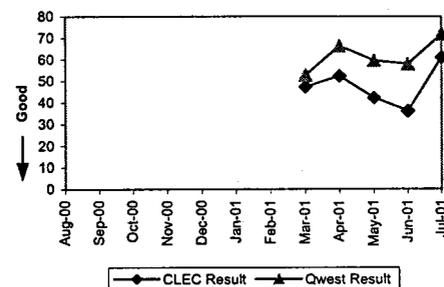


Centrex 21									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	158	3	52.67	3.79	13581	372	36.51	0.77	-0.53
Apr-01	466	8	58.25	70.81	32629	534	61.10	-0.13	-1.08
May-01	197	8	24.62	34.03	12839	318	40.37	-0.91	-1.55
Jun-01	284	13	21.85	34.08	13678	353	38.75	-1.2	-1.73
Jul-01	333	16	20.81	22.12	17392	433	40.17	-1.5	-1.91

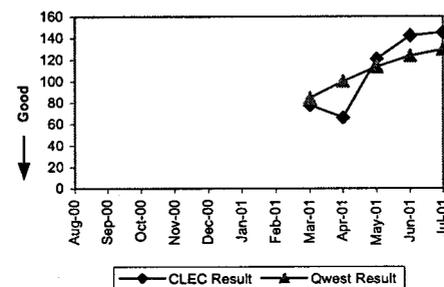


OP-15A - Interval for Pending Orders Delayed Past Due Date

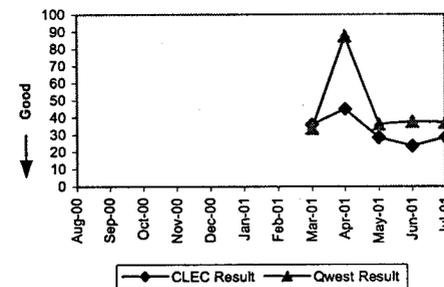
PBX									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	1374	29	47.38	73.71	37070	703	52.73	-0.46	-1.28
Apr-01	1676	32	52.38	65.59	49065	740	66.30	-1.09	-1.66
May-01	1016	24	42.33	68.75	34865	586	59.50	-1.13	-1.69
Jun-01	1125	31	36.29	67.05	35739	616	58.02	-1.52	-1.92
Jul-01	1039	17	61.12	94.80	23989	333	72.04	-0.48	-1.29



Basic Rate ISDN									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	700	9	77.78	69.81	152490	1804	84.53	-0.29	-1.18
Apr-01	728	11	66.18	75.85	178173	1781	100.04	-1.38	-1.84
May-01	603	5	120.60	106.40	183896	1626	113.10	0.19	-0.88
Jun-01	569	4	142.25	128.50	155765	1261	123.52	0.38	-0.77
Jul-01	727	5	145.40	126.68	155342	1200	129.45	0.32	-0.81

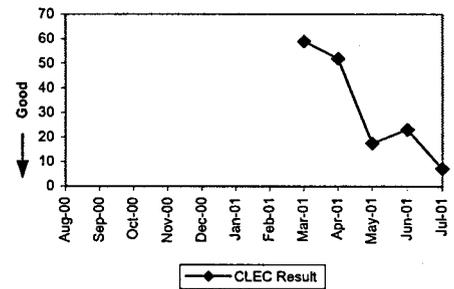


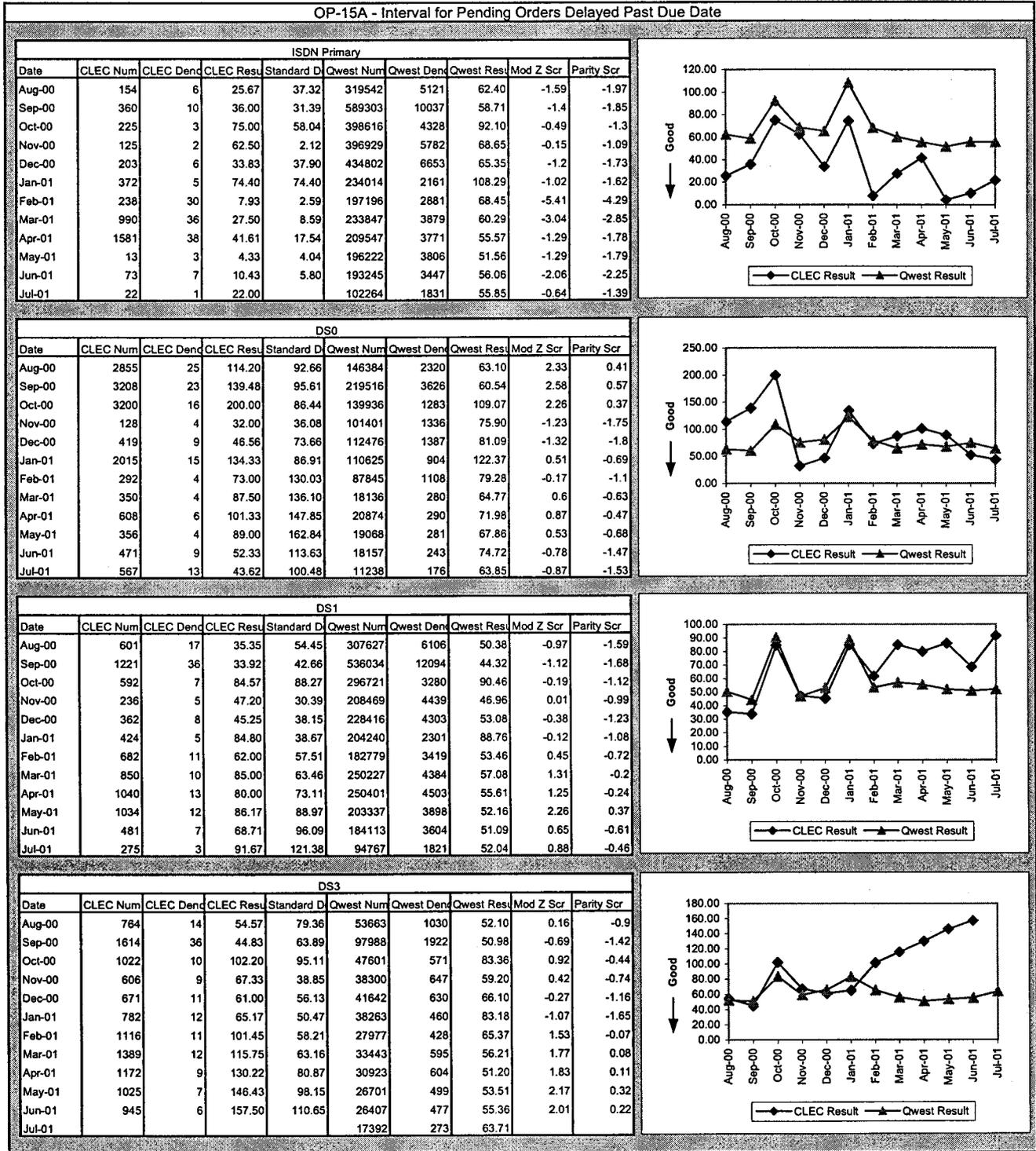
UNE - P (POTS)									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00									
Sep-00									
Oct-00									
Nov-00									
Dec-00									
Jan-01									
Feb-01									
Mar-01	324	9	36.00	27.33	375070	11133	33.69	0.22	-0.87
Apr-01	584	13	44.92	43.60	1699508	19466	87.31	-1.64	-2
May-01	312	11	28.36	33.99	446183	12339	36.16	-0.61	-1.37
Jun-01	259	11	23.55	36.10	554119	14682	37.74	-0.89	-1.54
Jul-01	486	17	28.59	35.89	789646	21225	37.20	-0.66	-1.4



OP-15A - Interval for Pending Orders Delayed Past Due Date

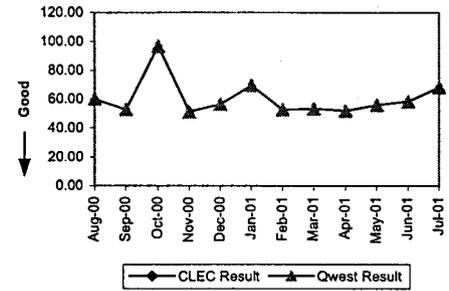
Line Sharing				
Record Date	CLEC Num	CLEC Denom	CLEC Result	Standard Dev
Aug-00				
Sep-00				
Oct-00				
Nov-00				
Dec-00				
Jan-01				
Feb-01				
Mar-01	1299	22	59.05	23.27
Apr-01	1765	34	51.91	40.87
May-01	211	12	17.58	28.11
Jun-01	208	9	23.11	34.34
Jul-01	3302	452	7.31	7.78





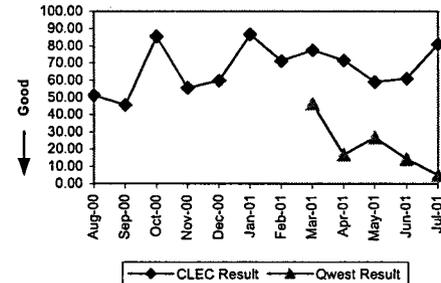
OP-15A - Interval for Pending Orders Delayed Past Due Date

Frame Relay									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Res	Mod Z Scr	Parity Scr
Aug-00					95067	1585	59.98		
Sep-00					149535	2832	52.80		
Oct-00					109538	1133	96.68		
Nov-00					9894	193	51.26		
Dec-00					11076	196	56.51		
Jan-01					94754	1363	69.52		
Feb-01					36574	693	52.78		
Mar-01					43426	814	53.35		
Apr-01					41022	789	51.99		
May-01					37653	671	56.11		
Jun-01					35853	612	58.58		
Jul-01					30299	444	68.24		

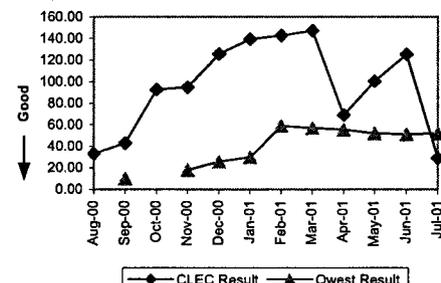


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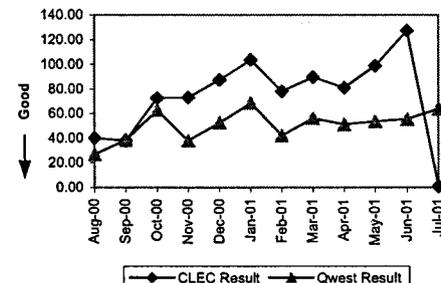
LIS Trunk									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	14473	283	51.14	57.45					
Sep-00	24143	529	45.64	52.30					
Oct-00	13504	158	85.47	69.76					
Nov-00	9574	172	55.66	53.65					
Dec-00	11189	187	59.83	58.58					
Jan-01	10841	125	86.73	63.37					
Feb-01	8046	113	71.20	59.01					
Mar-01	10232	132	77.52	65.08	512	11	46.55	1.55	-0.06
Apr-01	11971	167	71.68	70.59	286	17	16.82	2.05	0.25
May-01	12301	208	59.14	75.36	269	10	26.90	0.8	-0.52
Jun-01	10908	179	60.94	84.67	218	15	14.53	2.41	0.46
Jul-01	3966	49	80.94	102.84	5	1	5.00		



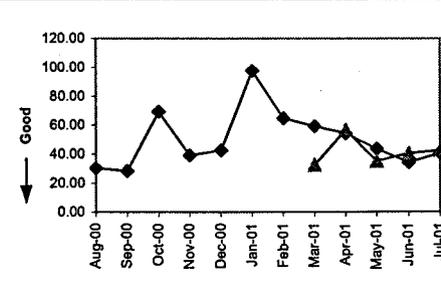
UDIT DS1									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	2686	81	33.16	45.31					
Sep-00	5126	119	43.08	44.98	10	1	10.00		
Oct-00	2038	22	92.64	62.24					
Nov-00	2661	28	95.04	70.15	54	3	18.00	1.9	0.15
Dec-00	2764	22	125.64	75.59	205	8	25.62	3.09	0.88
Jan-01	2790	20	139.50	79.22	120	4	30.00		
Feb-01	5142	36	142.83	90.52	177	3	59.00	1.3	-0.21
Mar-01	6182	42	147.19	97.13	250227	4384	57.08	2.12	0.29
Apr-01	7328	106	69.13	99.03	250401	4503	55.61	1.98	0.2
May-01	8551	85	100.60	107.88	203337	3898	52.16	2.17	0.32
Jun-01	8406	67	125.46	114.88	184113	3604	51.09	1.96	0.19
Jul-01	58	2	29.00	24.04	94767	1821	52.04	-0.42	-1.26



UDIT Above DS1 Level									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	2654	66	40.21	33.45	188	7	26.86	0.71	-0.57
Sep-00	4332	114	38.00	37.45	347	9	38.56	-0.1	-1.06
Oct-00	1453	20	72.65	45.36	251	4	62.75	1.15	-0.3
Nov-00	1464	20	73.20	59.16	305	8	38.12	1.3	-0.21
Dec-00	1750	20	87.50	64.74	473	9	52.56	1.14	-0.31
Jan-01	1347	13	103.62	62.12	480	7	68.57	1.54	-0.06
Feb-01	2034	26	78.23	54.20	421	10	42.10	0.82	-0.5
Mar-01	3224	36	89.56	57.60	33443	595	56.21	1.54	-0.06
Apr-01	3330	41	81.22	73.45	30923	604	51.20	1.56	-0.05
May-01	4053	41	98.85	77.68	26701	499	53.51	1.42	-0.14
Jun-01	3437	27	127.30	88.71	26407	477	55.36	1.55	-0.06
Jul-01	2	2	1.00	0.00	17392	273	63.71	-1.15	-1.7



Unbundled Loop Analog									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	77867	2564	30.37	51.94					
Sep-00	153788	5392	28.52	43.51					
Oct-00	83096	1197	69.42	71.17					
Nov-00	71857	1831	39.24	54.12					
Dec-00	68345	1604	42.61	61.98					
Jan-01	78861	808	97.60	90.19					
Feb-01	48766	753	64.76	73.30					
Mar-01	66062	1115	59.25	73.32	236316	7263	32.54	29.09	16.69
Apr-01	57711	1067	54.09	81.76	547888	9652	56.76	-1.5	-1.91
May-01	37804	865	43.70	83.15	257655	7337	35.12	6.08	2.69
Jun-01	28533	833	34.25	79.02	301165	7451	40.42	-3.61	-3.2
Jul-01	15021	369	40.71	82.70	350159	8231	42.54	-0.68	-1.41



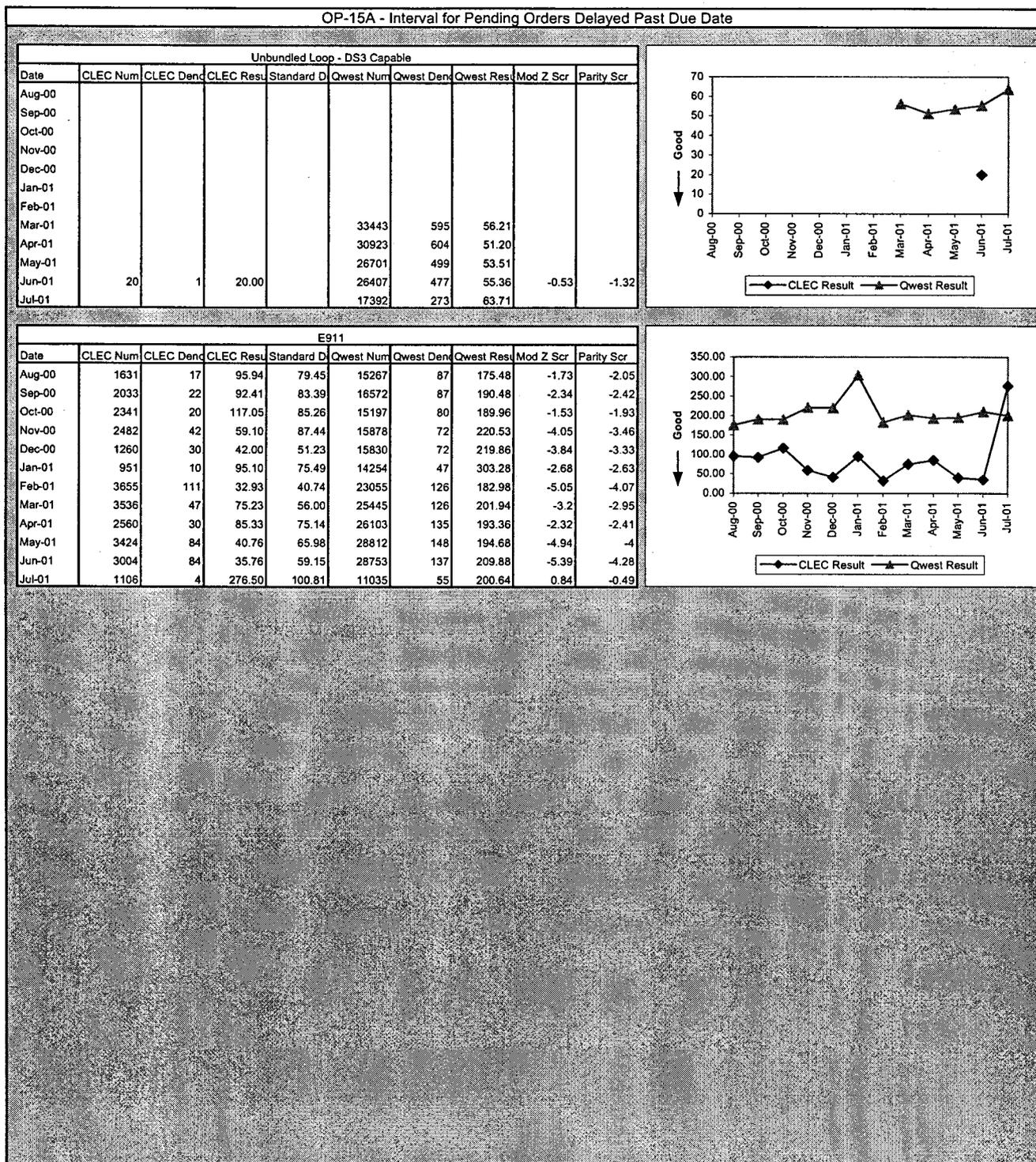
OP-15A - Interval for Pending Orders Delayed Past Due Date

Unbundled Loop - 2 Wire Non-Loaded									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	95021	1947	48.80	45.91					
Sep-00	156817	3728	42.06	47.10					
Oct-00	62803	708	88.70	59.20					
Nov-00	56098	580	96.72	61.12					
Dec-00	55717	566	98.44	73.69					
Jan-01	50511	386	130.86	74.90					
Feb-01	19573	307	63.76	75.94					
Mar-01	24078	395	60.96	78.02	152490	1804	84.53	-6.14	-4.73
Apr-01	22037	448	49.19	77.48	178173	1781	100.04	-11.85	-8.2
May-01	17539	290	60.48	91.71	183896	1626	113.10	-9.54	-6.8
Jun-01	10892	154	70.73	116.76	155765	1261	123.52	-6.23	-4.79
Jul-01	5097	108	47.19	96.05	155342	1200	129.45	-7.36	-5.48

Unbundled Loop - 4 Wire Non-Loaded									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	2689	27	99.59	99.24					
Sep-00	4190	54	77.59	91.22					
Oct-00	2640	15	176.00	113.96					
Nov-00	1075	13	82.69	81.83					
Dec-00	1213	9	134.78	79.18					
Jan-01	1122	8	140.25	84.21					
Feb-01	582	9	64.67	100.03					
Mar-01	646	7	92.29	118.08	250227	4384	57.08	1.39	-0.16
Apr-01	664	11	60.36	108.49	250401	4503	55.61	0.23	-0.86
May-01	29	4	7.25	6.08	203337	3898	52.16	-1.33	-1.81
Jun-01	138	7	19.71	12.92	184113	3604	51.09	-1.15	-1.7
Jul-01	78	5	15.60	12.93	94767	1821	52.04	-1.05	-1.64

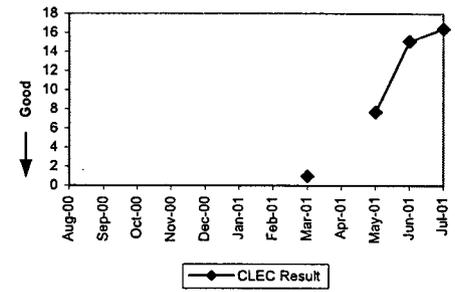
Unbundled Loop - DS1 Capable									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	6641	175	37.95	38.31					
Sep-00	14976	338	44.31	42.01					
Oct-00	8003	105	76.22	47.73					
Nov-00	9701	182	53.30	51.26					
Dec-00	11515	179	64.33	55.92					
Jan-01	8385	88	95.28	56.97					
Feb-01	5894	94	62.70	68.59					
Mar-01	7445	121	61.53	72.17	250227	4384	57.08	0.72	-0.56
Apr-01	5999	126	47.61	65.32	250401	4503	55.61	-1.26	-1.77
May-01	4448	110	40.44	66.88	203337	3898	52.16	-1.79	-2.09
Jun-01	3709	130	28.53	55.93	184113	3604	51.09	-3.5	-3.13
Jul-01	2601	105	24.77	52.54	94767	1821	52.04	-3.5	-3.13

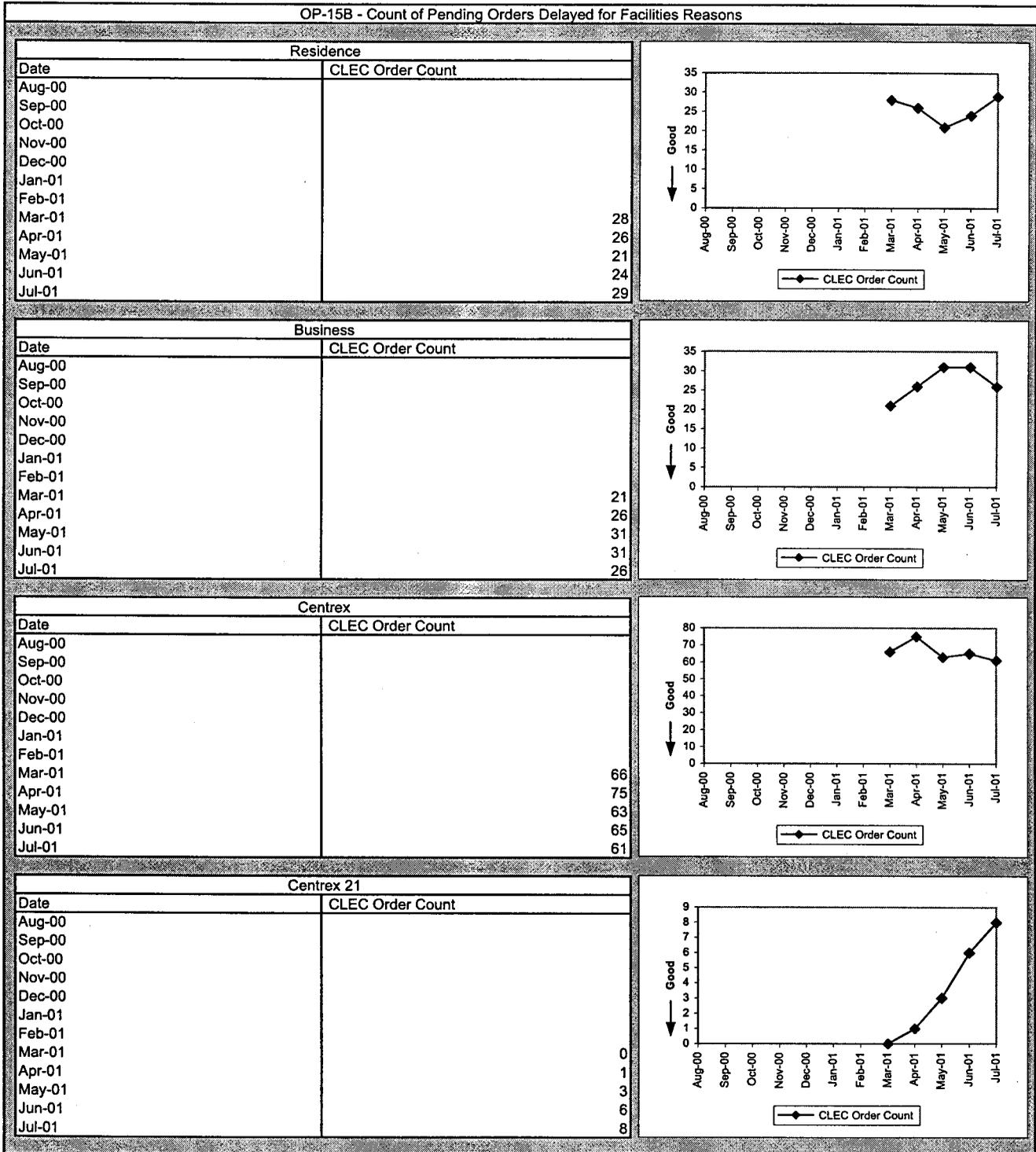
Unbundled Loop ISDN Capable									
Date	CLEC Num	CLEC Dend	CLEC Resu	Standard D	Qwest Num	Qwest Dend	Qwest Resu	Mod Z Scr	Parity Scr
Aug-00	60732	1295	46.90	46.71					
Sep-00	99899	2149	46.49	47.57					
Oct-00	37071	414	89.54	58.91					
Nov-00	36431	381	95.62	62.40					
Dec-00	30035	261	115.08	75.26					
Jan-01	24186	156	155.04	77.47					
Feb-01	7744	169	45.82	88.40					
Mar-01	7932	146	54.33	79.22	152490	1804	84.53	-5.08	-4.09
Apr-01	7102	166	42.78	80.44	178173	1781	100.04	-8.69	-6.28
May-01	5545	97	57.16	100.15	183896	1626	113.10	-6.19	-4.76
Jun-01	4523	87	51.99	105.32	155765	1261	123.52	-6.5	-4.95
Jul-01	1786	68	26.26	65.35	155342	1200	129.45	-7.44	-5.53

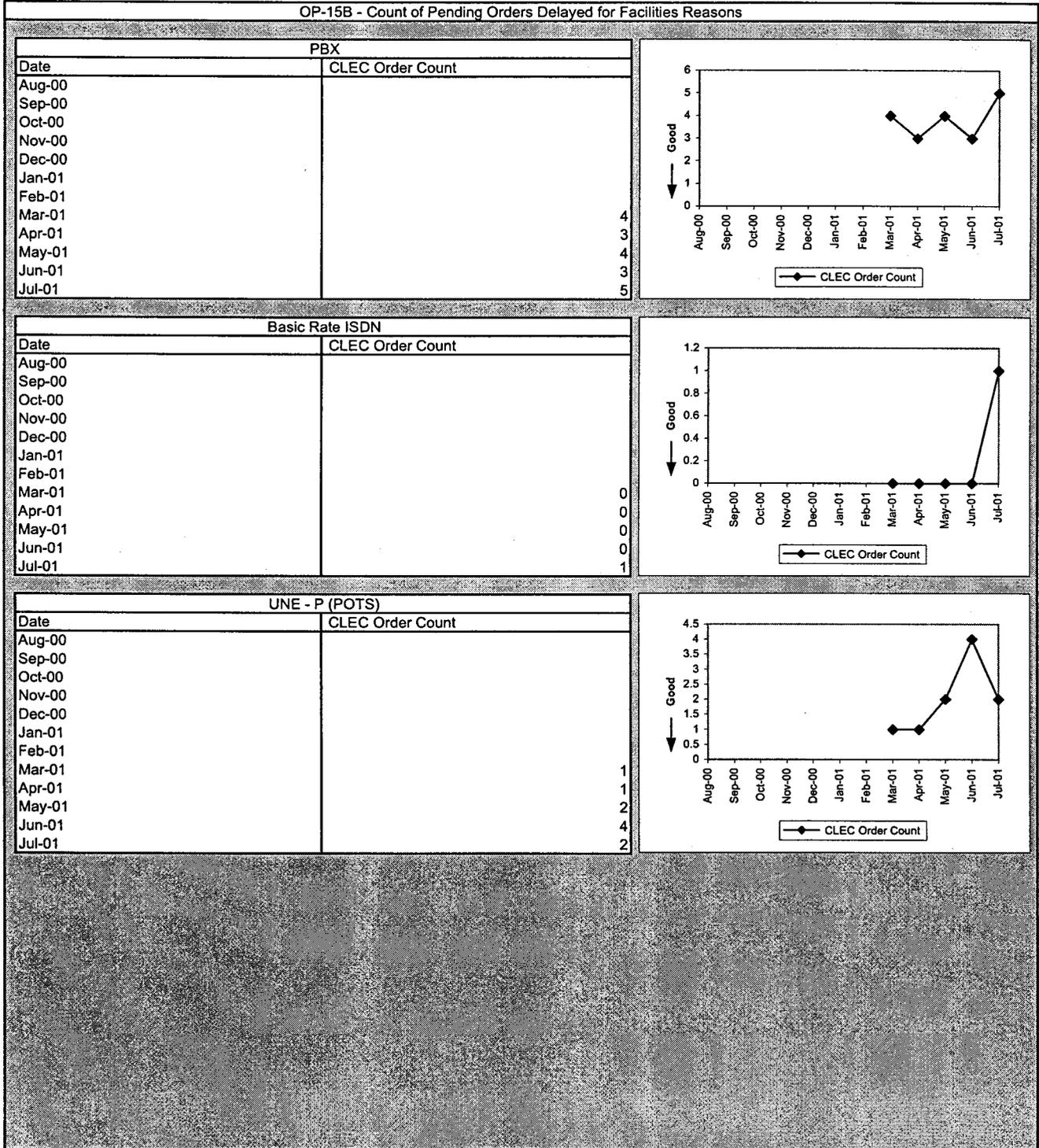


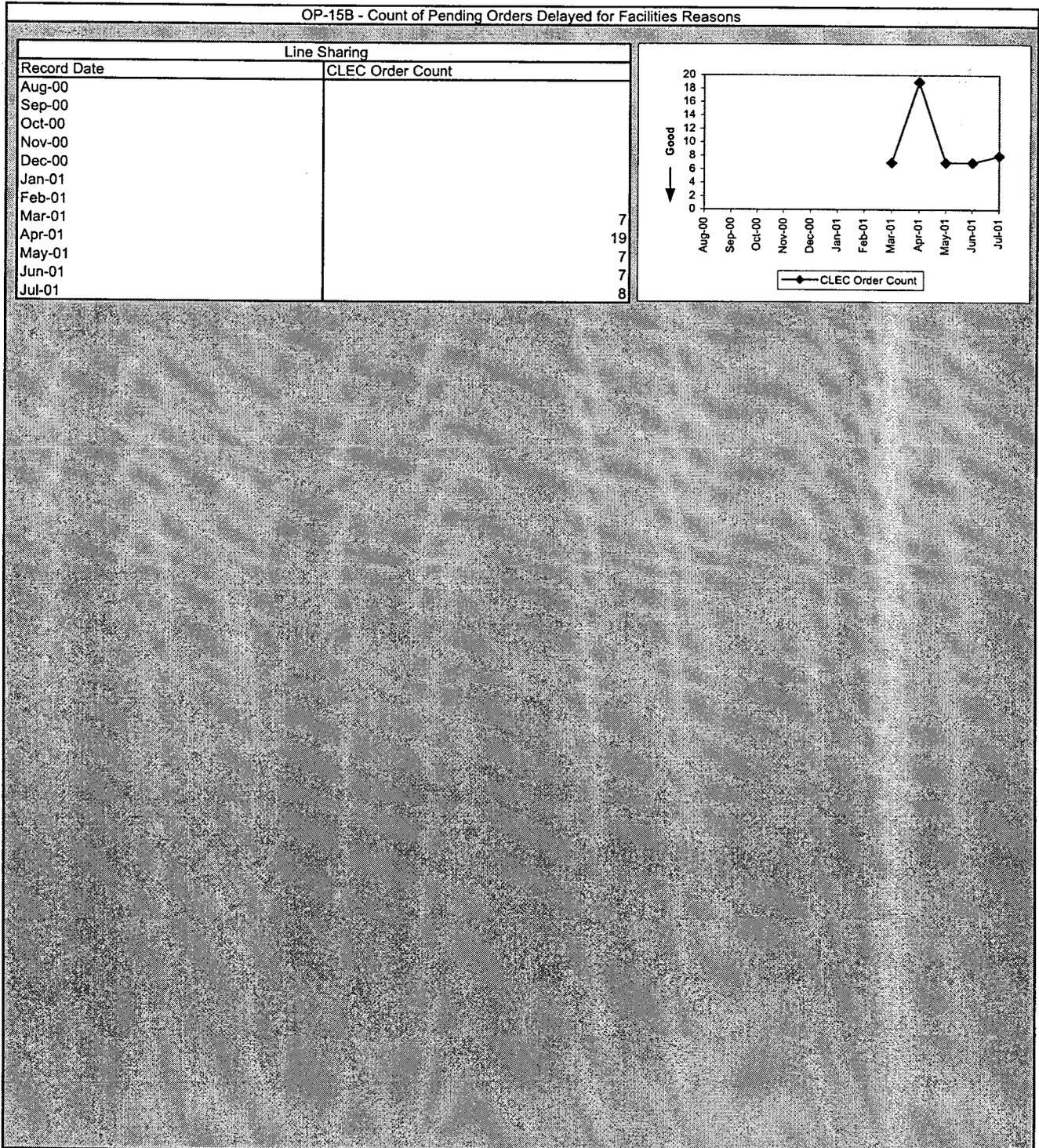
OP-15A - Interval for Pending Orders Delayed Past Due Date

Enhanced Extended Loops (EELs)				
Date	Num	Denom	CLEC Result	Standard Dev
Aug-00				
Sep-00				
Oct-00				
Nov-00				
Dec-00				
Jan-01				
Feb-01				
Mar-01	1	1	1.00	
Apr-01				
May-01	100	13	7.69	4.17
Jun-01	544	36	15.11	8.75
Jul-01	263	16	16.44	16.15

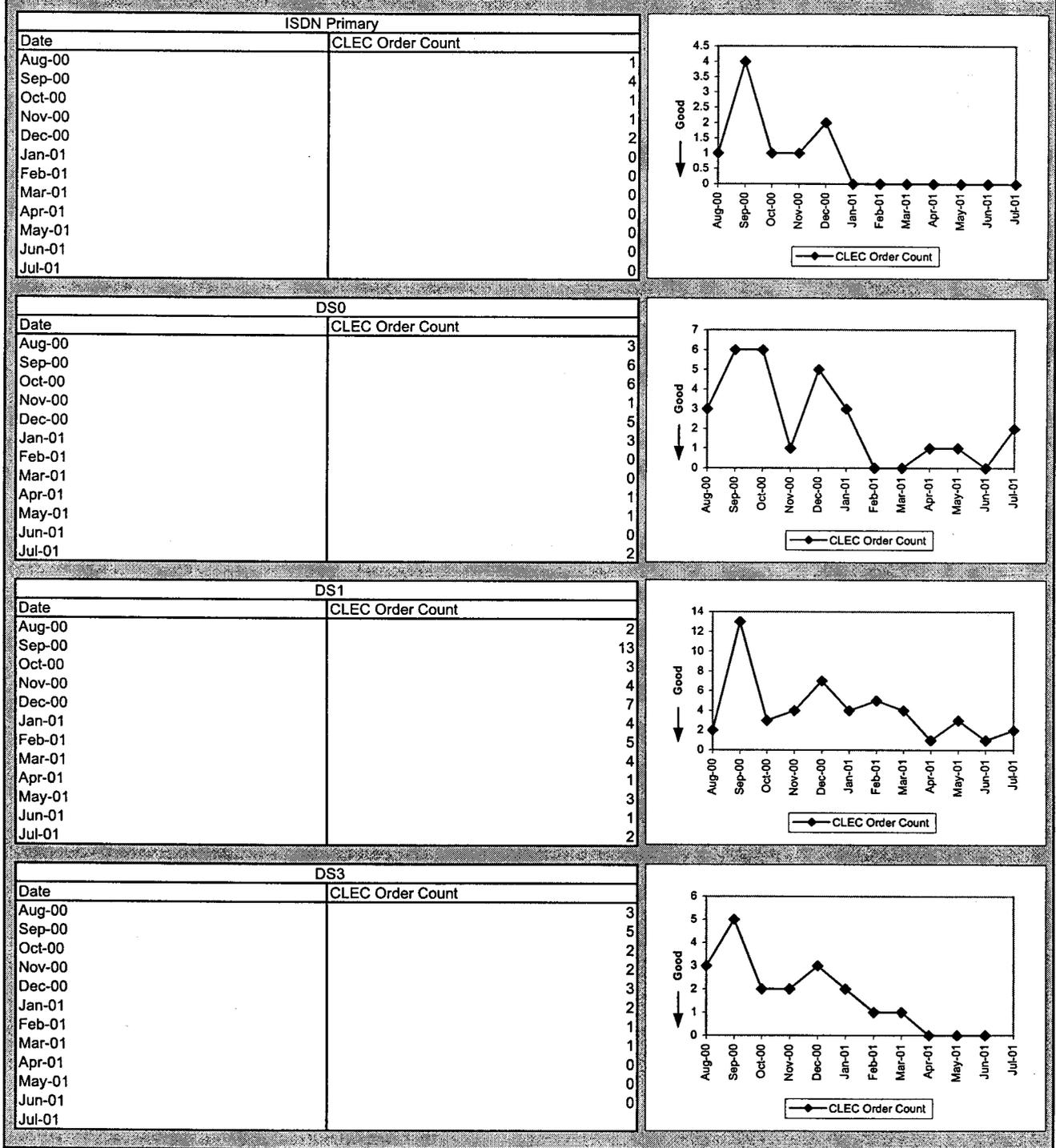


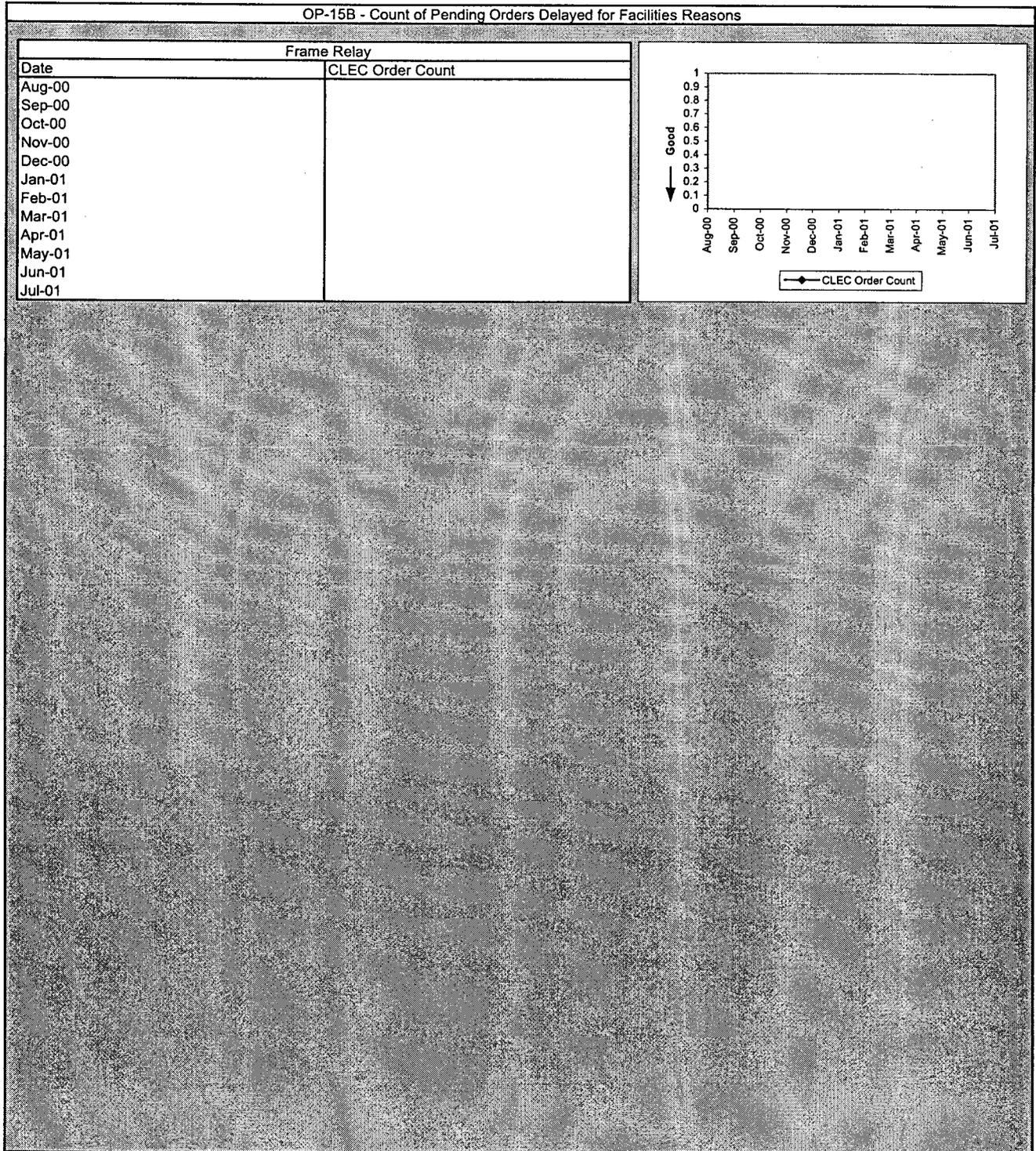






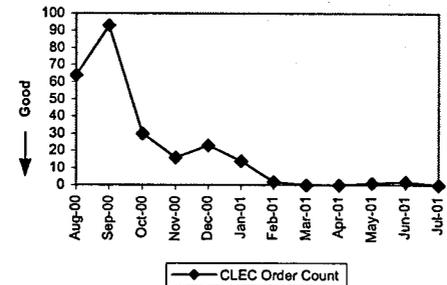
OP-15B - Count of Pending Orders Delayed for Facilities Reasons



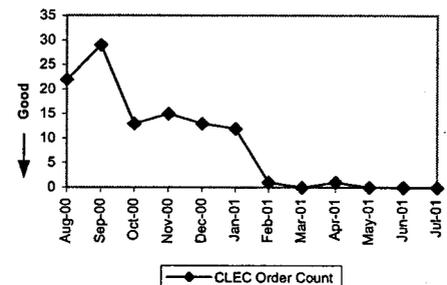


OP-15B - Count of Pending Orders Delayed for Facilities Reasons

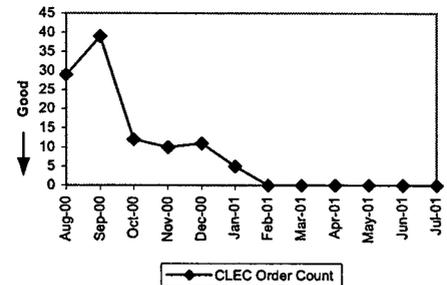
LIS Trunk	
Date	CLEC Order Count
Aug-00	64
Sep-00	93
Oct-00	30
Nov-00	16
Dec-00	23
Jan-01	14
Feb-01	2
Mar-01	0
Apr-01	0
May-01	1
Jun-01	2
Jul-01	0



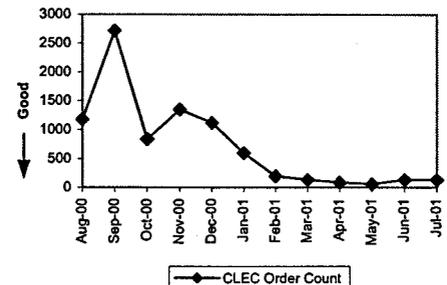
UDIT DS1	
Date	CLEC Order Count
Aug-00	22
Sep-00	29
Oct-00	13
Nov-00	15
Dec-00	13
Jan-01	12
Feb-01	1
Mar-01	0
Apr-01	1
May-01	0
Jun-01	0
Jul-01	0



UDIT Above DS1 Level	
Date	CLEC Order Count
Aug-00	29
Sep-00	39
Oct-00	12
Nov-00	10
Dec-00	11
Jan-01	5
Feb-01	0
Mar-01	0
Apr-01	0
May-01	0
Jun-01	0
Jul-01	0

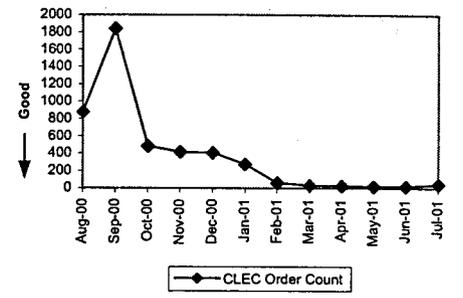


Unbundled Loop Analog	
Date	CLEC Order Count
Aug-00	1177
Sep-00	2719
Oct-00	834
Nov-00	1351
Dec-00	1123
Jan-01	597
Feb-01	199
Mar-01	134
Apr-01	90
May-01	60
Jun-01	135
Jul-01	134

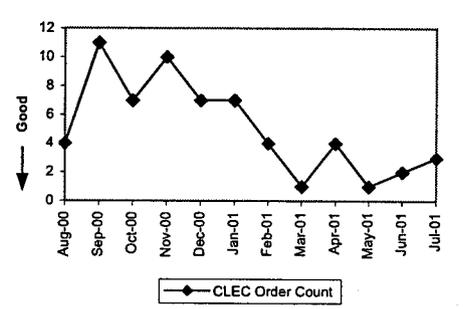


OP-15B - Count of Pending Orders Delayed for Facilities Reasons

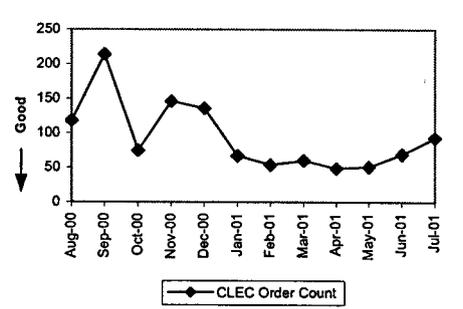
Unbundled Loop - 2 Wire Non-Loaded	
Date	CLEC Order Count
Aug-00	878
Sep-00	1841
Oct-00	486
Nov-00	417
Dec-00	409
Jan-01	276
Feb-01	62
Mar-01	36
Apr-01	29
May-01	20
Jun-01	21
Jul-01	45



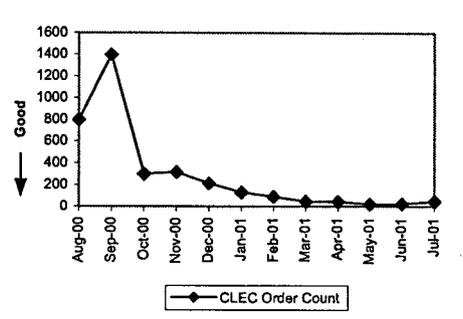
Unbundled Loop - 4 Wire Non-Loaded	
Date	CLEC Order Count
Aug-00	4
Sep-00	11
Oct-00	7
Nov-00	10
Dec-00	7
Jan-01	7
Feb-01	4
Mar-01	1
Apr-01	4
May-01	1
Jun-01	2
Jul-01	3

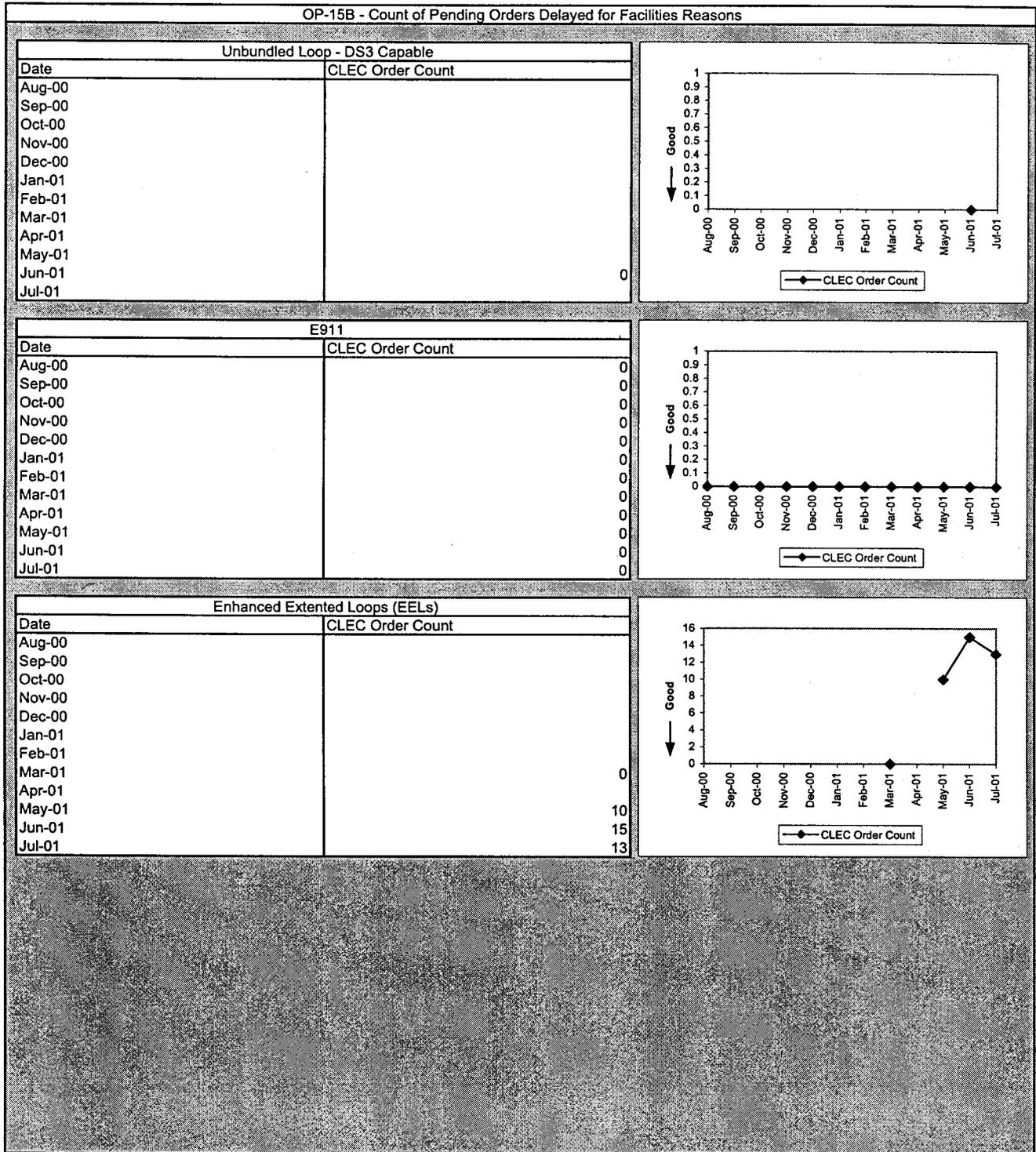


Unbundled Loop - DS1 Capable	
Date	CLEC Order Count
Aug-00	118
Sep-00	214
Oct-00	75
Nov-00	146
Dec-00	136
Jan-01	67
Feb-01	54
Mar-01	60
Apr-01	49
May-01	51
Jun-01	69
Jul-01	93



Unbundled Loop ISDN Capable	
Date	CLEC Order Count
Aug-00	796
Sep-00	1398
Oct-00	299
Nov-00	316
Dec-00	212
Jan-01	130
Feb-01	88
Mar-01	46
Apr-01	44
May-01	23
Jun-01	24
Jul-01	46







BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

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

QWEST'S LEGAL BRIEF REGARDING LOOP ISSUE 24, xDSL FOC TRIAL

INTRODUCTION

Qwest Corporation ("Qwest") submits this brief to the Commission in support of its compliance with checklist item 4 (unbundled loops) of the competitive checklist items in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (the "Act").¹ This brief addresses one issue: Loop 24, the results of the Colorado xDSL FOC Trial. In December 2000, Qwest proposed a two-month Trial involving all Colorado CLECs to test the efficacy and benefits of changing Qwest's Firm Order Confirmation (FOC) processes for xDSL Loops (2/4 Wire Nonloaded Loops, ADSL Compatible Loops, ISDN Capable Loops and xDSL-I Capable Loops) from a 24-hour FOC to a 72-hour FOC. The additional 48 hours permitted Qwest to confirm the availability of compatible loop facilities. The primary purpose of the Trial was to determine if moving to a 72-hour FOC provided CLECs with a "more meaningful" FOC. The parties agree – Qwest should move to a 72 hour FOC and should so modify its ROC PID (PO-5).

In addition, Qwest and CLECs agreed as part of the Trial to evaluate whether data contained in Qwest's Raw Loop Data (RLD) Tool, the tool that permits CLECs to qualify loops for xDSL service prior to placing an order, was accurate. The Trial showed that the information in Qwest's RLD Tool was generally accurate and at parity with that which Qwest provides to itself. Qwest did uncover, however, some databases gaps, which, as a result, Qwest has already

¹ 47 U.S.C. § 271(c)(2)(B)(iv).

planned to remedy through system upgrades. Thus, although Qwest is meeting its legal obligations with respect to RLD Tool (i.e.: retail parity), Qwest has taken action to ensure that the loop make up information available to all carriers, including Qwest, is as accurate as possible.

BACKGROUND

For the benefit of the Commission, Qwest summarizes the results of the Trial and the data reconciliation process in this section.

A. FOC Delivery and Due Date Performance

The results of the Trial demonstrate that it has been a tremendous success. The underlying document initiating the trial, upon which all parties agreed, stated that "the Trial will be deemed a success if 90% of the FOCs accurately reflect a 5 day or 15 day interval." During the two month trial, ten Colorado CLECs submitted 2,375 LSRs for xDSL Loops.

The final Trial results demonstrate outstanding performance:

- The ROC determined that Qwest should return 90% or more of its FOCs on time (PO-5). Qwest returned 91.1% of FOCs within 72 hours in March and 97.7% of FOCs within 72 hours in April.
- The ROC determined that Qwest should meet 90% or more of its installation commitments (OP-3). In March 2001, Qwest met its committed due dates 98% of the time and in April it met the due dates 97.5% of the time.
- The ROC determined that Qwest should provide 2-wire analog and non-loaded loops in an average of 6 days or less (OP-4). In March 2001, Qwest delivered loops that did not require conditioning in an average of 4.9 days and the same loops in 5.0 days in May.
- While the ROC did not set agreed upon benchmarks for conditioned loops, Qwest's conditioning interval is 15 business days. In March, Qwest delivered conditioned loops in an average of 9.5 days and similar loops were provided in May in 11.6 days.

In each instance, this data is not only passes, but passes with flying colors.

The Trial also included a data reconciliation process whereby Qwest agreed to provide underlying data from the Trial to any participating CLEC that wished to verify Qwest's results. Only three CLECs requested that Qwest provide CLEC-specific data to them. Only one CLEC, Covad, requested data reconciliation with Qwest. Covad presented its data on Qwest's performance at the follow up Workshop 5 session in May 2001. However, Qwest uncovered numerous, fundamental errors in Covad's initial data. During a June 11 meeting between Qwest and Covad to discuss data reconciliation, Qwest identified the following errors in Covad's data:

- Covad does not track when Qwest completes the loop order; Covad only tracks when Covad turns over the loop to its own customer. In round one of Covad's analysis, it determined that the due date was made based on an assumption associated with the delivery of the FOC.
- Covad included line shared orders in its analysis of Trial results.
- Covad assumed that all orders were due in 5 days, even if the loop required conditioning.
- Covad incorrectly counted all orders submitted up until midnight as placed on the same business day. Qwest's processes and procedures, however, specify that orders must be placed by 7:00 p.m. to be considered as placed on that business day.
- Covad used calendar days to calculate its results. Qwest's intervals, however, are based on business days.
- Covad attributed misses to Qwest that were missed due to Covad's own fault.

As a result of these meetings, Covad revised its Trial data on June 15, 2001. This data allegedly showed that Qwest met its due date less than 50% of the time. Qwest examined every Covad order, focusing on the percentage of due dates met. This data, too, however, had fundamental flaws that Qwest raised immediately with Covad. The most significant errors included:

- In round two of Covad's analysis they used the due date on the FOC to determine if Qwest met its commitment. In this analysis Covad counted the number of days from the Application date to the due date on the FOC. If the interval was greater than 5 days, Covad counted it as a miss. Thus, even though Qwest would meet its due date commitment to Covad, Covad would count it as a Qwest miss regardless of the reason why the interval was greater than 5 days.
- Covad failed to take into account the customer requested due date. In other words, when Covad or its customers requested a due date greater than 5 days, which Qwest clearly permits CLECs to do, Covad counted the order as a Qwest miss, regardless whether Qwest met the customer requested due date. This error affected approximately one-third of Covad's orders and dramatically skewed Covad's results.
- At the Washington Loop workshop on July 11, Covad also revealed to Qwest that its EDI systems has a six-day due date default. Covad established the 6 day installation interval default in order to accommodate different ILEC intervals.
- Qwest again found that loops that required conditioning were included in Qwest misses because Covad assumed a five-day interval even if conditioning was required. Covad counted these orders as Qwest misses even if Qwest met the 15-business day interval for conditioned loops.
- The Covad tracking report did not always match the actual FOC or application date. Covad's application date reflected Covad's first attempt at placing an LSR and did not reflect when the LSR was accepted by IMA.

Qwest recalculated Covad's data correcting for these errors and found that even using Covad's data, Qwest had met its committed due date more than 90% of the time. After Qwest alerted Covad to the errors in Covad's revised data, Covad withdrew its data in the Washington workshop.

Qwest appreciates Covad's candor in withdrawing its data, and does not relate this data reconciliation process to criticize Covad. Rather, an important component of the xDSL Trial was the performance data Qwest presented and Qwest's ability to track data accurately. CLECs suggested that reconciliation of this data was critical to evaluating the Trial, even though only one CLEC chose to engage in the process. The data reconciliation process was extremely time consuming, spanning several weeks and numerous on and off-line conference calls. In the end, Qwest's data stands unrefuted.

B. Raw Loop Data Tool

As mentioned above, a second component of the xDSL FOC Trial entailed an evaluation of the Raw Loop Data (RLD) Tool, a mechanized pre-order loop qualification Tool Qwest makes available to CLECs that draws from the same loop make up information Qwest uses to qualify retail customers for Qwest DSL. For each loop ordered during the Trial, Qwest accessed the IMA Address Validation Tool and requested raw loop data. The analysis revealed that the information in the RLD Tool is accurate at least 80% of the time.² However, Qwest also found that approximately 35% of the time, the RLD Tool generated a "No Working Telephone Number" response and provided no raw loop data at all. Qwest investigated this response, found the RLD Tool had a gap that applied equally to retail and wholesale, and has already planned to remedy the gap through system upgrades. Thus, Qwest has proactively addressed the one situation when CLECs cannot obtain accurate information from the RLD Tool.

Qwest and Covad also engaged in a data reconciliation process regarding the RLD. As Qwest already acknowledged above, Covad was unable to obtain results for some orders because of the "No Working TN" response. To reconcile their remaining issues, Qwest and Covad

² The data showed that the RLD Tool clearly provided accurate data 80% of the time. The data also showed that the Tool provided inaccurate data 1% of the time. The remaining 19%, however, is impossible to assess. Attached *Exhibit JML-1* shows that there were instances when the RLD Tool showed that the loop was not provisioned on copper, but Qwest found a copper alternative. The problem, of course, is that Qwest has committed to seeking alternatives (i.e.: line and station transfers) when a copper alternative is necessary. Thus, for these 19%, the tool may very well be accurate, but in an effort to meet its obligations, Qwest provisioned the loop when it could. All Qwest can say, therefore, is the tool is accurate at least 80% of the time.

focused on 18 orders that allegedly showed errors in the RLD Tool. Again, Covad vastly overstates the purported errors in the RLD Tool. Some of the errors in Covad's analysis are:

- For some orders, Covad claims that the RLD Tool erroneously omits MLT distance. However, Qwest noted that for some of these orders, a segment of the loop was on a pair gain system. Qwest has previously testified that MLTs can only be performed on copper loops. Thus, Covad should have known that if there is any pair gain on the loop, Qwest cannot perform an MLT. Qwest recently clarified this for Covad in workshops in Washington. Thus, for those loops with pair gain, the RLD (correctly) does not include an MLT distance.
- For several loops without MLT distances, Covad claimed that there was no overall loop length provided. However, the RLD reports the length of each segment of the loop. Covad can calculate the loop length based upon the length of each segment. Significantly, Qwest does not aggregate the lengths by segment for CLECs because each segment may have a different gauge, thereby affecting the functional total loop length. Qwest specifically provides gauge and length by segment to permit the CLEC to perform its own calculations to determine the loop length, as the FCC requires.
- Covad claimed that the Tool incorrectly reported pair gain for certain PONs. Covad claimed that the Tool was reporting this information for addresses that Covad had not asked the Tool to validate. However, upon examination of Covad's data, it appears that Covad is confusing the Terminal ID with the service address. The Terminal ID is where each segment of the loop terminates and is wholly unrelated to the service address.
- Covad claimed that when it requested loop information by working telephone number, the Tool only turned up one loop, but when it requested information by address, the Tool returned information on a second line. This is true and as it should be. If a CLEC requests information on a particular telephone number, the Tool

returns information for the loop associated with that telephone number only. If the CLEC requests information for an address, the Tool returns information on all working telephone numbers to that address.

After much debate, Qwest and Covad have agreed that a 72-hour FOC is beneficial and that Qwest should modify PID PO-5 to include a 72-hour FOC interval for xDSL loops. One impasse issue does remain, however: whether the RLD Tool provides CLECs with meaningful loop make up information. KPMG is testing (as part of the OSS Test) to ensure that the RLD Tool provides CLECs with information on parity with that Qwest provides to itself. Moreover, Qwest believes the Trial provided all parties with valuable information showing that the information in the Tool is generally accurate.

DISCUSSION

A. Loop Issue 24a: Should Qwest Provide a 72-hour FOC for xDSL Loops?

Qwest and Covad have agreed that a 72-hour FOC is appropriate for xDSL loops. As the Trial results summarized above demonstrate, when utilizing a 72 hour FOC Qwest was able to provide CLECs with meaningful FOCs and meet its committed due date the overwhelming majority of the time.

Revising the PO-5 measure at the ROC will benefit all carriers for several reasons. As mentioned above, extending the FOC interval to 72 hours permits Qwest to perform the work necessary to provide CLECs a more meaningful FOC for xDSL loops. CLECs in Colorado have stated that it is more important to them that Qwest provide a meaningful FOC than a "quick" FOC. In addition, Qwest's interconnection agreements with many carriers already carry a 72-hour FOC for xDSL loops. By making the interval uniform, Qwest will be able to implement standardized processes and procedures for these loops, further enhancing its performance. Finally, under the current PO-5 measure, loops that now carry the 72-hour FOC are excluded

from the performance measure. By revising the measure to reflect a 72-hour interval, Qwest's provision of all xDSL will be measured. Accordingly, Qwest asserts that revising the PO-5 measure to provide a 72-hour FOC for xDSL loops is in the interest of all carriers. Covad endorses this effort as well. Accordingly, the Commission should deem this issue closed and should accompany Qwest to the ROC and recommend a change in PO-5.

B. Loop Issue 24b: Does the RLD Tool Provide CLECs with Meaningful Loop Make Up Information?

As mentioned above, part of the xDSL Trial focused on the Qwest RLD Tool. As Ms. Liston testified at length during the workshop, the RLD Tool and the tool that Qwest uses to qualify loops for Qwest DSL draw from the same underlying loop qualification database. Thus, there is no issue regarding parity of access to loop make up information. Furthermore, any lingering concerns CLECs or the Commission may have regarding whether Qwest will provide CLECs with access to loop make up information at parity will be specifically resolved as part of the ROC OSS test. The ROC Master Test Plan provides that the third-party test will address the following questions:

- Does a wholesale loop qualification transaction result in the same information as a retail transaction for the same loop?
- Does the loop qualification come from the same database (directly or indirectly) with the same frequency of update?
- Are the wholesale responses returned in accordance with benchmarks set?
- Are any differences in the sub-processes or remedial options available in the retail loop qualification process versus the wholesale process?³

In light of this evidence, Covad cannot argue that Qwest does not provide parity of access. Instead, Covad's claims regarding the RLD Tool boil down to this: Covad believes that

³ Qwest presented an excerpt from the ROC Master Test Plan as Exhibit 5-Qwest-60.

Qwest does not provide loop qualification information in compliance with Section 271 because the RLD contains inaccuracies. Putting aside that Covad has failed to identify any meaningful inaccuracies beyond those Qwest has committed to fix, the same loop make up information feeds both RLD and the Qwest MegaBit Tool. Thus, any inaccuracies in the underlying loop make up information affects Qwest and CLECs identically. The FCC has twice addressed this identical issue and both times it determined that where the incumbent LEC and CLEC both experience inaccuracies in the database, there is no discrimination and no Section 271 issue. Parity is all Qwest must provide. For example, in the *Kansas/Oklahoma Order*, the FCC stated:

IP Communications claims that SWBT's actual loop makeup information database is inaccurate and thus harms competing carriers when they place orders for loops based on inaccurate information. As we noted above, when searching for loop qualification information, both competing carriers and SWBT utilize the LFACS system. Thus, any inaccuracies in SWBT's database, because they affect SWBT in the same fashion as competing carriers, are not discriminatory.⁴

The FCC reached a similar conclusion in its most recent *Verizon Massachusetts Order*. There, Covad raised the same argument it raises here: that Verizon failed to satisfy Section 271 because its LiveWire database contained inaccuracies. The FCC rejected that claim:

ALTS and Covad claim that Verizon's mechanized loop make-up information database -- LiveWire -- fails to meet *UNE Remand* requirements because it sometimes contains inaccurate and incomplete information, hampering competing carriers' ability to order xDSL loops. *As we noted above, the LiveWire database Verizon makes available to competing carriers is the same database used by Verizon's retail affiliate to qualify loops. Thus, any inaccuracies or omissions in Verizon's LiveWire database are not discriminatory, because they are provided in the exact same form to both Verizon's affiliate and competing carriers.*⁵

⁴ 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 ¶ 126 (rel. Jan. 22, 2001) ("*SBC Kansas-Oklahoma Order*").

⁵ 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 ¶ 66 (rel. Apr. 16, 2001) ("*Verizon Massachusetts Order*").

Thus, it is irrelevant for Section 271 purposes that the RLD Tool, which is drawn from the same loop make up information Qwest uses to qualify Qwest DSL, may have some inaccuracies. Those inaccuracies affect Qwest and CLECs alike. The FCC has conclusively determined twice that under such circumstances, the BOC provides loop qualification information consistent with the requirements of the Act.

Covad has suggested that because it must identify the need for conditioning, and Qwest does not condition facilities for its retail DSL services, that Qwest must go beyond the parity requirements in the FCC's orders in providing loop make up information to CLECs. This argument, however, makes no sense. Because Qwest does not sell Qwest DSL if the retail customer's loop requires conditioning, if the underlying loop qualification database does not accurately reflect the need for conditioning, Qwest is clearly affected by that inaccuracy as much (if not more) than a CLEC. For example, if the loop qualification database wrongly reports that conditioning will be required, Qwest will not make the DSL sale at all. Covad, on the other hand, clearly can and does make that sale even though conditioning may later be found to be unnecessary. Under this scenario, Qwest is more disadvantaged than Covad.

Some CLECs suggested at the workshop that Qwest should be forced to improve the quality of the RLD Tool even though Qwest undeniably provides parity access and the FCC has not required BOCs to exceed that standard. Those CLECs, however, have presented no evidence of any alleged inaccuracies in the RLD Tool. The *only* CLEC that has challenged the accuracy of the Tool is Covad, and, as set forth above, its analysis is seriously flawed. Regardless, Qwest is undertaking significant efforts to improve the quality of its underlying loop qualification databases. Specifically, it is initiating the system fixes identified above to resolve the "no working TN" errors that it uncovered in the Trial. Second, its technicians are instructed to update the LFACS database that feeds the loop qualification database if they discover errors in the underlying loop information. With these efforts, Qwest has demonstrated that it is committed to improving the quality of the loop make up information all carriers share.

CONCLUSION

The unrefuted results of the xDSL Trial demonstrate that it was a success. Qwest demonstrated that by moving to a 72-hour FOC for xDSL loops, Qwest provided FOCs on time and met its promised due date the overwhelming majority of the time. Only one carrier challenged Qwest's results and, upon data reconciliation, that carrier has withdrawn its data completely. Thus, Qwest demonstrated not only its ability to provide CLECs with a meaningful FOC, it demonstrated that it is accurately collecting and reporting its performance results. Covad, the most active participant in the Trial, has endorsed the 72 hour FOC. Qwest requests that the Commission close Loop Issue 24(a) and endorse Qwest's efforts before the ROC to revise the PO-5 to provide for a 72-hour FOC for xDSL loops.

The xDSL Trial also taught Qwest and CLECs much about the RLD Tool. First, the information in the Tool is at parity with that which Qwest provides to itself. No one disputes this issue and KPMG is testing to ensure retail parity. According to the FCC, the inquiry ends once parity is established. Nonetheless, as a result of findings in the Trial, Qwest has proactively undertaken system enhancements to cure one gap found in the Tool.

DATED this 18th day of July, 2001

Respectfully submitted,

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Lesson 9: Raw Loop Data

From the *PreOrder* menu, the *Raw Loop Data* query tool provides access to raw loop data by segment and sub-segment. The query is performed by sending TNs or the address of the end-user's premise. The *Address Validation* function can be used to get an exact match on the address. Returned data pertaining to the entire loop is displayed with a repeating section of data for each loop segment. Each segment contains a repeating section with data for sub-segments. This data can be used to perform calculations and determine whether the loop qualifies to carry DSL service.

Note: If an address is chosen, IMA will show raw loop data for up to 24 assigned or unassigned circuits that are associated with that address, working or non-working.

There are three Raw Loop Data query options available in IMA:

- Query by TNs
- Query Assigned by Address
- Query Unassigned by Address

The *Raw Loop Data Query By TNs* window is shown below:

Query by TNs

WTN: -- Add To List

WTN Query List: Delete From List

Print Preview E-mail Start Over Next >> Clear Finish

Java Applet Window

The *Raw Loop Data Query By TNs* window contains the following fields and buttons:

Fields:

WTN

WTN Query List

Buttons:

Add to List

Delete From List

Print Preview

E-mail

Start Over

Next>>

Clear

Finish

The *Raw Loop Data Query Assigned By Address* option window is shown below:

Raw Loop Data Query By Assigned Address

Query by Address

Validated Addresses:
No Validated Address

SAPR SANO SASF

SASD SASN SATH SASS

ROOM/MAIL STOP FLOOR BLDG AHN ROUTE BOX

CITY STATE ZIP

CALIFORNIA Select Supplemental

Print Preview E-mail Start Over Next >> Clear Finish

The *Raw Loop Data Query Assigned By Address* option window contains the following fields and buttons:

Fields:

- Validated Addresses
- SAPR
- SANO
- SASF
- SASD
- SASN
- SATH
- SASS
- ROOM/MAIL STOP
- FLOOR
- BLDG
- AHN
- ROUTE
- BOX
- CITY
- STATE
- ZIP

- CALA/SAGA

Buttons:

- Print Preview
- E-mail
- Start Over
- Next>>
- <<Previous
- Clear
- Finish

The *Raw Loop Data Query Unassigned By Address* option window is shown below:

Raw Loop Data Query By UnAssigned Address

Query by Address

Validated Addresses:
No Validated Address

BAPR SANO BASF
SASD SASN BATH SASS
ROOM/MAIL STOP FLOOR BLDG AHN ROUTE BOX
CITY STATE ZIP
CALASAGA select Supplemental

Print Preview E-mail Start Over Next >> Clear Finish

The top portion of the *Raw Loop Data Response* window is shown below:

Raw Loop Data Response

1 of 1

Add Delete Current Clear Current Delete All

WTN:
303-880-1908

SAPR: SANO: SASF:
19857

SASD: SASN: SATH: SASS:
E QUINCY PE

UNIT: FLOOR: BLDG: APT: ROOM/MAIL STOP:

CITY: STATE: ZIP:

WCCUJ: MLTDIST:
DNVRCOSH

The bottom portion of the *Raw Loop Data Response* window is shown below:

The screenshot shows a Java Applet window titled "Raw Loop Data Query By TNs". The window contains several input fields and buttons. At the top, there is a text field with "DNVRCOSH" and a "1 of 3" indicator. Below this are four buttons: "Add", "Delete Current", "Clear Current", and "Delete All". The main area contains a "TERMINAL ID" field with "TST 4801A S HIMALAYA". Below that is a table with columns: "CABLE NAME", "PAIR GAIN TYPE", "PAIR NUMBER", "LOAD COIL TYPE", and "LOAD POINTS AMOUNT". The table has one row with values: "PG27", "SEC2T", "1887", an empty field, and "0". Below the table are two text areas: "BRIDGE TAP OFFSET" and "MAKE UP DESC", both containing empty space. At the bottom of the window are five buttons: "Print Preview", "E-mail", "Start Over", "<< Previous", and "Finish". The bottom left corner of the window says "Java Applet Window".

CABLE NAME	PAIR GAIN TYPE	PAIR NUMBER	LOAD COIL TYPE	LOAD POINTS AMOUNT
PG27	SEC2T	1887		0



-----Original Message-----

From: Doberneck, Megan [mailto:mdoberne@Covad.COM]
Sent: Monday, September 10, 2001 1:11 PM
To: Sacilotto, Kara-WDC
Subject: RE: AZ Housekeeping matters

Kara:

Sorry for the delay in responding, but, as you know, the schedule is crazy.

1. For consistency's sake, why don't we file a stipulation regarding the FOC trial and attach the briefs we filed in Colorado? That way, our records and associated briefing will remain the same throughout the states, and we'll have closure on this issue in AZ.

2. I forgot to ask Mike about this; however, I forwarded your email to him and have asked for his input/response. As soon as I hear back from Mike, I'll let you know.

3. Let's defer cooperative testing to the ROC process. Between the new SGAT language and the ROC testing, I think this issue will be put to bed.

I'm off to draft the brief on the QPAP. I'll shoot you an email when I hear from Mike. Megan

-----Original Message-----

From: Sacilotto, Kara-WDC [mailto:sacik@PerkinsCoie.com]
Sent: Friday, September 07, 2001 11:56 AM
To: Doberneck, Megan
Subject: AZ Housekeeping matters

Megan:

I'd like to follow up on some little dangling issues that have been clarified and/or closed since the Arizona workshop on loops. Please let me know Covad's position so we can either proceed or inform the parties/Staff of the status of these issues.

1. The Colorado xDSL FOC trial. In Arizona, as you will recall, the FOC trial data reconciliation process was still underway, and the issue was

left open for incorporation of the resolution in Colorado. In Colorado, the parties agreed that even if they do not agree on the data, they will support a 72-hour FOC for xDSL loops before the ROC. In later workshops (i.e., WA), we've simply closed this issue by noting that resolution. You also agreed in Washington that Covad would withdraw its "commitment met" data consistent with its withdrawal of that data in Washington and Colorado (and I was supposed to remind you about AZ--which just shows how bad my memory is!). Given these developments, can we inform the Arizona Staff and parties that Covad has withdrawn that data and that although the parties dispute the trial data, they support the development of a 72-hour FOC for xDSL loops?

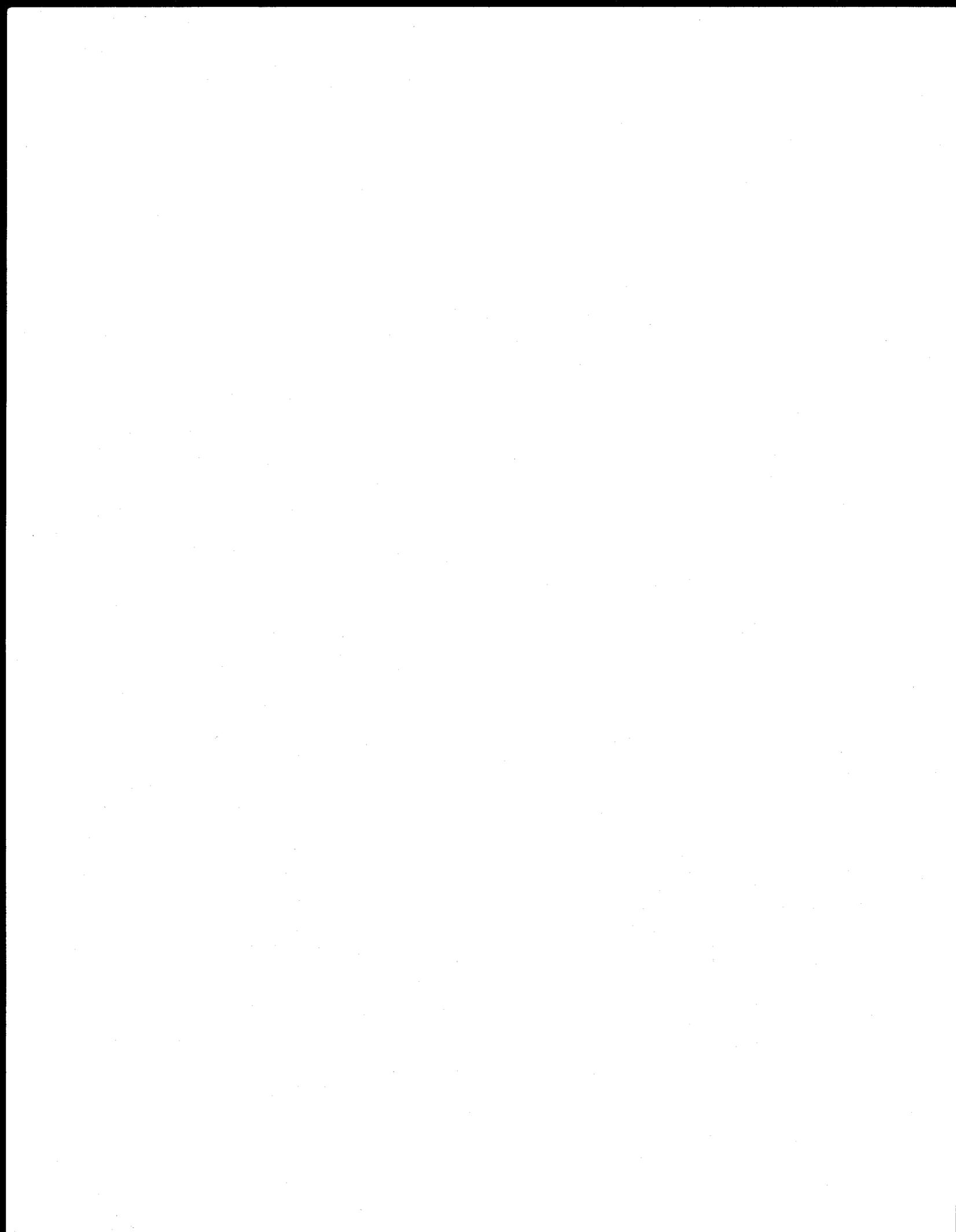
2. Build Information. In Covad's brief in Arizona, Covad claimed that it was not satisfied with the build information Qwest agreed to provide CLECs under SGAT Section 9.1.2.1.4 because it did not include information on remote DSLAMs and NGDLC. In the Washington workshop, however, Barry Orrel clarified that Qwest will be posting information regarding DSLAMs and remote terminals (discussed in the Washington workshop on July 11). I believe I asked you offline in Washington whether this clarification resolved Covad's issue, and you stated that you would let me know. I'd appreciate knowing whether this information does, in fact, resolve the issues identified in Covad's Arizona brief.

3. Cooperative Testing. In Arizona, the parties agreed to work this issue off line. In other states, such as Washington and (I think) Colorado, Covad said it wanted to defer this issue to the ROC process. Does Covad want to deal with this the same in AZ?

Please let me know at your earliest convenience what Covad's position is on these issues. Thank you.

Kara M. Sacilotto
Perkins Coie LLP
sacik@perkinscoie.com
(202) 434-1633--telephone
(202) 434-1690--facsimile

- InterScan_Disclaimer.txt



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2. Colorado – Volume 4A (Impasse Issues Order)
3. Multi-State Unbundled Network Element Report



DRAFT

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO**

In the matter of)
)
The Investigation into Qwest)
Communications, Inc.'s Compliance with) Docket No. 97I-198T
§ 271(c) of the Telecommunications Act of)
1996)

**VOLUME V A
IMPASSE ISSUES**

**COMMISSION STAFF REPORT ON
ISSUES THAT REACHED IMPASSE
DURING THE WORKSHOP INVESTIGATION
INTO QWEST'S COMPLIANCE WITH**

CHECKLIST ITEMS:

- No. 2 – Access to Unbundled Network Elements
(Line Splitting and Access to NIDs)**
- No. 4 – Access to Unbundled Local Loops**
- No. 11 –Local Number Portability**

DRAFT

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NOTE TO COLORADO WORKSHOP PARTICIPANTS

This is a copy of Staff's draft report Volume V A on the impasse issues of Workshop 5 concerning Checklist Item Nos. 2, 4, and 11. This draft report is provided for your review and comment. The respective briefs of the participants on the impasse issues are available to the Commission in their entirety for consideration by the Commission.

After reviewing the comments received from participants, Staff will prepare the final report and file it with the Commission in this docket for further processing and decision-making. In addition, a participant may request that the Hearing Commissioner hold a hearing or other review of the final report.

It is Staff's expectation that once the final report is filed, the Hearing Commissioner will issue a procedural decision that outlines his process for further comment or hearing on these matters.

This is a draft report. It may not be cited or relied upon in any manner.

I. INTRODUCTION

1. This is a companion report to Volume V in the series of reports prepared by the Staff of the Colorado Public Utilities Commission in Docket No. 97I-198T, which is the investigation into the compliance of Qwest Communications, Inc. (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST)¹, with the requirements of § 271 of the Telecommunications Act of 1996 (the Act)².
2. The Staff reports will be filed with the Colorado Public Utilities Commission for consideration and are part of the factual record in this proceeding. The Commission

¹ During the pendency of this proceeding, U S WEST and Qwest completed their merger. The names of Qwest and U S WEST are considered to be interchangeable in this report. For ease of reading, this report will primarily use Qwest in the text.

² Pub L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. 151, *et seq.*

DRAFT

directed Staff to conduct a series of technical workshops designed to provide open and full participation in the investigation by all interested parties. The technical workshops formed the basis of the lengthy, rigorous, and open collaborative process in Colorado that has been favored in the past by the Federal Communications Commission (FCC) in its approval of prior § 271 applications in New York and Texas. *Bell Atlantic New York Order* at ¶¶ 8 and 9 and *SBC Texas Order* at ¶ 11. The workshops served to identify and focus issues, develop consensus resolution of issues where possible, and clearly frame those issues that could not be resolved and reached impasse among participants. Impasse issues are then to be addressed through the dispute resolution process agreed to by participants and ordered by the Commission for this investigation and will be considered by the Commission in order to resolve the impasse.

3. This Volume V A Staff report focuses on the impasse issues that are subject to the dispute resolution process. When the Commission resolves the disputed issues, that resolution subsequently will be incorporated into the final version of this report for continuity and ease of understanding.
4. Volume V A in the series of Staff reports addresses the impasse issues from Workshop 5, which dealt with Checklist Items No. 2 (Unbundled Network Elements – Line Splitting and Access to NIDs), No. 4 (Unbundled Local Loops), and No. 11 (Local Number Portability). The checklist item impasse issues will be discussed in this report in that order.
5. In accordance with the Procedural Order, this report describes the various impasse issues, summarizes the positions of the participants, and provides a Staff recommendation

regarding resolution. The complete briefs filed by participants also are available to the Commission for its consideration in resolving the disputed issues.

II. CHECKLIST ITEM 4 – ACCESS TO UNBUNDLED LOCAL LOOPS

Impasse Issue No. Loop – 1:

Whether Qwest properly handles conversion from switch-provided service to UNE Loops where Integrated Digital Loop Carrier (IDLC) is involved and a CLEC orders basic installation.

Positions of the Parties:

6. AT&T, supported by WorldCom, asserts that internal Qwest coordination and process problems have resulted in a high percentage of customer disconnects when CLEC orders basic installation in a community served by Integrated Digital Loop Carrier (IDLC).³
7. AT&T cited the testimony of SunWest as clear evidence of the problems.⁴ Qwest acknowledged that there were problems on the Qwest side that required process changes to address loop coordination issues.⁵ AT&T asserts that Qwest has provided no evidence that it has fixed the problems or how they are going to be fixed.⁶
8. AT&T acknowledges that the FCC has recognized the difficulty of provisioning loops that are served by IDLC. However, the FCC has never altered the ILEC's obligation to provide such loops. AT&T urges the Colorado Commission to affirm that obligation.

³ AT&T's Post Workshop Brief on Loops, Line Splitting, NID and Local Number Portability ("AT&T Brief"), June 29, 2001, at p. 7.

⁴ *Id.*, at p. 8.

⁵ *Id.*, at p. 9.

⁶ *Id.*

9. Qwest argues that it has demonstrated that it has instituted policies and practices to address the AT&T concerns.⁷ Qwest presented its engineering decision tree that lists each step in the process of provisioning a loop served over IDLC.⁸
10. Qwest also presented its “hairpinning” process and committed to perform “hairpinning” on an interim basis for more than three loops while it pursues installation of a Central Office Terminal.⁹
11. Qwest states that the Raw Loop Data tool provides information to CLECs in advance that clearly indicates the presence of IDLC in the areas they may choose to serve so that they can plan accordingly.¹⁰
12. Qwest has also demonstrated how it coordinates loops and LNP orders and how it addresses problems that arise during the course of installation.¹¹ Qwest has agreed to hold the disconnect on a number port until 11:59 p.m. of the next business day following the scheduled port to avoid unintentional customer disconnects.¹²
13. Finally, Qwest notes that IDLC is not ubiquitous in Colorado where less than nine percent of all access lines are provisioned using IDLC.¹³

⁷ Qwest’s Legal Brief Regarding Loop and LNP Impasse Issues, June 29, 2001, at p. 6.

⁸ *Id.*, at pp. 6 and 7.

⁹ *Id.*, at p. 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*, at p. 8.

¹³ *Id.*, at p. 6.

Findings and Recommendation:

14. Staff finds that Qwest's proposals to utilize "hairpinning" and to delay disconnects for an extra day are constructive efforts to alleviate problems caused by ordering loops over IDLC.
15. Qwest performance needs to be monitored to ensure that the process changes Qwest is implementing in an effort to alleviate disconnects relating to lines provisioned using IDLC are effective. It is Staff's opinion that further ROC OSS testing is necessary to ensure that Qwest is actually providing the service it promises. Therefore, Staff recommends that Qwest be required to submit to the ROC additional PIDs that adequately measure Qwest's performance in this area. In the event that the ROC does not pursue this issue or that Qwest does not present the issue to the ROC. Staff recommends Colorado-specific testing of, or investigation into, Qwest's performance.
16. Staff recommends that, irrespective of the avenue used, the Commission should be satisfied that Qwest has in fact implemented the new procedures and changes – and that they fix the problem – before the Commission recommends § 271 approval.

Impasse Issue No. Loop – 9(a):

Whether it is proper for Qwest to provide high capacity (OCn) loops to CLECs on an Individual Case Basis (ICB). SGAT §§ 4.24(a), 9.2.2.3.1, and 9.2.3.3.

Positions of the Parties:

17. While AT&T is pleased that Qwest has agreed to offer these loops, AT&T has concerns about the ICB process that it will address in the General Terms and Conditions workshop.¹⁴
18. WorldCom asserts that high capacity loops are an essential feature of the loop. Without nondiscriminatory and consistent access to high capacity loops, CLEC entry into the local market and CLEC ability to compete are significantly hindered. The FCC supports the inclusion of high capacity loops in the definition of loop.¹⁵
19. WorldCom believes that all UNEs should be made standard offerings except in the most limited circumstances in which Qwest has sustained its burden of proving that a standard offering is impossible.¹⁶
20. WorldCom also has concerns about the ICB process which it will address in the General Terms and Conditions workshop.¹⁷
21. Qwest argues that ICB is the standard that Qwest uses to provision fiber and high capacity loops to its Colorado retail customers. Using ICB for wholesale customers offers the same service, at parity and on a nondiscriminatory basis.¹⁸
22. Qwest contends that ICB is appropriate because there is little demand for fiber and high capacity loops. Qwest will revisit this issue if future demand develops.¹⁹

¹⁴ Qwest Brief, at p. 9.

¹⁵ See, FCC Decision No. 99-238, at ¶ 176.

¹⁶ Brief Addressing Unbundled Loops, Local Number Portability, Network Interface Devices and Line Splitting Impasse Issues of WorldCom, Inc. ("WorldCom Brief"), June 28, 2001, at p. 3.

¹⁷ *Id.* at pp. 2 and 3.

¹⁸ Qwest Brief, at p. 9.

¹⁹ *Id.*, at p. 10.

23. Qwest also contends that ICB is a workable standard that has been used in other situations and jurisdictions (Qwest provides OCn loops on an ICB under its FCC Access Services Tariff) and should be retained here.²⁰

Findings and Recommendation:

24. AT&T agreed to close this issue based on Qwest's proposal to provision fiber and high capacity loops on an individual case basis.²¹
25. Qwest agreed to discuss the details of the ICB process as part of the General Terms and Conditions workshop.²²
26. WorldCom agreed to defer related pricing discussions to the Pricing docket.²³
27. Staff considers this impasse issue to be closed, pending successful completion of the General Terms and Conditions workshop.

Impasse Issue No. Loop – 9(c):

Whether Qwest is required to construct high capacity loop facilities for CLECs where there are no facilities currently available. SGAT § 9.1.2.1.4.

Positions of the Parties:

28. AT&T, supported by Covad and WorldCom, argues that Qwest must build loops, and other UNEs, for CLECs under the same terms and conditions that Qwest would build network elements for itself (or its retail customers) at cost-based rates.²⁴

²⁰ *Id.*, at pp. 10 and 11.

²¹ *Id.*, at p. 9.

²² *Id.*, at p. 11.

²³ *Id.*, at p. 9.

²⁴ AT&T Brief, at pp. 11 and 12; Covad Communications Company's Brief on Loops and Line Splitting Impasse Issues, at p. 6 (concurring with AT&T's brief); WorldCom, Inc., at p. 2.

29. The FCC's rules require that the ILEC provision network elements to CLECs on terms and conditions no less favorable than the ILEC provides itself.²⁵
30. While the FCC has explicitly limited an ILEC's obligation to provide interoffice facilities to existing facilities, it has made no explicit limitations for other network elements.²⁶
31. The FCC has also held that ILECs have an obligation to replace UNEs for CLECs. AT&T and WorldCom assert that this is essentially the same thing as an obligation to build UNEs.²⁷
32. WorldCom goes on to assert that Qwest's retail and wholesale rates include revenues to ensure that Qwest is able to construct new network and reinforce existing network.²⁸
33. Qwest asserts that the Act does not require an ILEC to build new facilities to provide an unbundled loop if no facilities currently exist. Rather, Qwest must provide access to its existing network.²⁹ The Eighth Circuit reached the same conclusion and required unbundled access to an ILEC's existing network, not to a yet unbuilt, superior one.³⁰
34. Qwest further argues that, in the *UNE Remand Order*, the FCC made the point again. Any carrier can build the requisite loop or UNE facilities. Such action would be consistent with the FCC's view that facilities-based competition by CLECs is a critical means of bringing competition to the local market and providing the greatest long-term benefit to consumers.³¹

²⁵ AT&T Brief, at p. 12.

²⁶ AT&T Brief, at p. 13.

²⁷ AT&T Brief, at p. 13; WorldCom Brief, at p. 4.

²⁸ WorldCom Brief, at p. 2.

²⁹ Qwest Brief, at p. 12.

³⁰ *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*"); *See also MCI Telecommunications Corp. v. Illinois Bell Tel. Co.*, 222 F.3d 323, 328 (7th Cir. 2000) ("Section 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.").

³¹ 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) ("*UNE Remand Order*").

35. Finally, Qwest argues that, where facilities are not already in place, CLECs are in just as good a position as Qwest to construct them, on any terms and conditions the CLEC deems appropriate. Qwest enjoys no competitive advantage.³²

Findings and Recommendation:

36. The Telecom Act of 1996 and subsequent FCC guidelines do not require ILECs to build facilities in order to provide a CLEC with an unbundled loop, when no facilities currently exist. Rather, CLECs are encouraged to construct their own networks.³³
37. Staff is of the opinion that local competition will be enhanced by CLECs building their own loop facilities. When a CLEC wants facilities where none currently exist, it appears that a CLEC, as holder of a Certificate of Public Convenience and Necessity from this Commission, is in just as good a position as Qwest to build those facilities. Also, consistent with previous Staff recommendations, Qwest is obligated, when considering whether to build new facilities or not, to treat CLEC requests for UNEs using the same criteria that it uses in making a decision to build for itself. Qwest has added § 9.1.2.1.4 to provide notification to CLECs of outside plant jobs to communicate availability of future facilities vis-à-vis the ICONN database, reflecting “funded” jobs that have been authorized.
38. Since SGAT § 9.1.2.1.4 does not modify Qwest’s obligation to build loops, and other UNEs, for CLECs under the same terms and conditions that Qwest would build network

³² Qwest Brief, at p. 15.

³³ *UNE Remand Order*, ¶ 324; 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*”).

elements for itself (or its retail customers), but merely is a form of notification to CLECs, Staff recommends that no change be required to this section.

Impasse Issue No. Loop – 10(b):

Whether Qwest's SGAT should be modified to include language proposed by AT&T that would require a refund to CLECs for loop conditioning charges under certain conditions. SGAT §§ 9.2.2.1, 9.2.2.2, and 9.2.2.4.

Positions of the Parties:

39. AT&T argues that its proposed language would ensure that Qwest is compensated when Qwest performs loop conditioning in a timely manner and delivers a quality loop as contracted for by a CLEC. If Qwest fails to do so, the CLEC should not have to bear the conditioning cost.³⁴
40. AT&T further argues that Qwest's proposal that such issues be dealt with as a billing dispute is not appropriate. It would allow Qwest to collect payment for a service when it performed badly and force a CLEC to pursue dispute resolution, a lengthy process, for each line that is misprovisioned.³⁵
41. AT&T asserts that Qwest should have an obligation up front to refund the conditioning charge if it fails to perform. AT&T also states that Qwest's suggestions that a CLEC should enter into termination liability assessments with end user customers to recover conditioning costs is unacceptable.³⁶
42. Covad supports AT&T's position on all of these points.³⁷
43. Qwest asserts that, because loop conditioning is an activity undertaken in response to a CLEC request, Qwest is entitled to recover its conditioning costs regardless of whether

³⁴ AT&T's Post Workshop Brief on Loops, Line Splitting, NID and Local Number Portability ("AT&T Brief"), June 29, 2001, at pp. 16 and 17.

³⁵ AT&T Brief, at p. 17.

³⁶ AT&T Brief, at p. 18.

³⁷ Covad Communications Company's Brief on Loops and Line Splitting Impasse Issues ("Covad Brief"), June 29, 2001, at p. 8.

the end user ultimately receives DSL service from the CLEC who requested the conditioning or the end user, after terminating the service of the original CLEC, orders and receives service from another CLEC.³⁸

44. Qwest believes that termination liability assessments are the proper vehicle to address recovery of conditioning costs if an end user customer leaves a CLEC within a short period.³⁹
45. Qwest feels that AT&T's current proposal would be difficult to implement. 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. There is no way to make a determination of "fault" without some process for addressing the dispute.⁴⁰
46. Qwest asserts that, to the extent a CLEC believes that it is entitled to a credit based on Qwest's poor performance, the issue should be addressed in the context of a billing dispute to permit a determination of fault.⁴¹

Findings and Recommendation:

47. The Performance Assurance Plan ("PAP") process has been developed to monitor Qwest's performance and penalize Qwest when it does not meet certain performance thresholds.
48. Staff recommends that a performance measurement be developed and implemented to monitor the timeliness and effectiveness of Qwest's loop conditioning. If the conditioning is not completed in some predetermined time frame, a penalty under the auspices of the PAP should be imposed on Qwest.

³⁸ Qwest Brief, at p. 16.

³⁹ *Id.*, at pp. 16 and 17.

⁴⁰ *Id.*, at pp. 17 and 18.

⁴¹ *Id.*, at p. 18.

49. In addition, disagreements over the amount Qwest charged a CLEC for a service when the service is inadequate or does not meet technical standards (line conditioning) may be arbitrated through the billing dispute procedures outlined in the Statement of Generally Available Terms.

50. Staff does not recommend the adoption of the proposed AT&T language regarding refunds of the conditioning charges by Qwest when a CLEC customer terminates its DSL service after a short period of time. The cost of conditioning a line for DSL service is a cost of doing business and is a risk that is appropriately born by the carrier marketing the final service. Qwest as the wholesaler, when it adequately performs its duty in providing a service, is due its compensation regardless of the success of the CLEC in maintaining its DSL customer.

Impasse Issue No. Loop – 10(c):

Whether Qwest is required to pay for deloading a loop for data use if the loop does not meet the requirements for voice grade service.

Positions of the Parties:

51. Although Rhythms did not brief this issue, it did argue in the workshop that CLECs should not be required to pay for deloading a loop for data applications if the unbundled loop does not meet voice grade service standards because of improper loading. DLECs are being asked to pay for conditioning that might not otherwise be necessary.⁴²

52. WorldCom asserts that, under accepted engineering principles, loops of lengths less than 18,000 feet should not have bridge taps or load coils. Therefore, WorldCom contends that any need for conditioning is based on an inefficiently designed loop by Qwest.

⁴² Qwest Brief, at p. 18.

WorldCom also opposes all line conditioning charges if reconditioning is necessary to assure the quality of the voice service on the UNE-P.⁴³

53. Qwest agrees that it would not charge a CLEC to bring an analog loop up to voice grade standards as mandated under FCC rules.⁴⁴
54. With respect to loops being requested to provide data services, Qwest states that it looks for a non-loaded copper loop. It tests the loop based upon the parameters of the loop type that is ordered.⁴⁵
55. Qwest contends that the FCC's service quality rules, which apply only to analog voice grade service, establish a range in which voice grade service is acceptable. The rules do not apply when a DLEC orders a loop to provide DSL service. Both the FCC and the United States District Court for the District of Colorado have held that Qwest is entitled to recover its costs for deloading loops at a CLEC's request, regardless of whether the CLEC believes the loads were "improperly" placed.⁴⁶

Findings and Recommendation:

56. The FCC in the *UNE Remand Order* clearly stated that an ILEC should be able to charge for conditioning loops 18,000 feet and shorter that have voice enhancing devices, despite the fact that bridge taps and load coils should not be required on networks of such lengths built today.⁴⁷
57. Qwest has stated that its internal procedure is to look for an appropriate loop when data service is ordered, thereby seeking to minimize conditioning costs.

⁴³WorldCom Brief, at p. 6.

⁴⁴Qwest Brief, at pp. 18 and 19.

⁴⁵Qwest Brief, at p. 19.

⁴⁶Qwest Brief, at pp. 19 and 20.

⁴⁷*UNE Remand Order*, ¶ 193.

58. In Colorado, this Commission has adopted specific technical minimum performance characteristics for the access line (loop) of basic local exchange service.⁴⁸ Qwest, as well as all providers of basic local exchange carriers, are obligated to meet the standards contained in that Rule including the obligation to initiate immediate repair activities on the access line when any tested performance value falls within the substandard range. It is to these Rule standards that Qwest must perform in Colorado.
59. When the only loop available to meet a CLEC's data service need is, though previously conditioned, meeting or exceeding the voice-grade loop standards of Colorado, Staff finds Qwest's current processes acceptable and finds further that law dictates that Qwest may charge for line conditioning.
60. However, in the circumstance, in which the only loop available to meet the CLEC needs does not meet the Colorado specific technical minimum performance characteristics for the access line (loop) of basic local exchange service, Qwest shall not charge the requesting CLEC for line conditioning. In that circumstance when in fact Qwest is performing the necessary maintenance to bring the loop performance up to the minimum Commission-mandated voice-grade standard. Staff recommends that Qwest file revised SGAT language clarifying that the line conditioning charge will not be charged to the CLEC in the above described situation.

⁴⁸ See Colorado Public Utilities Commission Rules at 4 CCR 723-1-18.

Impasse Issue No. Loop -14 (a):

Whether Qwest is required to provide CLECs access to Qwest's databases that contain loop information, including access to the Loop Facilities Assignment and Control System (LFACS). SGAT §§ 9.2.2.8 and 9.2.4.3.

Positions of the Parties:

61. AT&T, supported by Covad, argues that Qwest is required to provide access to its LFACS database and any other database or source that contains information regarding Qwest's loop plant. CLECs need the ability to understand, in those areas where Integrated Digital Loop Carrier ("IDLC") is deployed, what spare copper facilities are available, including loop fragments, to determine whether they can provision service in the area and actively market these.⁴⁹
62. AT&T states that this issue is not faced by Qwest's retail arm because Qwest does not need to unbundle IDLC to provision service over it. The issue is not one of parity, but whether CLECs are provided a meaningful opportunity to compete.⁵⁰
63. AT&T further states that the FCC requires RBOCs to provide CLECs with the same underlying information that they have in any of their own databases or internal records for pre-ordering loop qualification purposes.⁵¹
64. AT&T contends that Qwest's suggestion to put the spare facilities information in the Raw Loop Data Tool ("RLDT") is not sufficient. CLECs must have access to the same

⁴⁹ AT&T Brief, at p. 18.

⁵⁰ *Id.*, at p. 19.

⁵¹ *Id.*, at pp. 19 and 20.

information as Qwest, not just Qwest's retail personnel, and Qwest cannot digest or filter the information as it proposes to do through the RLDT.⁵²

65. AT&T further contends that CLECs need the same access to information as Qwest engineers have. AT&T is certain that accommodations can be made to insure that no improper access to, or use of, proprietary information results from CLEC access to LFACS.⁵³
66. Covad has agreed with Qwest to continue to work on this issue in an attempt to resolve their differences regarding the accuracy and reliability of Qwest's RLDT.⁵⁴
67. Qwest asserts that the information provided to CLECs in the RLDT meets all of the FCC's requirements and is the same information that is utilized to qualify Qwest's retail DSL service.⁵⁵
68. In addition to the RLDT, Qwest states that it provides access to a wealth of loop makeup information in other tools available to CLECs. AT&T's demand for access to LFACS exceeds the requirements of the Act and the FCC.⁵⁶
69. Qwest further contends that there is no requirement to provide direct access to an ILEC's back office databases, particularly when the information in those systems is made available to CLECs as Qwest does with the RLDT. The information need only be

⁵² *Id.*, at pp. 20 and 21.

⁵³ *Id.*, at pp. 21 and 22.

⁵⁴ Covad Brief, at p. 8.

⁵⁵ Qwest Brief, at pp. 21 and 22.

⁵⁶ *Id.*, at pp. 22-24.

provided to CLECs in substantially the same time and manner as the ILEC makes the information available to itself.⁵⁷

70. With respect to LFACS, Qwest states that its retail representatives only have access to the database during the provisioning process. Retail and wholesale orders follow the same provisioning processes, including the assignment process that occurs in LFACS.⁵⁸
71. In addition, Qwest further contends that LFACS is strictly an assignment tool and as such is not "searchable." There is no way to query LFACS for spare facilities, as AT&T claims it wants to do, without a significant overhaul of the system.⁵⁹
72. Qwest states that direct access to LFACS would provide confidential and proprietary information about both Qwest and other competitive carriers to CLECs, if they were allowed to use it.⁶⁰
73. Qwest will make spare facilities information available in the RLDT to CLECs on an individual and wire center basis no later than December 2001, and hopefully sooner.⁶¹
74. Qwest contends that the CLEC's claim that direct access to LFACS is necessary to determine if customers can be served where IDLC is prevalent is without merit. There already exist tools available to CLECs to obtain the information that they need. The CLECs simply want more than the law requires.⁶²

⁵⁷ *Id.*, at p. 24.

⁵⁸ *Id.*, at p. 24.

⁵⁹ *Id.*, at pp. 24 and 25.

⁶⁰ *Id.*, at p. 25.

⁶¹ *Id.*, at p. 26.

⁶² *Id.*, at pp. 27-29.

Findings and Recommendation:

75. The FCC in the SBC Kansas-Oklahoma § 271 Order,⁶³ clearly requires RBOCs to provide CLECs with the same underlying information that they have in any of their own databases or internal records for pre-ordering, loop qualification purposes. It is imperative that Qwest provide CLECs with all spare facilities data that are available to Qwest in its numerous databases.
76. CLECs need these data in order to have a meaningful opportunity to compete with Qwest. CLECs need the ability to determine if they can provision service in an area that is served by IDLC, just as Qwest engineers do.
77. Qwest has promised to load all spare facilities data into RLDT, thus making this information available to the CLECs. Staff agrees with Qwest that loading all pertinent information into RLDT will provide CLECs with the information they need to make important business decisions, without jeopardizing the confidential nature of the information stored in the LFACS system.
78. Qwest should propose a timetable specifying when all spare facilities data will be available on the RLDT. If these data cannot be loaded and made available in a timely manner (i.e., fully available by year end 2001), Staff recommends that Qwest make LFACS available to CLECs.

⁶³ *SBC Kansas-Oklahoma Order*, CC Docket No. 00-217, FCC 01-29, at ¶ 122.

Impasse Issue No. Loop – 14(b):

Whether Qwest is required to allow or perform a mechanized loop test (MLT) on a pre-order basis. SGAT §§ 9.2.2.8 and 9.2.4.3.

Positions of the Parties:

79. AT&T, supported by Covad and WorldCom, argues that CLECs need the ability to have an MLT performed prior to the provisioning of the loop to verify that the loop will support the services the CLEC intends to provide. Despite Qwest's claims, the MLT is not invasive or disruptive to customer service.⁶⁴
80. AT&T contends that this is demonstrated by the fact that Qwest performed an MLT on every copper loop in its network in order to obtain information to provision its retail DSL service. The information was then made available to CLECs as part of the loop qualification tools.⁶⁵
81. AT&T further contends that Qwest has the ability to perform MLTs on a pre-order basis and CLECs must be given the same opportunity to attain parity. The information provided to CLECs in the Raw Loop Data Tool ("RLDT") regarding MLT is not sufficient. Verizon offers MLT to CLECs as part of its manual loop qualification procedure. Qwest has the ability to perform an MLT on a copper loop connected to its switch at any time and has done so. CLECs are entitled to the same opportunity.⁶⁶
82. Qwest argues that it is not required to make MLTs available to CLECs on a pre-order basis for several reasons. An MLT is a switch-based test that requires the loop to be

⁶⁴ AT&T Brief, at p. 23.

⁶⁵ *Id.*

⁶⁶ *Id.*, at pp. 24-26.

connected to the Qwest switch. No other RBOC provides CLECs with the ability to run MLTs on a pre-order basis, but rather only in connection with a repair function, which is what Qwest provides.⁶⁷

83. Qwest argues that, in addition, an MLT is an invasive test that can result in unnecessary customer disruptions and needless repair calls. Moreover, Qwest does not perform MLTs for itself on a pre-order basis, but only uses it in repair situations.⁶⁸
84. Qwest further argues that the Commission should not order Qwest to provide this capability based upon a misplaced concern by CLECs that Qwest is not working to improve the quality of the information in its databases. Qwest has made a concerted effort to improve, and the quantity and quality of information has grown dramatically over the past year.⁶⁹
85. Qwest contends that the information it provides not only meets the CLECs' demands, but exceeds both what is available from other RBOCs and what Qwest's own retail sales operations receive. The fact that Qwest performed a one-time, region-wide sweep of MLTs to populate databases, that are also available to CLECs, in no way supports the multiple, continuous performance of MLT by, or on behalf of, CLECs.⁷⁰

⁶⁷ Qwest Brief, at p. 30.

⁶⁸ *Id.*, at p. 31.

⁶⁹ *Id.*, at pp. 32 and 33.

⁷⁰ *Id.*, at pp. 34 and 35.

Findings and Recommendation:

86. The fact that it is technically feasible for an MLT to be performed does not mean that MLTs *should* be performed on an on-demand, pre-order basis for CLECs.
87. The FCC requires ILECs to provide CLECs with the same information on a pre-order basis that the ILECs provide to their own operations personnel.⁷¹
88. Qwest does not run MLT on a pre-order basis as part of its normal internal processes: MLT it is a maintenance procedure run to debug loop problems.
89. Therefore, Staff recommends that Qwest not be required to make MLT available to CLECs on a pre-order basis.

Impasse Issue No. Loop – 24:

Whether Qwest's performance regarding the Firm Order Confirmation (FOC) process is satisfactory.

Positions of the Parties/Staff Findings and Recommendation:

90. This issue was at impasse during the workshop. However, the parties agreed that the final results of the FOC trial would be presented and discussed during a subsequent workshop. If the issue remains at impasse, the issue will be briefed separately at that time.

⁷¹ *UNE Remand Order*, at ¶ 427.

Impasse Issue No. Loop – 28(b):

**Whether Qwest's performance regarding address validation is satisfactory.
SGAT § 9.2.4.7.**

Positions of the Parties / Staff Findings and Recommendation

91. While this issue was identified as being at impasse during the workshop, the parties have subsequently agreed that it should be deferred to the evaluation of the ROC OSS Test. However, if AT&T continues to encounter address validation problems that have not surfaced during the course of the Test, AT&T reserves the right to raise this issue again at the conclusion of the ROC OSS Test.

Impasse Issue No. Loop – 31(a):

Whether Qwest's policy for handling held orders related to CLEC requests, as reflected in its "Build Policy" and the SGAT, is appropriate.

Background:

92. Early in 2001, Qwest had a large backlog of CLEC orders and determined that it should establish a uniform policy for CLEC held orders and order rejections. The orders were typically held for one of three reasons: (1) All facilities were exhausted; (2) Facilities were available but were not compatible with the facilities requested; or (3) The order was held for customer (CLEC) reasons. On March 22, 2001, Qwest distributed its new policy to the CLECs through the Co-Provider Industry Change Management Process (CICMP). Subsequently, Qwest reviewed the held orders and after 30 days, absent instructions from CLECs on how to treat their requests, cancelled the pending Local Service Requests

("LSR"). Going forward, Qwest will reject LSRs when it has no facilities available or planned.

Positions of the Parties:

93. AT&T, supported by Covad and WorldCom, objects to the new policy. AT&T asserts that the policy appears to be primarily designed to alleviate a problem with Qwest's performance under the Performance Indicator Definitions ("PID").⁷²
94. Secondly, AT&T does not believe that Qwest has invoked a similar policy for its retail customers and is therefore discriminating against its wholesale customers by refusing to track CLEC held orders and failing to take these held orders into account in developing its construction plans. Qwest should not be permitted to reject LSRs when no facilities are available and should be required to track CLEC held orders.⁷³
95. Qwest argues that CLECs submitted no evidence that Qwest improperly cancelled any of their orders. If a CLEC questioned the availability or compatibility of facilities, the CLEC could, and can, resubmit the order. Qwest's held order/LSR rejection policy is consistent with the obligations each carrier has to determine whether it can provide service pursuant to the Act.⁷⁴
96. Qwest has developed and made available to CLECs loop qualification tools to determine up front, without having to place an LSR, whether there are compatibility problems.⁷⁵

⁷² Qwest Brief, at pp. 39 and 40.

⁷³ *Id.*, at p. 41.

⁷⁴ *Id.*, at p. 40.

⁷⁵ *Id.*, at p. 41.

97. Qwest contends that there is no logical reason for ignoring this readily available information and placing and holding orders that will never be filled. Qwest's held order policy is clear and does not discriminate against CLEC customers.⁷⁶

Findings and Recommendation:

98. If CLECs do not approve of current Qwest processes, they should go through the CICMP process to let Qwest know of their concerns and to work with Qwest to ensure that Qwest procedures are acceptable. Also, the CLECs should take the issue to the ROC to request a PID to address their concern regarding the cancellation of LSRs after 30 days.
99. CLECs should also use available tools to determine whether or not there are compatibility or other problems before submitting an LSR.
100. Based upon the available record, Staff finds that Qwest's policy is an effort to ensure that orders being held hold some promise of being filled.

Impasse Issue No. Loop – 31(b):

Whether Qwest is required to construct loop facilities for CLECs when no facilities are available, and whether Qwest's "Build Policy" is appropriate.

Background:

101. Qwest has added § 9.1.2.4 to the SGAT that specifies that Qwest will notify CLECs of major loop facility builds that exceeds \$100,000 in total cost.

⁷⁶ *Id.*

Positions of the Parties:

102. With respect to the first question, AT&T, Covad, and WorldCom assert that Qwest is required to construct loop facilities for CLECs when no facilities are currently available. Their arguments are essentially the same as those presented for Issue Loop – 9(c). They contend that Qwest is obligated to build UNEs, except dedicated transport, on a nondiscriminatory basis at cost-based rates.⁷⁷
103. With respect to Qwest's current build policy, AT&T and WorldCom assert that Qwest's agreement to build DS0 loops for CLECs if Qwest has an obligation to build under its Provider of Last Resort (POLR) obligations (limited to the first voice grade line per address) does not go far enough and does not comply with the Act and the FCC's rules.⁷⁸
104. AT&T further argues that Qwest will have the ability to get in queue for new facilities ahead of CLECs because Qwest will always possess superior and advanced knowledge regarding its own build plans. Qwest's agreement to notify CLECs about major loop facility builds does not completely alleviate CLEC concerns that Qwest will be able to give its retail customers preferential treatment in the design, development, and access to future facilities builds initiated by Qwest.⁷⁹
105. While accepting Qwest's proposal regarding notification to CLECs of major loop facility builds, Covad still has concerns that Qwest can give preferential treatment to its

⁷⁷ Qwest Brief, at p. 42.

⁷⁸ *Id.*, at pp. 42-44.

⁷⁹ *Id.*

customers regarding future facility builds. Also, because Qwest has refused to provide additional information regarding remote DSLAMs, NGDLC, or related functionalities that may also be deployed, Covad may be precluded from capitalizing on the advanced notification. Until such time as Qwest implements the new notification process, Covad reserves the right to reopen this issue.⁸⁰

106. With respect to the first question, Qwest asserts that it has no obligation under the Act or the FCC's rules to construct loop facilities for CLECs when no facilities are available. Its arguments are essentially the same as those presented for Issue Loop – 9(c).⁸¹ Under its current build policy, Qwest will only build facilities for primary DS0, 2-wire, analog loops. If a CLEC wants something additional built, Qwest will do so if the CLEC submits a request pursuant to the special construction provisions of the SGAT. Qwest will construct loop facilities to end users if it is required to do so to meet its POLR obligations.⁸²
107. If a pending construction job would meet a CLEC's requirements, Qwest will notify the CLEC and hold the order until the construction job is completed. In addition, Qwest's build policies are consistent with those of other ILECs.⁸³
108. Qwest contends that, contrary to the arguments raised in workshop discussion by AT&T and Covad, the fill factor used to calculate Qwest's loop rates in the previous cost docket

⁸⁰ *Id.*, at pp. 42-47.

⁸¹ *Id.*, at p. 42.

⁸² *Id.*, at pp. 42 and 43.

⁸³ *Id.*, at p. 44.

does not require Qwest to build new facilities for CLECs when Qwest's facilities are exhausted. Nor are the costs Qwest incurs to build new facilities for CLECs included in the prices for UNEs. Qwest has made a significant accommodation to CLECs in agreeing to share build information to enable CLECs to determine where facilities may be placed and to plan accordingly.⁸⁴

Findings and Recommendation:

109. As previously stated in Impasse Issue Loop – 9(c), the Telecom Act of 1996 and subsequent FCC guidelines do not require ILECs to build facilities in order to provide a CLEC with an unbundled loop, when no facilities currently exist. Rather, CLECs are encouraged to construct their own networks.⁸⁵
110. Staff believes that local competition will be enhanced by CLECs building their own loop facilities. When a CLEC wants facilities where none currently exist, a CLEC is in just as good a position as Qwest to build those facilities.
111. Qwest has made a decision not to cancel orders when there is a pending build and further it is willing to share information with CLECs in order to help them decide whether or not adequate facilities are in place to accommodate their request. This is an adequate policy and does not need to be revised.

⁸⁴ *Id.*, at pp. 45-48.

⁸⁵ *UNE Remand Order*, ¶ 324; *MTE Order*, ¶ 4.

Impasse Issue No. Loop – 33:

Whether Qwest has taken the necessary steps to prevent its technicians from engaging in anti-competitive behavior.

Positions of the Parties:

112. Covad asserts that Qwest is unable to eliminate anti-competitive and discriminatory behavior by its technicians.⁸⁶ Such behavior damages Covad's relationship with its customers and impedes its ability to compete.
113. Qwest states that it takes Covad's concerns extremely seriously. Qwest points out that it has a Code of Conduct (COC), which employees are required to sign as a condition of employment. Violations are subject to discipline, up to and including termination.⁸⁷ Additionally, Qwest contends that it has taken a number of steps to ensure compliance with the COC. First, its CEO has sent a letter to all employees directing them to review the COC, indicating failure to do so would result in the employee and the employee's supervisor being ineligible for bonuses.⁸⁸ Second, Qwest issued a two-page memorandum to all network employees that described, in detail and in plain English, Qwest's policies against anti-competitive behavior.⁸⁹ Finally, Qwest introduced information at the workshop that identified employee terminations for violations of the COC. In sum, Qwest asserts that its policies and procedures comply with both the letter and the spirit of the Act.⁹⁰

⁸⁶ See *Covad Brief* at p. 30.

⁸⁷ *Qwest Brief* at p. 49.

⁸⁸ *Id.* at pp. 49 and 50.

⁸⁹ *Id.*

⁹⁰ *Id.* at p. 51.

114. Covad points to a number of reasons why Qwest's COC is insufficient. First, its technician union employees are not required to sign the COC.⁹¹ Second, the COC has been in place during Covad's entire relationship with Qwest and has not prevented inappropriate technician behavior. Third, the provisions of the COC are described in terms that are not readily comprehensible to the average person.⁹² Fourth, Qwest's encouragement of its technicians to promote its own services invariably leads to incidents of inappropriate behavior.⁹³ Finally, Qwest's policy to investigate COC violations is ineffective; and there is no assurance that any substantive or meaningful investigation will occur.⁹⁴

Findings and Recommendation:

115. One of the principal goals of the Act is to provide CLECs a meaningful opportunity to compete within the local exchange market. To further this goal, the Act requires a § 271 applicant to show that it offers "non-discriminatory access to network elements," such as the local loop.⁹⁵ The FCC has interpreted this to mean that a BOC must deliver the unbundled local loop to a competing carrier within a reasonable time frame, with minimal service disruptions, making sure it is of the same quality as it would be for its own customers.⁹⁶ It is Staff's opinion that this obligation also includes ensuring the loops are not delivered in an anti-competitive manner. A technician who makes disparaging comments regarding a CLEC while provisioning its loops provides service that is

⁹¹ *Covad Brief* at pp. 30 and 31.

⁹² *Id.*

⁹³ *Id.* at p. 30.

⁹⁴ *Id.* at p. 31.

⁹⁵ Section 271(c)(2)(B)(ii) of the Act.

⁹⁶ 47 C.F.R. §51.313(b); *Local Competition First Report and Order* at ¶¶ 312-316.

discriminatory and anticompetitive, in direct violation of the Act. Staff finds this type of conduct intolerable.

116. Having said this, it is Staff's opinion that Qwest's policies and procedures are sufficient to ensure that it meets this obligation. As described above, Qwest has instituted a Code of Conduct that explicitly prohibits employees from engaging in conduct that is disparaging of CLECs. This is a company wide policy that originates from the highest levels of Qwest management. Furthermore, Qwest has implemented a number of procedures to ensure that the code is properly understood. This includes providing video training to its technicians and issuing a two-page memorandum to all network employees describing, in detail, Qwest's policy and its obligations. Finally, Qwest has instituted appropriate disciplinary procedures for violations of the code, which include possible termination of employment.
117. Covad argues that the Code of Conduct is insufficient to prevent misconduct, pointing to a couple of alleged incidents that have occurred since the Code put into effect. It is Staff's opinion that the alleged incidents are not enough to show a pattern of anti-competitive behavior.⁹⁷ The reality of the situation is that Qwest is a large corporation. While it is Qwest's obligation to ensure that misconduct does not occur, it cannot control

⁹⁷ Staff finds that the additional information provided in *Covad's Motion To Supplement The Record* is irrelevant. It is Staff's opinion that what Covad describes is simply a case of theft, not an example of anti-competitive conduct relevant to the provisioning on unbundled local loops. See *In the Matter of the Investigation into US West Communication, Inc.'s Compliance with the § 271 of the Telecommunications Act of 1996*, Covad Communications Company's Motion For Leave To Supplement The Record For Workshop 5, Docket No. 971-198T (rel. August 1, 2001).

the actions of every person within the organization at all times. Put simply, there is not much more Qwest can do beyond instituting a Code of Conduct, ensuring that its employees understand it, and providing disciplinary action for violations.

118. As an additional measure, Covad asks for verified assurance that appropriate personnel have taken corrective action for every incident reported by Covad. Qwest does not contest this request. On the contrary, Qwest has taken every step necessary to ensure that Covad is kept informed on all investigations into alleged misconduct.
119. In conclusion, Staff recommends that the Commission find Qwest's SGAT language is in compliance with regard to this issue.⁹⁸

Impasse Issue No. Loop – 34(1):

Whether CLECS are required to disclose Network Channel/Network Channel Interface (NC/NCI) codes to Qwest. SGAT §§ 9.2.2.7 and 9.2.6.2.

Positions of the Parties:

120. Rhythms, supported by AT&T, Covad, and WorldCom, argues that NC/NCI codes should not be provided to Qwest by CLECs for several reasons.⁹⁹ First, spectral mask data are proprietary and competitively sensitive and the disclosure of these data to a competitor is unreasonable. Second, the logistical burden in recording these codes would be daunting for both CLECs and Qwest. Third, spectral mask data are also highly

⁹⁸ Staff notes that the FCC has explicitly stated that they will not withhold § 271 authorization based on isolated incidents of allegedly anti-competitive behavior. *SBC Texas Order* ¶ 431. A pattern of discriminatory conduct is necessary to show that the market is not open to competition. The FCC points out that there are other avenues available to CLECs with such claims, including anti-trust and private causes of action. *Id.* ¶ 421.

⁹⁹ Brief of Rhythms Links, Inc. Regarding Loop Impasse Issues, ("*Rhythms Brief*"), June 29, 2001, pp. 10-13.

unreliable. Finally, under Rhythms' proposed standards-based approach, the spectral mask information is completely unnecessary for resolving disputes.

121. Additionally, Rhythms believes that the FCC's *Third Order on Advance Services* established an interim policy that is now unnecessary.¹⁰⁰ It contends that the Network Reliability and Interoperability Council (NRIC) has proposed eliminating the reporting of spectral mask information as unnecessary and will ask that the FCC clarify that any such policy be rescinded.
122. Qwest argues that CLECs are required to disclose NC/NCI codes.¹⁰¹ NRIC recommendations include the use of nine spectrum classes to identify types of advanced services, and Qwest is in the process of implementing the NC/NCI codes established by the Common Language Group for spectrum management purposes. Qwest points out that the FCC has determined that ILECs need information regarding advanced services deployed on their networks. Additionally, it has rejected the position that Rhythms advances and requires CLECs to disclose information on deployment of DSL technology so that ILECs can maintain accurate records and resolve potential disputes. In sum, according to Qwest, disclosure of this information is not optional and is a requirement of the FCC's national spectrum policy.
123. Additionally, Qwest points out that it commits to maintaining the confidentiality of this proprietary information in accordance with FCC rules and the provisions of the SGAT addressing the protection of proprietary information.¹⁰²

¹⁰⁰ *Id.* at p. 13.

¹⁰¹ *See Qwest Brief*, pp. 53-57.

¹⁰² *Id.* at p. 57.

Findings and Recommendation:

124. In its *Advanced Services First Report and Order* the FCC made it clear that ILECs must disclose to requesting carriers information with respect to the number of loops using advanced services technology within the binder and type of technology deployed on those loops.¹⁰³ The FCC stated: "...such disclosure will allow for a more open and accessible environment, foster competition, and encourage deployment of advanced services."¹⁰⁴
125. The FCC subsequently reaffirmed this obligation in its *Line Sharing Order*.¹⁰⁵ It also made it clear in the *Line Sharing Order* that CLECs must provide to ILECs information on the type of service they wish to deploy.¹⁰⁶ The FCC felt that providing this information would encourage the deployment of advanced service by minimizing "conflicts over whether the proposed deployment falls within the presumption of acceptability."¹⁰⁷ Put more simply, providing this information allows both parties to know what technology is already deployed within the loop and what the prospects are of additional deployment significantly degrading the performance of these services. It is clear that this is a reciprocal obligation and should be indicated as such within the SGAT.¹⁰⁸

¹⁰³ *Advanced Services First Report and Order*, ¶ 73.

¹⁰⁴ *Id.*

¹⁰⁵ *Line Sharing Order*, ¶ 204.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ If parties find this obligation "too daunting," they do not have to opt into this provision within SGAT.

126. The FCC has noted that protecting the proprietary rights of carriers is of utmost importance.¹⁰⁹ However, it felt that the benefits of applying these reporting obligations outweighed any burdens on the parties. Staff will not second-guess the FCC's view on this issue. In any event, all parties should be and are required to use such information for network purposes only. Any other use of this proprietary information would subject the offending carrier to legal action.
127. Rhythms argues that providing this information is unnecessary to resolve disputes, because parties that comply with T1.417 standards will not cause disturbances. Staff does not agree with this contention. First, all carriers may not comply with industry spectrum guidelines. Additionally, new types of DSL service may be deployed that may not yet have guidelines designed for them.
128. In sum, Staff recommends that Qwest's SGAT § 9.2.6.2 correctly requires NC/NCI code reporting by CLECs who order xDSL loops. However, Staff recommends that Qwest revise SGAT § 9.2.6.2 to reflect Qwest's reciprocal obligation to provide NC/NCI codes to requesting CLECs. Additionally, Staff recommends that Qwest revise its SGAT to acknowledge that this proprietary information will be used for network purposes only. Staff reserves the right to revisit this issue upon any significant policy changes by the FCC.

¹⁰⁹ *Id.*

Impasse Issue No. Loop – 34(2):

Whether Qwest is required to implement an interim process for spectrum management from remote terminals in advance of T1E1 recommendations on the subject.

Positions of the Parties:

129. Rhythms, supported by AT&T, Covad, and WorldCom, asserts that spectrum disruption can occur with the remote deployment of ADSL or VDSL technologies and that whole neighborhoods may be cut off from being able to obtain advanced services from CLECs.¹¹⁰ Qwest is deploying ADSL and VDSL terminals in remote premises in Colorado. Similar situations can occur with the deployment of “repeated” services.
130. Rhythms acknowledges that, for these two circumstances, there are currently no standards adopted by T1E1. However, Rhythms contends that Qwest mistakenly believes that, in the absence of such standards, it may continue to deploy intermediate devices and remote ADSL that will disrupt other carriers’ services. Additionally, Rhythms argues that such a standard is far off in the future, if ever. T1E1 and NRIC are dominated by ILECs and their equipment Manufacturers, so ILECs maintain virtual veto power over any CLEC-proposed standard. These are existing standards-based approaches which can be used now to assure that all carriers can co-exist in the loop plant. Qwest refuses to use the T1.417 standard as a guideline for deploying intermediate devices and remote DSL.
131. In sum, Rhythms contends that, given that it is technically feasible, there is no excuse for Qwest to continue to deploy ADSL and VDSL in remote terminals that will assuredly

¹¹⁰ *Rhythms Brief*, pp.6-10.

wipe out central office-based CLEC services. It makes no sense to have one rule for central office facilities and another for remote facilities.

132. Qwest argues that there is no reason to rush the judgment on this issue and to require it to implement draft proposals that remain under discussion in industry forums.¹¹¹ It contends that the FCC has designated the NRIC to advise the FCC on spectrum compatibility standards and spectrum management policies and to report to the FCC on issues after receiving input from industry standards bodies, such as the T1E1.4. Additionally, Qwest points out that NRIC's final report to the FCC is due in January 2002 and that the T1E1 continues to discuss the issue of the use of intermediate devices and the remote deployment of DSL.
133. Further, Qwest contends that, when it deploys remote DSL, it locates the remote DSL further out in its network than central office-based ADSL will work. This placement will not cause an interference problem for such services. Qwest will continue to deploy in this way until final standards are developed.
134. In sum, Qwest asserts that the Commission should not to decide an issue that remains under discussion by the industry experts designated by the FCC and that is now only a potential problem for Rhythms.

Findings and Recommendation:

135. It is Staff's opinion that this issue is better left for another forum where it can be examined in a more deliberate manner. Currently there are no industry standards for the

¹¹¹ See *Qwest Brief*, pp. 57-61.

deployment of intermediate devices or remote deployment of xDSL. Staff does not recommend issuing guidelines that have not been thoroughly researched, with input from all the parties. The FCC has charged the NRIC to make a recommendation on this issue.¹¹² The parties can petition the Commission to revisit this issue when such guidelines are released. Therefore, Staff recommends that Qwest's SGAT be deemed in compliance with regard to this issue at this time.

Impasse Issue No. Loop – 34(3):

Whether Qwest is required to transition T1 facilities to other technologies when interference disturbances occur. SGAT § 9.2.6.4.

Positions of the Parties:

136. Rhythms, supported by AT&T, Covad, and WorldCom, argues that the FCC has designated T1s as a “known disturber” and requires state commissions to treat them differently.¹¹³ Rhythms points out that the FCC empowered state commissions to determine how to dispose of existing known disturbers in the network. It contends that the FCC recognized a binder management approach only as an interim measure.
137. Additionally, Rhythms argues that Qwest’s spectrum management proposal utterly fails to address how it intends to eliminate the future deployment of future T1s and to transition existing T1s to less disruptive technologies.¹¹⁴ Qwest suggests that it will abide by future FCC orders on the use of analog T1s in its network. However, the FCC has made it clear that it does not intend to issue new rules on known disturbers because it has

¹¹² See *Line Sharing Order*, ¶¶ 184-187.

¹¹³ See *Rhythms Brief*, pp. 2 and 3.

¹¹⁴ *Id.*, pp. 3-5.

left the issue to state commissions to decide. The FCC has suggested that states can order the sunseting of existing T1s and can block new deployments.

138. As a solution, Rhythms proposes a less drastic alternative that would allow Qwest to leave in place, and continue to deploy, T1s so long as they are not disrupting CLECs' services.¹¹⁵ If disruption occurs, Qwest must immediately transition to another technology that complies with the T1.417 standard. If no appropriate alternative technology exists in a particular case, Qwest could seek a waiver of the requirement from the Commission.
139. Qwest asserts that it is complying with the FCC policy and is appropriately managing its T1s in a way that considers the innovative technology needs of CLECs by segregating known disturbers.¹¹⁶ It contends that its services are not automatically trumping innovative services offered by CLECs. Qwest points out that its practice is to place repeatered services in binder groups by themselves, and to deploy T1 facilities in a separate binder group from other DSL services. Qwest argues that it is not required to deploy Rhythms' preferred technology, so long as the technology Qwest deploys is properly managed. Qwest commits to move to a less interfering technology wherever possible. Thus, there is no basis to require further dislocation of T1 services.

Findings and Recommendation:

140. Section 706 of the 1996 Act instructs the FCC to "encourage the deployment, on a reasonable and timely basis, of advanced telecommunications capability to all

¹¹⁵ *Id.* at p. 5.

¹¹⁶ *See Qwest Brief*, pp. 61-65.

Americans."¹¹⁷ In its *Line Sharing Order*, the FCC decided that this mandate required the establishment of ground rules concerning what technologies can be deployed and who has the ultimate say on deployment issues.¹¹⁸ One of the basic ground rules is "first-in-time," meaning the technology that is deployed within a network first prevails over subsequent interfering technology.¹¹⁹

141. However, the FCC has recognized an exception to the "first-in-time" rule for what is called "known disturbers".¹²⁰ Known disturbers are technologies that are prone to cause significant interference with other services deployed in the network. The FCC felt that allowing known disturbers to prevail in interference disputes would result in the inhibition of the deployment of innovative technologies.¹²¹
142. The FCC has concluded that it is up to the state commissions to decide how to handle the disposition of known interfering technologies.¹²² It has indicated a number of alternatives that state commissions can consider, including binder group management and instituting a sunset period.¹²³ Binder group management allows the ILEC to manipulate the configuration of binder groups in order to eliminate disturbances. This includes segregating known disturbers, such as T1, if necessary. Although the FCC explicitly disapproves of binder group management, it recognizes that in this instance the

¹¹⁷ See 47 U.S.C. § 157.

¹¹⁸ *Line Sharing Order*, ¶ 179 ("While we prefer to rely on natural market forces and mechanisms to address such network interoperability issues, we find that in order to achieve Congress's goals under § 706, under the circumstances at hand we must intervene to facilitate network deployment of advanced services by multiple providers.").

¹¹⁹ *Id.*, ¶ 211.

¹²⁰ *Line Sharing Reconsideration Order*, ¶ 55.

¹²¹ This is because an ILEC's existing network typically consists of T1's, a known disturber. Allowing them to prevail on a first-in-time basis, without further consideration, would preclude the advancement of new technologies. *Id.*

¹²² *Line Sharing Order*, ¶ 218.

¹²³ *Id.*

interference risks associated with mixing known disturbers with other technologies outweighs the risks of anticompetitive segregation practices.¹²⁴

143. The FCC also allows the state commission the latitude to implement a sunset period to phase out a particular known disturber. However, the FCC notes that a sunset period may not be appropriate in all circumstances.¹²⁵ In some areas, T1 deployment may be the only method of providing high-speed transmission. Additionally, transitioning to less interfering technologies could result in the disruption of services for many subscribers. In any event, the FCC concluded that the industry should attempt to "discontinue the deployment of known disturbers" whenever possible.
144. It is Staff's opinion that implementing a sunset period is too drastic a measure at this time and on this record. Such a policy would require Qwest to undertake an extremely expensive and time-consuming process. Additionally, it would cause the disruption of service for many end-user customers. Staff recognizes that the FCC favors the phasing out of known disturbers.¹²⁶ However, Staff feels that the decision to institute such a policy is better left for another docket, where the issue can be examined in more detail.
145. It is Staff's opinion that, in order to gain § 271 approval, Qwest must commit to eliminating interference from known disturbers, specifically its analog T1 service. As the FCC has noted, this can be achieved through segregation of the known disturber, as well as by other interference protection techniques.¹²⁷ Qwest must deploy a different, less

¹²⁴ *Id.*, ¶ 216.

¹²⁵ *Id.*, ¶ 219.

¹²⁶ *Id.*, ¶ 220.

¹²⁷ *Id.*, ¶ 218.

interfering, technology only if segregation does not relieve the interference.¹²⁸ If a less interfering technology is not technically feasible, Qwest may petition this Commission for a waiver. It is Staff's opinion that this resolution is consistent with the "competing goals of maximizing noninterference between technologies and not interfering with subscriber services."¹²⁹

146. Staff recommends that Qwest revise SGAT § 9.2.6.4 accordingly.

Impasse Issue No. Loop – 36:

Whether the standard intervals specified in Exhibit C of the SGAT are reasonable and appropriate.

Background:

147. CLECs propose shorter standard intervals than are specified in the SGAT Standard Interval Guide (SIG), as contained in Exhibit C, for the following categories: (a) 2/4-wire analog voice grade loops; (b) 2/4-wire non-loaded loops, basic rate ISDN capable loops, and ADSL compatible loops that do not require conditioning; (d) DS-1 capable loops, DS-1 capable feeder loop, 2-wire analog distribution loop; (h) repair intervals for basic 2-wire analog loops, line sharing, and line splitting; and (g) loop conditioning.

Positions of the Parties:

148. AT&T, supported by Covad and WorldCom, argues that Qwest must modify its SIG in order to allow CLECs to effectively compete.¹³⁰ It does not agree with Qwest's

¹²⁸ Qwest indicates in its brief that it already implements both these procedures. See *Qwest Brief* at pp. 62 and 63.

¹²⁹ *Line Sharing Order*, ¶ 219.

¹³⁰ See AT&T Brief at pp. 33-42.

contention that the intervals in the SIG were agreed upon as part of the development of PID OP-4 in the ROC OSS Test and that CLECs are foreclosed from requesting revisions in this proceeding. AT&T contends that the SIG was never presented to the ROC TAG for approval; further, the ROC TAG did not formally approve any of the standard intervals in the SIG because it does not control such approval.

149. Additionally, it argues that to the extent standard intervals proposed by Qwest impair the CLEC's ability to meet retail service quality standards imposed by the Commission, Qwest's intervals are improper.¹³¹

150. The CLECs raise a number of specific arguments regarding the intervals. With respect to intervals for categories (a) and (b), (above), they assert that conversions for these loops require simple jumping and migration work and should not take more than three days¹³². The availability of "Quick Loop" for loops with number portability would resolve AT&T's issues with category (a).

151. With respect to the interval for category (d), Qwest originally proposed the intervals that AT&T is requesting. Qwest subsequently extended these intervals, arguing that they are the same as those which exist on the retail side and are thus at parity. AT&T objects to the changes, asserting that Qwest changed its retail intervals in the last year to compensate for poor retail service quality.¹³³ Poor service quality on the retail side should not be used to drive parity decisions on the wholesale side.

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¹³¹ *Id.* at pp. 40 and 41.

¹³² *Id.* at p. 37.

¹³³ *Id.* at p. 38.

152. With respect to the interval for category (h), AT&T states that its proposed 18-hour interval is clearly justified and realistic on the basis of Qwest's demonstrated performance for mean time to restore retail customers (4-8 hours) and wholesale customers (3-9 hours).¹³⁴ Further, Qwest's parity argument, that the performance measure standard of 24-hour intervals for retail and wholesale customers is appropriate, is flawed. It is AT&T's position that parity is measured based upon the actual service Qwest provides to its retail customers, not the standard established by state commissions. If Qwest is consistently beating the 24-hour interval, it is appropriate to lower the interval for purposes of the SGAT.
153. With respect to the interval for category (g), Covad argues that the 15-day interval for conditioned loops is too long, given what must be accomplished.¹³⁵ The first three tasks for conditioning are primarily clerical in nature. The final task, performing the work, can typically be done in an hour. From a practical standpoint, a five-day interval for conditioned loops is eminently feasible and, in fact, Qwest has demonstrated that it can deliver such loops in fewer than 15 days. The only impediment to five-day interval is self-imposed constraints by Qwest.
154. Qwest argues that the intervals in the SIG are appropriate.¹³⁶ It states that the intervals correspond with the ROC PID benchmarks. It believes that the SIG forms an integral part of the ROC testing, particularly PID OP-4. CLECs actively participated in the ROC

¹³⁴ *Id.* at p. 39.

¹³⁵ See Covad Brief at p. 18.

¹³⁶ See Qwest Brief at p. 67.

process to develop PIDs with retail parity or benchmark standards, and no issue was off the table in the discussions. Though the ROC TAG did not work through the SIG item-by-item, Qwest asserts that there is no question that the SIG intervals are integrally related to the benchmarks and the retail parity measures in PID OP-4. The ROC TAG process was exhaustive and was established in collaborative proceedings. The FCC has recognized that standards thus developed give carriers a meaningful opportunity to compete.

155. With respect to the CLECs' contention that the SIG intervals should be revised to be consistent with Colorado's service quality rules, Qwest argues that the Commission should view the intervals in light of the industry consensus that they reflect.¹³⁷ Certain intervals are consistent with the Commission's existing rules. In some cases, the rules do not address the intervals proposed in the SIG, which are more favorable to CLECs as compared to the intervals of other ILECs. In those instances in which the Commission's existing rules require a shorter interval than those included in the SIG, Qwest suggests that the Commission take advantage of the complete and exhaustive industry participation in the ROC process. The Commission can consider future rule changes in light of the ROC process, as it seemed to indicate it might do in staying Qwest's appeal pending the outcome of deliberations in this docket.
156. Finally, Qwest argues that the CLECs have presented no factual evidence supporting their demands for shorter intervals.¹³⁸

¹³⁷ *Id.* at pp. 70-72.

¹³⁸ *Id.* at pp. 75-78.

Findings and Recommendation:

157. As an initial matter, Staff looks to the FCC for guidance on this issue. Section 251(c)(3) of the Act states that ILECs have the responsibility to provide "non-discriminatory access to network elements on an unbundled basis." The FCC has interpreted this to mean that, for those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner" as it provides to itself.¹³⁹ This "parity" requirement obligates an LEC to provision UNEs, such as sub-loops, in a time frame equal to its retail service. If no retail analogue exists, an LEC must provision UNEs in a manner that provides "efficient competitors with a meaningful opportunity to compete."¹⁴⁰ The FCC has indicated that the state commissions have the ability to determine what standard or standards are reasonable under these guidelines.¹⁴¹ The FCC will give deference to standards that have been established through a collaborative process.¹⁴²
158. It is Staff's opinion that to the extent that the SIG intervals are comparable to PIDs established in the ROC OSS Test process, as they are ultimately filed in the Colorado § 271 process and accepted by the Colorado Commission, they should be deemed reasonable. The ROC testing is an open and collaborative process intended to measure Qwest's performance in specific areas. Through the ROC OSS process, the parties have worked together to establish benchmarks that Qwest must meet to show it has opened the

¹³⁹ SBC Texas Order, ¶ 44.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at ¶ 56.

¹⁴² *Id.*

local market to competition. ROC OSS Test participants, including AT&T, had an opportunity to challenge these standards. The FCC has recognized that, where benchmarks are established in the course of collaborative proceedings that permit all interested carriers to weigh in, the benchmarks are presumed to give carriers a meaningful opportunity to compete.¹⁴³

159. At time of the writing of this Staff recommendation, a filing by Qwest for approval of the ROC PIDs for use in Colorado has not yet occurred as required by the hearing commissioner's *Procedural Order*. When that required filing occurs, the Colorado participants may raise issues concerning the appropriateness and/or completeness of the ROC OSS PIDs.¹⁴⁴

160. Staff is troubled by the fact that some of the PID benchmark intervals established in the ROC OSS Test do not comply with Colorado's wholesale service rules.¹⁴⁵ Staff recognizes that the collaborative ROC OSS Test process does not allow for benchmarks tailored to each individual state's service rules. However, this does not make Colorado's wholesale service rules obsolete or irrelevant. To the contrary, where the ROC benchmarks contradict Colorado's wholesale service rules, the rules must prevail in the SGAT unless the Commission has granted a specific rule waiver.¹⁴⁶ Simply put, the rules

¹⁴³ Verizon Massachusetts Order, ¶ 13.

¹⁴⁴ See Decision No. R00-612-I, ("*Procedural Order*"), at ¶¶ 22-24.

¹⁴⁵ See 4 CCR 723-43.

¹⁴⁶ Qwest contends that the Commission rules should not be binding on the SGAT. Staff disagrees. The wholesale service rules have not been stayed by any court and remain the law in Colorado. The Commission cannot approve an SGAT that is conflict with these rules. Staff recommends that Qwest take up this issue in another docket.

are the current law in Colorado. Additionally, these provisions were designed to assist the Commission in implementing the competitive mandates of the Act and of the Colorado Telecommunications Act of 1995, and were established, like the ROC benchmarks, through a collaborative process where all participants had a chance to provide input.¹⁴⁷ It is Staff's opinion that, in situations in which the ROC OSS benchmark intervals are longer than Colorado wholesale service rules, Qwest must adopt the Colorado rule intervals in the SIG or seek a waiver by an appropriate filing.¹⁴⁸

161. In sum, it is Staff's opinion that Qwest must provide service intervals that are at parity with the service it provides itself.¹⁴⁹ If no retail analogue exists, Qwest must provide service intervals equal to the retail benchmarks established in the ROC OSS process as modified by Commission order adopting the benchmarks for use in Colorado. Additionally, these intervals must comply with Colorado's Wholesale Service Rules, found in 4 C.C.R. 723-43, unless waived. Staff recommends that Qwest revise Exhibit C of the SGAT (SIG) accordingly.

¹⁴⁷ See 4-CCR 723-43.

¹⁴⁸ Some CLECs have mentioned that, in some instances, wholesale service guidelines may not allow CLECs to meet retail service guidelines. To the extent that this is true, CLECs can pursue this matter in another docket. As discussed above, Colorado's wholesale service rules were established through a process in which all parties had a chance to provide input.

¹⁴⁹ In its Brief AT&T indicates that, in some instances, parity with Qwest's retail offering may be inadequate. Staff notes that if AT&T believes this to be true it is free to provision its own services.

Impasse Issue No. Loop – 37:

Whether Qwest is required to redesignate interoffice facilities where loop facilities are at exhaust.

Positions of the Parties:

162. Supported by Covad and WorldCom, AT&T argues, that if distribution facilities are at exhaust between two Qwest offices and Qwest receives orders for UNE loops that could be filled by redesignating interoffice facilities to distribution facilities, Qwest should be required to redesignate to meet CLEC demand.¹⁵⁰ AT&T contends that, given Qwest's refusal to build facilities to meet CLEC demand, this requirement makes sense. Additionally, it asserts such a requirement will eliminate any incentive for Qwest improperly to designate facilities to reserve them for Qwest's own use. AT&T points out that Qwest has the discretion to use its facilities however it chooses when the need arises. In sum, AT&T argues that Qwest's policy is contrary to law, effectively allowing Qwest to reserve capacity for itself and denying CLEC access to unused capacity for use as UNE loops.
163. Qwest argues that it does not redesignate interoffice facilities ("IOF") to loops for itself and has no obligation under the Act or FCC rules to do so for CLECs.¹⁵¹ Qwest contends that AT&T's request would be extraordinarily burdensome, given the physical characteristics and configuration of IOF in Qwest's network. Qwest points out that its general practice, as part of its engineering process, is to transition IOF to loop facilities

¹⁵⁰ See AT&T Brief, pp. 42 and 43.

¹⁵¹ See Qwest Brief, pp. 79 and 80.

when an entire IOF copper plant is retired and replaced with fiber, provided the entire copper plant is in good enough condition to use as loop facilities.

Findings and Recommendation:

164. It is Staff's opinion that Qwest need not redesignate interoffice transport facilities when loop facilities are at exhaust. Neither the FCC nor the Act requires Qwest to do this. However, Qwest is required to treat the CLECs in the same manner as it treats itself.¹⁵² As long as Qwest does not provide this redesignation service for itself, it does not have to provide it for any CLEC. AT&T has not presented any evidence to the contrary. [However, Staff is aware of a situation in which the reverse occurred. Qwest redesignated distribution facilities as interoffice facilities in the instance of replacing its interoffice transport facilities to Rico Telephone Company.] It goes without saying that orders for UNE loops that go unfilled because of exhausted distribution facilities will be treated as held orders, and Qwest will be liable to the CLEC for any appropriate remedy including penalties under the Performance Assurance Plan.
165. Therefore, Staff recommends that no further action be taken on this issue.

¹⁵² See 47 C.F.R. § 51.313(b) ("the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements ... shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides to itself"); see also Qwest SGAT § 9.1.2 ("where technically feasible, the access and unbundled network element provided by Qwest will be provided in 'substantially the same time and manner' to that which Qwest provides to itself, or to its affiliates.").

III. CHECKLIST ITEM 2 – ACCESS TO UNBUNDLED NETWORK ELEMENTS

Impasse Issue No. LSPLIT – 1(a) and (b):

1(a): Whether Qwest is required to provide CLECs access to Qwest POTS splitters. SGAT § 9.21.2.1.2.

1(b): If so, whether the splitters must be located as close to the Main Distribution Frame (“MDF”) as possible. SGAT § 9.21.2.1.6.

Positions of the Parties:

166. WorldCom argues that Qwest should not be permitted to offer only CLEC-owned splitter deployment options. It contends that Qwest’s failure to deploy line splitters at the request of a CLEC effectively destroys the utility of UNE-P as a viable means of competing for residential customers who want advanced services.¹⁵³ Furthermore, without the option of an ILEC-furnished line splitter, a CLEC UNE-P provider would have to purchase or augment collocation space, deploy its own splitter, and go through a provisioning process that is lengthy, cost prohibitive, and unduly disruptive to the customer.¹⁵⁴
167. WorldCom also asserts that the Texas PUC determined ruled that line splitters must be located as close to the MDF as possible.¹⁵⁵
168. AT&T argues that Qwest should be required to provide access to outboard splitters in its central offices and remote terminals and make them available to CLECs on a line-at-a-time or shelf-at-a-time basis. It contends that Qwest’s reliance on the *SBC Texas Order* to deny CLECs access to splitters is unwarranted.¹⁵⁶ AT&T points out that the FCC

¹⁵³ See *WorldCom Brief* at p. 8.

¹⁵⁴ *Id.* at p. 9.

¹⁵⁵ *Id.* at p. 10.

¹⁵⁶ See *AT&T Brief* at p. 46.

intends to address this ILEC obligation again in its future reconsideration of the *UNE Remand Order*. Therefore, the *SBC Texas Order* is not dispositive of what the FCC may decide in the future or what state commissions may order to promote competition and the broader availability of advanced services.

169. Additionally, AT&T contends that the Colorado Commission is free to set more stringent requirements than the FCC.¹⁵⁷ AT&T cites the recent Texas PUC arbitration decision as an example, arguing that the Texas PUC found that the provision of splitters by the ILEC is necessary to provide access to the low and high-frequency spectrum portions of the loop in order for a CLEC to provide any telecommunications service that can be offered via that network elements, specifically including DSL services. Furthermore, the Texas Commission found that requiring CLECs to collocate to gain access to the high frequency portion of the loop increases the likelihood and duration of service interruptions, introduces unnecessary delays, and unnecessarily wastes space.
170. Qwest argues that the FCC has specifically rejected the contention that ILECs must provide line splitters to CLECs over UNE-P in both the *SBC Texas Order* and the *Line Sharing Order*.¹⁵⁸ According to Qwest, in the *Line Sharing Order*, the FCC is clear that ILECs have the option of providing line splitters themselves or allowing CLECs to place their splitters in the ILEC's central offices. Qwest asserts that both WorldCom and Covad concede that the FCC has not yet required ILECs to provide access to splitters and that such access is not a condition of obtaining § 271 approval.

¹⁵⁷ *Id* at p. 47.

¹⁵⁸ See *Qwest Brief* at p. 4.

171. Qwest further argues that the decisions of the Texas PUC do not control over FCC orders in this Colorado § 271 proceeding.¹⁵⁹ Additionally, Qwest notes that the Texas PUC decision expressly limited its finding to “stand-alone” splitters, which does not apply to a splitter that has been incorporated into a DSLAM. Qwest notes that in the Multi-state proceeding, the Facilitators refused to require Qwest to purchase and own POTS splitters on behalf of CLECs.
172. Finally, as to WorldCom’s demand regarding placement of splitters as close to the MDF as possible, Qwest states that it does not provide access to Qwest’s splitters, therefore issues regarding placement of splitters are moot.¹⁶⁰

Findings and Recommendation:

173. Staff believes that the FCC's position on this issue is quite clear: ILECs are not currently required to provide access to splitters for § 271 approval. In its *SBC Texas § 271 Order* the FCC explicitly stated:

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 UNE-P. The Commission has never exercised its legislative rulemaking authority under 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...

...The fact remains, however, that SWBT had no such obligation during the period covered by this application and *therefore, any SWBT failure to provide access to the splitter can provide no basis for denying this application.*¹⁶¹

¹⁵⁹ *Id.* at p. 5.

¹⁶⁰ *Id.* at p. 7.

¹⁶¹ *SBC Texas § 271 Order*, ¶¶ 327-328. (emphasis [supplied] [in the original])

From the above statement it is obvious that the FCC will not deny an application based on non-existent obligations.¹⁶²

174. As far as Staff is aware, the FCC has yet to revisit this issue, so Qwest's obligation remains unchanged. Therefore, at present, Qwest's application will not be denied if it does not provide access to its splitters.
175. Staff notes, however, that the FCC's position does not close the issue. AT&T argues that § 251 of the Act allows state commissions to impose more stringent, pro-competitive rules than required by the Act or the FCC.¹⁶³ AT&T relies heavily on the Texas Public Utilities Commission's decision, in which it approved an arbitrator's decision requiring Southwestern Bell Telephone to allow access to its stand-alone POTS splitters.¹⁶⁴
176. While Staff agrees with AT&T that the Colorado Commission is not constrained in this instance by the FCC's rules and has the authority to apply more stringent requirements, Staff does not believe should occur in this forum. The § 271 process is not the place for rulemaking changes. Colorado already has specific guidelines for access to unbundled network elements.¹⁶⁵ They do not include the splitter either as part of the UNE Loop, or as a separate unbundled network element. If AT&T, or any CLEC, wishes to amend

¹⁶² The FCC similarly refused to enforce its line sharing obligations on SBC because the application was filed before the implementation deadline. The FCC stated "...requiring SWBT to supplement the record with new evidence demonstrating its compliance with line sharing obligations...would necessitate an 11th hour review of fresh evidence and dispose of our well established procedural framework." *SBC Texas Order*, ¶ 321.

¹⁶³ See 47 U.S.C. § 251(d)(3) (...the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that - (A) establishes access and interconnection obligations of local exchange carriers).

¹⁶⁴ *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*, Order Approving Revised Arbitration Award, PUC Docket No. 22315 (Rel. March 14, 2001).

¹⁶⁵ See 4 CCR 723-39 (Rules On Interconnection And Unbundling).

these rules under Colorado Law, it can petition the Commission in a separate docket.¹⁶⁶

Or in the alternative, the CLEC may petition the Commission separately under § 251 to impose an obligation upon the ILEC.

177. Staff recommends that Qwest not be required, at this time, to allow access to its POTS splitters.¹⁶⁷ However, Staff notes that the FCC has stated that it intends to reconsider this issue in the future.¹⁶⁸ Therefore, Staff reserves the right to revisit this issue at that time. This recommendation renders impasse issue 1(b) moot.

Impasse Issue No. LSPLIT-2:

Whether Qwest is required to offer its retail DSL service on a stand-alone basis when a CLEC provides voice service over UNE-P.

Background:

178. Qwest only offers its retail DSL product if Qwest is the underlying voice service provider. Additionally it only offers its DSL service on a resale basis when Qwest provides the underlying voice service at retail or a competing carrier provides voice service by resale.

Positions of the Parties:

179. AT&T, supported by WorldCom, argues that Qwest's policy to disconnect its retail Megabit DSL service from a customer who decides to change to a CLEC for local voice

¹⁶⁶ Staff makes no recommendation as to the merits of AT&T's argument.

¹⁶⁷ This decision is consistent with the findings of the Multi-state facilitator. *See Multistate Facilitators Report on Emerging Services* (June 11, 2000) at p. 4.

¹⁶⁸ *See SBC Texas § 271 Order*, ¶ 328.

service is retaliatory, anticompetitive, and a clear barrier to entry.¹⁶⁹ It asserts that the only reason for Qwest to walk away from a lucrative business on a loop that is already DSL-conditioned and in-service is to discourage its customers from switching their local service to a CLEC. In AT&T's opinion customers should have the option to maintain their existing Megabit service or to switch to another DSL provider. Additionally, according to AT&T, neither the *SBC Texas Order* nor the *Line Sharing Reconsideration Order* is dispositive on this issue; and neither precludes the Colorado Commission from reaching a different conclusion, which is precisely what AT&T urges the Commission to do.

180. Qwest contends that it has no obligation to provide its retail DSL service on a stand-alone basis when the CLEC provides voice service over UNE-P.¹⁷⁰ According to Qwest, in the *SBC Texas Order* the FCC ruled that the ILEC has no obligation to provide xDSL service to customers who choose to obtain voice service from a competitor that uses UNE-P. In addition, Qwest asserts, in the *Line Sharing Reconsideration Order* the FCC upheld this concept. Finally, Qwest argues that its policy does not constitute a barrier to entry. A CLEC may provide its own DSL service to its voice customer, or may choose to resell Qwest's voice and DSL services, or the voice customer can obtain DSL service from another provider. Additionally, Qwest's retail DSL product is merely a competing product in the broadband market, a market dominated by cable modem service and in which Qwest cannot exercise market power.

¹⁶⁹ See *AT&T Brief* at pp. 50-52.

¹⁷⁰ See *Qwest Brief* at pp. 7-10.

Findings and Recommendation:

181. Staff is of the opinion that the FCC is clear on this issue: ILECs are not required to provide xDSL service when they are no longer the voice provider. The FCC explicitly stated in the *Line Sharing Reconsideration Order* that, "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 no longer the voice provider."¹⁷¹ However, the FCC's statement was strictly limited to the context of the *Line Sharing Order* and it noted that this action could still be a violation of §§ 201 and/or 202 of the Act.¹⁷² The FCC urged AT&T to take this issue up in another forum.
182. Staff questions AT&T's claim that Qwest's actions are anticompetitive and a barrier to entry. Admittedly, there may be a scenario in which a customer would be uneasy about switching voice services because of fear losing Qwest-provided DSL service. This is called a switching cost and is very common in a free-market economy.¹⁷³ Staff does not feel that in this situation Qwest's action represents an anti-competitive practice. There are other options available to the end-user, and it is up to the CLEC to point this out. The CLEC may provide the DSL service itself, the customer can choose from another competing provider, or the end-user can even elect another form of broadband service. From Staff's viewpoint, Qwest's loss seems to be CLEC's gain. When Qwest willingly gives up a customer, the CLECs should be happy to fill the void.

¹⁷¹ *Line Sharing Reconsideration Order* ¶ 26.

¹⁷² *Id.*

¹⁷³ For example, losing a long held e-mail account is a cost of switching ISPs. Staff does not believe that AT&T would suggest that AOL be forced to continue providing e-mail to customers it loses.

183. In sum, Staff finds it a difficult and inappropriate to compel Qwest to continue providing DSL service in this instance. Absent explicit and concrete evidence of anti-competitive conduct, Staff will not interfere with the marketing practice of a company. Therefore, Staff recommends that Qwest not be required to provide DSL service on a stand-alone basis when a CLEC provides voice service.
184. This recommendation is consistent with the FCC's decision in the *SBC Texas Order*. In dismissing SBC's obligation to provide xDSL service, the FCC stated that "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."¹⁷⁴ The FCC concluded that this type of conduct was not discriminatory.

Impasse Issue No. LSPLIT-12:

Whether Qwest is required to change SGAT references to "voice" services and "data" services to "low frequency" and "high frequency" services. SGAT §§ 9.21 and 9.1.13.

Positions of the Parties:

185. AT&T, supported by WorldCom, asserts that the use of the terms "voice" and "data" in the SGAT creates a needless presumption that the low and high frequency portions of the loop will each be used exclusively for voice or data services.¹⁷⁵ CLECs point out that "voice" or "data" can be carried over any frequency. AT&T proposes language for inclusion in the SGAT that would clarify that CLECs may provide voice or data services over a loop without restriction to the low or high frequency portion of the loop.

¹⁷⁴ *SBC Texas Order* ¶ 330.

¹⁷⁵ See *AT&T Brief* at p. 53.

186. Qwest indicates a willingness to consider proposed clarifying language from AT&T, which language had not been provided before briefs were filed. Absent such language, Qwest argues that the FCC has used the terms "voice," "data," and "xDSL" service in connection with the loop and in the line splitting context.¹⁷⁶ Qwest uses these terms in its SGAT and believes that they are consistent with the FCC's terminology and that they are an accurate reflection of Qwest's line splitting obligation.

Findings and Recommendation:

187. In the Washington workshop the parties agreed to the following language. They now propose this language be adopted in Colorado.¹⁷⁷

9.1.13 Notwithstanding any reference, definition or provision to the contrary, a CLEC may provide any technically feasible data or voice telecommunications service allowed by law over any loop or loop portion of a UNE combination, including without limitation, "voice" services over high frequency portions of any loop or "data" services over any low frequency portion of any loop, provided such services do not interfere with "voice band" or "data band" transmission parameters in accordance with FCC rules as more particularly described in this Agreement. Any related equipment provided by CLEC to deliver telecommunications services contemplated by this section must comply with appropriate ANSI standards such as T1.417 and T1.413. Other references to the voice or voice band portion of the loop in this Agreement will mean the low frequency portion of the loop.

188. Staff recommends that Qwest incorporate this language into the SGAT.

¹⁷⁶ See *Qwest Brief* at p. 17.

¹⁷⁷ E-mail from Joanne Ragge, *Qwest Communications*, to the § 271 E-mail List (August 9, 2001); E-mail from Rebecca B Decook, *AT&T Communications*, to the § 271 E-mail List (August 10, 2001).

Impasse Issue No. LSPLIT-20:

Whether the exceptions to the hold-harmless liability provision of SGAT §§ 9.21.7.3 and 9.24.7.3 are appropriate.

Background:

189. The parties have reached agreement on the SGAT provisions that allow CLECs or DLECS, as customers of record, to designate authorized agents to act on their behalf with Qwest on line splitting and loop splitting matters. At issue here is the last phrase of the two SGAT sections that established an exception to the hold-harmless provision. The phrase at issue currently reads: "...unless such access and security devices were wrongfully obtained by such person through the willful or negligent behavior of Qwest."

Positions of the Parties:

190. AT&T agrees that Qwest should not be held harmless where it has culpability for the unauthorized use of a CLEC's security devices. However, AT&T maintains that only a showing of Qwest's willfulness or negligence is appropriate and that a CLEC need not demonstrate that the third party also acted wrongfully.¹⁷⁸ Therefore, AT&T asserts that the word "wrongfully" should be stricken from these SGAT sections. Requiring an additional demonstration of a third party's wrongful behavior reduces the incentives and pressures on Qwest not to act willfully or negligently.
191. Qwest argues that deletion of the word "wrongful" would render the hold harmless provision meaningless.¹⁷⁹ It asserts that every time that Qwest processes a CLEC's

¹⁷⁸ See *AT&T Brief* at pp. 55 and 56.

¹⁷⁹ See *Qwest Brief* at pp. 19-22.

request for access from an authorized agent, Qwest is "willfully," or deliberately and intentionally, providing access. Qwest would be unprotected every time it "rightfully" provides access. On the other hand, where Qwest may have been careless but nonetheless provided access to a person the CLEC has authorized, Qwest could also be held liable. While the conduct may have been technically negligent, Qwest did exactly what the CLEC asked it to do. Qwest asserts that the word "wrongful" must be retained.

Findings and Recommendation:

192. As an initial matter, Staff notes that this dispute seems to turn on the interpretation of the term "willful." According to *Merriam-Webster's Collegiate Dictionary*, the meaning of the term "willful" is "done deliberately; intentional."¹⁸⁰ Similarly, *Black's Law Dictionary* defines "willful" as: "Proceeding from a conscious motion of the will; voluntary; knowingly deliberate."¹⁸¹ It is worth noting that *Black's* also includes in the definition "premeditated; malicious; done with evil intent."¹⁸² However, the Supreme Court has clarified this apparent discrepancy by stating: "In civil actions, [willfully] often denotes an act which is intentional, or knowing, or voluntary, as distinguished from accidental. But when used in a criminal context it generally means an act done with a bad purpose."¹⁸³ Therefore, it is Staff's opinion that, in this civil context, it is reasonable to interpret to the term "willful" simply to mean intentional conduct.

¹⁸⁰ See *Merriam-Webster's Collegiate Dictionary*

¹⁸¹ *Black's Law Dictionary* (6th Edition) at p. 1599.

¹⁸² *Id.* at p. 1600.

¹⁸³ *United States v. Murdock*, 290 U.S. 389, 394, 395 (1933).

193. Given the above interpretation, it is Staff's opinion that Qwest's SGAT is satisfactory. Staff feels that, for Qwest to be liable for the acts of a third party, in this circumstance, it is reasonable to require that there should be some "wrongful" act on Qwest's part. In the context of this clause, this means that it allows a third party to obtain access "wrongfully." If Qwest allows a third party to obtain access "wrongfully," it evidently committed a "wrongful" act itself.¹⁸⁴ Staff believes that, at the very least, this must be a pre-requisite to finding Qwest liable.
194. Staff sees the term "wrongfully" as necessary to protect Qwest from unwarranted liability. The elimination of the word "wrongfully" from the phrase potentially makes Qwest liable for the acts of third parties that received their access "rightfully." In this scenario Qwest would not have committed an act that should incur liability, since the party that received access was supposed to receive access.¹⁸⁵ Qwest can hardly be found liable for any third party acts in this instance.
195. AT&T suggests that the use of the term "willful" remedies this problem. It argues that a proper construction of the clause only makes Qwest liable for actions of third parties who obtain access through Qwest's misconduct, which must be either negligent or "willful." However, as we determined above, "willful" simply means intentional. Therefore Qwest would be liable in *all* instances when it intentionally (willfully) grants access to third parties. Again, holding Qwest liable for the actions of third parties for whom they intentionally and correctly granted access hardly seems right.

¹⁸⁴ Whether their conduct was intentional, negligent, or reasonable is irrelevant.

¹⁸⁵ Staff questions how Qwest could be guilty of any misconduct, negligent or otherwise, when a third party is "rightfully" granted access.

196. In sum, Staff recommends that the Commission deny AT&T's proposal to eliminate the term "wrongfully" from the phrase "...unless such access and security devices were wrongfully obtained by such person through the willful or negligent behavior of Qwest." found in §§ 9.21.7.3 and 9.24.7.3.

Impasse Issue No. LSPLIT – 22:

Whether Qwest is required to provide line splitting on all types of loops and resold lines.

Background:

197. Four separate impasse issues were consolidated for consideration here. Those impasse issues are:
- a) LSPLIT – 6 (Loop Splitting)
 - b) LSPLIT – 7 (Line Splitting over EELs)
 - c) LSPLIT – 8 (Line Splitting over all UNE Combinations that include a loop)
 - d) LSPLIT – 9 (Line Splitting over Resold Lines).

198. Qwest has agreed to provide line splitting for loops provided with UNE-P currently and with UNE loops in the future.

Positions of the Parties:

199. WorldCom contends that Qwest's attempt to identify loop splitting as a specific product in the SGAT implies that it is something different from what the FCC describes in its line

splitting orders.¹⁸⁶ WorldCom has reviewed the relevant FCC orders and finds no reference to loop splitting, EEL splitting or any other form of splitting other than line splitting. Therefore, WorldCom argues that the FCC line sharing orders should govern all of Qwest's named products.

200. AT&T, supported by Covad, agrees that Qwest should be required to provide line splitting on all forms of loops.¹⁸⁷ AT&T points out that, in its *Line Sharing Reconsideration Order*, the FCC confirmed that line splitting must be made available on UNE-P and that the requirement to provide line sharing and line splitting applies to the entire loop. Additionally, AT&T points out that the FCC has been clear that line splitting is part and parcel of the access a CLEC obtains when it leases a UNE. Therefore, CLECs should have broad access to use all of the features and functionalities of the loop, and ILECs may not impose any limitations on the use of the loop. In sum, AT&T contends that Qwest must be required to make line splitting available on all loops as a standard offering on an unlimited basis and that Qwest cannot be allowed to limit its line splitting obligation by the terminology it uses to define its offerings in the SGAT.
201. More specifically, AT&T argues that Qwest must make line splitting available on EELs.¹⁸⁸ It believes that CLECs should not be required to use the time consuming special request process to implement line splitting for EELs. Additionally, it contends that Qwest should not be allowed to use the lack of demand for splitting with EELs as an excuse for not developing a standard offering.

¹⁸⁶ See *WorldCom Brief* at p. 10.

¹⁸⁷ See *AT&T Brief* at pp. 56-62.

¹⁸⁸ *Id.* at pp. 60 and 61.

202. Covad raises the issue of whether Qwest is obligated to provide line splitting over both copper and fiber loops.¹⁸⁹ Covad argues that this issue is similar to Impasse Issue No. LS-18, covered in Workshop 3, and agrees to defer to the Commission's decision there.
203. Qwest argues that the FCC has established that Qwest's line splitting obligation is to permit competing carriers to engage in line splitting over UNE-P where the competing carrier purchases the entire loop and provides its own splitter.¹⁹⁰ It points out that, although the FCC does not impose a clear obligation to do so, Qwest has agreed to develop a standard offering for loop splitting and to work with CLECs for EEL splitting on a special request basis. Since there are no industry standards for loop splitting, Qwest says it will work collaboratively with CLECs to define the product offering and develop an implementation schedule.
204. Concerning line splitting with EELs, Qwest contends that it is only required to offer products where there is a current or reasonably foreseeable demand for such products.¹⁹¹ It does not believe that there is such a demand at present. Qwest will revisit the issue if demand increases sufficiently.
205. Qwest argues that the CLEC claim that Qwest is obligated to provide line splitting over any UNE combinations that include a loop is unfounded and is based on allegations, without definition of further obligations for line splitting.¹⁹²

¹⁸⁹ See *Covad Brief* at p. 21.

¹⁹⁰ See *Qwest Brief* at pp. 10-17.

¹⁹¹ *Id.* at p. 14.

¹⁹² *Id.* at p. 16.

206. For resold services, Qwest argues that it has no obligation to provide combinations of UNEs with resale products and that there is no evidence of any demand for splitting resold lines.¹⁹³ Any potential demand for such a product could be satisfied with other existing Qwest product offerings. Qwest says it will not offer line splitting over resold lines.

Findings and Recommendation:

207. It is Staff's opinion that the "line-splitting" obligation is not limited to UNE-P loops. A fair reading of *Line Sharing Reconsideration Order* indicates that the line-splitting obligation generally extends to the unbundled local loop in all contexts. In the *Line Sharing Reconsideration Order* the FCC noted that its rules require ILECs to allow "access to unbundled loops in a manner that allows the competing carrier to provide any telecommunications service that can be offered by means of that network element."¹⁹⁴ Interpreting this obligation to encompass line splitting, the FCC stated: "incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop."¹⁹⁵ The FCC did not limit this obligation to a specific type of unbundled loop product.

208. Staff notes that the FCC does explicitly refer to ILEC obligation to provide line-splitting in the UNE-P context.¹⁹⁶ Here the FCC was responding to AT&T's request for

¹⁹³ *Id.*

¹⁹⁴ *Line Sharing Reconsideration Order* at ¶ 18 .

¹⁹⁵ *Id.* at ¶ 18.

¹⁹⁶ *Id.* at ¶ 19.

clarification as to whether the line-splitting obligation extends to UNE-Ps. Staff feels that this shouldn't be interpreted to encompass an ILEC's entire obligation. To the contrary, Staff feels that if the line-splitting obligation extends to UNE-Ps, there is no reason it should not also extend to UNE-Cs and EELs.¹⁹⁷ In all of these cases CLECs lease the loop facilities and they should be allowed to use the full features and functionalities as they choose.

209. Loops - As stated above, it is Staff's opinion that the FCC has made it clear that Qwest has an obligation to provide line splitting over the UNE Loop. To some degree Qwest appears to concede this fact and provides such a product, labeled as "loop splitting."¹⁹⁸ However, AT&T argues that this "paper promise" is insufficient. Staff agrees that Qwest must show that it has gone beyond paper promises and demonstrate that it complies with its SGAT before the § 271 application can be approved. Therefore, Staff feels that Qwest must make a definite commitment to have this product available before approval and must make this product offering measurable under the ROC OSS testing.
210. EEL - Qwest agrees in its brief that EEL splitting is possible and that Qwest will provide it on a special request basis.¹⁹⁹ However, Qwest has limited this offering, arguing that it is required to provide products for which there is not a "reasonably foreseeable demand." Staff does not agree. First, Qwest is required to comply with the FCC's regulations, regardless of demand. As noted above, it is Staff's opinion that this includes EEL

¹⁹⁷ As noted below, Staff disagrees with Qwest's lack of demand argument.

¹⁹⁸ See SGAT § 9.24.

¹⁹⁹ See *Qwest Brief* at p. 15.

splitting. The FCC refers to an EEL as an "unbundled loop-transport combination."²⁰⁰ By definition it includes a local loop, subject to the line splitting obligations. Second, Staff is of the opinion that demand for EEL splitting *is* reasonably foreseeable. Before the Supreme Court decision in *Iowa Utilities Bd.* reinstated the ILEC obligation to provide UNE combinations, EELs were ordered by CLECs as private lines.²⁰¹ These private lines are now being converted to EELs. As the conversion progresses, the demand for EEL splitting should increase. Additionally, demand should increase once an EEL splitting product becomes available that CLECs could request and rely on.

211. UNE Combinations - Qwest argues that requiring line splitting over all UNE-Cs forces on it undefined obligations. This is not correct. As we have indicated, Qwest has a defined obligation to provide line splitting over the unbundled local loop.
212. Resale - Staff agrees with Qwest that the line splitting obligation does not extend to resale. The line-splitting obligation extends to UNE loops and the resale product is not a UNE. This issue is not addressed by the CLECs and does not appear to be a point of contention.
213. Additionally, it is Staff's opinion that Qwest may continue to refer to line splitting of UNE loops as "loop splitting." As Qwest has indicated, there is an administrative need to keep the products distinguished from each other. Staff feels that irrespective of how Qwest names its products, the obligation remains the same. As Shakespeare once wrote,

²⁰⁰ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications act of 1996*, Supplemental Order Clarification, CC Docket No. 96-98 (rel. June 2, 2000) at ¶¶ 21, 22, and 28.

²⁰¹ *AT&T Corporation v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999).

"What's in a name? That which we call a rose by any other name would smell as sweet."²⁰²

214. For the above-stated reasons, Staff recommends that Qwest revise its SGAT to set forth its obligation to provide line splitting available on all UNE loops and UNE loop combinations. Additionally, Qwest should make a definite commitment as to when its "loop-splitting" and "EEL splitting" products will be available and make the product offerings measurable under the ROC OSS testing.

Impasse Issue No. NID – 1:

Whether Qwest is required to make the Network Interface Device ("NID") available to CLECs on a stand-alone basis when Qwest owns the inside wire beyond the terminal. SGAT § 9.5.1.

Positions of the Parties:

215. AT&T initially argues that Qwest must make the NID available on stand-alone basis in all circumstances.²⁰³ Additionally, it argues that Qwest's SGAT definition of what the NID encompasses is too restrictive.²⁰⁴ AT&T asserts that the FCC has directed that all of the features and functions of the NID must be available to CLECs, not merely the NID terminal. Furthermore, it believes that this obligation may extend to certain downstream components that may include wiring, protectors, and other equipment. AT&T contends that Qwest violates this directive because, where Qwest owns the on-premises wiring,

²⁰² Romeo and Juliet, act 2, sc. 2, l. 43-4.

²⁰³ See AT&T Brief at pp. 63 and 64.

²⁰⁴ *Id.* at p. 69.

Qwest will not offer the NID as a stand-alone product. In such cases the NID is only available as a component of Qwest's sub-loop product. In conclusion, AT&T asserts that it is not attempting to "get the sub-loop for free," but rather only seeks that to which it is entitled (i.e., access to all the components that constitute the NID and not limited to the terminal).

216. Qwest argues that it need not offer stand-alone access to the NID when it owns inside wiring beyond the NID terminal.²⁰⁵ It states that the FCC has 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 the particular NID. Thus, Qwest believes that the FCC created a distinction between the unbundled NID (defined as the demarcation point) and the functionality of the NID (which is included in the subloop elements CLECs purchase). Qwest argues that, by ordering a NID that contains Qwest-owned inside wire, the CLEC is actually requesting access to sub-loops, which includes the features and functionalities of the NID. Qwest feels that the SGAT sections on sub-loops appropriately apply in this situation.

Findings and Recommendation:

217. It is Staff's opinion that the FCC's directives are clear on this issue. In its *Local Competition First Report and Order*, the FCC concluded that ILECs must offer unbundled access to the NID.²⁰⁶ The FCC later defined the NID to include "...all features, functions, and capabilities of the facilities used to connect the loop distribution

²⁰⁵ See Qwest Brief at pp. 24-27.

²⁰⁶ *Local Competition First Report and Order* ¶ 392.

plant to the customer premises wiring, regardless of the particular design of the NID mechanism."²⁰⁷ Quite simply, the FCC determined that the unbundled NID is any device used to connect loop facilities to customer premises wiring.²⁰⁸ It defined the NID in this broad manner to ensure CLECs access to NIDS as technologies advance. *However, the FCC explicitly declined to include inside wiring in the definition of the NID or to include the NID as part of any sub-loop element.*²⁰⁹ This policy was meant to keep the NID as an independent unbundled network element, giving CLECs "...flexibility in choosing where to best access the loop."²¹⁰

218. Therefore, it is Staff's opinion that Qwest should make NIDs available on a stand-alone basis in all instances, including when Qwest owns the inside wire beyond the terminal. As stated above, the FCC has made it clear that the NID is an independent UNE and that access to the NID is necessary to allow CLECs flexibility in choosing their point of access. This flexibility promotes facilities based competition by allowing CLECs to efficiently connect their facilities to Qwest's loop.

219. However, Staff feels that AT&T is incorrect in its contention that Qwest owned sub-loops should be included within the definition of the NID. Staff notes that the FCC has explicitly stated, "...we reject arguments that we should include inside wiring in the definition of the NID."²¹¹ Thus, a CLEC who chooses to access an end-user customer

²⁰⁷ *UNE Remand Order* ¶ 233.

²⁰⁸ It is Staff's opinion that this does not require the NID to be the demarcation point where customer premises facilities begin. On the contrary, Staff feels that the FCC's definition encompasses all devices used to connect loop facilities to inside wiring, *regardless of the design of the mechanism.*

²⁰⁹ *UNE Remand Order* ¶ 235.

²¹⁰ *Id.*

²¹¹ *Id.* ¶ 235.

through a NID terminal that contains Qwest owned sub-loops beyond the terminal must purchase Qwest's sub-loop product on a separate basis.

220. For the above-stated reasons, Staff recommends that Qwest amend SGAT § 9.5.1 by deleting the sentence: "If a CLEC seeks to access a NID as well as a subloop connected to that NID it may do so only pursuant to § 9.3."

Impasse Issue No. NID – 2:

Whether it is permissible to remove Qwest's distribution connection wires from the protector field of the NID. SGAT §§ 9.5.2.5, 9.5.3, and 9.5.2.1.

Positions of the Parties:

221. AT&T, supported by WorldCom, contends that the removal and "capping off" of Qwest's connections from the protector field of the NID is not in violation of the National Electrical Safety Code ("NESC") or the National Electric Code ("NEC"). AT&T cites a prior Bell System practice in support of its belief that such capping off is permitted. Such action is necessary to free up capacity on the NID so that CLECs can provide service to customers.
222. Qwest argues that such action would leave Qwest's distribution facilities unprotected and would be in violation of the NESC and NEC, which require surge protectors or over voltage protectors on communications conductors. It would also create risks to the network and to employees working on the terminal. Qwest does not believe that the Commission should rely on an old Bell System practice rather than the current national electric standards to resolve this issue.

Findings and Recommendation:

223. First, it should be noted this Commission has adopted the National Electric Safety Code as its minimum construction standard.²¹² Therefore, all local exchange carriers, incumbent or new entrant competitors alike, must comply with that standard.
224. Next, the last sentence of SGAT § 9.5.2.5 (the sentence that is at issue) exclusively refers to telecommunications cables **ENTERING** a Qwest NID. What the CLECs are asking is that the SGAT be modified to allow them to cap off the drop wire **OUTSIDE** of the NID at the premises. The National Electric Safety Code applies when the telecommunications cables are terminated in a NID that: 1) can be expected to be accessed by other than qualified persons; and 2) where there is a potential of lighting strikes. Staff recommends that Qwest's language be found appropriate in that circumstance. What is left unaddressed by the current SGAT § 9.5.2.5 is the issue at impasse.
225. There are several important concepts involved in resolving this issue. It seems inappropriate to have one carrier making material changes in the physical plant owned by another carrier, particularly when such changes may involve safety issues. The carrier owning the physical plant is ultimately responsible for the integrity and safety of the plant that it owns. Further, the carrier requesting the rearrangement or modification should be financially responsible for such construction activity. Finally, the ultimate result must meet the minimum safe standard for construction as adopted by this Commission.

²¹² See 4 *Code of Colorado Regulations* 723-1, Rule 14.1.

226. Qwest has agreed to allow access to its NIDs to allow CLECs to use any unused protectors. It appears from the SGAT language that, when a CLEC has requirements in excess of the number of spare protector capacity of the NID, a construction request would must be submitted by the CLEC to Qwest and that Qwest would perform such necessary activities on a time and materials basis.²¹³ Different physical circumstances at different premises will require more than one feasible construction solution. For example, Qwest may install a larger capacity NID. To free capacity in the existing NID, in an overhead construction application, Qwest may disconnect and remove its drop wire. In underground buried cable situations, Qwest might disconnect its drop from the distribution cable, leaving it in place and ground the drop conductors either at the pedestal or at the premises. The decision of which alternative construction to deploy, and the ultimate responsibility for safety rests, with the carrier owning the physical plant. Qwest's determination that the capping off of its drop wire is an unsafe practice that it is not willing to accept is a reasonable decision within the bounds of utility management discretion.
227. Staff recommends that Qwest's SGAT §§ 9.5.2.5 and 9.5.3 are adequate and that SGAT § 9.5.2.1 does not require revision.

²¹³ SGAT § 9.5.3.

Impasse Issue No. NID – 7:

Whether the CLEC is required to pay Qwest for access to the NID protector field, if a CLEC has its own protector in place but can only gain access to a customer's inside wire through Qwest's protector field. SGAT § 9.5.3.

Background:

228. SGAT § 9.5.3 requires CLECs to pay for access to Qwest owned protector fields.

Positions of the Parties:

229. AT&T argues that it is improper to charge CLECs for access to the Qwest protector field when Qwest has installed its NIDs in such a way that CLEC access to the customer's inside wire is not possible except via the Qwest NID protector field.²¹⁴ AT&T contends that, in such a circumstance, the CLEC has no interest in the protector functions of Qwest's NID, but, through no fault of the CLEC, has no other viable means of access to the customer. AT&T points out that the FCC's rulings have largely been designed to ensure that the CLEC has access to the end-user customer.

230. Qwest argues that it should be able to charge CLECs for access to its NID protector fields.²¹⁵ It contends that if a CLEC elects to install its own NID, even in circumstances in which it will need to access the protector field of Qwest's NID in order to serve the customer, that is the CLEC's decision. Qwest asserts that, once the Qwest protector field

²¹⁴ See AT&T Brief at pp. 73 and 74.

²¹⁵ See Qwest Brief at p. 29.

is accessed, access to the customer's inside wire is no longer available to Qwest or another CLEC. In conclusion, Qwest argues that this is a lease of Qwest's equipment and that Qwest is entitled to reimbursement.

Findings and Recommendation:

231. Section 251(c)(3) of the Act requires incumbent telecommunications carriers to provide unbundled access to network elements. The FCC has concluded that this obligation includes providing unbundled access to the NID.²¹⁶ This mandate was the result of the FCC's concern over the CLECs' ability to access inside wiring.²¹⁷
232. It is Staff's opinion that Qwest should not be allowed to charge for use of the protector field to access end-users inside wire in situations in which CLECs supply their own NID and protector. In these situations a CLEC is not purchasing or leasing Qwest's equipment, the CLEC is simply attempting to access an end-user customer through the only "last-ditch" method available. Under this circumstance, forcing CLECs to pay for access to the protector field would, in effect, create a "toll" for end-user access.²¹⁸ The potential for abuse by Qwest in this situation is substantial. By installing NIDs in a manner that requires CLEC to purchase access to the protector field, Qwest could create a choke point that inhibits competition by limiting access and raising the CLECs cost of connection. This is exactly what the FCC feared, and sought to avoid, when it ordered the NID to be unbundled in the first place.

²¹⁶ *Local Competition First Report and Order* at ¶ 392.

²¹⁷ *Id.*

²¹⁸ This would be analogous to forcing CLECs to purchase the local loop from Qwest, even though they supplied their own loop.

233. In sum, Staff recommends that Qwest revise SGAT § 9.5.2.5 to include the sentence: "No charge for this functionality will apply to a CLEC that supplies its own electrical protection for its facilities."²¹⁹

IV. CHECKLIST ITEM 11 – LOCAL NUMBER PORTABILITY

Impasse Issue No. LNP – 1:

Whether Qwest is required to provide an automated process to verify that CLEC-provided loops are ready for porting. SGAT §§ 10.2.2.1, 10.2.2.4.1, and 10.4.2.2.4.1.

Positions of the Parties:

234. AT&T argues that to avoid customer service outages, coordination must occur in Local Number Portability ("LNP") conversions and that some automated verification process needs to exist to ensure that the port has been activated by the CLEC before Qwest disconnects its loop.²²⁰ It feels that, from a competitive standpoint, smooth conversions are critical to competition. AT&T points out that the issue here is one that largely affects residential end-users and is particularly important to AT&T and Cox, the only two CLECs who are providing facilities-based competition in the residential mass market in Qwest's region.
235. AT&T proposes that Qwest develop an automated process, similar to the one used by BellSouth, to initiate a query or test call to confirm that the CLEC has activated the

²¹⁹ Staff notes that both parties have admitted in Workshop 5 that the situation in which a CLEC requires access to the protector field is "rare," thus restricting access fees in this situation should not impose any undue burden on Qwest.

²²⁰ See *AT&T Brief*, pp. 77-85.

port.²²¹ While Qwest has proposed a mechanized solution that would delay the disconnection of its loop until 11:59 p.m. of the day after the port is scheduled, AT&T argues that this solution is unproven and still under development.

236. Additionally, AT&T argues that it also experiences problems with premature disconnect when ordering a UNE Loop with LNP. It contends that Qwest disconnects the loop before the loop has been ported to AT&T.

237. AT&T believes that this problem can be corrected by proper coordination during the LNP conversion. As a solution it has proposed a revision to SGAT § 10.2.2.4 that reads: "Qwest will ensure that the end users loop will not be disconnected prior to confirmation that the CLEC loop, either CLEC provided or Unbundled Loop, has been successfully installed."²²²

238. Qwest asserts that number portability, unlike most checklist items, is in large part the responsibility of the CLEC.²²³ In Qwest's view, under the current process, it is only CLECs that fail to complete their work as scheduled, and fail to timely notify Qwest. As a result, CLECs may have their customers disconnected prior to number port completion. Additionally, Qwest contends that this occurs only one to two percent of the time. It argues that the automated query or test call process requested by AT&T is unprecedented, that the process has not been adopted by any other ILEC, and that the technology is not available in the market.

²²¹ *Id.* at p. 82.

²²² *See AT&T Brief* at p. 86.

²²³ *See Qwest Brief*, pp. 81-88.

239. In response to AT&T's proposal, Qwest asserts that BellSouth uses a different vendor's LNP database and different service order processors than Qwest uses.²²⁴ Qwest contends that forcing this "solution" on Qwest would require a complete service order processing system change for Qwest's entire LNP operations, is neither practical nor warranted under the circumstances, and has been rejected elsewhere. Qwest argues that it has gone beyond any existing requirements in providing a full-day delay of the switch translation disconnect.

Findings and Recommendation:

240. Section 251(b)(2) of the Act requires Qwest to "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." The FCC has held that the BOCs must provide number portability in a manner that allows users to retain existing telephone numbers "without impairment in quality, reliability, or convenience."²²⁵ For the reasons discussed below, Staff finds that Qwest's SGAT complies with this mandate.

241. Section 10.2.5 of the SGAT describes the procedure Qwest will utilize to port a number when the CLEC provides the loop. The basic procedure requires Qwest to set an AIN trigger notifying the network that the number is about to port. Qwest agrees to do this by 11:59 p.m. of the business day proceeding the scheduled port date.²²⁶ After the CLEC connects its loop and activates the port, Qwest must remove its switch translations and complete the service order, effectively disconnecting its service. Qwest agrees to do this

²²⁴ *Id.* at p. 86.

²²⁵ *BellSouth Second Louisiana § 271 Order*, ¶ 276.

²²⁶ SGAT § 10.2.5.3.1.

no earlier than 11:59 p.m. on the day after the scheduled port.²²⁷ If the CLEC cannot complete the port by the due date, Qwest simply asks for notification at least four hours before the 11:59 p.m. disconnect.²²⁸ Additionally, Qwest provides a LNP managed cut for instances in which a CLEC wishes to coordinate the process.²²⁹

242. It is Staff's opinion that Qwest's LNP procedure is sufficient to ensure number porting "without impairment in quality, reliability, or convenience." First, the SGAT clearly specifies Qwest's obligations regarding number porting and how it will satisfy them. Qwest explicitly agrees to set the AIN trigger in a timely manner and to delay the disconnection for at least one day after the scheduled port date. Second, this minimum 24-hour lag period is sufficient time for a CLEC to notify Qwest of any missed port dates, thus averting a premature disconnection and service disruption to the customer. Third, the managed cut option gives CLECs the choice of a more secure transition if desired. Finally, Staff notes that the Washington Commission tentatively approved this number porting procedure.²³⁰

243. Staff does not believe that Qwest should be responsible for making sure the CLEC properly provisioned the loop and completed the number port. Qwest should be responsible solely for its own actions, not the actions of the CLEC as well. If a CLEC

²²⁷ SGAT § 10.2.5.3.1.

²²⁸ See *Qwest Brief* at p. 85.

²²⁹ See SGAT § 10.2.5.4.

²³⁰ In its initial order on Workshop 2, the Washington Commission held that requiring Qwest to delay disconnecting its service until 11:59 p.m. of the day following the scheduled port was sufficient to prevent service outages. *In the Matter of the Investigation into US West Communications, Inc.'s Compliance with § 271 of the Telecommunications Act of 1996*, Initial Order Finding Compliance in the Areas of Interconnection, Number Portability and Resale, Docket No. UT-003022 (rel. February 2001), ¶¶ 210-219.

misses a port date for any reason, it should be responsible for notifying Qwest and averting a premature disconnect.

244. In its brief AT&T seems to concede that Qwest's proposed procedure for number porting is acceptable. However, AT&T does have serious reservations about what it terms "paper promises."²³¹ Staff believes that AT&T is correct that these "paper promises" by Qwest are not sufficient to gain § 271 approval. Qwest must also show it is actually providing the services it claims to offer. This is what the ROC OSS testing and Performance Assurance Plan (PAP) are meant to ensure. AT&T argues that the ROC OSS testing is insufficient because there is no current PID available to address this issue. It is Staff's opinion that Qwest must include in the ROC OSS testing, and in the PAP, measures that will properly address compliance with this section of the SGAT.
245. As an alternative to Qwest's LNP procedure, AT&T suggests adopting an automated system similar to the one utilized by BellSouth.²³² Staff feels that this suggestion is both unnecessary and unreasonable. As noted above, Staff finds that the current process employed by Qwest is adequate to provide protection against customer service outages. Furthermore, requiring Qwest to adopt a new ordering procedure will cause Qwest, and subsequently all CLECS, to incur the additional costs of system development.²³³ These additional costs impede competition by increasing the barriers to entry into the local market.

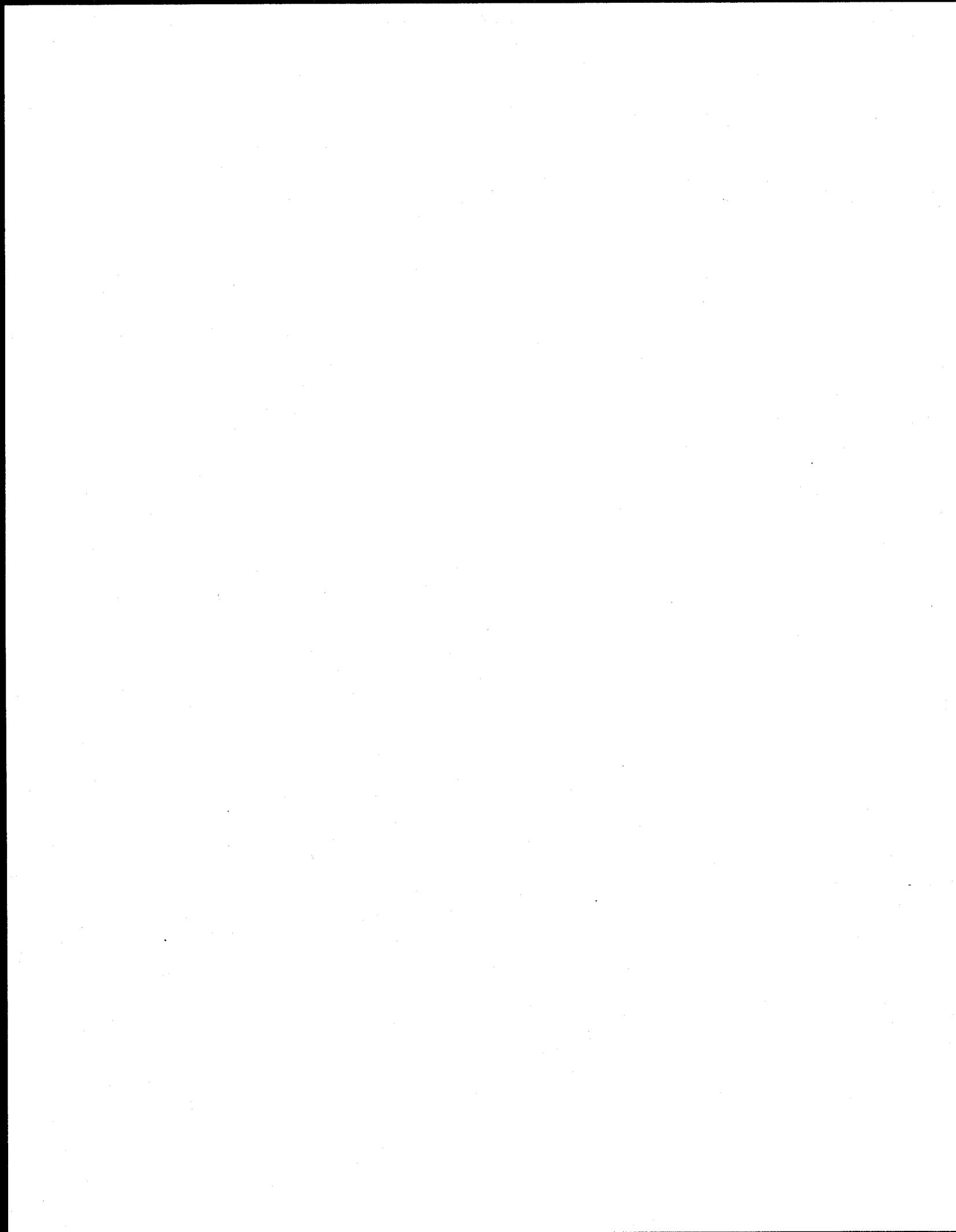
²³¹ AT&T states that, "While AT&T commends Qwest for the movement it has made on this issue and AT&T is hopeful that this process change will resolve this issue ultimately, Qwest(s) proposal is now merely a paper promise." *AT&T Brief* at p. 76.

²³² See *AT&T Brief* at p. 82.

²³³ Section 251(e)(2) of the Act requires the cost of establishing number portability to be borne by all telecommunications carriers on a competitively neutral basis.

246. AT&T also argues that it experiences problems with premature disconnections when ordering UNE Loop LNP conversions.²³⁴ It suggests that proper coordination will remedy this problem and suggests SGAT language that calls for Qwest to withhold disconnection of its loop until confirmation that the CLEC loop has been installed. This additional language is not necessary. Qwest's SGAT § 10.2.2.4.1 already states that LNP activity must be coordinated with facilities cutovers to ensure the customer is provided with uninterrupted service. The SGAT also states that the parties agree to notify each other if delays occur and will take prompt action, pursuant to industry standards, to make sure customer disruption is minimized.
247. In summary, Qwest's proposed number porting procedure is sufficient to provide number porting "without impairment in quality, reliability, or convenience" and Qwest should not be required to provide an automated process to verify that CLEC-provided loops are ready for porting. However, Staff notes that Qwest's SGAT does not explicitly reflect its policy of aborting the removal of the switch translations if advised to do so by the CLEC before 8:00 p.m., on the day the Qwest disconnection is scheduled. Therefore, Staff recommends that Qwest add to SGAT § 10.2.5.3.1 the sentence "If CLEC requests Qwest to do so by 8:00 p.m. (Mountain Time), Qwest will assure that the Qwest Loop is not disconnected that day."
248. Additionally, Qwest must be required to submit to the ROC, and the PAP, additional PIDs that adequately measure its performance in this area.

²³⁴ *AT&T Brief* at p. 86.



Decision No. R01-846

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 97I-198T

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

VOLUME 4A IMPASSE ISSUES ORDER

Mailed Date: August 16, 2001

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I. INTRODUCTION

A. This order resolves impasse issues brought before the hearing commissioner in Volume IVA of Commission Staff's Report on the Fourth Workshop. By Decision R01-806-I, I determined

that no further investigation, hearing, briefing or arguments were necessary to resolve the Volume IVA impasse issues. Volume IVA reflects terms in Qwest's Statement of Generally Available Terms and Conditions (SGAT) that could not be agreed to by consensus in the fourth workshop of the § 271 collaborative process.

B. I have reviewed Staff's Report, Staff's recommendation, the participants' briefs and the workshop record. Because Volume IVA comprehensively recounts the participants' respective positions on the impasse issues, this order will not recapitulate those positions. Instead, this order will identify the issue in summary fashion, give a summary of the party positions, announce the resolution of the impasse issue, and then discuss the reasoning behind the conclusion.¹

¹ The Commission Staff has combined issues CL2-15 and UNE-C-19 into one issue and they will be similarly addressed in this order. Issues EEL-8 and UNE-C-4(b) have also been combined. The parties have resolved issue numbers UNE-C-4(a), UNE-C-21, SW-12 and TR-11. Those issues are not considered here. Moreover, there are two issues that have been raised by the parties in this Workshop that have been addressed in previous orders. I incorporate my findings from Impasse Issue 1-88 (Channel Regeneration Charges) from the Volume IIA Impasse Issues Order with regard to Issue CL2-11/TR-6, which has been similarly raised in this workshop. In order to comply with § 271, Qwest must eliminate the regeneration compensation language from the SGAT or incorporate the ANSI standards for regeneration compensation. I also incorporate my findings from Impasse Issue 14-9 (Marketing to Misdirected End-user Calls) from the Volume IIA Impasse Issues Order, as it is wholly applicable to Issue SW-2 in this workshop. Qwest is not responsible for informing misdirected callers of their mistake before conducting its marketing activities. Finally, some of the issues contained in this order have been broken up into two sub-issues. Although these distinctions were not explicitly made in Volume IVA of Staff's Report on the Fourth Workshop, the issues warrant such a split.

Recommendation of § 271 Compliance:

Upon Qwest's making the necessary changes to the SGAT described below, I will recommend to the Commission that it certify Qwest's compliance with § 271 checklist items 5 and 6.²

II. ACCESS TO UNBUNDLED NETWORK ELEMENTS

A. CL2-5c: Retail Service Quality Standards (SGAT § 9.1.2)

ISSUE:

Whether Qwest must comply with state retail service quality requirements in providing UNEs.

Party Positions:

Qwest:

There is no basis for comparison of Qwest's performance in providing UNEs to CLECs and in providing retail services to Qwest's retail end users. CLECs have the option of reselling Qwest's retail services. There is no retail analog for most UNEs, which is reflected in the ROC OSS Third Party Test.

AT&T (Covad concurring):

Qwest should be required to comply with all state wholesale and retail requirements, particularly in the case of UNE-P. A difference in the quality of service that Qwest provides raises a question of discrimination under § 251(c)(3).

² As AT&T and WorldCom have pointed out in their comments to the Staff Report, access to other UNEs such as NIDs and loops are being addressed in other workshops, and compliance with checklist item 2 is also conditioned on satisfactory completion of the review of Qwest's OSS. Therefore, a recommendation of full compliance cannot be made unless and until these other requirements are met. Of course, ROC OSS compliance is also a prerequisite for compliance.

Staff:

Qwest (in providing UNEs equal in quality to what it provides itself) complies with the FCC's wholesale service requirements. In addition, CLECs may petition this Commission to take further action in a separate docket. Finally, the Performance Assurance Plan ("PAP") contains provisions that monitor and regulate Qwest's wholesale service quality.

Conclusions:

It is inappropriate to apply the state retail requirements to wholesale elements and combinations of those elements. Qwest's SGAT meets the requirements set forth by the FCC.

Discussion:

(1) The FCC has made it clear that "the access and unbundled network element provided by an incumbent LEC must be at least equal-in-quality to that which the incumbent LEC provides to itself."³ Furthermore, the FCC concluded that 47 U.S.C. § 251(c)(3) requires "incumbent LECs to provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete."⁴ As a threshold matter, the proposed SGAT contains provisions that unequivocally meet these guidelines. Sections 9.1.2 and 9.23.3.1, which pertain to UNEs and UNE-Cs, respectively, both recite the FCC's mandate in this regard.

(2) AT&T's argument that state retail service quality

³ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd. 15499(1996) (hereinafter *Local Competition Order*), at ¶ 312.

⁴ *Id.*

requirements should apply across the board to UNEs appears to be aimed at services such as UNE-P or other combinations that may be comparable to retail services. AT&T seeks access to UNE-P in order to reap the benefits of TELRIC pricing, while extending the state retail quality service rules to elements that are wholesale in nature. AT&T can't have it both ways. If a CLEC desires the protection afforded by the retail quality service rules, then it has the option of reselling Qwest's services, albeit at lower profit margins.

(3) Moreover, granting an extension of the retail quality service rules would contradict the PAP. The PAP focuses on achieving the proper penalties and service credits to achieve compensation of the CLECs, as well as the proper performance incentives for the ILEC.

(4) As it stands now, a CLEC that opts into the PAP will surrender any rights to monetary relief provided by Colorado's wholesale quality rules or provisions of an interconnection agreement designed to provide such relief. State law regulatory enforcement actions that are redundant with the PAP are prohibited. Such preempted rights could conceivably include an action by this Commission that results in the payment of money to a CLEC if the retail service quality standards were applied to UNE-P and other wholesale services.

(5) Qwest's current SGAT language is acceptable for § 271 purposes.

**B. CL2-15, UNE-C-19: Construction of Facilities for UNEs
(SGAT §§ 9.1.2.1, 9.19)**

ISSUES:

- i. Whether Qwest is required to construct facilities for UNEs for CLECs.*
- ii. Whether Qwest must light unused dark fiber upon a CLEC's request.*

Party Positions:

Qwest:

- i. UNEs were created with the purpose of giving CLECs access to the incumbent LEC's existing network, but ILECs do not have the obligation to build a network for CLECs.*
- ii. Dark fiber should be unbundled and lit if the electronics are already in place, but requiring Qwest to add electronics to dark fiber constitutes a requirement to construct or build.*

AT&T:

- i. Qwest must build network elements for CLECs (except interoffice facilities) under the same terms and conditions that the ILEC would build facilities for itself.*
- ii. Requiring Qwest to light unused dark fiber and make it available as dedicated transport is a reasonable modification under the FCC's requirements.*

WorldCom:

- i. If Qwest determines that it will not construct a facility based upon an individual financial assessment, the SGAT should provide the CLEC with the opportunity to challenge this decision.*

- ii. WorldCom does not address the second issue.

Staff:

- i. Qwest does not have an affirmative duty to build in all instances, although it is obligated to assess whether to build a UNE for a requesting CLEC as it would when assessing whether to build for itself.
- ii. Qwest must light unused dark fiber when the dark fiber already has existing electronics attached to it. Requiring Qwest to add electronics to dark fiber, however, results in an impermissible "build" situation.

Conclusions:

- i. Qwest should be required to assess whether it should build UNEs in the same manner that it normally builds them for itself.
- ii. Qwest is not required to attach electronics to dark fiber. This does not constitute a modification of Qwest's facilities.

Discussion:

a. Construction of UNEs

(1) The Commission has previously addressed this issue.⁵ The parties have submitted competing interpretations of the *Local Competition Order* and the *UNE Remand Order*, as well as the Eighth Circuit's opinion in *Iowa Utilities Board v. FCC*.⁶ AT&T and WorldCom correctly point out that *Iowa Utilities Board* decision invalidated FCC rules that would have required ILECs to

⁵ *In the Matter of the Petition of ICG Telecom Group, Inc., for Arbitration of an Interconnection Agreement with U S West Communications, Inc., Pursuant to § 252(B) of the Telecommunications Act of 1996*, Docket No. OOB-103T, Initial Commission Decision (Mailed Aug. 1, 2000) at pgs. 37-38.

⁶ 120 F.3d 753 (8th Cir. 1997).

provide superior network elements when requested. However, the Eighth Circuit's rationale was based upon the premise that section 251(c)(3) requires unbundled access *only* to an incumbent LEC's *existing* network.⁷ AT&T has also argued that because ILECs have an obligation to maintain, repair, or replace unbundled network elements under the *Local Competition Order*, they should also have the obligation to build UNEs because this would be "essentially the same thing."⁸ There is a fundamental difference between repairing or replacing that which you are legally obligated to provide in the first place and building that which you are not legally obligated to provide at all.

(2) The Eighth Circuit emphasized that nondiscriminatory access to unbundled elements does not lead to the conclusion that "incumbent LECs cater to every desire of every requesting carrier." Qwest, simply put, is not a UNE construction company for CLECs. Qwest should not be required in all instances to expend the resources in time and manpower, at an opportunity cost to itself, to build new facilities for competitors who have the option of constructing those facilities at comparable costs.

(3) AT&T's argument that the *UNE Remand Order*

⁷ *Id.* at 813.

⁸ AT&T Brief at 9.

requires ILECs to construct facilities by negative implication is disingenuous.⁹ The FCC has never expressly imposed construction requirements in all circumstances on ILECs. One would surmise that the Commission would have directly imposed this potentially burdensome responsibility on ILECs in unequivocal terms.

(4) 47 C.F.R. § 313(b) requires Qwest to provision network elements to CLECs on terms and conditions under which the ILEC provides such elements to itself. I adopt the spirit of Staff's recommendation and order that Qwest revise SGAT section 9.19 to include the sentence: "Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself." This language will sufficiently address situations where Qwest rejects a request to build and then constructs the same facilities for its own customers.¹⁰

⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, FCC 99-238 (Rel. Nov. 5, 1999) (hereinafter *UNE Remand Order*) at ¶ 324. "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 where the incumbent LEC has not deployed transport facilities for its own use." *Id.*

¹⁰ Of course, even this requirement likely inhibits Qwest from building facilities for itself, in the marginal case, particularly because of the opportunity cost of building out facilities for TELRIC recompense, as opposed to other alternatives. The FCC no doubt was aware of this marginal disincentive, and believed other unnamed policy objectives should predominate.

b. Lighting Unused Dark Fiber

(1) The FCC has included dark fiber in the definition of dedicated transport.¹¹ Dark fiber does not have electronics on either end of the dark fiber segment to energize it to transmit a telecommunications service.¹² The FCC has also found that dark fiber is "easily called into service" by the incumbent carrier,¹³ but has also indirectly indicated that a carrier leasing the fiber is expected to put its own electronics and signals on the fiber.¹⁴ The FCC has also stated that ILECs must make reasonable modifications to provide access to UNEs.¹⁵

(2) As an initial matter, the FCC's discussion of network modifications took place within the larger discussion of the definition of technical feasibility for interconnection and access to unbundled network elements. The FCC concluded "that the obligation imposed by sections 251(c)(2) and 251(c)(3) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection or access to network elements."¹⁶

¹¹ *UNE Remand Order* at ¶ 324.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at n.292 (quoting definition of dark fiber in Newton's *Telecom Dictionary*, 14th ed.).

¹⁵ *Local Competition Order* at ¶ 198.

¹⁶ *Id.*

(3) Here, the unbundled network element is dark fiber, not lit fiber. It is a subtle, yet critical distinction. I agree with Qwest that the addition of electronics to dark fiber means that dark fiber is no longer being offered.¹⁷ This goes beyond a mere modification to provide access to an unbundled element. In essence, the addition of electronics to unlit fiber constitutes the construction of a new, "functional" dedicated transport facility, which is plainly prohibited by the *UNE Remand Order*. Additionally, Staff has found that adding electronics at the termination locations of dark fiber can be a time consuming and expensive process.¹⁸ Therefore, AT&T's argument falls outside the scope of the FCC's requirement for modifications to LEC facilities. Just as there is no obligation upon Qwest to build dark fiber in the first instance, there is no obligation to add electronics to the segment once it is built.

(4) Qwest has agreed that it will make dark fiber available to CLECs. CLECs can attach the electronics at a comparable cost. CLECs may also ask Qwest to attach electronics under SGAT section 9.19, but Qwest is not required to do so.

¹⁷ Qwest Comments on Staff Report 4A at 5.

¹⁸ Staff Report at ¶ 30.

C. EEL-1: Connection of Enhanced Extended Links to
Tariffed Services (SGAT § 9.23.3.7.2.7)

ISSUE:

Whether Qwest must provision an EEL combination (a combination of loop and transport elements) or convert Private Line/Special Access to an EEL if Qwest records indicate that service "will be connected directly to a tariffed service."

Party Positions:

Qwest:

The FCC has clearly prohibited the connection of EELs with any tariffed services.

WorldCom

Qwest should commingle UNE combinations with tariffed services if the CLEC pays retail rates for special access circuits. This merely presents Qwest with an administrative issue that mirrors the requirements that Qwest must satisfy in sorting traffic for other types of circuits.

Staff

The FCC's prohibition on commingled traffic does not extend to tariffed services in general. The SGAT should be modified to specify that EELs will be provisioned when they will be directly or indirectly connected to local exchange tariffed services.

Conclusion:

Qwest may prohibit the commingling of EELs and Private Line-Special Access with tariffed special access services.

Discussion:

(1) In the FCC's *Supplemental Order Clarification*, the Commission listed three local use categories and included the caveat that "[t]his option does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services."¹⁹ The Commission subsequently qualified what it meant by "tariffed services" in the *Supplemental Order Clarification*:

We further reject the suggestion that we eliminate the prohibition on "commingling" (i.e. combining loops or loop-transport combinations with **tariffed special access services**) in the local usage options described above We are not persuaded that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily **to bypass special access services**.²⁰ (emphasis added).

(2) The FCC's temporary prohibition and policy basis is straightforward. Qwest's SGAT section 9.23.3.7.2.7 must reflect that EELs or Private Line/Special Access will not be provisioned if these services will be "connected directly to a *tariffed special access service*." (emphasis added). This is the only clarification that Qwest must make in order to comply with the FCC mandate. If a CLEC is willing to pay retail rates for

¹⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Supplemental Order and Clarification*, FCC 00-183 (Rel. June 2, 2000) (hereinafter *Supplemental Order Clarification*), at ¶ 22.

²⁰ *Id.* at ¶ 28. See also *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Services*, CC Docket No. 96-98, Public Notice (Rel. Jan. 24, 2001) (hereinafter *Public Notice*).

special access services, they may independently negotiate with Qwest or await the FCC's impending decision on this issue.

**D. EEL-5: Termination of Liability Assessments
("TLAs") (SGAT § 9.23.3.12)**

ISSUE:

Whether TLAs in pre-existing pricing agreements should be waived.

Party Positions:

Qwest:

TLAs were incorporated into discounted pricing plan agreements for special access circuits or private lines, and CLECs should not be allowed to avoid their contractual obligations. This is not an appropriate issue for the § 271 proceedings.

AT&T:

The Commission should waive TLAs for private line/special access circuits that qualify as EELs. Qwest did not provide these combinations to CLECs until the Supreme Court's holding in *Iowa Utilities Board*.

Staff:

Qwest can require CLECs to pay TLAs. It was reasonable for Qwest to believe that it had no obligation to provide EELs until the Supreme Court decision in *Iowa Utilities Board*. There is no evidence on the record that CLECs were unable to negotiate the terms of the agreements containing TLAs.

Conclusion:

The Colorado § 271 proceeding is not the appropriate forum for resolution of this issue.

Discussion:

(1) In the *SWBT Texas Order*, the FCC emphasized that a 271 application is not "an appropriate forum to consider instituting a 'fresh look' policy (to provide an opportunity for retail and wholesale customers to exit without penalty long term contracts that the carriers have voluntarily entered into with SWBT)." ²¹

(2) The issue raised by AT&T with regard to TLAs collides with this directive. I decline to scrutinize the record in an attempt to determine whether Qwest did or did not provide loop and loop/transport combinations until "long after the FCC had identified its obligation to do so" in the *Local Competition Order*.²² If this is indeed the case, AT&T and other CLECs have had an ample amount of time to challenge these practices. Instead, the parties voluntarily contracted for private line or special access rates in consideration for a reduced price from Qwest.

(3) The language that Qwest agreed to in SGAT § 9.23.3.12 will receive a favorable § 271 recommendation.²³

²¹ In the *Matter of the Application of SBC Communications, et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, June 30, 2000, FCC 00-238, at ¶ 433.

²² AT&T Brief at 51.

²³ Qwest Brief at 13.

E. EEL-6: Waiver of Use Restrictions for Unconverted Circuits

ISSUE:

Whether CLECs may connect special access/private lines that would qualify as EELs to UNEs.

Party Positions:

Qwest:

This issue addresses TLAs again. TLAs are not an appropriate issue for § 271 cases. The issue of TLAs on special access conversions is currently before the FCC.

AT&T:

Qwest cannot prohibit a CLEC from connecting UNEs to special access/private line circuits where the CLEC was unable to order the special access/private line circuits as UNEs.

Staff:

Qwest must allow CLECs to connect UNEs to special access/private line circuits that qualify as EELs in situations where the CLECs were unable to purchase such circuits as UNEs, until the initial term of the line agreement expires.

Conclusion:

The Colorado § 271 proceeding is not the appropriate forum for resolution of this issue.

Discussion:

(1) Requesting carriers can convert special access/private line circuits to EELs if they meet the FCC's local use restrictions. In Issue EEL-5, *supra*, I declined to

address whether Qwest belatedly permitted CLECs to order UNE-Cs and waive the TLA provisions. Such an issue is beyond the scope of the § 271 application process. This is another attempt by AT&T to circumvent its contractual obligations. This issue is similarly not germane to this proceeding.

F. EEL-7: Waiver of Local Use Restrictions When Qwest Refuses to Build

ISSUE:

When Qwest refuses to build a UNE, and a CLEC then orders a tariffed service at retail rates, do the commingling restrictions apply?

Party Positions:

Qwest:

If Qwest agrees to build facilities under SGAT section 9.19, then the facility is a UNE or a combination of UNEs. Facilities purchased out of special access tariffs cannot be combined with UNEs.

AT&T (WorldCom concurring):

If CLECs must pay retail rates for tariffed services and wishes to, for example, use the same multiplexer for the tariffed services as it does for UNE loops, CLECs will be forced to pay for additional multiplexing and transport costs if the commingling restrictions are applied.

Staff:

Qwest is not required to construct UNEs, although CLECs may make a request under SGAT section 9.19. A tariffed service purchased at retail cannot be combined with an EEL.

Conclusion:

Where Qwest agrees to construct UNEs the commingling restrictions will not apply.

Discussion:

(1) The scenario presented by AT&T arises, in part, from the law of unintended consequences. As an initial matter, I suspect that the FCC will dispense with this and the other issues surrounding the commingling prohibition in the near future. In the meantime, and as addressed in Issue CL2-15, *supra*, Qwest must assess whether to build a UNE for a CLEC in the same manner that it would assess building for itself. Although Qwest is not required to build in all instances, this resolution should mitigate the CLEC's concerns.²⁴ Otherwise, the commingling restrictions would apply if a CLEC opted to purchase tariffed special access services.²⁵

²⁴ "[I]f the Commission concludes that Qwest has no obligation to build UNEs, it is imperative that the SGAT contain language that makes clear that the same assessment to build will be used for both Qwest's end user customers and CLECs under section 9.19." AT&T and WorldCom's Joint Comments on Commission Staff's Report on Volume IVA Impasse Issues at 7.

²⁵ Of course, the scenario presented by AT&T in its brief of this issue ignores the possibility that CLECs can avoid the commingling restrictions by building DS1 loops or other facilities that might otherwise constitute tariffed special access services.

- G. **UNE-C-4(b): Finished Services (SGAT §§ 9.1.5, 9.6.2.1, 9.23.1.2.2)**

ISSUES:

- i. *Whether the FCC has prohibited commingling between tariffed special access services and all UNEs, or whether the prohibition is limited to loop and loop-transport combinations.*
- ii. *Is the SGAT prohibition against directly connecting UNE combinations to finished services proper?*

Party Positions:

Qwest:

- i. The FCC is currently addressing whether UNEs may be combined with tariffed services. In the meantime, the commingling prohibition covers all UNEs.
- ii. Requiring collocation maintains the distinction between UNEs and end-to-end finished services.

AT&T (WorldCom concurring):

- i. The commingling prohibition is limited to loop and loop-transport combinations connected to special access services.
- ii. The SGAT should be amended to remove any prohibition on connecting UNEs to finished services, except where expressly prohibited by the FCC.

Staff:

- i. The FCC has only prohibited the connection between a loop-transport combination and an ILEC's tariffed services.
- ii. Qwest's collocation requirement for UNEs connected to finished services unnecessarily impedes the ability of CLECs to compete. The SGAT should be modified to state that UNEs can be directly connected to finished services unless the FCC has expressly prohibited it.

Conclusions:

- i. The commingling prohibition applies to loop and loop-transport combinations.
- ii. The SGAT should be amended in order to account for future modifications of existing rules.

Discussion:

(1) The most reasonable interpretation of commingling in the *Supplemental Order Clarification* and the Commission's subsequent *Public Notice* is that commingling is forbidden between loop and loop-transport combinations and tariffed special access services. Although the FCC has employed a varying use of the term "commingling," in paragraph 28 of the *Supplemental Order Clarification*, the FCC specifically states that loops and EELs (loop-transport combinations) are included in the prohibition against commingling. The FCC emphasized that the purpose of this temporary prohibition was to avoid the "use of unbundled network elements by IXCs solely or primarily to bypass special access services."

(2) The *Public Notice* also specifically seeks comment on whether circuits may remain connected to existing access service circuits "if a requesting carrier converts special access circuits to combinations of unbundled network elements."²⁶ The Commission then explicitly asks whether "incumbent LECs

²⁶ *Public Notice* at 3.

[should] be required to commingle unbundled loops and loop-transport combinations for competitive carriers if they do so in their own networks."²⁷ Because a narrow construction of the temporary prohibition is required since "it is not clear that the 1996 Act permits any restrictions to be placed on the use of unbundled network elements,"²⁸ I cannot subscribe to Qwest's assertion that the commingling prohibition extends to all UNEs.

(3) Although existing rules currently prohibit the connection of UNEs to the finished services that Qwest currently lists in section 4.23 of the SGAT,²⁹ the SGAT should reflect that UNEs can be directly connected to finished services, unless it is expressly prohibited by existing rules. This additional language will encompass any possible changes that are made to the "existing rules" by the FCC in the immediate future or what constitutes a "finished service" by Qwest.

(4) Upon the modification of the SGAT in accordance with the foregoing discussion, SGAT sections 9.6.2.1 and 9.23.1.2.2 will receive a favorable § 271 recommendation. SGAT section 9.1.5 is acceptable as it relates to this issue.

²⁷ *Id.*

²⁸ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC-Docket No. 96-98, Supplemental Order (Rel. Nov. 24, 1999), at 3.

²⁹ This includes voice messaging, DSL, access services, private lines, retail services, and resold services. As such, Qwest's imposition of collocation requirements for these services is acceptable.

H. UNE-P-16: Rates for Lines in Density Zone 1 of the Top 50 Metropolitan Statistical Areas ("MSAs")

ISSUE:

Should unbundled local switching in Density Zone 1 for subscribers subject to the "four line or more" exemption be priced on a market or TELRIC basis?

Party Positions:

Qwest:

Large businesses should not be allowed to order three lines at TELRIC rates and their fourth lines and above at market-based rates. Unbundled rates should be available for the mass market, which the FCC has determined to be end-users with three lines or less.

Unaddressed by the other parties

Staff:

In Density Zone 1, increased revenue potential allows CLECs to counter ILEC economies of scale and effectively compete. Colorado has previously drawn similar lines where advanced features are offered to customers with five or more lines.

Conclusion:

Unbundled switching in Density Zone 1 for subscribers with four or more lines should be priced on a market basis.

Discussion:

(1) The FCC has found that requesting carriers are not impaired without access to unbundled switching when they serve customers with four or more lines in Density Zone 1 of a top 50

MSA and the ILEC has provided access to an EEL.³⁰ I agree with Staff and the FCC that in density zone 1 the increased demand and enhanced revenue opportunities associated with high-density areas make it possible for requesting carriers to make use of self-provisioned switching facilities, and effectively compete.³¹ Therefore, when a subscriber has three lines or less, unbundled local switching at TELRIC rates shall apply. However, Qwest may charge market-based rates for each line when a subscriber has four lines or more.

III. ACCESS TO UNBUNDLED LOCAL TRANSPORT

A. TR-2: Distinction between UDIT and EUDIT (SGAT § 9.6.1.1)

Issue:

Whether Qwest's distinction between the distance-sensitive rate for unbundled dedicated interoffice transport ("UDIT") and a flat rate for extended unbundled dedicated transport ("EUDIT") is permissible.

Party Positions:

Qwest:

The distinction between UDIT and EUDIT is simply one of price. By delineating the unbundled transport between the Qwest serving wire center and the CLEC central office as EUDIT, this segment of dedicated transport has historically been recovered as a non-distance-sensitive rate element.

³⁰ UNE Remand Order at ¶ 278.

³¹ Id. at ¶ 299.

All other interoffice transport has typically been cost modeled and rated on a fixed and per mile basis.

AT&T:

The FCC has identified dedicated transport as a network element, and Qwest's distinction between UDIT and EUDIT works to the detriment of CLECs. The entire dedicated transport link should be based on a distance sensitive, flat rate charge. In addition, Qwest should be required to provide the electronics on dedicated transport terminating at a CLEC wire center.

WorldCom:

Because UDIT is an unbundled network element, CLECs are permitted to use it without the restrictions imposed by Qwest's disaggregation of UDIT into separate subparts. This unnecessarily imposes additional costs on CLECs.

Covad:

The UDIT/EUDIT distinction is unwarranted as a matter of principle and as a matter of law. Because Qwest refuses to allow CLECs to co-locate all of their equipment in a central office, there is an additional transmission leg required to connect CLECs to their own and Qwest's networks.

Staff:

Qwest should have the opportunity to prove its need for the UDIT/EUDIT distinction and corresponding cost and rate structures in the pricing docket.

Conclusion:

Rates for dedicated transport should reflect their true costs. The UDIT/EUDIT distinction in the SGAT must be eliminated. Qwest is not required to provide the electronics on the CLECs end of dedicated transport.

Discussion:

(1) Section 9.6.1.1 of the SGAT describes two rates for dedicated transport. UDIT provides a CLEC with a network element of a single transmission path between Qwest end offices, serving wire centers or tandem switches in the same LATA and state. EUDIT provides a CLEC with a bandwidth-specific transmission path between the Qwest serving wire center and the CLEC's wire center or an interexchange carrier's POP located within the same Qwest serving wire center area.

(2) It is unnecessary to defer this issue to the cost docket. The FCC has categorized dedicated transport as an unbundled network element. In the pricing of network elements, ILECs "must recover costs in a manner that reflects the way they are incurred."³² This is interpreted as a blanket rule. The averaged rate imposed by Qwest for EUDIT is a discriminatory restriction that has no place in the pricing scheme the FCC has mandated for network elements. The disincentives created by such a scheme (e.g., effectively barring CLECs from building facilities to a meet-point between wire centers)³³ serve as an additional reason to strike the UDIT/EUDIT distinction in the SGAT. In eliminating the EUDIT product, Qwest must also make

³² *Local Competition Order* at ¶ 440.

³³ See AT&T Brief at 38.

any additional changes to the SGAT in conformance with this order, including rate changes, ordering changes and interval changes.

(3) For the reasons stated in issue CL2-15, UNE-C-19, *supra*, Qwest is not required to add the electronics on dedicated transport terminating at a CLEC wire center.³⁴

**B. TR-16: Qwest Affiliates Subject to §§ 251 and 252
(SGAT § 9.7.1)**

ISSUE:

Whether all of Qwest Corporation's affiliates are obligated to comply with the unbundling obligations of Sections 251 and 252 of the Telecommunications Act of 1996.

Party Positions:

Qwest:

Qwest Communications International (QCI) is a holding company for Qwest Corporation (QC), the successor to US West and provider of local exchange services, and Qwest Communications Corporation (QCC), the successor to the pre-merger Qwest and provider of non-local exchange services. Section 251 does not extend to QCC as it is not a successor

³⁴ AT&T argues that it should not be required to self-provision electronics because the FCC has indicated that it is infeasible to do so. See AT&T Brief at 40. However, the language in the *UNE Remand Order* does not lead to such a categorical conclusion: "In the *Local Competition First Report and Order*, the Commission concluded that a requesting carrier would incur 'much higher costs' if it 'had to construct all of its own facilities' to match the scope of an incumbent LEC's interoffice transport network." (emphasis added). *UNE Remand Order* at ¶ 355. "Requiring carriers to self-provision, or acquire from third-party vendors, extensive interoffice transmission facilities materially increases the costs of market entry or of expanding service, delays broad-based entry, and limits the scope and quality of the competitor's service offerings." (emphasis added) *Id.* at ¶ 332.

and assign of US West. Therefore, QCC need not provide unbundled access to its dark fiber.

AT&T (Covad concurring):

Qwest must unbundle the dark fiber owned by the companies affiliated with Qwest because they are "successors and assigns" of US West and, therefore, ILECs under § 251(h). Otherwise QCI will be able to "sideslip" § 251 requirements by offering impermissible telecommunications service through the affiliates.

Staff:

QCC and its predecessors do not provide local exchange service or exchange access in Colorado. Therefore, QCC is not an ILEC for the purposes of § 251. As a result, QCC is not required to unbundle its in-region facilities, as long as those facilities have been used only for long distance and data services. On a going forward basis, anytime QC has rights in or access to an inventory of unbundled fiber in a route (within a sheath), that dark fiber must be unbundled for CLEC access. Qwest should file modified SGAT language, upon which parties should be allowed to comment.

Conclusion:

QCC is not obligated to offer unbundled access to its dark fiber. However, QC must offer unbundled access to any dark fiber over which it has a unique right to access.

Discussion:

(1) Before unbundled access to QCC's dark fiber is required, QCC must be a successor or assign of US West.³⁵ The determination as to whether an affiliate is a successor or assign is ultimately fact-based, with a standard of "substantial

³⁵ 47 U.S.C. § 251(h).

continuity" between the two companies.³⁶ In addition, the FCC has suggested that whether the parties are attempting to circumvent the ILEC obligations of § 251(c) is a consideration.

(2) Despite the "synergies" justifying the Qwest/US West merger, it is not necessarily the case that those synergies exist between the current QCC and US West. Furthermore, no evidence suggests that QCC is attempting to circumvent ILEC obligations. In fact, Qwest's apparent desire to achieve § 271 approval suggests its desire to fulfill its ILEC obligations rather than circumvent them.

(3) Therefore, QCC is not obligated to unbundle its dark fiber facilities. However, QC is obligated to unbundle any dark fiber facilities (on an individual facility basis) that it has any access rights to, other than those access rights equally available to any other CLEC. The test is based on the nature of QC's access rights rather than the form, and the standard is the "necessary and impair" standard from § 251(d)(2).³⁷

(4) Qwest's current SGAT language with regard to Impasse Issue TR-16 is acceptable for § 271 purposes.

³⁶ *In Re Applications of Ameritech Corp. and SBC Communications, Inc. for the Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (Released October 8, 1999), at ¶ 454.

³⁷ See *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 387-390 (1999).

C. FOR-1: Trunk Utilization Forecasting Process (SGAT
§§ 7.2.2.8.4, 7.2.2.8.6.1)

ISSUES:

- i. *Whether Qwest's seven-month interval to provide interconnection to trunk capacity is excessive.*
- ii. *Whether Qwest's forecast requirement that CLECs must account for any changes in demand in future forecasts is overly burdensome or anti-competitive.*

Party Positions:

Qwest:³⁸

The lead-time for provisioning is necessary because of the time required to order equipment from vendors, the impact of weather conditions, and the difficulty of placing electronics and cable.

WorldCom:³⁹

- i. Six months for provisioning is an unreasonable amount of time. Qwest can provision a trunk in one month. The six-month lead time forces CLECs to overestimate their needs.
- ii. The requirement for changes in demand from the prior forecast rather than the total forecast number unnecessarily complicates the forecast calculations and adds manual steps to the process.

Staff:

- i. The seven-month time frame is reasonable but may be subject to future revision via the Performance Assurance Plan.

³⁸ See Supplemental Rebuttal Affidavit of Thomas R. Freeberg, January 9, 2001.

³⁹ See Prefiled Supplemental Testimony of Thomas T. Priday, March 2, 2001.

- ii. The calculation of demand requirements is an internal business decision of the ILEC. As long as Qwest requires the same forecasting format of all carriers, under 47 U.S.C. § 251(c)(2)(C), the requirement is not overly burdensome or anti-competitive.

Conclusions:

- i. The forthcoming modifications to Qwest's SGAT under Impasse Issue 1-114 and the interval provisions in the PAP should sufficiently address provisioning intervals.

- ii. Qwest should require forecasting on a total trunk basis in order to reduce the burden on CLECs.

Discussion:

(1) SGAT section 7.2.2.8.4 requires that CLECs provide trunk utilization forecasts on a semi-annual basis.⁴⁰ After Qwest receives a forecast, it has seven months to provide the capacity. CLECs cannot change their forecasts after they are submitted. Instead, they must account for any changes in demand in future semi-annual forecasts.

(2) This issue is related to Impasse Issue 1-114 from Workshop 2. There, I concluded that Qwest might collect deposits from a CLEC when that CLEC's trunk forecasts necessitate construction of new facilities. However, Qwest cannot require a deposit for interconnection provisioning until the parties have established contractual liability. I also concluded that Qwest should modify its SGAT to reflect different

⁴⁰ At the time of the Staff Report, this section required forecasts on a quarterly basis. Qwest's SGAT Third Revision, submitted on June 29, 2001, reflects the change to a semi-annual basis.

types of offerings, both forecasted and unforecasted, with deposit requirements to be decided in the costing docket, No. 99A-577T. This resolution, in combination with the performance intervals in the PAP, tries to balance the interests of the parties.

(3) With regard to Qwest's standard process for LIS trunking forecasts, I do not agree with Staff's assessment that it is an internal business decision by Qwest that does not burden competitors. Before there is a "meeting of the minds" (e.g., the offer and acceptance of a deposit) I have previously indicated that forecasting is a generally meaningless undertaking. The record suggests that CLECs must devote an inordinate amount of time and effort in a demand process that is less than accurate. In order to minimize this burden, Qwest should only require total trunks to track forecasting in lieu of forcing CLECs to furnish net growth figures.

(4) In order to receive a favorable § 271 recommendation, Qwest must modify its SGAT in accordance with the decision above.

IV. ACCESS TO UNBUNDLED LOCAL SWITCHING

A. SW-5: Availability of Advanced Intelligence Network ("AIN") Service Software

Issue:

Whether Qwest should be required to provide unbundled access to AIN features.

Party Positions:

Qwest:

Qwest makes the AIN platform, Service Creation Environment ("SCE"), Service Management System and testing equipment available to CLECs. However, the FCC does not require the resulting proprietary AIN products to be unbundled.

AT&T:

The FCC erred in determining that AIN service software met the criteria for a proprietary element, and the Commission disregarded its own standards for determining whether a network element is necessary.

Staff:

Qwest's AIN features are proprietary in nature. CLECs would not be prevented from offering their own AIN-based features and, therefore, these features are not "necessary" under the 1996 Act. It appears that the FCC conducted an analysis consistent with its own standards. The FCC's exceptions to the necessary standard are inapplicable here.

Conclusion:

Qwest is not required to provide unbundled access to its proprietary AIN service software. CLECs are not precluded from developing competitive software solutions using AIN platforms and architecture. The goals of the 1996 Act are furthered, not hindered, through the development of competitive AIN features.

Discussion:

(1) The FCC has already considered this issue.⁴¹ The *UNE Remand Order* raises a presumption that the Qwest AIN service software should not be unbundled. However, because states may require additional unbundling under certain conditions, I have the responsibility to consider this issue on the merits.⁴²

(2) The FCC employed what is essentially a "three-step" analysis to determine whether AIN services should be unbundled in the *UNE Remand Order*. First, it determined that AIN services are proprietary, and therefore must be considered under the 'necessary' standard. Second, the Commission decided that AIN services did not meet the standard of being "necessary" as defined by the *UNE Remand Order*. Third, the FCC did not find that additional circumstances exist, in lieu of the "necessary" standard, in providing the basis for an unbundling recommendation.

⁴¹ "We agree with Ameritech that unbundling AIN service software such as 'Privacy Manager' is not 'necessary' within the meaning of the standard in section 251(d)(2)(A). In particular, a requesting carrier does not need to use an incumbent LEC's AIN service software to design, test, and implement a similar service of its own. Because we are unbundling the incumbent LEC's AIN databases, SCE, SMS and STPs, requesting carriers that provision their own switches or purchase unbundled switching from the incumbent will be able to use these databases to create their own AIN software solutions to provide services similar to Ameritech's 'Privacy Manager.' They therefore would not be precluded from providing service without access to it. Thus, we agree with Ameritech and BellSouth that AIN service software should not be unbundled." *UNE Remand Order* at ¶ 419.

⁴² *Id.* at ¶ 153.

(3) The record establishes that Qwest's AIN service software is proprietary. Qwest has asserted that it has invested substantial resources to develop services that are protected by patents (or pending patents), copyrights, trademarks, or trade secrets. Although AT&T claims that Qwest's "Caller ID with Privacy+" appears to be similar to Ameritech's "Privacy Manager" service, this does not mean that Qwest's service software is not proprietary. AIN service software covers more products than "Caller ID with Privacy+." There is simply no evidence on the record to conclude otherwise.

(4) Next, it must be determined whether access to Qwest's proprietary AIN features is "necessary" under section 251(d)(2) of the Act. The FCC has interpreted the "necessary" standard as requiring the Commission to consider whether, as a practical, economic, and operational matter, lack of access to a proprietary network element would preclude the requesting carrier from providing the services it seeks to offer.⁴³ I agree with Staff's assessment that CLECs would not be prevented from offering AIN-based features. AT&T's claims that writing or purchasing software would be expensive and time-consuming are unavailing because they prove too much. Obviously, the development of proprietary services takes time and effort.

⁴³ *Id.* at ¶¶ 44, 418.

However, AT&T has not established that it would be precluded from developing and offering the requested services on its own.

(5) Finally, Qwest's AIN service software must be evaluated under the criteria set forth by the FCC for unbundling features even if they are proprietary.⁴⁴ One exception can arise where the ILEC has implemented only a minor modification to qualify for proprietary treatment. A second exception arises where the proprietary service does not differentiate the ILEC's services from the requesting carrier's services. The third and final exception asks whether lack of access to an element would jeopardize the goals of the 1996 Act.

(6) As stated above, there has been no showing that Qwest has not differentiated its services from those of a requesting carrier, nor does the record suggest that Qwest has made only minor modifications to its AIN software in order to establish its proprietary rights. While AT&T points out similarities between Qwest's and Ameritech's "Privacy" services, the Commission Staff properly concluded that Qwest's intellectual property rights should not be nullified via a general assertion that two AIN services are similar.⁴⁵

(7) With respect to the goals of the 1996 Act, it has

⁴⁴ *Id.* at ¶ 37.

⁴⁵ Staff Report at 45.

been shown above that CLECs would not be precluded from developing their own AIN service software using the unbundled components that Qwest provides. Indeed, the FCC has found that unbundled access to AIN platforms and architecture will allow requesting carriers "to devise innovative AIN services that will spur competition and benefit consumers through greater choices of telecommunications services."⁴⁶ As Justice Breyer has noted, "[i]ncreased sharing by itself does not automatically mean increased competition. It is in the un shared, not in the shared, portions of the enterprise that meaningful competition would likely emerge."⁴⁷

(8) I fail to see how the goals of the 1996 Act would be "jeopardized" under these pro-competitive circumstances. Qwest's SGAT is acceptable on this issue for § 271 purposes.

**B. SW-9: Unbundled Switching when EELs are not Available
(SGAT § 9.11.2.5)**

Issue:

Whether Qwest is improperly restricting CLEC access to unbundled local switching in Density Zone 1 where EELs are not available.

⁴⁶ UNE Remand Order at ¶ 417.

⁴⁷ AT&T Corporation v. Iowa Utilities Board, 525 U.S. 366, 429, 119 S.Ct. 721, 754 (1999).

Party Positions:

Qwest:

The FCC's unbundled switching exemption is not dependent upon capacity availability for other services in impacted Qwest wire centers.

AT&T:

If an EEL is ordered by a CLEC and Qwest cannot provision it, Qwest must make the unbundled switching element available to the CLEC's customer.

WorldCom:

The ability of Qwest to deny unbundled switching should be conditioned upon Qwest's ability to provide an EEL connection to a CLEC. Lack of Qwest capacity has been a problem in the past and should not be allowed to result in a situation in which competitors cannot serve an end-user in high volume offices through UNE-P or EELs.

Staff:

There is no language in the *UNE Remand Order* that lends support to the notion that the FCC's rule is based upon alternatives available to CLECs in the aggregate. The SGAT does not recite the EEL requirement. AT&T's proposed language should be adopted.

Conclusion:

The unbundling exemption is predicated upon the availability of EELs. Under the plain meaning of the *UNE Remand Order* the exemption does not apply if EELs are not available due to space or capacity limitations.

Discussion:

(1) The FCC has concluded that competitors are not impaired without access to unbundled switching in Density Zone 1

where EELs are available.⁴⁸ In some situations, Qwest may not have space or capacity availability in interoffice facilities to provide the transport capability for EELs. According to Qwest, the unbundled switching exemption is not dependent on whether a particular CLEC has access to a desired transport element.⁴⁹ Qwest submits that the FCC's analysis is based upon alternatives available to CLECs in the aggregate.

(2) There is simply no language in the *UNE Remand Order* that would comport with Qwest's interpretation of the unbundling exemption. The FCC stated that "carriers will not be impaired in their ability to serve customers *only when* the EEL is provided *throughout* density zone 1."⁵⁰ If EELs are not available, then CLECs will not be able to aggregate loops at fewer locations, thereby increasing the cost of collocation and switching capacity.

(3) I agree with the FCC that switch capacity, distance-sensitive transport costs, and collocation costs significantly impair a requesting carrier.⁵¹

(4) Therefore, in order to receive a favorable section 271 recommendation Qwest must modify SGAT section

⁴⁸ *Id.* at ¶¶ 253 & 278.

⁴⁹ Qwest Brief at 27.

⁵⁰ *UNE Remand Order* at ¶ 298 (emphasis added).

⁵¹ *Id.* at ¶ 261.

9.11.2.5.3 to be consistent with the FCC's unbundling exemption. The language proposed by AT&T and accepted by Staff clarifies Qwest's obligation and should be added:

This exclusion will not apply in wire centers where Qwest has held orders for transmission facilities needed for EELs or where CLECs are unable to obtain sufficient co-location space to terminate EELs.

C. SW-19: Determination of Unbundled Switching Obligation (SGAT §§ 9.11.2.5, 9.11.2.5.6)

ISSUE:

In determining the applicability of the exception to provide unbundled local switching, whether the customer's access lines should be counted using customer locations rather than the sum of customer locations in the wire center.

Party Positions:

Qwest:

The FCC has been clear that the number of lines is satisfied if the end-user has "four or more lines within density zone 1." AT&T's request to erode the FCC's exception and make the end user have four or more lines at each geographic location within Density Zone 1 should be rejected.

AT&T:

"Four or more lines" should be counted for each location in a wire center, rather than for the wire center as a whole. The SGAT is ambiguous regarding how lines should actually be counted, whether on a per-wire center or per-location basis, and the FCC provides no clarity. As a practical matter it will be easier to determine the line count on a location basis.

Staff:

Absent express language to the contrary, the plain meaning of the FCC's rule should apply. A location-based approach will permit CLECs to circumvent the FCC's exception for unbundled switching requirements.

Conclusion:

Access lines should be counted on a per-wire center basis. Qwest's interpretation of the FCC's unbundling exemption conforms to the plain meaning of the rule and minimizes absurd results.

Discussion:

(1) SGAT section 9.11.2.5 states that "unbundled local switching does not constitute a UNE . . . when CLEC's end-user customer to be served with unbundled local switching has four access lines or more and the lines are located in density zone 1 in specified MSAs."

(2) The exception to the national unbundling requirement was designed to be "an administratively simple rule."⁵² The four-line limit was an estimate by the FCC of the number of lines that separates the "mass market" (primarily residential and small business services) from the medium and large business market.⁵³ The FCC indicated that residential customers rarely have more than two lines. It is even less likely that a "mass market" end-user would have more than a

⁵² *Id.* at ¶ 276.

⁵³ *Id.* at ¶¶ 290-298.

total of four access lines in multiple locations. However, I will digress and provide a brief hypothetical that serves to illustrate why AT&T's proposal is a thinly-veiled attempt to avoid the unbundling exemption. Under AT&T's interpretation of the rule, if an end-user that operates a "small chain" business has three access lines in three separate locations, the unbundling exemption would not apply. However, if one end-user that operates a "medium-sized" business in a single location has five access lines, the exemption would apply. Of course, the small business end-user would have a total of nine access lines and the medium business owner five. Under Qwest's interpretation of the rule, in both situations the unbundling exemption would apply. To the disinterested observer, Qwest's interpretation is obviously more reasonable.

(3) The FCC recognized that its rule, as is the case with most bright-line rules, would be both over-inclusive and under-inclusive at the margins.⁵⁴ Qwest's interpretation fits within the plain meaning of the FCC's rule.⁵⁵ It also minimizes the absurd results that might arise, as illustrated in the foregoing discussion. While I recognize that the FCC limited

⁵⁴ *Id.* at ¶ 294.

⁵⁵ "We find that, where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements . . . requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs)." *Id.* at ¶ 253.

the exemption in order to encourage competition in the residential and small business markets, it is ultimately irrelevant whether the access lines are counted on a per-wire center or per-location basis in achieving this result.

(4) Qwest's SGAT section 9.11.2.5 is acceptable.

V. CONCLUSION

A. I take this opportunity to remind the parties of the scope of this order. This docket is not adjudicatory, but rather a special master/rulemaking hybrid. See *Procedural Order*, Dec. R00-612-I pgs. 11-15. The ultimate authority over this application lies with the FCC, not this Commission. Accordingly, this order does not have the traditional effect of compelling Qwest to take the ordered action. Rather, this order is hortatory. If Qwest makes the SGAT changes recommended by this decision, then I will recommend that the Commission verify compliance with the checklist items to the FCC.

B. Upon filing of appropriate modifications to the SGAT, I will find, through a subsequent order, that Qwest has complied with checklist items involving impasse issues as they relate to Volume IVA workshop issues. Such a finding of compliance from the Colorado Commission would lead to a favorable recommendation to the FCC under 47 U.S.C. § 271(d)(2)(B).

C. Because this is not a final order, nor a proceeding under the Commission's organic act or the Colorado Administrative Procedure Act, see C.R.S. §§ 40-2-101 et seq.; C.R.S. §§ 24-4-101 et seq., participants in this docket do not have a right to file exceptions to this order or to ask for rehearing, re-argument or reconsideration. Likewise, this decision will not ripen into, or otherwise become, a final decision of the Commission subject to judicial review under the commission's organic statute or Colorado law.

D. Nonetheless, should parties believe that I have resolved any impasse issue based on a material misunderstanding of the law, the issue or the factual record, they should move for modification of this Volume IVA Impasse Issue Resolution Order within seven days of its mailing date.⁵⁶ Any necessary response to a request to modify this order will be due five days after the motion to modify.

E. Participants will be afforded an opportunity to argue or reargue their respective positions about impasse issues to the full Commission before the Commission acts under 47 U.S.C. § 271(d)(2)(B).

⁵⁶ Let this footnote reemphasize that participants should not use this procedure to seek modification of the impasse issue resolution to restate their arguments, as is often done with RRR. Rather, any motion to modify this impasse resolution order should be directed to the hopefully rare, but theoretically possible, instance where I have made a material misunderstanding of fact or of the dispute itself.

F. Any recommendations of compliance with a § 271 checklist item are subject to modification by results of the operational support system ("OSS") test currently underway under the auspices of the Qwest Regional Oversight Committee. Similarly, actual commercial experience in Colorado will inform the Commission's recommendations.

VI. ORDER

A. It is Ordered That:

1. Commission Staff Report Volumes IV and IVA, along with resolution of the impasse issues above, and consensus reached in workshop IV establish Qwest's compliance with checklist item 5. The Hearing Commissioner recommends that the Colorado Commission certify compliance with the same to the FCC.

2. Commission Staff Report Volumes IV and IVA, along with resolution of the impasse issues above, and consensus reached in workshop IV establish Qwest's compliance with checklist item 6. The Hearing Commissioner recommends that the Colorado Commission certify compliance with the same to the FCC.

B. This Order is effective immediately upon its Mailed Date.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Hearing Commissioner

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9/24/01

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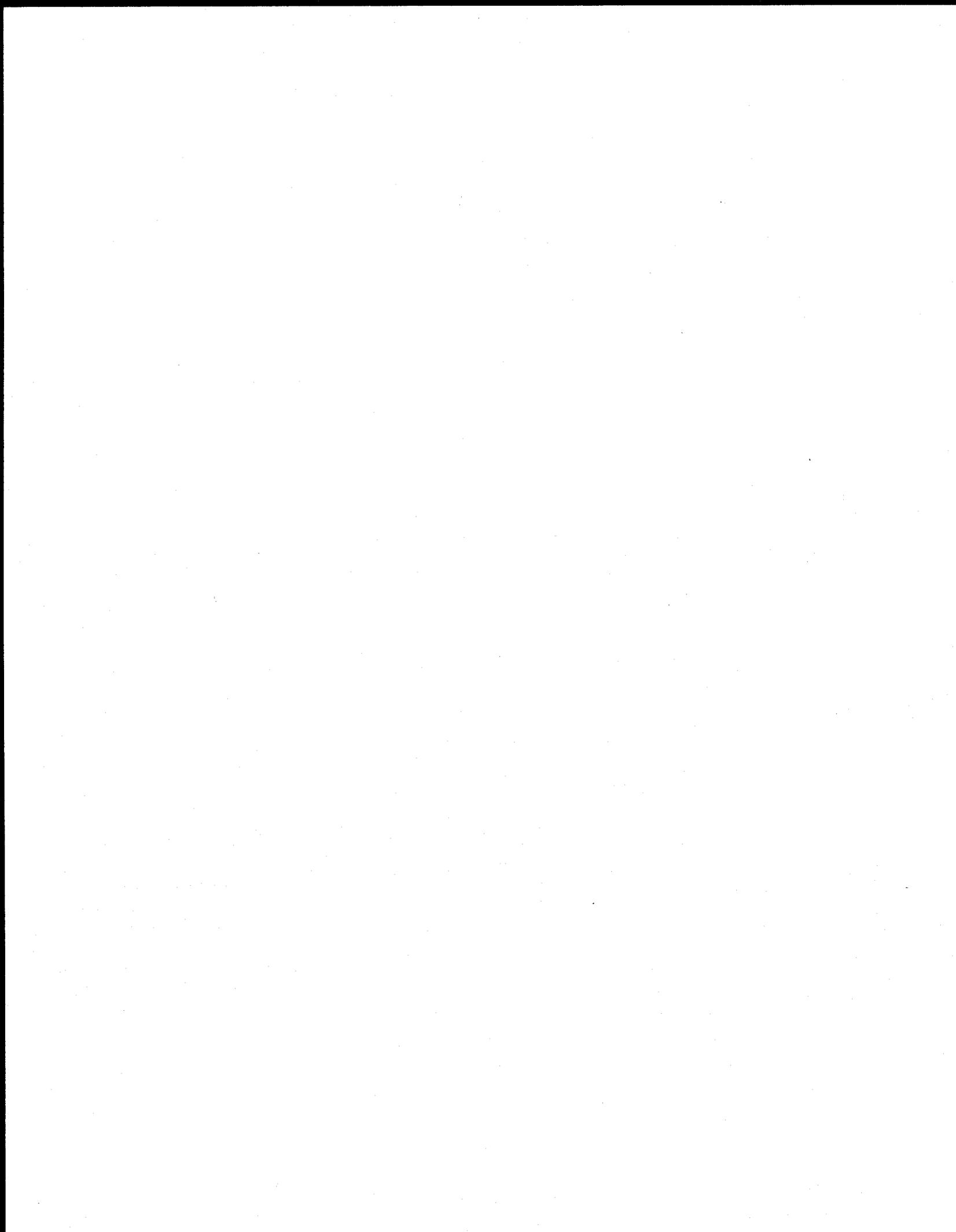


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I. Scope of this Report

This report discusses the group four issues that form part of the seven-state workshop process addressing Qwest's compliance with the Section 271 Checklist of the Telecommunications Act of 1996. Some of the issues assigned to "Workshop Three" by the initial procedural orders are covered in this report; others (Track A, 272 and General Terms and Conditions) have been assigned to group 5. This report addresses the following issues:

- Unbundled Network Elements (UNEs) – Checklist Item 2
 - UNE Combinations
 - UNE Platform
- Access to Unbundled Loops – Checklist Item 4
 - Line Splitting
 - Network Interface Devices (NIDs)
- Access to Unbundled Local Transport – Checklist Item 5
 - EELs
- Access to Unbundled Local Switching – Checklist Item 6

II. General Background

The purpose of this report is to assist the seven state Commissions (Iowa, Idaho, Utah, New Mexico, North Dakota, Montana, and Wyoming) in reaching a decision about what consultation to provide to the Federal Communications Commission (FCC) on the question of whether Qwest should be granted the authority to provide in-region interLATA services in these seven states. To be eligible to provide in-region interLATA service, Qwest must meet the competitive checklist and other requirements of Section 271 of the Telecommunications Act of 1996 (the Act).¹ A Qwest May 4, 2000 filing encouraged the several state commissions to consider a multi-state process to jointly review track A (competition issues), various aspects of the 14-point competitive checklist, Section 272 (separate subsidiary issues), and public interest considerations. Iowa, Idaho, Utah, North Dakota and Montana joined together (with Wyoming joining in September 2000 and New Mexico thereafter) in a multi-state collaborative proceeding, and issued procedural orders to govern the conduct of joint workshops. The joint workshops provide a common forum for all participants in all the states involved to present, for individual consideration by the seven commissions, all issues related to Qwest's Section 271 compliance. The commissions have amended their procedural orders on several occasions, in order to reflect changes in the schedule requirements set forth therein and to address issues regarding the scope of these workshops.

Qwest filed the group four issues testimony of Karen Stewart, Lori Simpson and Jean Liston on January 19, 2001. On or about February 23, 2001, the following parties filed testimony or comments: AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc. and AT&T's subsidiaries and affiliates operating in these states, (collectively, "AT&T"); XO Utah, Inc (XO), Electric Lightwave, Inc. (ELI) and The Association of Communications Enterprises ("ASCENT"). The New Mexico Public Regulation Commission Advocacy Staff filed testimony on December 20, 2000. Qwest filed the rebuttal testimony of Lori Simpson and Karen Stewart on March 9, 2001. AT&T filed verified comments on loops, line splitting, and NIDs on March 26, 2001. Rhythms filed on March 23, 2001 the affidavit of Valerie Kendrick regarding loops. On the same date, XO filed the additional response testimony of David LaFrance. Qwest filed the rebuttal testimony of Jean Liston on April 18, 2001. Briefs were filed on or about May 31, 2001 by the following parties: Qwest, AT&T, ELI/XO, Rhythms, and the Wyoming Consumer Advocate Staff. Qwest and AT&T filed supplemental briefs on June 18, 2001.

We have adopted a general rule that requires Qwest to file, before briefing of the issues, a copy of SGAT language related to those issues. This "frozen SGAT language" is intended to reflect language on which there is general agreement among the parties and language proposed by Qwest to address issues or language on which there is not general agreement. The purpose of this language is to provide a reference base first for the participants' briefs and second for the commissions in reviewing this report. It is not intended to offer new language that has not before been seen or discussed in workshops, filings, or discussions among the parties.

¹ See 47 U.S.C. Section 271(c)(2)(B).

Qwest filed the required language here on May 30, 2001². The language is set forth as an appendix to this report. This report assumes that the SGAT language filed by Qwest on May 30, 2001 will remain in effect, except as commission acceptance of any of the findings and conclusions of this report may require such language to change. Therefore, to the extent that any further changes in SGAT language are proposed (e.g., as a result of agreements reached in similar workshops in other states) they must be separately filed and supported, in order that the commissions may consider any issues associated with such proposed language changes. Absent individual commission approval of any such proposed changes, the language set forth in the appendix hereto shall be considered to be the final language for purposes of any state SGAT review or consultation with the FCC under Section 271.

² Hereafter, "the Frozen SGAT."

III. Disputed Issues and Recommendations Summary

General UNE Issues Deferred

1. Bona Fide Request Process

Comments were filed about the bona fide request (BFR) process for handling requests for non-standard forms of interconnection or UNEs. The bona fide request process is of general applicability to the SGAT; therefore, it was addressed in the subsequent workshop on General Terms and Conditions.

General UNE Issues Decided in Earlier Reports

1. Including LIS in the Definition of Finished Services

There were objections to including Local Interconnection Service (LIS) in the definition of "finished services" in the SGAT. This issue was significant because of the SGAT prohibition against commingling UNEs and finished services in the same trunk group. The principal focus of that issue was commingling special access circuits (which are finished services as well) with UNEs in a manner that could allow CLECs to avoid access charges improperly. Qwest agreed to delete LIS from the definition of "Finished Services" in Section 4.23(a) of the SGAT. With this change, the commingling issue became similar to the third unresolved *Reciprocal Compensation Issue (Commingling of InterLATA and Local Traffic on the Same Trunk Groups)* of the May 15, 2001 *First Report – Workshop One* in these proceedings. That recommended resolution remains appropriate here.

2. Marketing During Misdirected Calls

As it did in the workshop addressing resale, AT&T asked for a change to SGAT Section 9.23.3.17, in order to provide controls on marketing and sales exchanges in cases where a CLEC customer misdirects a service, maintenance, or repair call to Qwest. This issue was addressed as the second unresolved *Resale issue (Marketing During Misdirected Calls)* of the May 15, 2001 *Second Report – Workshop One* from these workshops. That resolution, which required that Qwest change SGAT Section 9.23.3.17 so as to limit such communications when it receives such a call from a CLEC customer, remains appropriate here.

3. Regeneration Charges

AT&T argued that Qwest should be required to provide the signal as ordered by a CLEC at the CLEC's collocation point, without any charges for any necessary regeneration. This issue is essentially the same as the tenth unresolved *Collocation issue (Channel Regeneration Charges)* of the May 15, 2001 *Second Report – Workshop One* in these proceedings. There it was recommended that CLECs be required to pay for regeneration costs except in cases where CLECs were denied available collocation locations that would not require regeneration. Here, AT&T also said that in paragraphs 114 through 120 of the *Second Report and Order* the FCC prohibited regeneration charges for the termination of CLEC facilities at their collocation spaces. The FCC did not make any such prohibition, nor is any appropriate, given the language already

recommended in the second report from these workshops. Therefore, the resolution of the similar issue recommended in that report remains applicable here.

General UNE Issues Remaining in Dispute

1. Construction of New UNEs

A number of CLECs argued that CLECs would be denied a meaningful opportunity to compete in the event that Qwest were not required to build facilities to provide CLECs network elements (other than transport) under the same terms and conditions that it would construct for itself or its end users: Qwest could refuse a CLEC request, then build facilities itself to serve the same end user. XO/ELI further argued that a number of provisions of Utah law add to Qwest's obligations in that state, citing provisions : (a) prohibiting unreasonable prejudice or disadvantage to anyone, (b) furnishing facilities necessary for public safety, health, comfort, and convenience, and (c) excluding lack of facilities from cases where Qwest may refuse service to a requesting customer.

Qwest argued that it had no obligation to "build a network for CLECs," citing paragraph 324 of the FCC's *UNE Remand Order* and the Eighth Circuit Court's holding in *Iowa Utilities Bd. V. FCC*. Qwest noted that there was no bottleneck-facilities concern with respect to facilities that did not yet exist. Nevertheless, Qwest did agree to undertake specific construction obligations in its SGAT Sections 9.1.2.1 and 9.1.2.2. The facilities encompassed by this commitment include conditioning, placing a drop, adding a network interface device, adding a card to central office or remote equipment, and adding central office tie pairs and field cross jumpers.

The CLEC requests are inappropriate on several grounds. First, it is unreasonable to require Qwest to make new investments at costs that may exceed UNE rates and without term commitments that will assure cost recovery. There is a clear economic distinction to be made between: (a) allowing access to facilities already built at costs that may not reflect what it took to build them and (b) requiring new investments under less than compensatory terms and conditions. Second, CLECs do not have a general right under the Act or the FCC's rules to make Qwest their construction arm. Qwest must already make its poles, ducts, conduits, and rights of way fully available; given that, Qwest has, at least as a general matter, no bottleneck control over as yet unbuilt facilities. CLECs therefore do have a meaningful opportunity to compete in the case of unbuilt facilities, and there is no discrimination at issue because CLECs have rights to the same underlying occupation rights and linear support facilities as Qwest does.

2. Commingling UNEs and Tariffed Services on the Same Facilities

The FCC has temporarily prohibited the use of the same facilities to provide both tariff services (such as special access services) with UNEs, while it addresses its concerns about whether such combined or commingled use could allow CLECs inappropriately to avoid access charges. XO/ELI argued broadly for the elimination of the Qwest SGAT provisions prohibiting such commingling; AT&T argued somewhat more narrowly that the SGAT language would prohibit CLEC use of UNES in cases far broader than those temporarily banned by the FCC. XO/ELI failed to offer a meaningful description of what, if any, commingled use would be prohibited under its approach. Therefore, its argument would essentially negate the FCC ban. AT&T correctly argued that the SGAT imposed a broader ban than could be supported under the FCC's

requirements. Therefore, the SGAT should be changed to make its restrictions more in line with those requirements.

3. OSS Testing

AT&T objected to what it said was a lack of SGAT language allowing for appropriate testing of OSS interfaces before large-scale market entry by a CLEC. Some of the disagreement was resolved through SGAT language changes proposed by Qwest. One of the remaining AT&T concerns was for the stand-alone test environment. Because the ROC OSS test will include this area, conclusions about its sufficiency should await the results of that test. As to the remainder of the production-testing dispute, AT&T failed to demonstrate the need for such testing now, given the pendency of comprehensive ROC OSS testing, with which AT&T's proposed testing could interfere. However, because such testing could well be appropriate given future CLEC market entry plans, the SGAT should include a new provision allowing for it, following negotiations about the nature of the testing that fits such future conditions.

UNE Platforms and Other Combinations

No UNE Platform or Combination issues remained in dispute; all were resolved during the workshops. However, some disputes that affect combinations are addressed below.

Access to Unbundled Loops - Issues Deferred to Another Workshop

1. Accepting Loop Orders With "Minor" Address Discrepancies

AT&T commented that Qwest was rejecting service orders with minor and immaterial differences between end user information on the LSR and information in Qwest's systems. Qwest objected to accepting LSRs with such problems, arguing that its OSS already contained address validation tools that would allow CLECs to assure that addresses it wanted to enter were correct. During the workshop the parties agreed that AT&T would submit a number of examples of address discrepancies that it could not solve using the address validation tools available through Qwest's OSS. The record made here provided no conclusive evidence that proper use of the address validation tools would have failed to adequately rationalize CLEC and Qwest address information about customers. The record also demonstrated that address errors would be within the scope of the ROC OSS testing now underway. This issue should await resolution until the completion of that testing.

2. Resolving Conflicts Between the SGAT and Parallel Documents

AT&T commented that a number of other documents, including the IRRG, and Qwest Technical Publications, conflict with the SGAT. It was agreed to defer to the subsequent General Terms and Conditions workshop the issue of determining how to resolve conflicts between the SGAT and other documents referred to therein or otherwise used by Qwest in implementing the SGAT.

Access to Unbundled Loops – Issues Remaining in Dispute

1. Standard Loop Provisioning Intervals

AT&T considered the length of the SGAT's standard loop provisioning intervals (the time between orders and in-service dates) would not provide CLECs a meaningful opportunity to compete, were discriminatory or anticompetitive, violated state law in some cases, and would preclude CLECs from being able to meet the service quality standards of some of the participating states. Qwest's position was that they were consistent with the intervals used during the ROC's development of the Performance Measures against which the OSS test would be conducted. Qwest also stated that it had offered a very short interval for a basic loop (called "Quick Loop").

The evidence here supports the conclusion that the intervals are generally appropriate. They are in line with what the ROC considered in an open and collaborative process. A preference to have them be shorter is not enough to compel a conclusion that they need to be shorter; CLECs did not present substantial evidence to counter the evidence of record showing that the intervals are at parity with Qwest retail operations or will give CLECs a meaningful opportunity to compete with Qwest for retail business. There may be state intervals that differ; this report recommends that the SGAT's intervals be deemed acceptable if those states with different intervals choose to seek regional consistency. If they do not, then they can consider the particular variances between the SGAT and their particular requirements or guidelines in their individual considerations of this report.

AT&T also objected to repair intervals, citing Wyoming, Utah, and Idaho durations that it could not meet if the SGAT repair intervals were adopted. The record supports a conclusion that the SGAT repair intervals are consistent with repair intervals established in these three states.

2. Loop Provisioning and Repair Intervals - Utah

XO testified generally that the SGAT's installation and service intervals for loops were not consistent with Commission rules at Utah Administrative Code § R746-365-4. The testimony did not cite which specific intervals were inconsistent. The XO/ELI brief argues that many of the SGAT's provisioning intervals exceed Utah limits, but also does not specify which ones. The resolution of the immediately preceding issue adequately addresses the relationship between generally applicable intervals and unique state requirements.

3. Reciprocity of Trouble Isolation Charges

Qwest's frozen SGAT filing changed SGAT Section 9.2.5 trouble isolation charge provisions to respond to AT&T concerns that the charge be made reciprocal. AT&T sought two additional changes: (a) adding language allowing CLEC access to the NID (not just the demarcation point, which Qwest proposed) for testing purposes, and (b) preserving the ability to challenge in subsequent cost proceedings the issue of double recovery of trouble isolation costs. The SGAT should be changed to allow CLECs NID access for testing purposes where access at the demarcation point will not suffice to allow required loop testing. Moreover, nothing in this report

should be viewed as constraining or prejudging the merits of SGAT charges, should they be later raised in cost dockets in the individual states.

4. Delays in the Roll-Out of ADSL and ISDN Capable Loops

Rhythms testified that Qwest was slow to make ADSL and ISDN capable loops available, thus impeding the development of competition in that sector. Qwest responded with evidence that it has since made such loops available; Rhythms did not respond to that evidence, nor did it brief this issue. There is no basis for concluding that Qwest is failing to meet requirements in this specific regard. However, Qwest has been resistant to developing standard SGAT offerings for lower volume CLEC requests, such as these loops have been in the past. The circumstances surrounding this issue warrant a formal expression of Qwest's intent with respect to moving as expeditiously as possible to respond to non-standard offerings. Qwest should do so in its comments to the commissions on this report, including the promptness with which Qwest will be prepared to respond to proper, but nonstandard CLEC requests in the future.

5. Cooperative Testing Problems

Rhythms testified generally that it had experienced a number of problems with cooperative testing on loop installations: (a) failure to perform tests, (b) failure to provide test results, (c) failure to provide notification of test performance, and (d) incorrect test results. Rhythms did not brief this issue. The evidence of record indicates that Qwest has taken actions to address problems in supporting coordinated installations and in adopting measures that will avoid the need for them in some cases.

6. Spectrum Compatibility

Spectrum compatibility generally means the ability of multiple carriers to send signals through a common cable without causing each other's signals to degrade past an acceptable point. Rhythms and AT&T raised concerns about spectrum compatibility. Three principal areas of dispute remain: (a) interference due to remote DSL deployment (which has the potential for disrupting competitors' central-office based services), (b) the requirement to remove existing T1s in the short term (T1s are recognized by the FCC as known causes of disturbance and the FCC allows states to take firm measures to eliminate them as they feel appropriate), and (c) the need to provide NC/NCI information (which Qwest says is needed for it to have the information needed to resolve spectral interference issues when a carrier complains).

With respect to **remote DSL deployment**, it is not appropriate to require Qwest to adopt the Rhythms approach, which would anticipate the results of industry-wide efforts (sanctioned by the FCC) that are not yet complete. However, the failure to adopt some short-term solution could give Qwest the ability to foreclose competition from CLEC central-office-based high-speed service configurations, should Qwest use repeaters or remotely deployed DSL arrangements. Therefore, the SGAT should contain a provision that would require Qwest to mitigate interference with such CLEC configurations where a CLEC has established that such configurations exist. With respect to **T1s**, the SGAT should be changed to make clearer what are Qwest's obligations with respect to T1s that cause disturbances. With respect to **providing NC/NCI codes**, the record supports Qwest's need for the information, for at least so long as the

recommended solution to the preceding interference issues remains in place. However, it should be clear that the information provided by CLECs is appropriately limited in its circulation.

7. Conditioning Charge Refund

AT&T first commented that it should be entitled to a refund of any applicable SGAT Section 9.2.2.4 loop conditioning charges if the customer for whom the unloading was done and charged to a CLEC, switches providers within one year. It dropped this request, seeking instead to require refunds when Qwest fails to meet service requirements associated with the service that CLECs seek to offer over loops that have been conditioned to provide xDSL Service. Qwest agreed conceptually to the notion of a credit in cases where it failed to perform conditioning in a workmanlike manner or significantly missed its due date for conditioning.

The better approach is not to hinge responsibility on customer reaction or upon inherently vague definitions of quality or harm. Moreover, it seems reasonably clear that a delayed installation followed by a customer choice to take the CLEC's service does not materially harm the CLEC. On the other hand, for the sake of simplicity and rough equity, it seems reasonable to conclude that a delayed conditioning followed by a customer choice not to take the service is a material factor in that choice. Therefore, the SGAT should include recommended language to incorporate a compromise between the positions of Qwest and AT&T.

8. Pre-Order Mechanized Loop Testing

AT&T wanted Qwest to allow CLECs to perform mechanized loop testing (MLT), in order to provide them with actual loop length and performance information, so that CLECs could verify that the loop can support the services they sought to provide over it. Qwest responded that its representatives cannot perform such tests, and that Qwest performs them only in cases or repairs. Qwest also said that its Loop Qualification Tool already provides MLT information to CLECs. The evidence demonstrates that Qwest does not perform such testing for itself, except in one, broad scale program, the results of which it is willing to make available to CLECs. Thus, Qwest's refusal to allow CLECs to perform MLT is not discriminatory. Beyond that, Qwest has reason to discourage such testing, because it disrupts service when it takes place. The evidence supports the conclusion that Qwest's approach to making loop qualification information available to CLECs does not require allowing MLT in order to provide CLECs nondiscriminatory treatment and with a meaningful opportunity to compete.

9. Access to LFACS and Other Loop Information Databases

It is difficult to unbundle loops that use integrated digital loop carrier (IDLC) technology. AT&T therefore wanted access to special information tools that would help it make broadly based decisions about entry (through acquisition of Qwest unbundled loops) into areas where Qwest makes significant use of IDLC. AT&T asked for access to a database known as LFACs and to other information sources that would allow it to determine in advance of marketing to customers whether there was enough copper in the vicinity to allow a meaningful number of unbundled loops to be made available (assuming that the difficulty in unbundling IDLC loops would make that approach unsuitable for large scale entry).

Qwest's opposition to this request was rooted in notions of parity, which are not the relevant standard here, because only CLECs, not Qwest, need face the problem of unbundling loops provided with IDLC technology. This need is real and it is legitimate for CLECs to seek the requested information before they begin to submit orders for loops. However, the record also shows that the LFACs database will not serve the purpose for which AT&T seeks access to it. Perhaps significant work could give LFACs this capability, but it is premature to conclude from the record here that this effort is required, because other tools cited by Qwest may well suffice. Therefore, the SGAT should require that Qwest to allow access to information (whether LFACs or not) sufficient to give a reasonably complete identification of the copper facilities available in areas where Qwest has deployed significant amounts of IDLC.

Line Splitting Issues Decided In Earlier Reports

1. Line-At-A-Time Access to Splitters

AT&T commented that Qwest should be obliged to provide access to "outboard" (i.e., splitters that are not integrated into the DSLAM) splitters in its central offices and remote terminals. AT&T also said that CLECs should be able to gain access to them for a single line or a single shelf. This issue is the same as the first unresolved issue (*Ownership of and Access to Splitters*) under *Line Sharing* in the June 11, 2001 *Third Report – Emerging Services* in these workshops. No new evidence or arguments here would serve to alter the resolution made of that issue, which is therefore equally applicable here.

2. Discontinuing Megabit Service

AT&T objected to Qwest's policy of discontinuing Megabit (high-speed data) service to its own end users when they switch to a CLEC for voice service. AT&T cited the same support for its objections as it made in the emerging services workshop. The treatment of this question as the second unresolved issue (*Tying Qwest Data Service and Voice Service*) under *Line Sharing* in the June 11, 2001 *Third Report – Emerging Services* in these workshops remains valid here. No new evidence or arguments here would serve to alter the resolution made of that issue, which is therefore equally applicable here.

Line Splitting Issues Remaining in Dispute

1. Limiting Line Splitting to UNE-P

The dispute centers around three AT&T requests that Qwest declined to accommodate: (a) requiring a definitive timetable for loop splitting, (b) providing a standard offering for line splitting over EELs, and (c) line splitting over resold loops. With respect to a loop splitting timetable, the evidence supports the conclusion that Qwest has not delayed in addressing the novel issue involved; therefore, provided that it can show in its filing to the FCC substantial progress in defining the specific terms and conditions applicable, it should be deemed to have met its obligations. With respect to a standard offering related to EELs, the evidence shows very small current demand, and no reported future demand. Therefore, the special-request basis, on which Qwest makes splitting over EELs available, is appropriate. With respect to splitting in the

resale context, the evidence shows that the ability of CLECs to acquire the loop as a UNE, which it does not do when it resells Qwest's retail services, is sufficient.

2. Liability for Actions by an Agent

The issue in dispute is responsibility when Qwest agrees that both CLECs splitting a line can contact Qwest to address account, maintenance, repair, and service questions. The parties agreed that Qwest should generally not be held responsible for any harm due to actions by anyone to whom the customer of record has given the identification and security passes that are sufficient to allow such person to gain access to the customer of record's account at Qwest. Only in a very narrow area was there disagreement. The disagreement was whether the third person must have obtained the identification and passes "wrongfully" from the customer of record. Qwest would say "yes;" AT&T would say "no." Qwest's position better comports with the circumstances in which the agreed to provision would apply.

NID Issues Remaining in Dispute

1. "NID" Definition and Access to Terminals Where Qwest Owns Facilities in the Direction of the End User

The dispute here appears to raise no issues other than that considered in the first unresolved *Subloop Unbundling* issue (*Subloop Access at MTE Terminals*) from the June 11, 2001 *Third Report – Emerging Services* from these workshops. In essence, AT&T is still seeking to argue that MTE terminals are NIDs, because it believes that winning the definition issue will give it essentially unmediated access to such terminals. Qwest, on the other hand, effectively seeks again victory by defining access at MTEs as subloop access, in the apparent hope that it can impose a set of pre-defined standard FCC collocation arguments. As stated there, what CLECs can and cannot be required to do is not a function semantics, but of the specific field conditions (for example, the service reliability, safety, work efficiency, cost, and engineering and operating practice concerns mentioned in the *Emerging Services* report. In other words, standard collocation requirements could be eased in cases where standard FCC rules do not make sense in terms of those circumstances, just as standard NID access requirements could be restricted for the same reasons.

2. Protector Connections

AT&T's brief, which contained an exhibit bearing on the applicable factual circumstances, requested the ability for CLECs to disconnect Qwest's drops from the Qwest NID where necessary to give CLECs space to connect their drops to the NID. There is no evidence of record to support a conclusion other than one that safety and reliability concerns preclude allowing CLECs to do so. Even if AT&T's factual support properly admitted, which it was not, it is not clear that it would substantially contradict this conclusion.

3. CLEC Use of Qwest's NID Protector without Payment

AT&T objected to the SGAT Section 9.5.3 requirement that it pay for its use of protectors at Qwest's NID in cases where it has its own protectors. AT&T says that, where it has its own

protectors, i.e., it connects to those in its own nearby NID, it may still find it necessary or "convenient" when it cross connects to Qwest's NID to do so in the protector field. AT&T would change the section to say that it does not have to pay for the functionality of the protector field when it has its own and therefore presumably is not using this "functionality." AT&T should pay the full costs of what it secures; neither it nor Qwest should exclude functionalities or capabilities, or begin to subdivide an element on the basis of which functionalities are in actual use.³

Unbundled Transport Issues Decided in Earlier Reports

1. Access to the Facilities of Qwest Affiliates

AT&T's brief argued that the Commissions should require the addition of SGAT language obligating QCI and its affiliates to unbundle dedicated transport, along with other in-region facilities. This is the same argument that AT&T made in the context of dark fiber; the report preceding this one addresses that argument fully.⁴ That argument was addressed under the first unresolved *Dark Fiber* issue (*Affiliate Obligations to Provide Dark Fiber*) in the June 11, 2001 *Third Report – Emerging Services* in these workshops. The resolution recommended there is equally appropriate here.

2. Access to Dark Fiber in Qwest's Joint-Build Arrangements

AT&T also argued, as it did previously, that Qwest is required to allow CLECs to lease dark fiber that exists in "joint build arrangements" with third parties. That argument was addressed under the second unresolved *Dark Fiber* issue (*Access to Dark Fiber in Joint Build Arrangements*) in the June 11, 2001 *Third Report – Emerging Services* in these workshops. The resolution recommended there is equally appropriate here.

Unbundled Transport Issues Remaining in Dispute

1. SONET Add/Drop Multiplexing

AT&T asked that Qwest change SGAT Section 9.6.1.2 to add SONET add/drop multiplexing as a CLEC option. Qwest objected on the basis of its argument that the FCC does not require it to construct new facilities to provide UNEs. Therefore, the resolution of this issue should follow that of the *Construction of New UNEs* issue discussed previously.

2. UDOT/EUDOT Distinction

AT&T argued that dedicated transport consists of a single element; therefore, Qwest's attempts to distinguish UDOT and EUDOT were impermissible. Qwest does in fact make transport available as a single element; it distinguishes between UDOT and EUDOT only to reflect its views of the proper costing and charging for transport that uses both. There is no need to alter the

³ AT&T is here actually even using the connectors for which it does not want to pay, arguing that use of them is a convenience, rather than an operating necessity.

⁴ AT&T Brief at pages 32 through 37.

SGAT, but it should be noted that this report leaves to later consideration in cost dockets the issue of the basis for and the amount of charges for unbundled transport including UDIT and EUDIT.

AT&T also asked that Qwest be required to provide the electronics on dedicated transport terminating at a CLEC wire center. Qwest is not required by the FCC to provide such electronics and it is clear that CLECs have the same capability that Qwest has to install new or upgraded electronics needed to make a transport element function. Therefore, it is not appropriate to change the SGAT to impose this obligation on Qwest.

3. Commingling UNEs and Interconnection Trunks

AT&T asked that LIS Trunks be excluded from the definition of "finished services" under the SGAT.⁵ Qwest agreed in its brief to delete LIS Trunks from the definition of "finished services" and it conceded that LIS trunks could be connected with UNEs, dropping its prior argument that such commingling should be precluded. With Qwest's change to the SGAT and its recognition that there is not SGAT prohibition on commingling UNEs and LIS Trunks in the same facilities, this issue can be considered closed.

4. Applying Local Use Restrictions to Unbundled Transport

AT&T argued that SGAT Section 9.6.2.4 improperly prohibits the use of interoffice transport as a substitute for special or switched access services. After the FCC's *UNE Remand Order* addressed the ability of CLECs to order loop and transport combinations to provide interexchange service without any local-use requirement, the FCC modified paragraph 486 of the order to prohibit CLEC or IXC Conversion of special access to loop/transport combinations, absent a significant amount of local exchange service to a particular customer. However, AT&T claimed that the FCC has not expanded the local use requirement beyond loop/transport combinations; therefore, the requirement does not extend to dedicated transport generally. AT&T would agree to new SGAT language that it said Qwest found acceptable in other jurisdictions. This issue should therefore be considered closed in the basis that such language is agreeable, pending Qwest's comments on this report to the individual commissions.

Issues Remaining in Dispute - EELs

1. Limiting Local Use Requirements to Existing Special Access Circuits

The FCC has imposed a local-use requirement on EELs, out of concern that CLECs could transform special access circuits to EELs, and thereby avoid the access charges applicable to special access circuits. ELI argued that application of the local-use requirement should be limited to conversions of existing special access circuits, but should not extend to newly created EELs (i.e., those not using an existing special access circuit). However, it is clear that the FCC's concern about access charges applies equally to newly created EELs. Moreover, there is nothing in the FCC language prohibiting the application of the local-use requirement to newly created EELs. Therefore, the SGAT language applying the restriction is appropriate.

⁵ AT&T Brief at page 39.

2. Allowing Commingling Where Qwest Refuses to Construct UNEs

AT&T argued that Qwest should not be permitted to refuse commingling UNEs and tariffed services in certain cases where Qwest refuses to construct UNEs. Specifically, AT&T wanted to be able to use a loop secured as a special access circuit to connect with Qwest provided transport. There is substantial merit in allowing commingling where, due to inadequate existing loop facilities and a refusal by Qwest to construct new ones, CLEC options for delivering service are constrained. Moreover, if such commingling is permitted, without allowing ratcheting of rates (i.e., requiring the CLEC to continue to pay the tariff rate for the loop portion and the UNE rate for the transport portion) then the FCC concern about access charge avoidance is mitigated. Therefore, the SGAT should be changed to allow this narrow exception to the rule against commingling.

3. Waiver of Termination Liability Assessments for EELs

AT&T and XO/ELI argued that Qwest failed to provide EELs when required, choosing to wait until extensive litigation about the obligation to provide them ended in a 1999 decision by the U.S. Supreme Court, and subsequent federal court decisions. The evidence supports a conclusion that CLECs have secured special access circuits only to avoid Qwest's refusal to provide them with EELs. The record also demonstrated that CLECs secured special access circuits under reduced rates in exchange for minimum term commitments. Qwest made a generally acceptable proposal for exempting CLECs from termination liabilities in defined cases. With several recommended changes, this proposal would equitably balance the competing interests involved.

4. Waiving Local Use Restrictions on Private Lines Purchases in Lieu of EELs

AT&T argued that CLECs should be exempted from complying with local use restrictions on private line purchases made when Qwest would not allow access to EELs. This argument had more weight in the presence of significant early termination penalties for private lines secured only because EELs were not available. However, the easing of those penalties, as discussed in the previous issue, provides an acceptable avenue for converting private lines to EELs. Therefore, AT&T's recommendation should not be adopted.

5. Counting ISP Traffic Toward Local Use Restrictions

XO and ELI argued that ISP traffic should be counted toward local usage requirements, because it presents no threat of avoiding special access charges, from which ISP traffic continues to be exempt. They argued that it would be discriminatory to require CLECs to purchase significantly more expensive access services to serve ISPs, while Qwest could provide its ISP customers with less expensive local exchange service. The FCC's recent order on reciprocal compensation leaves little doubt that ISP traffic is interstate in nature and has nothing to do with the provisions of the Telecommunications Act of 1996 as they relate to reciprocal compensation for the exchange of local traffic. Therefore, on its face, ISP traffic cannot count, under any practical application of the FCC's requirements, as local usage. Hopefully, the FCC will address the interplay between commingling issues and the recent *ISP Remand Order*, because XO/ELI have made a credible argument that it does not serve the public interest to require CLECs in some

cases to pay tariff prices that include subsidies to serve ISPs, while incumbents can serve them on a basis that conforms more closely to their costs.

Issues Remaining in Dispute - Switching

1. Access to AIN-Provided Features

Special features (e.g., Caller ID) can be provided by the switch or through the development of software-based capabilities through Qwest's AIN. The latter approach can avoid limitations that are built into the switch intelligence that switch vendors provide. The evidence of record establishes that Qwest makes available to CLECs all switch-provided features, whether or not Qwest has activated them in its switches. At issue was whether Qwest must provide access to AIN-provided features or, instead, to AIN feature development capabilities, which would allow CLECs to develop their own competing features. The FCC has said that the latter is sufficient and the record demonstrates that Qwest does provide access to those capabilities. AT&T considered the FCC's consideration of the issue to be inadequate, arguing that CLECs should have access to the AIN-provided features that Qwest has developed. The evidence of record supports the conclusion that giving CLECs access only to the AIN feature-development capabilities (and not the features that Qwest has developed from those capabilities) is sufficient to permit them to compete with Qwest in the provision of relevant services to end users.

2. Exemption from Providing Access to Switching in Large Metropolitan Areas

AT&T argued that SGAT Section 9.11.2.5 improperly limited the availability of unbundled switching in the 50 top Metropolitan Statistical Areas (the only one relevant in these seven states is in Salt Lake City) to end users with four or more access lines within a wire center. AT&T wanted UNE rates to apply to the first three lines when a customer added additional lines, recognizing that the market-based rates would apply when a customer had more than three lines. This argument is not consistent with the distinction the FCC made between the mass and business markets; the FCC's exclusion should apply to all lines of end users that have more than three.

3. Basis for Line Counts in Applying the Four-Line Exclusion

AT&T argued that neither the FCC nor the SGAT 9.11.2.5 were clear in explaining whether the three-line maximum per customer should be applied on a per-customer or per-location basis: AT&T favored a per-location approach, which it said better reflected the FCC's mass versus business market distinction. A per-customer approach better comports with the FCC's language; therefore, the existing SGAT language is appropriate.

4. Providing Switch Interfaces at the GR-303 and TR-008 Level

Qwest had objected to AT&T's request for such access during the workshops. However, Qwest noted in its brief that it had since incorporated into SGAT Section 9.11.1.1.2 language that it felt would give AT&T the access it sought. This issue should therefore be considered closed, subject to the raising (in AT&T's comments on this report) of any concerns with Qwest's proposed language.

IV. Checklist Item 2 – Access to Unbundled Network Elements

Background - UNEs

Item two of the 271 competitive checklist addresses nondiscriminatory access to unbundled network elements, hereafter referred to as UNEs. The Telecommunications Act of 1996 requires Qwest and other incumbent local exchange companies to provide access to UNEs “on rates, terms and conditions that are just, reasonable and nondiscriminatory.” 47 U.S.C. Section 251(c)(3). The checklist item 2 portion of the report first addresses general UNE issues, and then UNE platform, or UNE-P, and other combinations. Qwest’s SGAT Section 9 sets forth the general terms that govern access to UNEs.

Issue Deferred to Another Workshop

1. Bona Fide Request Process

Comments were filed about the bona fide request (BFR) process for handling requests for non-standard forms of interconnection or UNEs. The bona fide request process is of general applicability to the SGAT; therefore, it was addressed in the subsequent workshop on General Terms and Conditions.

Issues Resolved During This Workshop – UNEs Generally

1. Definitions

AT&T commented that the UNE-P definition of SGAT Section 4.61 should include all the UNEs that are part of the platform, including the NID (network interface device), tandem switching, dedicated transport, and signaling, for example. AT&T also objected to the “pre-existing” terminology as a qualifier on combinations. Finally, AT&T said that the definition of UNE Combinations included only two specified types; the section should be changed to eliminate any inference that UNE-P and UNE combinations are limited to pre-existing ones or to any particular set of combinations.⁶ Qwest responded that it had made changes to SGAT Sections 4.6.1 and 4.6.3 in another state’s workshops; it reported that these changes were sufficient to close the issue there. This issue was not briefed; it can be considered closed.

2. Changes in Law Regarding Access to UNEs

AT&T objected to SGAT Section 9.1.1, which provided a detailed method for incorporating changes in legal requirements involving access to UNEs.⁷ Qwest agreed that this section is redundant, given the general change-of-law provision contained in Section 2.2. Qwest therefore agreed to change this section to refer to that section.⁸ Issues regarding the appropriateness of

⁶ AT&T’s Comments on Access to Unbundled Network Elements, EELs, and Switching, February 23, 2001 (AT&T UNE Comments) at pages 30 and 31.

⁷ AT&T UNE Comments at page 15.

⁸ Seven State Reply Testimony for Checklist Items 2 and 5, Karen A. Stewart, on behalf of Qwest Corporation, March 9, 2001 (Stewart UNE Rebuttal), at page 4.

Section 2.2 were addressed at the subsequent workshop on General Terms and Conditions. Apart from that consideration, the remainder of this issue can be considered closed here.

3. General Obligation to Provide UNE Access

AT&T objected to the SGAT Section 9.1.2 expression of Qwest's statutory obligation to provide UNE access, because it failed to capture the applicable FCC standards and terms. AT&T also sought to add to the section language that would require Qwest to indemnify CLECs in the event that Qwest failed to meet the requirements of the section or of state retail or wholesale service quality requirements.⁹ Qwest changed the section to track more closely the FCC's terminology.¹⁰ Arguments about the indemnity issue were moved to the following workshop on General Terms and Conditions. Therefore, this issue, subject to later consideration of indemnity, can be considered closed.

4. UNE Use Restrictions

AT&T raised a concern about whether SGAT Section 9.1.3 would allow all FCC-permitted uses, and asked that the ancillary services prohibited by this provision be identified.¹¹ Qwest clarified that it would allow all currently permitted FCC uses, and that the ancillary services at issue were identified in SGAT Appendix A. This issue can be considered closed.¹²

5. UNE Demarcation Points

AT&T objected to the SGAT Section 9.1.4 requirement that it pay for Interconnection Tie Pairs (ITPs), which tie CLEC-purchased UNEs to a designated demarcation point between the networks of Qwest and the purchasing CLEC. AT&T also wanted to add direct connection from the CLEC collocation space to the distribution frame as an additional kind of allowable demarcation point.¹³ Qwest responded that the costs for ITPs should be considered in cost dockets, and it agreed to change the section to add the requested demarcation point language.¹⁴ This issue can be considered closed, subject to later cost docket consideration of the costs of ITPs.

6. UNE Testing

AT&T expressed concern that SGAT Section 9.1.6 failed to obligate Qwest to perform required testing to confirm functionality or to support maintenance and repair. AT&T also expressed concern that the section qualified Qwest's language, and did not unambiguously give CLECs all access necessary to perform end-to-end transmission and circuit functionality.¹⁵ Qwest responded in its testimony and further in its frozen SGAT filing with an amendment clarifying its obligations to: (a) perform tests to meet the technical parameters for the UNEs or the UNE

⁹ AT&T UNE Comments at page 16.

¹⁰ Stewart UNE Rebuttal at page 7.

¹¹ AT&T UNE Comments at page 17.

¹² Stewart UNE Rebuttal at page 8.

¹³ AT&T UNE Comments at page 18.

¹⁴ Stewart UNE Rebuttal at page 9.

¹⁵ AT&T UNE Comments at page 18.

combinations provided, (b) cooperate with CLECs in testing requested by CLECs to assist in determining end-to-end transmission and circuit functionality of UNE combinations, and (c) maintain and repair UNEs that it provided to CLECs.¹⁶ This issue can be considered closed.

7. UNE Provisioning Intervals

AT&T requested the identification of loop intervals, which SGAT Section 9.1.7 says are contained in SGAT Exhibit C.¹⁷ Qwest amended Exhibit C to list intervals for all UNEs.¹⁸ This issue can be considered closed with respect to the need to specify all intervals; however, the propriety of intervals for particular UNEs remains in dispute. Treatment of that issue follows later in this report.

8. Notice of Changes Affecting UNE Transmission Parameters

SGAT Section 9.1.9 commits Qwest to conforming to FCC requirements that would affect the interoperability of Qwest and CLEC networks. However, AT&T expressed concerns that Qwest could make changes that do not affect interoperability, but could affect the nature or quality of UNEs or of the conditions governing access to them. AT&T sought to require that such Qwest modifications be made subject to "Existing Rules" as defined in the SGAT, or, alternatively, that such modifications be subjected to a change management provision.¹⁹ Qwest responded with examples of the "minor" changes it considered to be contemplated by this SGAT section. Qwest also agreed to amend the section to clarify that, after such changes, it would still meet the transmission parameters of the UNE as ordered by a CLEC.²⁰ This issue can be considered closed.

9. UNE Rates

AT&T noted that UNE rates are to be reviewed in other proceedings; they have not been addressed in this one.²¹ This issue can be considered closed in these proceedings, subject to later Commission proceedings to address prices and costs.

10. Miscellaneous Charges

AT&T commented that SGAT Section 9.1.12 "Miscellaneous Charges" needs to specifically identify when such charges apply. AT&T argued that the charges should be just, reasonable, and nondiscriminatory.²² Qwest agreed to define and identify the circumstances when such charges could be applied, and to address any issues surrounding those charges in the following workshop on General Terms and Conditions. Therefore, the issue of the need to specify when such charges apply can be considered closed, subject to any consideration in the following workshop about the specific terms and conditions to be proposed by Qwest.

¹⁶ Stewart UNE Rebuttal at page 10.

¹⁷ AT&T UNE Comments at page 19.

¹⁸ Stewart UNE Rebuttal at page 11.

¹⁹ AT&T UNE Comments at page 19.

²⁰ Stewart UNE Rebuttal at page 11.

²¹ AT&T UNE Comments at page 20.

²² AT&T UNE Comments at page 21.

11. Construction Charges for Ancillary and Finished Services

AT&T objected to the provisions of SGAT Section 9.19 that would allow Qwest to impose construction charges for ancillary and finished services, in addition to direct charges for UNEs.²³ Qwest's frozen SGAT language removes authorization to charge for ancillary or finished services, thereby limiting the charges to those applicable to UNEs. While a dispute remains on the question of Qwest's obligation to build new UNEs (that dispute is addressed below), the issue of charges for ancillary and finished services (but not for UNEs, as discussed below) can be considered closed.

12. Unbundled Customer Controlled Rearrangement Element (UCCRE)

AT&T expressed uncertainty and concern about the element that Qwest identified as UCCRE in SGAT Section 9.9.²⁴ Qwest responded that UCCRE was Qwest's offering to meet the FCC's requirement that CLECs be provided with digital cross connect capabilities in the same manner that incumbents provide it to interexchange carriers. Qwest noted that it does not require the use of UCCRE to gain access to features or functions or to combine UNEs.²⁵ Qwest said that AT&T agreed in another state's workshop that this issue was closed; AT&T did not brief the issue here. This issue can be considered closed.

13. UNE Demarcation Points

AT&T requested a new SGAT Section 9.23.1.10, which would obligate Qwest to provide a UNE demarcation point and adequate CLEC access to it.²⁶ Qwest generally agreed that there should exist a network demarcation point for each UNE, but that certain combinations do not have a demarcation point on the Qwest network (e.g., the UNE-P demarcation point is the end user's premises). Qwest, however, felt that no new SGAT language was required, because Section 9 already dealt adequately with the issue of UNE demarcation points.²⁷ No brief identified this issue as remaining in dispute; it can therefore be considered closed.

14. Access to Newly Available UNEs and UNE Combinations

AT&T wanted to add a new SGAT Section 9.23.17, which would deal with CLEC access to new newly available UNEs or to additional UNEs or combinations that it makes available to itself, affiliates, or other CLECs.²⁸ Qwest amended SGAT Section 9.23.1.2 to include language, which resolved this issue in another state's workshops.²⁹ The language was included in the frozen SGAT and AT&T did not brief this issue. Therefore, this issue can be considered closed.

²³ AT&T UNE Comments at page 21.

²⁴ AT&T UNE Comments at page 29.

²⁵ Stewart UNE Rebuttal at page 15.

²⁶ AT&T UNE Comments at page 36.

²⁷ Stewart UNE Rebuttal at page 27.

²⁸ AT&T UNE Comments at page 35.

²⁹ Stewart UNE Rebuttal at page 14.

15. Information Access When Customers Change Service Providers

AT&T objected to the fact that SGAT Section 9.23.5.6 provided that Qwest would not tell the CLEC the name of the new service provider when that CLEC loses a customer. AT&T considered this provision discriminatory, because the section contained no prohibition on informing Qwest marketing personnel of the change.³⁰ Qwest replied that the Act already addresses the confidentiality of customer-sensitive and proprietary information; therefore, the SGAT need not address this issue. Qwest deleted the sentence that AT&T considered discriminatory.³¹ This issue can be considered closed.

Issues Decided in Earlier Workshop Reports – UNEs Generally

1. Including LIS in the Definition of Finished Services

There were objections to including Local Interconnection Service (LIS) in the definition of “finished services” in the SGAT. This issue was significant because of the SGAT prohibition against commingling UNEs and finished services in the same trunk group. The principal focus of that issue was commingling special access circuits (which are finished services as well) with UNEs in a manner that could allow CLECs to avoid access charges improperly. Qwest agreed to delete LIS from the definition of “Finished Services” in Section 4.23(a) of the SGAT. With this change, the commingling issue became similar to the third unresolved *Reciprocal Compensation Issue (Commingling of InterLATA and Local Traffic on the Same Trunk Groups)* of the May 15, 2001 *First Report – Workshop One* in these proceedings. That recommended resolution remains appropriate here.

2. Marketing During Misdirected Calls

As it did in the workshop addressing resale, AT&T asked for a change to SGAT Section 9.23.3.17, in order to provide controls on marketing and sales exchanges in cases where a CLEC customer misdirects a service, maintenance, or repair call to Qwest.³² This issue presents no new issues, assertions, or support different from those addressed in the second unresolved *Resale issue (Marketing During Misdirected Calls)* of the May 15, 2001 *Second Report – Workshop One* from these workshops. That resolution remains appropriate here. Therefore, Qwest should be required to make changes to SGAT Section 9.23.3.17 that correspond to those recommended in the *Workshop One* report.

3. Regeneration Charges

AT&T objected to the SGAT Section 9.1.10 channel regeneration charges where distances from the IDCF frame to a CLEC’s collocation space would require regeneration.³³ AT&T argued that Qwest should be required to provide the signal as ordered by a CLEC at the CLEC’s collocation point, without any charges for any necessary regeneration. AT&T argued that such charges were improper, because Qwest has the power to determine collocation locations. The location of the

³⁰ AT&T UNE Comments at page 49.

³¹ Simpson UNE Rebuttal at page 6.

³² AT&T Loops Brief at pages 12 and 13.

³³ AT&T UNE Comments at page 20.

CLEC's facilities is a controlling factor in whether or not regeneration is necessary. It would discriminate among CLECs if some of them had to pay and some did not, based solely on where Qwest chose to locate them. AT&T also said that in paragraphs 114 through 120 of the *Second Report and Order*³⁴ the FCC prohibited regeneration charges for the termination of CLEC facilities at their collocation spaces.

This issue is essentially the same as the tenth unresolved *Collocation* issue (*Channel Regeneration Charges*) of the May 15, 2001 *Second Report – Workshop One* in these proceedings. AT&T's challenge here to that report's resolution of the issue is misplaced. First, the FCC report and order cited dealt with special access by interexchange carriers; the FCC was not discussing local services that CLECs take from incumbents. Second, the issue at hand there was the inclusion of repeater (regeneration) costs in tariff rates for all cross connections, despite the fact that the evidence demonstrated that repeaters were only necessary in rare cases where distances were beyond certain lengths. In other words, the issue there was whether repeater costs should be built into the charges for all collocations. For example, in commenting on Bell Atlantic's argument that repeaters were necessary, the FCC said (at paragraph 119 of the order) that:

Bell Atlantic does not explain why it is necessary to add repeaters to circuits without regard to the length of the cable between the interconnector's facilities and the LEC's facilities...We find, therefore, that Bell Atlantic fails to justify including a repeater on every interconnection circuit.

The FCC went on to require that repeater costs be excluded from tariff rates. The issue here is not the inclusion of repeater or regeneration costs in all collocation instances. It is acknowledged that the cost will apply only when regeneration is necessary and only where there is no alternative location. This is not the issue that the FCC had before it. If regeneration is required through no fault of Qwest's, then the reasonable costs of providing it should be recovered from the CLEC who benefits from regeneration. The reasons supporting this conclusion were fully addressed in the cited section of the *Second Report – Workshop One*. The argument that AT&T made here about the FCC report and order considering interconnection in the interstate context (and that Jato made in the first workshop) is not persuasive.

Issues Remaining in Dispute – UNEs Generally

1. Construction of New UNEs

ELI commented that SGAT Section 9.19 should be amended to require Qwest to construct unbundled loops under similar terms and conditions to those that apply when Qwest must construct its own loops to provide service to its own customers. ELI also requested that the phrase "provided that facilities are available" be deleted from SGAT Sections 9.23.1.4-6, in

³⁴ *Local Exchange Carriers' Rates Terms and Conditions for Expanded Interconnection through Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, Second Report and Order, FCC 97-208 (rel. June 13, 1997).

order to impose on Qwest the obligation to construct UNEs and UNE combinations.³⁵ Qwest responded that its obligation to build UNEs should be limited to cases where it has a legal obligation to build for its own end users, citing paragraph 451 of the First Report and Order, which limits the unbundling of facilities to "existing incumbent LEC facilities."³⁶

AT&T argued that Qwest should be obliged to build new facilities to provide UNEs for CLECs under the same terms and conditions that it would construct them for its own end users. AT&T argued that Qwest should also have to perform such construction at cost based prices, which presumably means TELRIC costs, not the actual costs of construction of the particular UNE involved. AT&T cited the obligation to provide UNEs on terms that are just and reasonable and equal to the terms and conditions under which an incumbent provides facilities to itself. AT&T said that nowhere did the FCC relieve incumbents of the responsibility to construct new facilities to provide UNEs, except in the case of interoffice transport.³⁷

AT&T argued that CLECs would be denied a meaningful opportunity to compete in the event that Qwest were not required to build facilities to provide CLECs network elements (other than transport) under the same terms and conditions that it would construct for itself or its end users; Qwest could refuse a CLEC request, then build facilities itself to serve the same end user.³⁸

ELI objected to the SGAT Section 9.23.1.4, Section 9.23.1.5, Section 9.23.1.6, and Section 9.23.3.7.2.12.8, which limit Qwest's obligation to provide EELs to existing and available facilities.³⁹ Qwest responded that paragraph 451 of the *First Report and Order* limits the provision of unbundled interoffice transport to "existing" Qwest facilities.⁴⁰

XO/ELI argued that it would be discriminatory for Qwest to refuse to construct new facilities for the use of CLECs in those circumstances (and under those terms and conditions) where it would construct new facilities to serve its end users. Nevertheless, XO/ELI assert that Qwest subjects CLEC requests for new facilities to different standards.⁴¹

XO also testified that SGAT Section 9.2.4.3.1.2.4 should not allow Qwest to reject a CLEC order for unbundled loops for lack of facilities, unless Qwest was entitled to reject a similar order from one of its end users. XO wanted to change the language to provide for parity between CLECs and Qwest's own end users.⁴²

XO/ELI argued that the Supreme Court's holding that CLECs are not entitled to a "yet unbuilt superior" network was not intended to deny an obligation to build, but was set forth in the limited context of denying a CLEC right to service that is superior in quality to what ILECs were

³⁵ Workshop 3 Response Testimony of Timothy H. Peters on behalf of Electric Lightwave, Inc., February 23, 2001 (Peters Testimony), at page 15.

³⁶ Stewart UNE Rebuttal at page 15.

³⁷ AT&T's Brief on Impasse Issues Regarding Checklist Items 2, 5, and 6 ("AT&T UNE Brief"), May 30, 2001, at page 5, citing *Local Competition Order* paragraph 315 and 47 C.F.R. § 313(b).

³⁸ AT&T UNE Brief at page 6.

³⁹ Peters Testimony at pages 15 and 18.

⁴⁰ Stewart Rebuttal at page 37.

⁴¹ XO/ELI Brief at page 2.

⁴² LaFrance Testimony at page 11.

providing other customers.⁴³ These two participants also asserted that paragraph 451 of the *First Report and Order* did not exempt incumbents generally from an obligation to construct, but rather concerned only the impact of the FCC's rules on small CLECs (which do not include Qwest).⁴⁴

XO/ELI further argued that a number of provisions of Utah law add to Qwest's obligations in that state, citing provisions: (a) prohibiting unreasonable prejudice or disadvantage to anyone, (b) furnishing facilities necessary for public safety, health, comfort, and convenience, and (c) excluding lack of facilities from cases where Qwest may refuse service to a requesting customer.⁴⁵

Qwest argued that it had no obligation to "build a network for CLECs," citing paragraph 324 of the FCC's *UNE Remand Order*, which said that:

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.

Qwest also cited the Eighth Circuit Court's holding in *Iowa Utilities Bd. v. FCC* that:

*We also agree with petitioner that subsection 251(c)(3) implicitly requires access to only an incumbent LEC's existing network, -- not to a yet unbuilt superior one.*⁴⁶

Qwest noted that there was no bottleneck-facilities concern with respect to facilities that did not yet exist. Despite this argument, Qwest did agree to undertake specific construction obligations in its SGAT Sections 9.1.2.1 and 9.1.2.2. The facilities encompassed by this commitment include conditioning, placing a drop, adding a network interface device, adding a card to central office or remote equipment, and adding central office tie pairs and field cross jumpers. AT&T argued that this offer from Qwest to build network elements to the extent that it has an obligation to build under its "carrier of last resort" obligations is not sufficient, because it extends only to DS0 loops, not higher capacity ones.⁴⁷

AT&T's concerns extend to transport as well. Qwest specifically declined to add electronics for dedicated transport UNEs, citing paragraph 324 of the *UNE Remand Order*.⁴⁸ AT&T objected to Qwest's refusal to accept an obligation either to: (a) place electronics on dark fiber in order to make it available as dedicated transport, or (b) replace electronics to expand existing capacity of the fiber. AT&T argued that UNE rates would compensate Qwest for the cost of installing electronics. AT&T also said that the duty to modify facilities to provide UNE access (under

⁴³ XO/ELI Brief at page 3, citing *Iowa Utilities Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *reversed in part and remanded on other grounds, AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

⁴⁴ XO/ELI Brief at page 3.

⁴⁵ XO/ELI Brief at pages 3 and 4.

⁴⁶ Qwest's Legal Brief Regarding Disputed Issues: Checklist Items 2 (UNEs), 5 (Transport), and 6 (Switching) ("Qwest UNE Brief"), May 31, 2001, at pages 10 and 11.

⁴⁷ AT&T UNE Brief at page 7.

⁴⁸ Qwest UNE Brief at page 11.

Local Competition Order paragraphs 198 and 202) support a requirement to add electronics to dark fiber.⁴⁹

Proposed Issue Resolution: Qwest's reliance upon the Eighth Circuit Court opinion is strained. The context of the statement about an unbuilt network does not clearly relate to the issue of an incumbent's obligation to construct specific UNEs, as opposed to the issue of the kinds of presumptions about an incumbent's network that are appropriate for addressing broad questions about prices or service quality under the Telecommunications Act of 1996. Quite simply, the precise question at issue here has not been addressed explicitly, either in the Act or in the orders and rules of the FCC.

Looking to the Act's purposes, however, is helpful in narrowing the issue. So is Qwest's commitment in SGAT Sections 9.1.2.1 and 9.1.2.2 to provide for CLECs' new facilities that Qwest would provide under its carrier-of-last-resort obligations. Under this commitment Qwest would only charge CLECs what a Qwest retail customer would have to pay under analogous circumstances. This commitment narrows the issue to one of determining whether, even where Qwest has no retail obligation to build, there should nevertheless be a requirement that it undertake construction of new facilities to provide UNEs and whether such construction should be at TELRIC prices.

In deciding the question, we should begin by addressing several points that can cloud the real issue. First, there is a substantial risk that Qwest will not recover actual costs in the event that AT&T's proposal is accepted. AT&T is not correct in arguing that UNE rates are compensatory for the installation of new or enhanced electronics on dark fiber. UNE rates are monthly in nature and generally without minimum term commitments. They can be said to compensate Qwest for investments that it has already made for its own purposes; at least that is a conceptual underpinning of the FCC's pricing approach for UNEs. However, a CLEC that requires a new investment altogether should have more than an obligation to pay month-to-month. Absent a term commitment, Qwest could be significantly under-compensated in cases where CLECs abandon UNEs before new investment is recovered.

In essence, asking that Qwest be required to provide new construction is tantamount to requiring Qwest to take investment risk in new facilities. Nothing in the Act or in the rulings of the FCC suggests that promoting competition requires altering the normal risks of new investments. Moreover, AT&T has proposed no language that would mitigate this risk to Qwest. Instead, AT&T proposes merely to move the obligation to Qwest, which actually would encourage AT&T to require Qwest to make investments in situations where neither AT&T nor any other rational competitor would risk its own resources on the chance that customer use would continue for long enough to provide investment recovery. It is wholly inconsistent with the promotion of effective competition to sever connections between risk/reward by transferring all of the former to a competitor.

Second, we should not accept on faith that, with respect to new facilities, Qwest holds the same advantages of incumbency that apply to its existing facilities. It is clear that Qwest would gain material advantage by being able to exploit existing facilities, which it gained before the onset of

⁴⁹ AT&T UNE Brief at page 8.

facilities-based competition. However, there is just as clearly no presumption that it will indefinitely continue to have advantage as to new facilities. If the case were otherwise, then Congress and the FCC could be said to have started a meaningless pursuit of facilities-based competition. Otherwise we must ask how such competition can be expected to develop if incumbents have natural and compelling advantages out into the future. A key premise of the Act and of the FCC's implementing actions with respect to it is the development of facilities-based competition. For existing facilities, it is correct to place the burden on Qwest to show why access to them is not appropriate. For new facilities, the burden should be on Qwest's competitors to show why access to them is appropriate.

There is no evidence of record to support any claim that Qwest has a monopoly position with respect to new facilities. In fact, circumstances would suggest that all carriers competent enough to have a future in the business have the capability either to construct new facilities themselves, or to contract with third party construction experts (much as incumbents do themselves on occasion) who do. Space on or in poles, ducts, conduits, or rights of way may prove scarce, but competitors have access to Qwest's facilities and rights in this regard. Certainly, AT&T did not produce any evidence indicating that Qwest has any, let alone an unnatural, advantage in the costs of constructing new facilities. Moreover, AT&T presented no evidence to indicate that the access it is entitled to with respect to Qwest's poles, ducts, conduits, and rights of way is insufficient to allow it the same ability that Qwest has to construct new facilities where access rights are scarce.

Thus, there is not a clear basis for concluding that the failure to require Qwest to undertake the obligation to construct new facilities will significantly hinder fulfillment of the Act's general objectives, let alone its specific requirements. Even were there some demonstrated basis to so conclude, one would have to consider the goal of promoting facilities-based competition. Requiring Qwest to serve indefinitely and ubiquitously as both a financing arm (by taking investment risk under month-to-month UNE leases to CLECs) and as a construction contractor (by being forced to perform the installations required) is not appropriate. Not only will it not promote the goal, it may well hinder it. If CLECs can transfer the economic risks of new construction to Qwest, there is little reason to expect that they will have an incentive to take facilities risks or develop efficient installation capabilities.

There is, of course, a balance to be drawn in seeking to serve this goal and the goal of assuring that Qwest does not secure undue advantage through its incumbency in the local exchange market. However, where, as here, that incumbency cannot be shown to give particular advantage, the decision is clear – Qwest should not generally be required to construct new facilities to provide CLECs with UNEs.

AT&T's brief expressly argued that failing to require Qwest to install electronics to light dark fiber would allow Qwest to retain the fiber solely for its own use. This argument ignores the self-evident point that AT&T can gain access to the dark fiber, and install its own electronics, using its rights of access to Qwest's poles, ducts, conduits, and rights of way. There is not any evidence in this record to counter the notion that CLECs have the financial and operational wherewithal to perform such installations. Even if Qwest were more efficient in making such installations (another question on which no evidence was submitted and which is, by no means,

without doubt), there is no basis for concluding that CLECs cannot make such installations in a way that gives them a meaningful opportunity to compete with Qwest.

AT&T's argument that Qwest's duty to modify facilities to accommodate interconnection or UNE access actually undercuts the argument that the FCC has supported the notion that incumbents must install new facilities to provide UNEs. Modification is different from new installations. If it were held otherwise, we would create a slippery slope down which would slide many types of installation work. Probably nobody would argue that removing bridge taps or load coils constitute a modification that makes a facility serviceable as a UNE. However, if the term modification were given a broad meaning, then it would also support the claim that Qwest should have to take out a smaller switch and install a newer one (or replace a smaller capacity line with a higher one) if there were capacity limits constraining the particular use anticipated by a CLEC for the existing facility as a UNE. In that case, the distinction between modification and new installation would become hopelessly blurred. If the FCC had intended that result, it is difficult to comprehend why it spoke in terms of modification at all.

The AT&T argument about preferential treatment misses a central point of the Act. Throughout its brief, AT&T cites the general proposition that Qwest cannot discriminate in favor of itself. Quite to the contrary, except where prohibited, Qwest has the same rights as any other business or person to discriminate in favor of itself. The normal standard of behavior among competitors is that they may exploit any peculiar asset to gain advantage over their rivals. Only where such discrimination is prohibited should there be concern. There is nothing inherently evil or malicious about using one's assets to serve one's own interests at the expense of competitors; in fact, it would be naïve to believe that any of the carriers participating in these workshops thinks otherwise.

We must be careful not to cross an important conceptual line here. We are not addressing discrimination in a social or constitutional sense; it should not be considered bad per se, or even suspect. Rather, it should be prohibited where it is inconsistent with the goals and the specific requirements of the Telecommunications Act of 1996, and that is all. Thus, general assertions of discrimination are not persuasive; context is critical in resolving issues where that claim has been made.

The Act does not preclude all preferential treatment by an incumbent in favor of itself. For example, an incumbent is perfectly free to favor itself by not making its vehicle fleet available for lease by CLECs. Nothing in the Act prohibits it, even though one of the clear advantages of incumbency is the existence of a mature, readily available fleet that draws significant economy of scale advantage, as compared with the existing resources of at least some CLECs. Discrimination is only prohibited in cases where the FCC has decided that CLECs are entitled to equal availability of facilities or services. Thus, that an ILEC favors itself does not itself give rise to a right of equal treatment; that right must come from some other, independent place in the law or in the pronouncements of the FCC. Quite simply, neither the law nor the FCC has granted it explicitly, nor is there reason evident from this record why that right should be determined by the participating commissions to be necessary to give CLECs a meaningful opportunity to compete or otherwise to satisfy the public interest.

2. Commingling UNEs and Tariffed Services on the Same Facilities

ELI argued for the elimination of SGAT Section 9.23.3.7.2.7, Section 9.23.3.7.2.10, and Section 9.23.3.13 restrictions on providing UNEs and tariff services on the same facilities.⁵⁰ XO/ELI argued that Qwest took an incorrect interpretation of the FCC's "commingling" term. They noted that the FCC concern here was to avoid bypass of special access services. XO/ELI contended that using the same facility to provide UNEs and special access services neither combines UNEs and tariff services nor does it allow a bypass of special access services. Holding otherwise, according to XO/ELI would also produce economic waste. Such a holding would require a CLEC that purchased a DS-3 facility under tariff to pay for an entirely new DS-3 facility for local traffic, even if there were enough currently unused capacity in the tariffed DS-3 facility to meet all the local service needs. XO/ELI considered it particularly egregious that Qwest would not even allow the same multiplexer to be used for UNEs and tariffed services. XO/ELI also cited added grooming costs and service disruptions, should Qwest's limitations stand. Therefore, they recommended allowing multiple use and proration of rates according to the percentage of the facility used for UNEs and for special access.⁵¹

Qwest countered that paragraph 22 of the *Supplemental Order Clarification* provides that:

This option [for establishing a significant amount of local exchange service] does not allow loop-transport combinations to be connected to the incumbent LEC's tariffed services.

Qwest's brief also cited language from paragraph 28 of the order:

We further reject the suggestion that we eliminate the prohibition on "co-mingling" (i.e. combining loops or loop-transport combinations with tariffed special access services)... We are not persuaded on this record that removing this prohibition would not lead to the use of unbundled network elements by LXC's solely or primarily to bypass special access services. We emphasize that the co-mingling determinations that we make in this order do not prejudice any final resolution on whether unbundled network elements may be combined with tariffed services. We will seek further information on this issue in the Public Notice that we will issue in early 2001.

AT&T raised a concern different from the problem that XO/ELI had with commingling. AT&T proposed an SGAT Section numbered 9.23.1.9, which would allow CLECs to combine Qwest-provided UNEs with other unbundled elements or services.⁵² Qwest addressed such further combinations in its proposed SGAT Section 9.23.1.2.2, which, unlike AT&T's language, precluded directly connecting UNE combinations with Qwest finished services in most cases.⁵³

⁵⁰ Peters Testimony at pages 17 and 18.

⁵¹ XO/ELI Brief at pages 4 through 6 and Peters Testimony at pages 8 and 9.

⁵² AT&T UNE Comments at page 36.

⁵³ Stewart UNE Rebuttal at page 14.

AT&T argued that the broad commingling prohibition of SGAT Section 9.23.1.2.2 is not supported by any FCC rule or order. Rather, AT&T said, 47 C.F.R. § 51.307(a) precludes restrictions on the use of UNEs. AT&T also argued that Qwest's prohibition against commingling is wasteful, and raises a barrier to meaningful competition with Qwest, because it requires the construction of separate networks where one would serve.⁵⁴

AT&T acknowledged the existing FCC restriction against commingling either EELs or loops with special access circuits on the same facilities, pending a review of the matter. However, AT&T noted, there were no prohibitions extending beyond these specific ones. Accordingly, AT&T sought a change to SGAT Sections 9.6.2.1 and 9.23.1.2.2 to make it clear that the SGAT ban on connecting UNEs and "finished" services would not extend beyond cases specifically prohibited by the FCC.⁵⁵

In supporting the SGAT sections prohibiting commingling, Qwest relied upon the same FCC determinations acknowledged by AT&T.⁵⁶ Qwest did mention the FCC ruling on commingling of interconnection facilities and special access circuits (resolved as the third unresolved issue, *Commingling of InterLATA and Local Traffic on the Same Trunk Groups*, under *Reciprocal Compensation* in the May 15, 2001 *Second Report – Workshop One* in these workshops). However, Qwest provided no argument or support for a commingling ban involving UNEs beyond what was specifically required by the FCC in connection with loops or loop transport combinations.

Proposed Issue Resolution: The FCC used the terms "connecting," "combining," and "commingling" of loops and loop-transport combinations to describe what it is that CLECs cannot do pending its determination of whether its access-charge regime would be compromised thereby. The most fundamental problem with the XO/ELI argument is that it does not say what these three terms mean, if they do not mean segregating UNEs and special access circuits into separate facilities at least as a general matter. Nor is any other interpretation apparent. In the absence of a clear alternative that will serve the FCC's goal, which is an important one, Qwest's interpretation of the requirement should be adopted as consistent with the language and the purpose of the FCC's temporary prohibition.

The dispute between AT&T and Qwest is much narrower: AT&T has not contested the ability of Qwest to deny (pending current consideration of the ban by the FCC) CLECs the ability to commingle loops and loop-transport combinations and special access circuits on the same facilities. However, Qwest's language does not limit the prohibition to these cases. Nor did Qwest provide any support for the proposition that the FCC has otherwise retreated from its broad restriction under 47 C.F.R. § 51.309(a) against incumbent:

limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

⁵⁴ AT&T Loops Brief at page 11.

⁵⁵ AT&T Loops Brief at page 12.

⁵⁶ That resolution remains appropriate and is in no way intended to be changed here.

Therefore, Qwest should not be permitted to impose restrictions broader than those specifically addressed in its brief. Accordingly, the next-to-last sentence of SGAT Section 9.23.1.2.2 should be amended to read as follows:

Where specifically prohibited by applicable federal or state requirements, UNE Combinations will not be directly connected to a Qwest Finished Service, whether found in a Tariff or otherwise, without going through a Collocation, unless otherwise agreed to by the Parties.

3. OSS Testing

AT&T raised concerns about the lack of SGAT language to address the testing it considered necessary to address the effectiveness of Qwest's OSS to support large-scale market entry by CLECs. Qwest responded by proposing SGAT Section 12.2.9.3 in Exhibit WS3-QWE-KAS-7. AT&T proposed changes to make that language more comprehensive.⁵⁷

One aspect of AT&T's concern is the existence of a stand-alone test environment to test new OSS releases. AT&T noted that Qwest has recently proposed to make the environment available prior to seeking Section 271 approval and to submit a proposal to the ROC for testing that environment. AT&T argued that the stand-alone test environment should be tested as part of the ROC third-party OSS test before a finding of compliance with checklist item 2.⁵⁸

The second major aspect of AT&T's concern was the lack of a provision for comprehensive production testing. AT&T argued that Qwest's language for Section 12.2.9.3 did not provide for testing in volumes that would confirm the suitability of Qwest's OSS for "large-scale market entry." AT&T said that all of the testing provided for by Qwest operated on a small scale or required the use of "friendlies" (CLEC customers willing to risk their telephone service to participate in the test). AT&T's proposal, which it said was consistent with its interconnection agreement in Minnesota and its dealings with Verizon and Bell South, would install 1,000 lines to test equipment and billing. AT&T considered the OSS test (which would not test AT&T's particular interfaces) inadequate to meet the FCC's finding that carrier-to-carrier testing is also relevant.⁵⁹

Qwest objected to AT&T's detailed proposal for comprehensive production testing as: (a) generally unnecessary in light of the other forms of testing contemplated by the SGAT, (b) duplicative of the testing to be performed as part of the ROC third-party OSS test now underway, and (c) particularly unnecessary for a company with AT&T's reported entry strategy of market entry that does not make substantial use of Qwest's loops. Qwest objected to being obliged to undertake extensive testing on the unilateral request of a CLEC, but did indicate a willingness to negotiate a specific comprehensive test procedure based upon particular circumstances.⁶⁰

⁵⁷ AT&T Loops Brief at pages 15 and 16, referring to its Exhibit WS3-ATT-MFH-2.

⁵⁸ AT&T Loops Brief at pages 17 and 18.

⁵⁹ AT&T Loops Brief at pages 19 and 20.

⁶⁰ Qwest Loops Brief at pages 5 and 6.

Qwest objected to a number of AT&T's other changes to SGAT Section 12.2.9.3.1 through 12.2.9.3.4:

- AT&T's addition at various places of the phrase "CORBA and other application-to-application interfaces" should not be accepted because Qwest is reluctant to make commitments regarding non-standard or unidentified interfaces. Qwest considered its agreement to AT&T's last sentence in proposed Section 12.2.9.3.1 adequate to address connectivity-testing needs for new interfaces.
- The added AT&T sentences in Section 12.2.9.3.2 and 12.2.9.3.3 (those beginning with "While separate...") that require testing and production results to be "identical." Qwest considered that standard vague and perhaps impossible to meet.
- The AT&T requirement that test "pre-order inquiries" be subject to the same edits as production orders. Qwest said that this was not possible, because the edits based on real customer data in Qwest's systems had no application to the fictional customers used for purposes of this test.
- AT&T's additions as the last sentence of the first paragraph of Section 12.2.9.3.2 and of Section 12.9.3.3 ("When CLEC is testing its interface with a new Qwest release...") and the third sentence of Section 12.9.3.4 ("When Qwest migrates its OSS interfaces..."). Qwest believed that its language in Section 12.2.9.4.1 and 12.2.9.4.2 of the SGAT attached to its brief already adequately addressed new software releases and upgrades.

Proposed Issue Resolution: Qwest's brief did not address AT&T's concern about evaluation of the stand-alone test environment in at least the general context of 271 approval activities. Given Qwest's reported goal of conducting an evaluation in the immediate term, therefore, this issue will be deferred until state commission consideration of the results of the current ROC third-party OSS test.

AT&T's proposed language for SGAT Section 12.2.9.3.5 would adopt a prescriptive approach to comprehensive testing that would not allow for negotiation between Qwest and CLECs with respect to test scope, conditions, or payment responsibility. It also contains no provision for dealing with requested tests that duplicate other test activities. Moreover, adopting that language now could prove disruptive to the OSS test procedures now underway. There was no disagreement on the record with the following propositions: (a) the ROC third-party test will comprehensively address the ability of Qwest's OSS to serve CLEC needs, including the ability to handle commercial volumes of transactions, (b) the test has been designed with input from all stakeholders, including CLECs, who had an opportunity to identify any test activity considered material to Section 271 compliance, and (c) the stated objective of AT&T in conducting the test was to test its particular side of the interface with Qwest's OSS (which does not seek to evaluate the functionality of any CLECs operations or systems). Moreover, AT&T presented no argument or evidence that its near-term market-entry plans require any such test to be performed immediately.

However, it should be recognized that, in the future, there could well be circumstances where a CLEC has a particular need for testing beyond what is already contemplated by the SGAT, for example because of a major CLEC product or service roll-out or a change in the systems that a CLEC will use to manage its customer relationships, including its interface with Qwest's OSS. There should be a provision to allow for testing that is appropriate to such circumstances. While it is proper to expect Qwest and the CLEC involved to work out the details of such a test, it is not reasonable to require that they ultimately agree, which would be tantamount to giving Qwest a veto power over the conduct of such a test. Therefore, the following language should be included in the SGAT, in lieu of AT&T's proposed Section 12.2.9.3.5:

Upon request by a CLEC, Qwest shall enter into negotiations for comprehensive production test procedures. In the event that agreement is not reached, the CLEC shall be entitled to employ, at its choice, the dispute resolution procedures of this agreement or expedited resolution through request to the state commission to resolve any differences. In such cases, CLEC shall be entitled to testing that is reasonably necessary to accommodate identified business plans or operations needs, accounting for any other testing relevant to those plans or needs. As part of the resolution of such dispute, there shall be considered the issue of assigning responsibility for the costs of such testing. Absent a finding that the test scope and activities address issues of common interest to the CLEC community, the costs shall be assigned to the CLEC requesting the test procedures.

Moreover, given the importance and the significant resource consumption required by the current ROC third-party OSS test, this procedure should not be available for use until completion of that test and after the first consideration by the FCC of the results thereof.

Finally, there remain Qwest's specific objections (itemized above) to other portions of the AT&T changes to SGAT Section 12.2.9.3. Those objections are well founded. Therefore, none of the AT&T additions subject to those objections is appropriate. However, subject to the revised Section 12.2.9.3.5 proposed above and subject to the acceptance of Qwest's specific objections to AT&T's changes, AT&T's other requested changes to Section 12.9.2.3 and its subparts (as shown in WS3-ATT-MFH-2) should be incorporated into the SGAT.

Issues Resolved During This Workshop – UNE Platform and Other Combinations

1. Availability of Switch Features with UNE-Platforms

AT&T commented that the SGAT Section addressing UNE-P POTS was unclear; it suggested that Qwest could withhold some switch features from this option.⁶¹ Qwest responded that it did not intend for the language to create that suggestion; Qwest offered various amendments to portions of SGAT Sections 9.23.3.2 to address AT&T's concern.⁶² This issue can be considered closed.

⁶¹ AT&T UNE Comments at page 39.

⁶² Simpson UNE Rebuttal at pages 3 and 4.

2. Features Available with UNE-P-PBX, UNE-P-DSS, and UNE-P-ISDN

AT&T commented that SGAT Section should list all of the features that can and cannot be ordered with the UNE-P-PBX.⁶³ Qwest made changes to SGAT Sections 9.23.3.3, 9.23.3.4, and 9.23.3.5 to provide more detail about the features of these offerings.⁶⁴ This issue can be considered closed.

3. Migrating from Centrex Services to UNE-P

AT&T said that SGAT Section 9.23.3.6 did not make clear what Centrex-type UNE combinations Qwest was making available. The features available were not clearly stated and the section did not oblige Qwest to make available all necessary administrative controls.⁶⁵ Qwest changed the Section to provide the additions requested by AT&T.⁶⁶ This issue can be considered closed.

4. High Speed Data with UNE-P-POTs and UNE-P-ISDN

AT&T said that CLECs should be able to order these offerings with xDSL, which would require the addition of unbundled packet switching.⁶⁷ Qwest responded that this issue was to be addressed in the workshop that addressed line splitting. It saw no need here to make SGAT changes separate from those identified there.⁶⁸ AT&T did not brief this issue; it can be considered closed.

5. Converting From Resale to UNE-P

AT&T wanted to change SGAT Section 9.23.3.13 to apply the UNE-P rate (when it is converting from serving a customer by reselling Qwest retail services to the use of a Qwest-provided UNE-P) at the later of the due date requested by the CLEC or the standard interval. AT&T noted that there should be no reason for delay in the conversion, because no new facilities are required in such cases.⁶⁹ Qwest agreed to change the section to accommodate AT&T's request, except where delay is caused by the requesting CLEC.⁷⁰ This issue can be considered closed.

6. Definition of Access

AT&T noted that SGAT Sections 9.23.1 and 9.23.2 were phrased to allow "access" to UNE combinations, but did not make the combinations themselves available to CLECs.⁷¹ The phrasing of Section 9.23.2 in Qwest's frozen SGAT filing makes it clear that Qwest offers the combinations, not just access to them. This issue can be considered closed.

⁶³ AT&T UNE Comments at page 40.

⁶⁴ Simpson UNE Rebuttal at page 4.

⁶⁵ AT&T UNE Comments at page 41.

⁶⁶ Simpson UNE Rebuttal at page 4.

⁶⁷ AT&T UNE Comments at page 46.

⁶⁸ Simpson UNE Rebuttal at page 7.

⁶⁹ AT&T UNE Comments at page 47.

⁷⁰ Simpson UNE Rebuttal at page 5.

⁷¹ AT&T UNE Comments at page 31.

7. Restrictions on UNE Combinations

AT&T considered previous SGAT Section 9.23.2 language to have placed restrictions under language that did not track FCC orders, but noted that the current language offered by Qwest reflected acceptable changes.⁷² This issue can be considered closed.

8. Use Restrictions

AT&T sought a provision in SGAT Section 9.23.1.2.1 that would prohibit Qwest from imposing use restrictions or other limiting conditions on UNE combinations, consistent with 47 C.F.R. § 51.315(d).⁷³ Qwest agreed here to language that AT&T found acceptable in another state's workshop.⁷⁴ This issue can be considered closed.

9. Combining Qwest Provided UNEs With Other Elements or Services

AT&T sought a provision that would explicitly allow it to combine Qwest-provided UNEs or combinations with other elements or services provided by Qwest, the CLEC or third parties.⁷⁵ Qwest agreed, except for combinations with other services, which it considered broader than what the FCC required. Qwest proposed SGAT Section 9.23.1.2.2 language to accommodate AT&T's request in part.⁷⁶ This issue can be considered closed insofar as it concerns combinations with other Qwest UNEs or network components provided by the CLEC itself or third parties. However, there remains a dispute, which is addressed elsewhere in this report, about combinations with "finished" Qwest services.

10. Non-Separation of Combined Elements

AT&T proposed an addition to Qwest's SGAT Section 9.23.1.3 language prohibiting Qwest, except upon CLEC request, from disconnecting or separating CLEC-requested elements that are already combined in Qwest's network. AT&T's addition provided more detail about separation or disconnection, and it addressed non-recurring charges for the transition from existing services to UNE combinations.⁷⁷ Qwest noted that SGAT Section 9.23.4 already addressed the transitioning costs, which would make inclusion of similar language here redundant.⁷⁸ No brief identified this provision as remaining in dispute; this issue can therefore be considered closed.

11. "Glue" Charges for Combinations

AT&T wanted to add SGAT Section 9.23.1.11, which would generally preclude Qwest for charging for the linkages between UNEs secured in combination or separately if Qwest is providing its own customers with service through direct connections between the elements

⁷² AT&T UNE Comments at page 32.

⁷³ AT&T UNE Comments at page 33.

⁷⁴ Stewart UNE Rebuttal at page 21.

⁷⁵ AT&T UNE Comments at page 33.

⁷⁶ Stewart UNE Rebuttal at page 23.

⁷⁷ AT&T UNE Comments at page 34.

⁷⁸ Stewart UNE Rebuttal at page 24.

involved.⁷⁹ Qwest agreed to limit its non-recurring element-combination costs to its costs, which are addressed in SGAT Section 9.23.4.1.2.⁸⁰ This issue can be considered closed.

12. Ordering Equipment Ancillary to UNE Combinations

AT&T wanted to add SGAT Section 9.23.1.12, which would allow CLECs to order the ancillary equipment (citing the example of a multiplexer when a CLEC wants to convert a circuit from DS0 to DS1) that is required to connect or provide an interface between UNEs in a combination.⁸¹ Qwest responded that: (a) it already allows access to multiplexing, (b) it does not know what other ancillary equipment exists, and (c) UNE engineering requirements can already be specified. Therefore, it proposed no change to the SGAT.⁸² This issue was not briefed; therefore, it can be considered closed.

13. Restricting Available UNE Combinations

AT&T expressed concern that the SGAT Section 9.23.2 list of standard UNE combinations might be read to prohibit other types of combinations. It sought a change that would make it clear that Qwest could only disallow combinations if the elements were not normally combined in Qwest's network and if the requested combinations were not technically feasible.⁸³ Qwest's response cited SGAT Section 9.23.1.4 and 9.23.1.5 provisions that do obligate Qwest to provide other combinations if they are technically feasible and if they would not impair other CLEC access or interconnection or Qwest's own use of its network. Qwest said that it would allow combinations other than those of Section 9.23.2 under its special request process.⁸⁴ This issue was not briefed. It can be considered closed with respect to the issue of whether UNE combinations are limited to those expressly allowed in the SGAT. However, general issues regarding the use of the SGAT's special request process, which extends beyond UNE combinations, was held over for consideration in the subsequent workshop.

14. Loop and Multiplexing Combinations

ELI requested that Qwest make loop and multiplexing combinations (which it now secures from Qwest as a tariffed service) available without the need for use of the special request process.⁸⁵ Qwest responded that adding DS1 loops to a multiplexer was already contemplated with multiplexed EELs. It considered other multiplexer/loop issues to be part of subloop unbundling.⁸⁶ This issue was not briefed; it can be considered closed.

⁷⁹ AT&T UNE Comments at page 36.

⁸⁰ Stewart UNE Rebuttal at page 28.

⁸¹ AT&T UNE Comments at page 37.

⁸² Stewart UNE Rebuttal at pages 29 and 30.

⁸³ AT&T UNE Comments at page 37.

⁸⁴ Stewart UNE Rebuttal at pages 30 and 31.

⁸⁵ Peters Testimony at page 16.

⁸⁶ Stewart UNE Rebuttal at page 31.

15. CLEC Loop Terminations

AT&T wanted to add a switch port and shared transport combination.⁸⁷ Qwest responded that this arrangement is already permitted, because shared transport must be ordered with unbundled switching.⁸⁸ This issue can be considered closed.

16. UNE Combination Forecasts

AT&T wanted to remove SGAT Section 9.23.3.14 language addressing forecasts; ELI wanted to eliminate forecasts as a condition for accepting UNE combination orders. Qwest agreed to remove the language.⁸⁹ This issue can be considered closed.

17. Nonrecurring Charges

ELI expressed concern about the reference to "Existing Rules" in the language regarding nonrecurring charges for UNE combinations. In particular, ELI sought review either here or in a cost docket of the question of whether Qwest's nonrecurring charges exceed the amount necessary to recover actual costs incurred.⁹⁰ These workshops have not included evidence in support of any particular charges; consideration of pricing issues has been generally deferred to separate cost dockets.

18. Delays From Loading CLEC Billing Rates into Qwest's Systems

ELI expressed concern that SGAT Section 9.23.5.1 could require delays from causes such as the need to execute and SGAT amendment, or the time it takes Qwest to load Commission-approved rates into its billing systems.⁹¹ The frozen SGAT streamlines the ordering process. Qwest also said that it had to enter rates for individual CLECs, each of which may have unique rates. Qwest testified that it was working to reduce the time required to load rates.⁹² ELI did not brief this issue; it can be considered closed.

⁸⁷ AT&T UNE Comments at page 46.

⁸⁸ Qwest UNE Rebuttal at page 32.

⁸⁹ AT&T UNE Comments at page 48; Peters Testimony at page 18; Stewart UNE Rebuttal at page 32.

⁹⁰ Peters Testimony at page 18.

⁹¹ Peters Testimony at page 19.

⁹² Stewart UNE Rebuttal at page 38.

V. Checklist Item 4 – Access to Unbundled Loops

Background – Loops

Item 4 of the competitive checklist requires that Qwest and other incumbent local exchange companies provide “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from local switching or other services.” 47 U.S.C Section 271(c)(2)(B)(iv). The FCC further defined the loop as “a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC central office, and the network interface device at the customer premises.”⁹³ The *UNE Remand Order* modified this definition to include “all features, functions and capabilities of the transmission facilities, including dark fiber and attached electronics (except those used for the provision of advanced services, such as DSLAMS) owned by the incumbent LEC, between an incumbent LEC’s central office and the loop demarcation point at the customer premises.”⁹⁴

Also treated under this topic are two subsidiary issues:

- Line Splitting – Line splitting refers to the situation where two different CLECs provide both the voice and data service over a single loop, which Qwest provides.
- NID – The NID is defined as “any means of interconnection of end-user premises wiring to the incumbent LEC’s distribution plant, such as a cross-connect device used for that purpose.”⁹⁵ Qwest is required to unbundle subloop elements and NIDs.

Issues Deferred to Another Workshop

1. Accepting Loop Orders With “Minor” Address Discrepancies

AT&T commented that Qwest was rejecting service orders with minor and immaterial differences between end user information on the LSR and information in Qwest’s systems. AT&T asked for the addition of the following SGAT language to address this concern:⁹⁶

Qwest will accept CLEC orders as accurate when there are small and immaterial differences between the end user address on the CLEC order and the end user address in Qwest’s records. When the end user combines a change in service to the CLEC with a change in address, Qwest will provide an ordering process that accomplishes this transition in an efficient and accurate manner.

Qwest objected to accepting LSRs with such problems, arguing that its OSS already contained address validation tools that would allow CLECs to assure that addresses it wanted to enter were correct.⁹⁷

⁹³ *Local Competition First Report and Order*, para. 380.

⁹⁴ *UNE Remand Order*, paragraph 167.

⁹⁵ *UNE Remand Order*, paragraph 233.

⁹⁶ AT&T Loop Comments at page 29.

⁹⁷ Liston Rebuttal at page 54.

During the workshop the parties agreed that AT&T would submit a number of examples of address discrepancies that it could not solve using the address validation tools available through Qwest's OSS. The examples were provided and testimony was taken from Qwest and AT&T witnesses. After that testimony, the participants had the opportunity to raise and support any arguments on this issue through briefs. None chose to do so. In addition, the record made provided no conclusive evidence that proper use of the address validation tools would have failed to adequately rationalize CLEC and Qwest address information about customers. Finally, the record demonstrated that address errors would be within the scope of the OSS testing being performed under the multi-state OSS testing now in progress. Therefore, this issue should await resolution until the completion of that testing.

2. Resolving Conflicts Between the SGAT and Parallel Documents

AT&T commented that a number of other documents, including the IRRG, and Qwest Technical Publications, conflict with the SGAT. AT&T's principal concern was that such parallel documents could be read to impose additional or inconsistent terms beyond those required by the SGAT.⁹⁸ It was agreed to defer to the subsequent General Terms and Conditions workshop the issue of determining how to resolve conflicts between the SGAT and other documents referred to therein or otherwise used by Qwest in implementing the SGAT.

Issues Resolved During This Workshop - Loops

1. Definition of Loop Demarcation Point

AT&T requested changes to SGAT Sections 4.34 and 9.2.1 to clarify the demarcation point where unbundled loops end at the customer premises. AT&T also wanted to add a definition of inside wire.⁹⁹ Qwest made the demarcation point language change requested by AT&T, but said then that inside wire did not need to be identified for the purposes of determining where unbundled loops end.¹⁰⁰ AT&T did not brief this inside wire language addition; this issue can be considered closed.

AT&T also requested a change to SGAT Section 9.2.2.1 to clarify that the loop is unbundled from switching and transport.¹⁰¹ Qwest changed the language to address this comment.¹⁰² This issue can be considered closed.

2. Digital versus Digital-Capable Loops

AT&T commented that Qwest should be required not only to provide loops capable of being equipped to provide digital service, but also loops already having the ISDN equipment installed. AT&T recommended an SGAT Section 9.2.1 language change to define loop type (ii) as

⁹⁸ AT&T Loop Comments at page 29.

⁹⁹ AT&T'S Comments on Loops, Line Splitting and NID(AT&T Loop Comments), March 23, 2001, at page 10.

¹⁰⁰ Rebuttal Testimony of Jean M. Liston, Qwest Corporation, Checklist Item 4 Unbundled Loops (Liston Rebuttal), April 18, 2001, at page 12.

¹⁰¹ AT&T Loop Comments at page 11.

¹⁰² Liston Rebuttal at page 13.

including “Digital and Digital Capable” loops.¹⁰³ AT&T made a similar request in connection with ISDN loops (SGAT Section 9.2.2.6),¹⁰⁴ DS1 and DS3 loops (SGAT Section 9.2.2.6),¹⁰⁵ and digital loops (SGAT Section 9.2.2.7).¹⁰⁶

Qwest added SGAT provisions containing definitions of what “capable” and “compatible” mean, in order to respond to this comment. Qwest noted that these changes proved satisfactory to CLECs in workshops in other states.¹⁰⁷ AT&T did not brief this issue; it can be considered closed.

3. Parity in Providing Unbundled Loops

AT&T requested language that would require Qwest to provision CLEC unbundled loops in the same time and manner as Qwest provides service to its own end users.¹⁰⁸ XO wanted to change the retail comparative quality standard from “substantially the same” to “at least equal to.”¹⁰⁹ AT&T made a similar comment. Qwest’s frozen SGAT filing accommodates the AT&T request and obligates Qwest to meet the specific performance requirements that are set forth SGAT in Exhibit C and Section 20. This issue can be considered closed.

4. Limiting Available Analog Loop Frequency

AT&T objected to Section 9.2.2.2 language that limited analog loops to the frequency “within the analog voice frequency range.” AT&T said that CLECs should have access to whatever bandwidth is available on a loop. AT&T also requested another detail change in the section.¹¹⁰ Qwest changed the section to respond to the AT&T recommendations.¹¹¹ This issue can be considered closed.

5. Method for Providing Unbundled IDLC Loops

AT&T said that Qwest should be more specific about providing unbundled loops where it used IDLC.¹¹² Qwest added SGAT Section 9.2.2.2.1 to provide a description of how it will do so.¹¹³ This issue can be considered closed.

6. Choosing Loop Technology Types

AT&T said that a CLEC should be able to choose between available technologies for providing the type of digital loop requested, when more than one type is available.¹¹⁴ Qwest responded that

¹⁰³ AT&T Loop Comments at page 11.

¹⁰⁴ AT&T Loop Comments at page 15.

¹⁰⁵ AT&T Loop Comments at page 16.

¹⁰⁶ AT&T Loop Comments at page 17.

¹⁰⁷ Liston Rebuttal at page 18.

¹⁰⁸ AT&T Loop Comments at page 11.

¹⁰⁹ Workshop 3 Additional Response Testimony of David LaFrance (LaFrance Testimony), March 23, 2001, at page 6.

¹¹⁰ AT&T Loop Comments at page 12.

¹¹¹ Liston Rebuttal at page 19.

¹¹² AT&T Loop Comments at page 13.

¹¹³ Liston Rebuttal at page 21.

its practice for itself is to select the first suitable alternative identified by its mechanized systems. Qwest agreed to change SGAT Section 9.2.2.3 to provide that it would choose loops for CLECs in the same manner that it chose them for its own end users. Qwest indicated that this resolution proved satisfactory to AT&T in another state's workshop.¹¹⁵ This issue can be considered closed.

7. CLEC Authorization for Conditioning Charges

XO wanted to clarify that SGAT Section 9.2.2.3 charges would require CLEC request.¹¹⁶ Qwest changed the Section to provide that clarification.¹¹⁷ This issue can be considered closed.

8. Access to Loop Features, Functions, and Capabilities

AT&T expressed concern that SGAT Section 9.2.2.3 did not specifically commit Qwest to providing all the features, functions, and capabilities that a loop and its electronics can provide.¹¹⁸ Qwest responded that the loop specifications set forth in SGAT Sections 4.34 and 9.2.1 are sufficient, and need not be repeated in later SGAT sections.¹¹⁹ AT&T did not brief this issue; it can be considered closed.

9. Offering High Capacity and Fiber Loops on an Individual Case Basis

AT&T commented that SGAT Section 9.2.2.3.1, which offered high capacity and fiber loops on an Individual Case Basis, violated Qwest's obligation to make such facilities available on substantially the same basis as it provides them for its own end users.¹²⁰ XO said that Utah's service quality rules R746-365-4 contemplate the provisioning of high capacity loops, which therefore should be subject to specific terms and conditions.¹²¹

Qwest said that it would provide high capacity loops, but that there had been insufficient demand for them to justify the creation of standard terms and conditions. Qwest noted that 12 of its 14 states provide ICB pricing for OC3 loops, and that the FCC had approved a number of SBC 271 applications in cases where ICB pricing applied to high capacity loops. Qwest did agree that it would meet the Utah-specific requirement to provision OC3 loops within 15 days, but said that Utah rules allow negotiated due dates for OC4 and above.¹²² AT&T agreed that its objections to the ICB process could be raised at the subsequent workshop, where ICB issues would be addressed generally.¹²³ This issue can generally be considered closed, except to the extent that any ICB concerns remain open following the workshop addressing them and except to the extent that there remains for resolution a general XO/ELI objection regarding the general consistency of the SGAT's provisioning and repair intervals and Utah-specific rules. Standard

¹¹⁴ AT&T Loop Comments at page 13.

¹¹⁵ Simpson Rebuttal at page 22.

¹¹⁶ LaFrance Testimony at page 6.

¹¹⁷ Liston Rebuttal at page 21.

¹¹⁸ AT&T Loop Comments at page 13.

¹¹⁹ Liston Rebuttal at page 22.

¹²⁰ AT&T Loop Comments at pages 13 and 14.

¹²¹ LaFrance Testimony at page 7.

¹²² Liston Rebuttal at pages 23 and 24.

¹²³ AT&T Loops Brief at page 9.

provisioning intervals for loops with specific durations also remain in dispute; this issue is addressed below.

10. Charges for Unloading Loops

Load coils are examples of those devices used to support the provisioning of voice service that are inconsistent with providing data service over loops. Such devices have to be removed or "unloaded" in order to allow a CLEC to provide data services over the loops affected. AT&T objected to the SGAT Section 9.2.2.4 and 9.2.2.5 requirement that CLECs pay the costs of unloading for loops of less than 18,000 feet in length, arguing that loops of less than that length should not have had such devices in the first place. AT&T also objected to paying for the removal of bridge taps, which it said Qwest should have removed when it eliminated party-line service.¹²⁴

Qwest responded that the FCC has already explicitly determined in the *UNE Remand Order* that incumbents can charge for conditioning loops of less than 18,000 feet, even though networks built today would not ordinarily have load coils on such loops. Qwest also said that a recent federal court case reached the same conclusion.¹²⁵

AT&T did not brief this issue. Given the clarity of the FCC's order, the reference to an applicable federal court decision, and the lack of briefs, this issue can be considered closed. Moreover, should it remain in dispute, it is clear that there has been no evidence presented to demonstrate that the installation of load coils and bridge taps was imprudent or that leaving them in place was imprudent. Thus, the cost of removing them is a legitimate cost of doing business and those costs should be paid by the party for whom unloading or conditioning is performed.

11. Extension Technology to Give Loops ISDN Functionality

AT&T questioned what charges would apply under SGAT Section 9.2.2.5 for loop extension technology when Qwest had to dispatch technicians to make the changes necessary to allow a loop to provide ISDN service. AT&T also questioned what technical standards would apply.¹²⁶ In response, Qwest changed the section to specify that charges would be in accord with SGAT Appendix A and to address technical aspects of extension technology. This issue can be considered closed, subject to the open issue (to be addressed in the subsequent workshop on General Terms and Conditions) relating to the effect of cited technical documents that may conflict with SGAT requirements.

12. DS1 and DS3 Loop Specifications

AT&T asked that Qwest address the specifications of these loop types, which SGAT Section 9.2.2.6 covers.¹²⁷ Qwest provided to AT&T the addresses of the Qwest web sites that discussed those specifications.¹²⁸ AT&T did not brief this issue; it can be considered closed.

¹²⁴ AT&T Loop Comments at page 14.

¹²⁵ Liston Rebuttal at page 25, citing *USWEST Communications, Inc. v. Hix*, Civil Action No. 97-D-152 (consolidated), Order at 10 (D. Colo. June 23, 2000).

¹²⁶ AT&T Loop Comments at page 15.

¹²⁷ AT&T Loop Comments at page 16.

13. Access to Digital Loops Where Available

AT&T expressed concern that SGAT Section 9.2.2.7 could be read as allowing Qwest to deny access to available digital loops in areas where "any" loop (as opposed to all loops) was being provided on facilities that could not support digital loops.¹²⁹ Qwest made a change, which it said satisfied AT&T in another state's workshop; it would exempt Qwest from providing digital loops only in areas that were "exclusively" served on facilities that could not support digital loops.¹³⁰

14. Loop Installation Process

SGAT Sections 9.2.2.9.1 and 9.2.2.9.2 describe basic loop installation. AT&T asked that Qwest describe more fully in the SGAT the Qwest installation processes, and that Qwest provide its operations manuals for review. AT&T said that it was experiencing facility problems with almost one third of Qwest installations of DS-1 loops.¹³¹ Qwest responded that a number of exhibits it had filed in these workshops provided descriptions of its loop installation processes.¹³²

15. Coordinated Installation

AT&T sought language that it felt would improve Qwest' processes for coordinating the cutover of loops with number porting, in order to address customer service problems and even service outages that AT&T said it was experiencing. AT&T proposed the following language for SGAT Section 9.2.2.9:¹³³

Qwest will assure that loop cutovers are closely coordinated with number portability on both simple and complex orders. On complex orders, Qwest will assure that all facilities are in place and tested before translations are removed from the Qwest switch and before the switch is actually disconnected from the customer loop. When loop cutover dates are changed, whether due to the CLEC, Qwest, or end user-initiated changes, Qwest will assure that all number portability activity is coordinated.

AT&T also felt that SGAT Sections 9.2.2.9.3 and 9.2.2.9.4, dealing with coordinated installation, required changes. First, AT&T sought an explanation of the process for cutovers. Second, AT&T wanted a specification of the time frames within which CLECs could delay loop cutovers without fear of service disruptions. Third, AT&T wanted to assure that Qwest was obligated to perform tests sufficient to determine a cutover loop's digital service capability. Fourth, AT&T wanted charge-waiver and rescheduling provisions to deal with cases where Qwest was unable to meet appointment dates.¹³⁴

¹²⁸ Liston Rebuttal at page 30.

¹²⁹ AT&T Loop Comments at page 17.

¹³⁰ Liston Rebuttal at page 31.

¹³¹ AT&T Loop Comments at page 19.

¹³² Liston Rebuttal at page 34.

¹³³ AT&T Loop Comments at page 20.

¹³⁴ AT&T Loop Comments at pages 20 and 21.

Qwest responded to three of these four requests. First, it agreed to provide process flow descriptions for cutovers. Second, Qwest did not respond to the cutover postponement requests. Third, Qwest's frozen SGAT requires the performance of tests adequate to assure that the loop is within the required parameters and the submission of confirming test results to CLECs, and fourth, Qwest agreed to waive nonrecurring charges when it failed to meet appointments and to specify in the SGAT its rescheduling obligations.¹³⁵ This issue can be considered closed.

16. Limits on Loop Testing Costs

XO argued that Qwest should not have the unilateral right under SGAT Section 9.2.2.9.4 to decide what types of testing would entail separate, added charges to CLECs. XO also sought the addition of language addressing the basis on which such charges would be calculated.¹³⁶ XO did not brief this issue. Qwest's frozen SGAT language for Section 9.2.2.9.4 limits the ability of Qwest to charge for testing. This section of the SGAT does not specify that Qwest's charges shall be limited to its actual and reasonable costs for performing the test, but, as that is the core standard generally applicable to nonrecurring charges, it can be presumed to apply here unless and until any participant raises the issue in a cost docket. On that basis, this issue can be considered closed.

17. Obtaining Multiplexing for Unbundled Loops

XO testified that SGAT Section 9.2.2.9.10 should be expanded to address how CLECs could obtain from Qwest multiplexing associated with unbundled loops also acquired from Qwest.¹³⁷ Qwest proposed the following language to address XO's concern:

9.2.2.10. Multiplexing. CLEC may order multiplexing for Unbundled Loops under the terms and rates for multiplexing of unbundled dedicated interoffice transport (UDIT), in the UDIT Section of this Agreement.

Qwest also agreed to include Sections 9.6.2.2 and Section 9.23.3.7.1 language clarifying Qwest's multiplexing offering.¹³⁸ This issue can be considered closed.

18. Transmission Parameters

AT&T expressed concern that the language of SGAT Section 9.2.2.9.11 could be read as freeing Qwest of the responsibility to add repeaters to assure that DS1 loops could provide service even at longer lengths. Reacting to the SGAT statement that transmission parameters could change, AT&T also requested that Qwest explain the type of changes that might occur, that were occurring now, or that might occur over the next several years. AT&T also wanted Qwest to provide examples that would demonstrate the kinds of transmission parameter changes that would require prior notice to CLECs.¹³⁹

¹³⁵ Liston Rebuttal at pages 35 and 36.

¹³⁶ LaFrance Testimony at page 7.

¹³⁷ LaFrance Testimony at page 8.

¹³⁸ Liston Rebuttal at pages 36 and 37.

¹³⁹ AT&T Loop Comments at pages 20 and 21.

Qwest agreed, as it had in a previous workshop, to delete the phrase that raised concerns about long digital loops. Qwest also provided a number of examples of minor changes that could result from routine network maintenance or upgrade activities.¹⁴⁰ AT&T did not brief this issue; it can be considered closed.

19. CLEC/End User Disagreements about Disconnecting or Connecting Loops

SGAT Section 9.2.2.9.12 addressed what Qwest would do if an end user provided Qwest with a position about the end users' service that was inconsistent with an order that a CLEC had placed with Qwest for an unbundled loop (e.g., a dispute about whether an end user actually wants service from a CLEC that has placed with Qwest an unbundled loop in order to serve that user). XO objected to the portions of the section entitling Qwest (after first advising the end user to contact the CLEC and after Qwest also informed the CLEC) to act in accord with the express instructions of the end user.¹⁴¹

Qwest agreed to delete the portions of the section that entitled it to make loop order cancellation and nonrecurring charge decisions on the basis of direction from the end user. As a result the section now merely requires that Qwest: (a) refer the end user to the CLEC and (b) initiate contact with the CLEC itself.¹⁴²

This issue can be considered closed.

20. Qwest Access to Qwest Facilities on CLEC Customer Premises

SGAT Section 9.2.2.13 gave Qwest rights of access for network management purposes to Qwest facilities that are located on the premises of a CLEC customer. AT&T expressed concern about the application of this section in cases where a CLEC had no independent right of access to the customer's premises, but derived all of its rights solely through the acquisition of unbundled elements from Qwest (in which case, AT&T argues, all the existing rights of access are those that Qwest acquired in the first place.)¹⁴³

Qwest revised the section to make two points clearer: (a) that the intent was not to ask CLECs to make available to Qwest rights of access to customer premises that AT&T itself did not have, and (b) that the intent was to oblige CLECs not to inhibit Qwest's entry for listed testing, inspection, repair, and maintenance of Qwest's own facilities for which it has continuing responsibility.¹⁴⁴ This issue can be considered closed.

21. Points of CLEC Access to Unbundled Loops

AT&T commented that SGAT Section 9.2.2.9.13 should be amended to allow CLECs access to loops at all "appropriate subloop locations."¹⁴⁵ Qwest objected to addressing the issue here,

¹⁴⁰ Liston Rebuttal at page 37.

¹⁴¹ LaFrance Testimony at page 8.

¹⁴² Liston Rebuttal at page 38.

¹⁴³ AT&T Loop Comments at pages 22 and 23.

¹⁴⁴ Liston Rebuttal at page 39.

¹⁴⁵ AT&T Loop Comments at page 23.

arguing that SGAT Section 9.3 already addresses subloop access. Qwest also noted that the FCC clearly had not required or endorsed CLEC access to unbundled loops at midpoints along their course, and that doing so would raise significant network security issues.¹⁴⁶ AT&T did not brief this issue, nor is it apparent how its request for access at subloop demarcation points is relevant here, where the entire loop, but not particular subloop portions, have been secured by a CLEC. Therefore, this issue can be considered closed.

22. Relinquishing Loops on Loss of End Use Customers

AT&T questioned the purpose of SGAT Section 9.2.2.9.15, which dealt with "Loss Alerts," and required CLECs to make disconnect orders when loops serving their end users were relinquished and were required by others.¹⁴⁷

Qwest responded that it had not worded the section accurately. It made comprehensive revisions, which followed national standards in addressing how information among service providers should flow when a CLEC loses an end user it serves through unbundled loops, and which specified the flow of activities that should occur in the event that another carrier, whether Qwest or someone else, has need of the loops that the customer-losing CLEC had been securing from Qwest.

XO testified that this section needed to be more specific and that Qwest should similarly have to relinquish facilities before it could claim lack of facilities as grounds for refusing to make available to CLECs the same loops that Qwest used to serve the end user before losing that end user to the requesting CLEC.¹⁴⁸ Qwest testified that its policy is always to reuse its loops as unbundled loops where the CLEC is seeking to provide to the end user services compatible with the capabilities of those loops. Qwest also said that this policy is incorporated into SGAT Section 9.2.2.9.¹⁴⁹ XO did not further pursue this issue in briefs.

The issues raised by AT&T and XO can be considered closed.

23. CLEC Right to Select From Available Loop Technologies

AT&T wanted to change SGAT Section 9.2.3.3, which addresses rate elements, in order to specify that CLECs, rather than Qwest, can choose the technology through which a loop is to be provided, if alternatives are available.¹⁵⁰ Qwest agreed to strike from this section, all the non-price language, which includes that to which AT&T objected, given that its purpose is to address prices.¹⁵¹ Therefore, this issue can be considered closed.

¹⁴⁶ Liston Rebuttal at pages 39 and 40.

¹⁴⁷ AT&T Loop Comments at page 23.

¹⁴⁸ LaFrance Testimony at page 9.

¹⁴⁹ Liston Rebuttal at page 42.

¹⁵⁰ AT&T Loop Comments at page 24.

¹⁵¹ Liston Rebuttal at page 43.

24. Miscellaneous Charges

AT&T commented that SGAT Section 9.2.3.6 should specifically address the circumstances under which miscellaneous charges could be applied. AT&T also noted that the reasonableness of any miscellaneous charges should be addressed in cost proceedings.¹⁵² XO also raised concerns about the lack of SGAT specificity on when such charges would apply and how would be calculated.¹⁵³ Qwest responded by defining Miscellaneous Charges in SGAT Section 4 and Section 9.1.12.¹⁵⁴ Qwest's language additions specify that such charges are contained in SGAT Attachment A and that no miscellaneous charges other than those allowed by the SGAT would apply. This issue can be considered closed.

25. Installation Hours

AT&T commented that SGAT Sections 9.2.3.7.1 and 10.2.10.3 established inconsistent lists of normal business hours for purposes of determining when coordination of loop cutovers and number porting would be available for CLECs. ¹⁵⁵ Qwest responded that the first of these sections dealt with installation work, whose SGAT hours mirror those available for its own end users. In contrast, Qwest said Section 10.2.10.3 dealt with hours for number portability, not installation. Therefore, the fact that normal hours for number portability were longer did not mean that they were inconsistent.¹⁵⁶

AT&T responded in its brief that the hours definition question had narrowed to one involving how and where time would be defined (e.g., local time at the customer's location), which could be addressed in the subsequent general terms and conditions workshop.¹⁵⁷ Therefore, the issue of consistency between loop installation and number portability business hours can be considered closed.

26. Unforecasted Out-of-Hours Coordinated Loop Installations

XO objected to the SGAT Section 9.2.3.7.2 provision that conditioned Qwest's obligation to make out-of-hours installations on the receipt of forecasts for such installations.¹⁵⁸ Qwest agreed to remove this condition.¹⁵⁹ This issue can be considered closed.

27. Overtime for Out-of-Hours Installations

AT&T objected to the SGAT Section 9.2.3.7.5 application of overtime rates to all out-of-hours installations, because it did not follow that all out-of-hours work would require premium pay for Qwest workers. AT&T preferred that this section merely refer to SGAT Attachment A for such

¹⁵² AT&T Loop Comments at page 24.

¹⁵³ LaFrance Testimony at page 9.

¹⁵⁴ Liston Rebuttal at page 43.

¹⁵⁵ AT&T Loop Comments at page 25.

¹⁵⁶ Liston Rebuttal at pages 43 and 44.

¹⁵⁷ AT&T Loops Brief at page 21.

¹⁵⁸ LaFrance Testimony at page 9.

¹⁵⁹ Liston Rebuttal at page 44.

charges.¹⁶⁰ XO made a similar comment.¹⁶¹ Qwest made a change to the section to address this concern.¹⁶² This issue can be considered closed.

28. Proofs of Authorization

AT&T expressed a concern that SGAT Section 9.2.4.2 language requiring CLECs to have customer proofs of authorization before ordering unbundled loops to serve them did not reflect new FCC guidelines.¹⁶³ XO expressed similar concerns.¹⁶⁴ This issue was addressed as the 32nd resolved *Resale* issue, titled *Proofs of Authorization to Change Providers*, in the May 15, 2001 *Second Report – Workshop One* in these workshops. That report noted that Qwest had agreed to expand the language of the SGAT to allow all forms of customer authorization required by the FCC. Therefore, this issue can be considered closed.

29. ICB Intervals for Large Loop Orders

AT&T objected to the requirement that intervals for loop orders for 25 or more loops at an individual address be determined on a case-by-case basis.¹⁶⁵ Qwest responded that this provision of SGAT 9.2.4.4 provided CLECs with the same treatment as Qwest offers to its own end users that make similar orders. Qwest agreed to change the section to make its intent clearer, asserting that AT&T found the same change satisfactory in workshops in another state.¹⁶⁶ AT&T did not brief this issue; it can be considered closed.

30. Firm Order Confirmations

AT&T commented that it was having difficulty in receiving firm order commitment dates (FOCs) in cases where Qwest had facility shortages. Particularly, AT&T said that Qwest's estimated FOCs tended to vary widely from actual completion dates, with insufficient Qwest communication in the interim to keep AT&T adequately informed about status. AT&T sought new SGAT language that would require Qwest to: (a) provide loop order completion commitment dates, (b) give prompt notice to the CLEC when Qwest found that it had to change the completion date, (c) provide the CLEC with reasons for the change, and (d) impose no requirement on CLECs to issue supplements to CLEC loop orders due to Qwest problems in filling them.¹⁶⁷

Qwest testified that it had conducted an analysis to address the FOC performance that gave rise to much of AT&T's concerns. Specifically, Qwest conducted a two-month trial in Colorado, beginning in March 2001. The trial was designed to determine if the use of defined processes

¹⁶⁰ AT&T Loop Comments at page 25.

¹⁶¹ LaFrance Testimony at page 10.

¹⁶² Liston Rebuttal at page 44.

¹⁶³ AT&T Loop Comments at page 26.

¹⁶⁴ LaFrance Testimony at page 10.

¹⁶⁵ AT&T Loop Comments at page 26.

¹⁶⁶ Liston Rebuttal at page 45.

¹⁶⁷ AT&T Loop Comments at pages 27 and 28.

would lead to meaningful FOCs from Qwest and to routine meeting of the commitment dates included in those FOCs. Qwest reported that the trial had shown positive results.¹⁶⁸

Qwest also added SGAT Section 9.2.4.4.1, which added the requirements sought by AT&T.¹⁶⁹ This issue can be considered closed.

31. Conditions Excusing Compliance With Loop Installation Intervals

XO testified that the SGAT's general force majeure clause was already sufficient to detail when Qwest's obligations to install facilities on time could be excused; therefore it asked for the elimination of Section 9.2.4.5.¹⁷⁰ Qwest testified that it changed the SGAT to specify the conditions where it could apply an ICB approach, rather than adhering to the standard intervals, to loop intervals. The specified circumstances in the revised section included central office conversions, system outages, severe weather, and emergency preparedness instances.¹⁷¹ This issue can be considered closed.

32. Maintenance and Repair Parity

Rhythms testified that it could not get the same repair intervals or availability of DSL repair service that Qwest was making available to its own end users.¹⁷² Qwest responded that Rhythms appeared to have confused the hours available for reporting troubles with the lesser hours during which repairs could actually be performed. Qwest also testified that: (a) repair availability hours for its own end users and CLECs were the same, and (b) its performance information under ROC Performance Measures MR-3, MR-4, and MR-6 showed that the trouble clearing rates for its own end users and for CLECs were comparable.¹⁷³ Having received Qwest's explanation, Rhythms chose not to include this issue in its brief on loops. Therefore, this issue can be considered closed.

33. Specifying Repair Intervals in the SGAT

XO testified that the SGAT should specify unbundled loop repair intervals.¹⁷⁴ Qwest responded that 1.0(h) and 1.0(l) of SGAT Exhibit C already did include repair intervals.¹⁷⁵ This issue can be considered closed, except for the dispute about consistency between SGAT intervals and the requirements of Utah regulations, which is addressed below.

34. Responsibility for Repair Costs

XO agreed that CLECs should be responsible for repair problems on its facilities, but raised two concerns about SGAT Section 9.2.5.2: (a) that Qwest should be responsible for cabling or cross-

¹⁶⁸ Liston Rebuttal at page 59.

¹⁶⁹ Liston Rebuttal at page 48.

¹⁷⁰ LaFrance Testimony at page 11.

¹⁷¹ Liston Rebuttal at page 49.

¹⁷² Affidavit of Valerie Kendrick, Rhythms Links, Inc. (Kendrick Testimony), March 23, 2001, at page 5.

¹⁷³ Liston Rebuttal at pages 49 and 50.

¹⁷⁴ LaFrance Testimony at page 12.

¹⁷⁵ Liston Rebuttal at page 51.

connects at collocations, and (b) the SGAT should specify how trouble isolation charges (incurred to determine where the source of a customer trouble is) would be calculated.¹⁷⁶ Qwest agreed that the location of the demarcation point would be used to determine cost responsibility for cabling and cross-connect repairs. Thus, the owner, whether Qwest or the CLEC, would be responsible for the costs of repairing trouble-causing facilities. Qwest also said that the basis for calculating trouble isolation charges would be appropriate for determination by each state in its own cost dockets.¹⁷⁷

Issues Remaining in Dispute - Loops

1. Standard Loop Provisioning Intervals

AT&T sought to change a number of the standard loop intervals that are set forth in SGAT Exhibit C. AT&T argued that the length of some intervals would not provide CLECs a meaningful opportunity to compete, were discriminatory or anticompetitive, violated state law in some cases, and would preclude CLECs from being able to meet the service quality standards of some of the participating states.¹⁷⁸

Qwest argued that Exhibit C's intervals are consistent with considerations of the ROC in adopting performance measures to gauge Qwest's performance in serving CLECs. Qwest said that the ROC initially used parity with retail services to set the basis for measuring Qwest's performance in measuring loop installation performance, but decided later to adopt specific benchmarks. Qwest cited testimony by ROC's project manager as evidencing the fact that the standards for Performance Measure OP-3 (percent of installations completed on the due date) and for OP-4 (number of days to complete installation) were formed on the basis of Qwest's Standard Interval Guides (reflected in Exhibit C). Arguing that the parties to the ROC process, which included broad participation, including AT&T and other CLECs, had reached consensus on specific performance measures that generally reflect what is in Exhibit C, Qwest urged that AT&T not be permitted to succeed here in undoing that consensus. Qwest further argued that AT&T failed to present evidence to support a conclusion either that Qwest could or should install loops in intervals shorter than those set forth in Exhibit C.¹⁷⁹

Qwest also testified that it has recently added (via SGAT Section 9.2.2.9.1.3) an offering that will allow CLECs to secure access to certain two-wire unbundled loops within a shorter interval. These so-called "Quick Loops" are available when converting existing loops where coordination and testing are not required. Quick loops have a three-day installation interval, which shortens the standard loop interval.¹⁸⁰

AT&T responded that the evidence showed that Qwest's Standard Interval Guide, or SIG, (and by extension, SGAT Exhibit C) was not presented to the SIG, nor did the ROC ever formally approve any of the Exhibit C standard intervals. AT&T said that it was never foreclosed from

¹⁷⁶ LaFrance Testimony at pages 11 and 12.

¹⁷⁷ Liston Rebuttal at pages 51 and 52.

¹⁷⁸ AT&T'S Supplemental Post Workshop Brief On Loops (AT&T Supplemental Loops Brief) at page 3.

¹⁷⁹ Qwest's Supplemental Legal Brief Regarding Loop Issue 1(D) (Loop Intervals) Following Workshop 3, Session 7 (Qwest Supplemental Loops Brief) at pages 1 and 2.

¹⁸⁰ Liston Rebuttal at page 64.

arguing in a later 271 context that Qwest's standard intervals were too long.¹⁸¹ It then went on to urge the adoption of shorter installation intervals for a variety of loop types (including analog, unloaded, ISDN, ASDL, and DS1). AT&T also wanted to shorten the repair interval benchmark from 24 to 12 hours.¹⁸²

AT&T said that the Quick Loops proposal responded to a portion of its concern, provided that it be extended, which Qwest is considering, to loops that include number portability. AT&T focused particular attention on DS1 loops, arguing that Qwest had, until recently, been willing to accept AT&T's proposed interval, even though Qwest did not appear to be succeeding in meeting it in practice.¹⁸³ In support of its proposed repair intervals, AT&T's brief cited 10 hours as Qwest's reported mean time to restore retail service and 4 hours as the reported mean time to restore wholesale service.

Finally, AT&T cited Utah and New Mexico DS1 installation intervals of 5 days as being inconsistent with Exhibit C. AT&T also said that a 24-hour repair interval would leave AT&T unable to meet Utah and Idaho rules requiring CLECs to restore service within 24 hours of a trouble report and Wyoming rules requiring 90 percent of all out-of-service trouble reports during any three-month period to be cleared within 24 hours.¹⁸⁴

Proposed Issue Resolution: The evidence demonstrates conclusively that the ROC established its loop installation interval related performance measures (OP-3 and OP-4) through an open and collaborative process that benefited from full, open, and substantial participation by the CLEC community. The evidence also established that the discussion of those intervals (which measure percent of intervals on time and average durations) centered upon and were integrally related to the intervals of Qwest's Service Interval Guide, which forms the basis of the installation intervals set forth in SGAT Exhibit C.

AT&T correctly argues that there is now no bar to urging the creation of different intervals from the ones that played this role in setting the applicable ROC performance measures. However, the more central point here is what weight should be given to those intervals, as compared with the different ones urged here. Substantial weight should be placed upon them. They were set on the basis of presentations and dialogues by and among the participants, which clearly considered the issues relevant under the Act e.g., competitive opportunity, parity with retail operations, incremental CLEC needs that might add time (before a customer could first be served) to any interval applicable to Qwest provisioning activities, and differences between average and maximum intervals.

Therefore, the intervals of Exhibit C come before these workshops already entitled to very substantial weight. This does not mean that evidence showing their inapplicability to a particular state, or in particular circumstances, or (for that matter) even to generally applicable circumstances and conditions, cannot be considered. However, AT&T has cited no evidence that would demonstrate that the installation intervals do not give it a meaningful opportunity to

¹⁸¹ AT&T Supplemental Loops Brief at page 8.

¹⁸² AT&T Supplemental Loops Brief at pages 5 and 6.

¹⁸³ AT&T Supplemental Loops Brief at page 7.

¹⁸⁴ AT&T Supplemental Loops Brief at page 9.

compete. It did say that another state had a shorter interval for DS1 loops, but there are other loop types at issue as well; Qwest presented evidence that intervals for some of its other loop types compared favorably. Overall, there is no basis for concluding that a comparative analysis with other RBOCs (assuming that to be a more relevant criterion than how intervals relate to needs and circumstances in these seven states) would show that Qwest's loop installation intervals are too long. Certainly it would be unreasonable on its face to argue that Qwest fails to offer a meaningful opportunity to compete unless its intervals for each and every loop it offers are equal to or better than the next best interval any company anywhere offers for that type.

Similarly, it is not persuasive to argue that Qwest has lengthened a standard interval for a particular type, particularly where it was not being met in the first place. The proper standard is not equal to or better than what was done before. The standard, where parity with retail operations is not determined to be appropriate, is a meaningful opportunity to compete. We have the benefit of the ROC's deliberations to tell us that Exhibit C's intervals do that; we have no evidence of what competitive disadvantage will accrue to CLECs, should we fail to adopt AT&T's proposed intervals.

Therefore, the record in these workshops supports a conclusion that the loop installation intervals of Exhibit C are generally appropriate to meet the applicable standard.

With respect to repair intervals, AT&T's argument centers on inconsistency with state standards and the risk to which an inconsistency would expose AT&T (which, it says, is subject to the those standards). It must first be observed that a 24-hour maximum duration is not evidently inconsistent with the Wyoming standard. That standard allows 10 percent of outages to exceed 24 hours. Requiring all outages to be restored within 24 hours (as the SGAT does) may be perfectly consistent with a standard of 90 percent within 24 hours. Determining whether there is consistency would require a somewhat sophisticated mathematical analysis of actual outage information. Such an analysis would have to consider the full range of outage durations and the numbers that fall both beneath and above 90 percent. AT&T has provided no such analysis. It has, however, provided evidence that mean times to restore are a small fraction of this amount for wholesale customers (even the retail average time is comfortably below 24 hours). If anything, these mean times suggest (but do not prove) that the numbers of troubles cleared within 24 hours are likely to meet or exceed 90 percent. These numbers are at least sufficient to place on AT&T the burden to have done more than it did to show that it is at substantial risk in Wyoming.

There is theoretically more likelihood that AT&T is at risk in Idaho and Utah, which, in effect, appear to require 100 percent of interruptions to be restored within 24 hours. AT&T noted that it could not meet a 24-hour total interval if time for its activities had to be added to 24 hours already consumed by Qwest. However, as Qwest's brief noted, AT&T could not when requested identify how long it would take to perform its work. Moreover, as Qwest has maintenance and repair responsibilities for Loop UNEs, it is not clear that AT&T will have time consuming responsibilities in many cases.¹⁸⁵ Thus, there is a basis for concluding that the 24-hour Exhibit C standard is not materially different from a 24-hour retail standard.

¹⁸⁵ Qwest Supplemental Loops Brief at page 15.

AT&T's more interesting claim here is that the 24-hour standard is much longer than both Qwest's average retail and wholesale performance. It would be curious to see a benchmark standard coexist long term where it varies so much from an applicable retail and wholesale analog. However, in at least the short run, the fact that measurements show wholesale performance besting retail performance is comforting, particularly in an area like this one where (as Qwest's brief concedes) there is in fact a retail analog. This fact indicates that there is not a need for immediate resolution of the gap: CLECs have a meaningful opportunity to compete and they have more than parity pending ROC reconsideration of this measure, should AT&T or any other entity request it.

In any event, the issue of unique state requirements of this type may be better dealt with in comments before these two states, which will allow two things not present in the record here: (a) a fuller description and discussion of the applicability of their rules and any material exclusions that may exist, and (b) consideration of state-specific circumstances that may ultimately justify a different standard there, as compared with the general provisions of SGAT Exhibit C.

This report should not be read as a criticism of any state standards different from those set forth in Exhibit C. The two reasons set forth above, probably among others, indicate why. However, in assessing the issue of whether to apply their regulations or requirements despite differences with Exhibit C, this report should be read as a recommendation that, absent state commission findings of special circumstances or needs there, the Exhibit C standards would otherwise adequately serve the competitive needs and the public interest in all seven of the participating states.

2. Loop Provisioning and Repair Intervals - Utah

XO testified generally that the SGAT's installation and service intervals for loops were not consistent with Commission rules at Utah Administrative Code § R746-365-4. The testimony did not cite which specific intervals were inconsistent.¹⁸⁶ The XO/ELI brief argued that many of the SGAT's provisioning intervals exceed Utah limits, but also does not specify which ones.¹⁸⁷

Qwest testified that the SGAT intervals did meet Utah requirements, except for the quantities of lines (on an individual order) that trigger differing intervals.¹⁸⁸ Qwest's brief argued that the Utah intervals serve as guidelines, not requirements; therefore, strict adherence to them is not required. Qwest also argued that the guidelines were intended only to be interim ones, which are now appropriate for change, given that the ROC has given consideration to the issue of intervals in establishing performance indicators specifically applicable to loop provisioning intervals.¹⁸⁹ Qwest also testified that the Utah-specific repair intervals applied "unless other repair intervals have been agreed to," which Qwest says has been accomplished through the ROC's approval of specific repair intervals.

Proposed Issue Resolution: The resolution of the immediately preceding issue adequately addresses the relationship between generally applicable intervals and unique state requirements.

¹⁸⁶ LaFrance Testimony at page 11.

¹⁸⁷ ELI/XO Brief at pages 12 and 13.

¹⁸⁸ Liston Rebuttal at pages 46 and 47.

¹⁸⁹ Qwest Loops Brief at page 8.

If Utah is inclined to change its guidelines to provide for regional uniformity, then the SGAT's intervals would serve adequately to accomplish this purpose. However, until such time as existing state rules are changed, the current state rules should take precedence.

3. Reciprocity of Trouble Isolation Charges

SGAT Sections 9.2.5.2 and 9.2.5.3 require CLECs to pay Qwest's costs of isolating the source of network troubles when it is determined that the problem's source is on the CLEC's side of the demarcation point between its and Qwest's facilities. AT&T objected to the lack of a similar ability to charge Qwest for its own trouble isolation activities in those cases where the problem turns out to be on Qwest's side of the demarcation point. AT&T also commented that CLECs should not be charged separately for trouble isolation work that identifies customer wiring or equipment as the source of a reported trouble, asserting that Qwest has already built such costs into its unbundled loop prices.¹⁹⁰ Qwest initially objected to a change, arguing that CLECs could themselves seek to isolate troubles to Qwest's network before asking that Qwest undertake the burden first. Qwest also disputed the claim that its unbundled loop prices included trouble isolation charges.¹⁹¹

However, Qwest's frozen SGAT filing made changes to the SGAT Section 9.2.5 trouble isolation charge provisions. AT&T found them acceptable, with two exceptions: (a) AT&T wanted to add language allowing CLEC access to the NID (not just the demarcation point, which Qwest proposed) for testing purposes, and (b) AT&T wanted to preserve the ability to challenge in subsequent cost proceedings the issue of double recovery of trouble isolation costs.¹⁹²

Proposed Issue Resolution: It is reasonable to allow CLECs NID access for testing purposes in those cases where access at the demarcation point will not suffice to allow required loop testing. The SGAT should therefore contain a clause providing that:

Qwest shall allow access to the NID for testing purposes where access at the demarcation point is not adequate to allow testing sufficient to isolate troubles; in the event that Qwest chooses not to allow such access, it shall waive any trouble isolation charges that may otherwise be applicable.

Moreover, as has been the custom with respect to other issues whose resolution requires consideration of underlying cost studies, nothing in this report should be viewed as constraining or prejudging their merits, should they be later raised in cost dockets in the individual states.

4. Delays in the Roll-Out of ADSL and ISDN Capable Loops

Rhythms testified that Qwest was slow to make ADSL and ISDN capable loops available, thus impeding the development of competition in that sector. Rhythms said that Qwest did not agree until 1999 that it had a responsibility to unbundle such loops for CLECs. Rhythms said that it discovered in 1999 that Qwest did make ADSL and ISDN available to its end users. Rhythms

¹⁹⁰ AT&T Loop Comments at page 28.

¹⁹¹ Liston Rebuttal at pages 52 and 53.

¹⁹² AT&T Loops Brief at pages 21 and 22.

testified that it was not immediately available to secure access to Qwest's facilities to provide comparable services to end users, but had to wait until Qwest developed "wholesale products" that would give CLECs access to the necessary types of unbundled loops. Rhythms said that it took a year of delay and the filing of a complaint before the Colorado PUC before it could get access to loops needed to provide service that Qwest had been providing to its end users.¹⁹³

Qwest responded that it introduced ISDN service in 1997 and ADSL service in the last quarter of 1999. Qwest conceded that it did not offer ADSL until 2000, but noted that there were only 82 orders for such loops in the year 2000. Qwest also provided data showing that there were 909 ISDN BRI capable loops in 2000.¹⁹⁴

Proposed Issue Resolution: Rhythms did not brief this issue. However, Qwest's testimony did not dispute the facts about delay. Instead, Qwest responded to the claim by noting that there was low demand. The existence of low demand may justify the lack of pre-defined offerings, but it should not excuse delay in responding to requests when they are made. Qwest has many times in these workshops justified the lack of certain standard offerings by citing low demand for them. If Qwest continues to seek to avoid prior identification of terms and conditions for low-demand offerings, it is essential that it be prepared to respond quickly in the future to CLEC requests for access to non-standard UNEs. The general process for doing so is scheduled to be addressed in the workshop covering General Terms and Conditions. However, the circumstances surrounding this issue warrant as well a formal expression of Qwest's intent with respect to moving as expeditiously as possible to respond to non-standard offerings. Therefore, Qwest should do so in its comments to the commissions on this report, in order to permit consideration of that issue in the context of the report to come, which will address general terms and conditions, including the promptness with which Qwest will be prepared to respond to proper, but nonstandard CLEC requests in the future.

5. Cooperative Testing Problems

Rhythms testified generally that it had experienced a number of problems with cooperative testing on loop installations: (a) failure to perform tests, (b) failure to provide test results, (c) failure to provide notification of test performance, and (d) incorrect test results. Rhythms said that it had stopped ordering loops with such testing because of the problems.¹⁹⁵ Qwest responded by saying that had not received any customer-specific data that would allow it to validate the specific concerns of Rhythms. However, Qwest also noted that it had undertaken a number of activities to improve its performance in coordinated installations. It cited: (a) identification of personnel training needs based on review of results under Performance Measure OP-13, which deals with coordinated loop installations, (b) a new coordination center dedicated to assisting in coordinated installations, and (c) measures that would avoid the need for coordinated installations.¹⁹⁶

¹⁹³ Kendrick Testimony at pages 3 and 4.

¹⁹⁴ Liston Rebuttal at page 60.

¹⁹⁵ Kendrick Testimony at page 6.

¹⁹⁶ Liston Rebuttal at page 66.

Proposed Issue Resolution: Rhythms did not brief this issue. The evidence of record indicates that Qwest has taken actions to address problems in supporting coordinated installations and in adopting measures that will avoid the need for them in some cases.

6. Spectrum Compatibility

Spectrum compatibility generally means the ability of multiple carriers to send signals through a common cable without causing each other's signals to degrade past an acceptable point.¹⁹⁷ Rhythms cited FCC Rule 51.232 as requiring competitive neutrality and support for innovative approaches in the area of spectral interference. Rhythms said that SGAT Section 9.2.2.7 is not consistent with FCC requirements, because it gives Qwest the power to segregate traffic based on Qwest's own needs.¹⁹⁸ Qwest responded by replacing that section with a new Section 9.2.6, which it said met FCC requirements and provided for nondiscriminatory treatment of CLECs.¹⁹⁹

Rhythms' brief said that the principal difference between it and Qwest on this issue was that Qwest would give preference to pre-existing sources of interference (primarily T1 lines), while Rhythms would create a level playing field for newly deployed services, regardless of whether they had the advantage of being the first located on the common facility. Rhythms noted that T1s are a particularly disruptive source of interference to advanced services. Rhythms said that, as a "known disturber," T1s must be treated differently, either by segregating them into separate binder groups within a cable, or by eliminating them entirely. Rhythms said that the FCC has empowered states to adopt either approach, citing paragraph 281 of the *Third Advanced Services Order*.²⁰⁰

Rhythms stated that Qwest's SGAT does not address the elimination of existing disturbers, and, moreover, its method for managing interference is not in compliance with FCC requirements. The result, Rhythms argued, is that Qwest neither manages interferences as required, nor does it address the obligation to eliminate disturbers (e.g., by replacing T1 facilities with newer, less disruptive ones), thereby posing intractable problems for the deployment of newer technologies.²⁰¹ Rhythms said that the FCC has countenanced sunseting existing T1s and prohibiting the deployment of new ones; Rhythms offered, however, an alternative that it considered less drastic in its impacts on Qwest. Rhythms would allow new deployment of T1s, but would require them to be replaced when they cause disruption, a requirement that Rhythms says is already consistent with Qwest's stated practice. Rhythms would further require that the replacement be according to the so-called T1.417 standard, in order to assure that the replacement technology is not itself disruptive.

Rhythms also argued that the SGAT should contain language particularly protecting against disturbances through the remote deployment of HDSL, ADSL, or VDSL. Specifically, its brief cited examples of how the use of sub-optimal (from a spectrum compatibility perspective) practices by Qwest (one example was to use repeaters, rather than to employ an available,

¹⁹⁷ *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, 99-355, December 9, 1999.

¹⁹⁸ Kendrick Testimony at page 4.

¹⁹⁹ Liston Rebuttal at page 17.

²⁰⁰ Rhythms Loops Brief at pages 2 and 3.

²⁰¹ Rhythms Loops Brief at page 4.

spectrally compatible technology) could obliterate a CLEC DSL signal coming from a central office much farther away. Rhythms said that the danger to the marketplace is that any such deployment by Qwest will foreclose competition; the only choice customers will have is to take service from Qwest. Rhythms testified that it has experienced loss of service to its high-speed customers already, sometimes finding that the source of the problem is the introduction of repeaters by Qwest.

Rhythms also said that it has sometimes taken long periods of time to trace the source of the problem, thus causing Rhythms to risk losing customers, as their impatience grows.²⁰² Rhythms expressed a lack of confidence that an acceptable set of standards would result from consideration by industry bodies, such as NRIC, which Rhythms considers to be under the control of incumbents, and which Rhythms feels may never recommend standards in this area.²⁰³

Rhythms also objected to being required to report NC/NCI codes on every service order, commenting that this requirement would give Qwest, its competitor, exact knowledge on a daily basis of the kind of services Rhythms was offering and where. Rhythms said that its proposal would obviate the need for reporting this information, because it would require each carrier to assume a potential spectral conflict in the adjacent binder and to deploy its facilities in a manner that precluded interference.²⁰⁴

AT&T's initial comments requested removal of or changes to the last sentence of SGAT Section 9.2.2.7, for the purposes of assuring non-discrimination by Qwest in spectrum management. AT&T's change would require Qwest to: (a) treat CLECs as it does itself and its affiliates, and (b) apply the guidelines "recommended" by any industry forum convened to address spectrum management.²⁰⁵ AT&T's brief adopted Rhythms approach to resolving this issue, citing its consistency with the objectives of competitive neutrality and of meeting the Act's Section 706 goal of encouraging the deployment of advanced telecommunications capabilities. AT&T explained that the FCC has specifically decided that the advanced services goal of the Act justifies an exception to the ordinary "first-in-time" rule where T1s are concerned, citing the following provision of paragraph 54 of the *Line Sharing Order*:

With respect to known disturbers, we sought to ensure that "noisier" technologies that are at or near the end of their useful life cycles do not perpetually preclude deployment of newer, more efficient and spectrally compatible technologies.

AT&T's brief then observed that the FCC has left to state commissions decisions on how to phase out known disturbers, such as T1s, after declining to adopt a prescriptive national approach.²⁰⁶ AT&T said that Rhythms approach is neither prescriptive nor immediate, requiring only that T1s be replaced where they cause interference. AT&T argued that allowing Qwest to seek a waiver of the T1 removal requirement on a showing that Qwest has no available

²⁰² Rhythms Brief at page 7 citing May 1, 2001 transcript at page 278.

²⁰³ Rhythms Brief at page 7.

²⁰⁴ Rhythms Brief at page 11.

²⁰⁵ AT&T Loop Comments at page 17.

²⁰⁶ AT&T Loops Brief at pages 23 and 24.

alternative in a particular case could solve the dispute between Rhythms and Qwest about whether T1s could always be replaced.

Beyond removal of existing T1s, AT&T argued that there should be restrictions on their future placement, noting that the Rhythms language would preclude the deployment of "known disturbers in binder groups that could cause interference" by requiring all carriers, including Qwest to follow spectrum management guidelines.²⁰⁷ AT&T noted that the adoption of the Rhythms language would also avoid the need for carriers to provide NC/NCI codes to Qwest. AT&T argued that these codes provide Qwest with competitive information about what services CLECs are offering. AT&T also said that Qwest was acting anticompetitively and contrary to the goals of Section 706 by failing to accept the obligation to follow spectrum management practices in remotely deploying DSL facilities that interfere with other carriers' DSL services.²⁰⁸

Qwest's brief responded to the three principal areas of dispute: (a) interference due to remote DSL deployment, (b) the requirement to remove existing T1s in the short term, and (c) the need to provide NC/NCI information.

With respect to remote DSL deployment, Qwest noted that the FCC has agreed that the matter should be dealt with in industry forums. Specifically, the FCC asked in the *Line Sharing Order* that NRIC advise it and that NRIC submit a report by January 2002.²⁰⁹ Qwest said that it would be counterproductive to adopt requirements in these workshops while deliberations continue at the national level. Moreover, Qwest said that concern about the effects of any remote DSL deployment is not valid. Qwest said that it would only remotely deploy DSL at locations far from central offices, in locations where CLEC central-office based DSL will not even function. Therefore, CLEC central-office based DSL will not even be in existence to be interfered with in cases where Qwest has made remote deployment. Qwest also agreed to include in SGAT Section 9.2.6.1 a commitment to implement the final NRIC recommendation on remote deployment of DSL.²¹⁰

With respect to "sunsetting" existing T1s, Qwest first noted that one of the FCC-endorsed means for state treatment of known disturbers was to provide for segregating them, which Qwest says that it does. Qwest's brief referred to testimony demonstrating that, in its larger binder groups, Qwest minimizes T1 disturbances by locating such facilities in outer binder groups, and by placing the send and receive portions on opposite sides. Moreover, Qwest said that, when such management efforts fail, it has committed in SGAT Section 9.2.6.5 to change a disturbing T1 to an HDSL facility wherever possible.²¹¹

With respect to providing competitive information, Qwest described the Rhythms/AT&T approach to precluding the need for providing Qwest with NC/NCI codes for spectrum management as assuming that all carriers will act in accord with accepted practices, which

²⁰⁷ AT&T Loops Brief at page 25.

²⁰⁸ AT&T Loops Brief at page 26.

²⁰⁹ Qwest Loops Brief at page 43.

²¹⁰ Qwest Loops Brief at page 44.

²¹¹ Qwest Loops Brief at page 47.

assumption is not prudent.²¹² Qwest says that the FCC has rejected this approach in paragraph 204 of the *Line Sharing Order* and in 47 C.F.R. § 51.231(b) and (c):

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.

That same paragraph addresses the competitive information issue by requiring that incumbents limit the use of the NC/NCI code information to network management purposes.

Proposed Issue Resolution: There are three issues to resolve: (a) treatment of T1s, (b) remote DSL and repeater deployment, and (c) provision of NC/NCI codes on LSRs.

Treatment of T1s

There is no doubt that states have the power to subject T1s to control or elimination requirements that ignore whether they came first to the facilities where interference is occurring. At the same time, however, it is clear that, if there is a universal set of rules fairly applicable to T1s, the FCC has not found it. Its decision to leave the treatment of T1s to the states makes clear that the circumstances applicable in these states should be the foundation for deciding what to do about them.

The approach taken by SGAT Section 9.2.6.4 is circular. As set forth in the frozen SGAT it provides:

Qwest recognizes that the analog T1 service traditionally used within its network is a "known disturber" as designated by the FCC. Qwest will spectrum manage this technology as defined in its spectrum policy and agrees that any future "known disturber" defined by the FCC or the Commission will be managed as required by FCC rules.

This section says that Qwest will handle known disturbers as required by FCC rules, which in turn, in the case of T1s, invite state adoption of such rules. With respect to T1s, the section provides further that it will manage them in accord with its "spectrum policy." However, that policy is not otherwise defined or explained in the SGAT Spectrum Management Section 9.2.6 as even including two specific requirements with which Qwest appears to agree: (a) to place T1s in binder groups that minimize interference possibilities and (b) to replace T1s that are causing disturbances with another technology, wherever possible. The record supports the adoption of these two requirements as reasonable and practical means of addressing interference from T1s. In order to make Qwest's obligations reasonably concrete, SGAT Section 9.6.2.4 should be changed to read:

²¹² Qwest Loops Brief at page 39.

Qwest recognizes that the analog T1 service traditionally used within its network is a "known disturber" as designated by the FCC. Qwest will place such T1s, by whomever employed, within binder groups in a manner that minimizes interference. Where such placement is insufficient to eliminate interference that disrupts other services being provided, Qwest shall, whenever it is technically feasible, replace its T1s with a technology that will eliminate undue interference problems. Qwest also agrees that any future "known disturber" defined by the FCC or the Commission will be managed as required by FCC rules.

This change will address a significant portion of Rhythms' concerns about T1s. It does not adopt Rhythms' all-carrier solution. Making Qwest, through the SGAT, the party responsible for resolving disputes that do not involve its own facilities (other than the provision regarding placement of T1s in minimally interfering binder groups) is not appropriate. The SGAT already provides an adequate remedy for resolution of disputes involving only non-Qwest facilities.

Remote DSL Deployment

Rhythms and AT&T have not shown good reason to act in advance of the NRIC report that the FCC expects. The FCC has essentially said that it wants to be informed by that report before it acts. There is certainly no basis for concluding that, on the record before us, we should step in where that angel fears to tread. There is also no basis for deciding at this point that concerns about the bias or the pace of the NRIC should give us less confidence than the FCC has shown in its ability to make a constructive contribution on matters of great technical complexity. Therefore, it would not be appropriate to move to incorporate into the SGAT the T1.417 technical standards proposed by Rhythms and AT&T.

However, there is the immediate question of how actions by Qwest in the meantime could serve to give it undue advantage in capturing market share in the advanced services market. It is not reasonable to defer taking appropriate actions that will mitigate Qwest deployment decisions whose effect would be to render competitors unable to effectively use existing methods to deliver advanced services in competition with Qwest. Two such Qwest deployment methods were identified on the record: (a) remote DSL deployment and (b) use of repeaters. Qwest agreed temporarily to limit its remote DSL deployment to cases where there can be no interference with CLEC central-office based DSL services, but that commitment is not explicitly incorporated into Section 9.6.2. Qwest did not, however, address at all the question of repeaters.

Rhythms and AT&T begin from a conceptual position that, while reflecting the economic interests of competitors seeking to serve the advanced services segment of the market, ignores an important reality the public service commissions face routinely. That question is how to ensure that service across the range spectrum of customers is provided economically. In particular for rural states, broad-level standards about network design may prove difficult to reconcile with the benefits of promoting new technology that allows added kinds of services to be delivered across a network historically dedicated largely to voice traffic. Where distances are long and customer densities are low, strict enforcement of newer standards may come at a particularly high cost in rural areas. While one should not abandon the goals of provisions like Section 706 in such cases, one should similarly not forget that the cost of achieving those goals could vary widely from

what looks to be the case in denser markets that are more likely to be the prime focuses of interest for many competitors.

What the dispute about repeaters and remote DSL essentially comes down to is who should pay for the costs of removing them when they inhibit the introduction of competitors' advanced services. What Rhythms and AT&T essentially argue is that they do not want to tell Qwest what services they are providing for fear that Qwest will use the information for competitive purposes (presumably even if there are disclosure limitations, because such limitations are standard for other competitive information required to be provided under the SGAT). Instead, they would like Qwest to deploy its network on the assumption that CLECs are making uses that are inconsistent with how Qwest would like to serve its own customer needs with respect to that network. Moreover, they would like Qwest to bear the incremental costs of doing so at the expense of other Qwest end use customers or of other CLECs who would like to use UNEs secured from Qwest to provide voice service. Finally, Rhythms and AT&T ask all this without making any commitment that they will actually make a significant entry into the markets where they have asked Qwest in effect to pre-groom the facilities.

It may be that the NRIC, the FCC, or someone else with expertise or authority will adopt standards that decree repeaters or Qwest's particular methods of remotely deploying DSL contrary to what should happen in all cases, be they dense or sparse, or urban or rural. That certainly has not happened yet, nor is there any reason for assuming, from the perspective of these seven states that it will. Moreover, even if it does happen, it is not at all clear that states like these seven will be forced to or should agree that such standards should require Qwest to change its practices at the expense of those customers who will not be taking advantage of advanced services.

There is no evidence on this record to show that repeaters, or any particular Qwest method of remotely deploying DSL, inherently constitute bad design or operating practice in these seven states, or anywhere for that matter. Therefore, it would be against public policy to adopt blanket requirements that may have the effect of forcing Qwest to adopt more expensive means of designing and operating its network to optimize it for a certain segment of customers, rather than for all customers. As important as the goal of promoting advanced services is, there is no evident reason to conclude that serving it should come at significant expense to other sectors of the local exchange market. This conclusion is underscored by two facts that are clear from the record: (a) there are no demonstrated CLEC commitments to bring such services to the seven states and (b) there is no offer by the providers of advanced services to bear any portion of the incremental costs that Qwest might have to spend to change its approaches to deployment of facilities to serve all customer types and needs, so that competitors have the theoretical ability to make advanced services available to a segment of those customers.

Thus, meeting the goal of promoting the development of advanced services, as well as the goal of making Qwest's network available to CLECs under the other provisions of the Act, should take another direction. It would be reasonable to require Qwest, pending further deliberations at the national level, to respond to actual CLEC deployments that can be disrupted by Qwest network actions, such as the use of repeaters. However, to respond, Qwest must know where CLEC facilities of the types affected are being installed, which AT&T and Rhythms are reluctant

to provide. Pending further consideration of the spectrum issues at the national level, it is reasonable to give CLECs the choice of refusing dialogue with Qwest about their facilities or having the right to accommodation of those facilities in Qwest's network – but not both.

Accordingly, this issue should be resolved by providing that Qwest is obligated to undertake reasonable actions when given specific information about network locations where its own repeater use or remote DSL deployment could disrupt central office based CLEC DSL services. If CLECs place a higher interest in confidentiality under these circumstances, then theirs should be the risk that Qwest's proper use of its own network will cause conflicts. It should be emphasized that the use of repeaters and the remote deployment of DSL (beyond the distance limits of central office based DSL) by Qwest remain, at least for the present, legitimate and proper uses. The evidence does not now show otherwise; even if such uses might cause conflict with CLEC facilities as discussed above, denying Qwest the right to make network decisions considering all customers and what costs various configurations will cause, is not justified. The addition of the following additional subsection to SGAT Section 9.2.6 would accomplish this purpose:

Where a CLEC demonstrates to Qwest that it has deployed central-office based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or remotely deployed DSL service in that area. It shall be presumed that the costs of such mitigation will not be chargeable to any CLEC or to any other customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this SGAT.

This resolution should be considered interim and subject to reconsideration at such time as the FCC takes any material action in connection with the advice and consent it expects to receive by January 2002 from the NRIC.

NCI/NCI Codes on LSRs

A primary foundation of the Rhythms and AT&T argument was that adoption of Rhythms' overall approach would essentially moot the need for this information to be supplied to Qwest. That foundation does not exist, given the previous matters addressed under this issue. Under these circumstances, Qwest has a legitimate need for the information. Moreover, it is difficult to envision an effective means, other than LSRs, as proposed by Qwest, to provide it. The information has value when there is a dispute or uncertainty about the source of interference. As Rhythms argued, and properly so, if such disputes drag out, CLECs risk customer loss. Qwest, therefore, must be expected to provide promptly and to all concerned, specific information about what facilities are involved and who may be using them.

Use of the LSR to provide the information will provide a sound linkage to the systems that Qwest would presumably use if it had a need for prompt identification of the relevant information. No other suitable means of providing it to Qwest is apparent. Therefore, the SGAT Section 9.2.6.2 provision requiring submission of the information on LSRs (or equivalent ordering document) is appropriate. However, it should be made clear, in a manner consistent with other SGAT treatment of confidential or proprietary information, that the NC/NCI information is sensitive, that its use must be limited to spectrum management purposes, and that only those needing to know the information for that purpose shall have access to it.

7. Conditioning Charge Refund

AT&T argued that it should be entitled to a refund of any applicable SGAT Section 9.2.2.4 loop conditioning charges if the customer for whom the unloading was done and charged to a CLEC switches providers within one year.²¹³ Qwest responded that it is entitled to recover its legitimate costs for unloading, regardless of whether the CLEC requesting them suffers an eventual loss because a customer transfers away from it. Qwest further noted that after the customer loss, there might no longer even remain a need for the loops involved to have been conditioned. Qwest objected to refunding conditioning charges.²¹⁴ AT&T's brief dropped its request to change Section 9.2.2.4 as it had originally proposed.²¹⁵ AT&T made a different proposal at the workshops. It would require refunds when Qwest fails to meet service requirements associated with the service that CLECs seek to offer over loops that have been conditioned to provide xDSL Service. AT&T's proposal was for a new SGAT section that would provide:

9.2.2.4.1 If CLEC's end user customer, for which CLEC has ordered xDSL capable Unbundled Loops from Qwest, (i) never receives xDSL service from CLEC, (ii) suffers unreasonable delay in provisioning, or (iii) experiences poor quality of service, in any case due to Qwest's fault, Qwest shall refund or credit to CLEC the conditioning charges associated with the service requested. This refund or credit is in addition to any other remedy available to CLEC.

AT&T supported this refund proposal by asserting that CLEC's will lose revenue and suffer reputation damage, because customers cannot be expected to distinguish between CLEC and Qwest responsibility for no service or for bad service. AT&T considered this provision to constitute a proper incentive to compensate CLECs and to induce Qwest to perform according to SGAT requirements and expectations.²¹⁶

Qwest's brief argued that it must bear conditioning expenses whether or not an end user ever takes service from a CLEC; therefore, its cost recovery should not be so conditioned. Its fundamental problem with AT&T's proposal, however, was that there must be, by definition, some prior method for assessing "fault," which can prove hard to establish, depending on what type of advanced service a CLEC might be seeking to provide. Qwest also argued that terms such as "poor quality" or "unreasonable delay" were too vague to provide reasonable

²¹³ AT&T Loop Comments at page 14.

²¹⁴ Liston Rebuttal at pages 26 and 27.

²¹⁵ AT&T's Loops Brief at page 14.

²¹⁶ AT&T Loops Brief at page 15.

commercial expectations. Qwest did agree conceptually to the notion of a credit in cases where it failed to perform conditioning in a workmanlike manner or significantly missed its due date for conditioning, but considered the issue more properly addressable in the context of a billing dispute, rather than a specific SGAT section here.²¹⁷

Proposed Issue Resolution: AT&T's second two refund qualifying conditions are vague, but Qwest's willingness to accept responsibility in cases of non-workmanlike performance or significant due date misses does not provide substantially greater objectivity. Rather that willingness reflects the fact that the harm done due to poor or late conditioning is hard to pin down, primarily because such harm results from inherently unpredictable customer reactions to delays or poor service quality. It would also be difficult to determine with a high degree of confidence whether a CLEC customer abandoned the CLEC for these reasons, other reasons, or a combination of both. In other words, the circumstances here fall within one of the classic reasons why commercial contracts provide for liquidated damages; i.e., expected difficulty in sorting out fault or the magnitude of economic consequences flowing from fault.

This fact, and Qwest's conceptual agreement to bearing a refund liability in some circumstances argue for uniquely treating the issue here in the context of conditioning, rather than consigning it to more general SGAT sections, such as those addressing billing disputes. In doing so, the better approach is not to hinge responsibility on customer reaction or upon inherently vague definitions of quality or harm, particularly in recognition of the fact that CLECs may be offering a wide variety of services through a wide variety of connected facilities or end user devices. Moreover, it seems reasonably clear that a delayed installation followed by a customer choice to take the CLEC's service does not materially harm the CLEC. On the other hand, for the sake of simplicity and rough equity, it seems reasonable to conclude that a delayed conditioning followed by a customer choice not to take the service is a material factor in that choice. Therefore, the following language should be added to the SGAT:

Where Qwest fails to meet a due date for performing loop conditioning, CLEC shall be entitled to a credit equal to the amount of any conditioning charges applied, where it does not secure the unbundled loop involved within three months of such due date. Where Qwest does not perform conditioning in accord with the standards applicable under this SGAT, CLEC shall be entitled to a credit of one-half of the conditioning charges made, unless CLEC can demonstrate that the loop as conditioned is incapable of substantially performing the functions normally within the parameters applicable to such loop as this SGAT requires Qwest to deliver it to CLEC. In the case of such fundamental failure, CLEC shall be entitled to a credit of all conditioning charges, except where CLEC asks Qwest to cure any defect and Qwest does so. In the case of such cure, CLEC shall be entitled to the one-half credit identified above.

8. Pre-Order Mechanized Loop Testing

AT&T wants Qwest to allow CLECs to perform mechanized loop testing (MLT), in order to provide the CLECs with actual loop length and performance information. AT&T said that such

²¹⁷ Qwest's Loops Brief at page 23.

testing is needed before provisioning to verify that the loop can support the services that the CLEC wishes to provide. AT&T concedes that a momentary outage of the current customer's service would be required. However, it said that the fact that Qwest has had to do such tests to populate its own databases shows that such interruptions are acceptable.²¹⁸ AT&T's brief noted that the FCC has cited Verizon in Massachusetts as offering mechanized loop testing on a pre-order basis. AT&T also said that Qwest performs mechanized loop testing to determine loop capabilities for its own Megabit service; refusing to allow it for CLECs would constitute disallowed discrimination under paragraph 427 of the *UNE Remand Order*.²¹⁹

Qwest responded that its representatives cannot perform such tests, and that Qwest performs them only in cases of repairs. Qwest also said that its Loop Qualification Tool already provides MLT information (the previous testing to which AT&T alluded) to CLECs. Qwest conceded that it is not sufficient under the *UNE Remand Order* for it to digest its information for a CLEC or to pre-qualify the loop for the CLEC. Qwest must provide access to the underlying information about the loop's makeup, including at least "the same underlying information that the incumbent LEC has in any of its own databases or other internal records."²²⁰

Qwest cited the following as examples of what incumbents must provide and what Qwest's Loop Qualification Tool provides to CLECs:

- The loop's material, e.g., fiber or copper
- The location and type of any electronic or other equipment on the loop, e.g., digital loop carrier, feeder/distribution interfaces, bridge taps, load coils, and pair-gain devices
- The loop's length segmented by transmission media type
- Wire gauges
- Electrical parameters.

Qwest argued that it does provide CLECs access to the same information and in the same manner that its retail personnel have, citing testimony that Qwest does not use MLTs on a pre-order basis, but only as part of the repair process. In fact, Qwest said that CLECs have more information available, because Qwest offers them access to the Raw Loop Data Tool (which its own service representatives do not have), which contains the loop information gained from the system-wide mechanized loop testing it did on a one-time basis to populate that tool. Qwest also said that the ROC OSS test will provide verification of whether the information available to CLEC and to Qwest retail personnel is available in the same manner, at the same time, and from the same sources. Qwest also claimed that such testing is invasive, because it would disconnect any call in progress when the test occurred. Qwest noted that it would be improper to give CLECs free access to a capability that would disrupt service to customers being served by others.²²¹

²¹⁸ AT&T Loops Brief at page 17.

²¹⁹ AT&T Loops Brief at page 18.

²²⁰ Qwest Loops Brief at page 25, citing the *UNE Remand Order* at ¶ 427.

²²¹ Qwest's Loops Brief at pages 27 and 28.

Proposed Issue Resolution: There is sufficient evidence of record from which to conclude that Qwest does not generate pre-order information through mechanized loop testing in serving its own end users. However, it does clearly have the capability to do so. AT&T has not presented any evidence to rebut the Qwest testimony that it provides CLECs with the same information, from the same sources, and in the same manner as is available to its own personnel in the pre-order context. That Qwest has done the test on a comprehensive basis in the past does not demonstrate discrimination; Qwest makes the results of that test at least equally available to CLECs for pre-order use. The results of that prior testing thus do Qwest no better in terms of assessing loop capabilities than what CLECs can get from having access to it.

That other ILECs may allow the conduct of such testing for CLECs is not determinative. The record does not address the issue of whether they conduct such testing for themselves on a pre-order basis. If they do, then the issue differs from the one in question here, because a question of discrimination arises there. Moreover, under the facts made clear here, CLECs already have access to the results of a one-time system wide program that Qwest conducted to provide a tool that would set forth the information involved. Given its availability to CLECs, given the potential disruption to the service of end users of other carriers (whether Qwest's or another CLEC's) and given a sound basis for concluding that Qwest satisfies applicable non-discrimination requirements, Qwest should not be required to make mechanized line testing available for CLECs for so long as Qwest continues not to perform it for itself or its affiliates.

9. Access to LFACs and Other Loop Information Databases

AT&T said that recognized problems with unbundling IDLC loops for CLEC use as UNEs created a particular need for detailed information about where in Qwest's loop plant a CLEC might be able to find enough spare copper facilities (both whole loops and fragments) to make up loops. AT&T noted that Qwest itself testified to the difficulty and time consumption involved in unbundling IDLC loops. AT&T further said that, even when unbundled, such loops could not be used by a CLEC to provide xDSL services. AT&T said that these difficulties posed area-wide problems that must be addressed before a CLEC creates customer expectations through marketing efforts, only to find that it cannot deliver services because Qwest is using IDLC and there are not enough copper facilities to provide CLECs with unbundled loops. AT&T therefore sought access to a system called LFACs because the company thought it might contain such information. However, AT&T's request, given its state of knowledge at the time of the workshops, would be better described as seeking access to whatever information Qwest could provide (whether inclusive of LFACs or not) to give it access to a reasonably complete inventory of spare Qwest copper facilities in areas where Qwest serves end users through significant amounts of IDLC.²²²

Qwest's primary response was that parity with its own retail operations did not require granting access to LFACs, because Qwest's retail personnel did not use it in the pre-ordering process.²²³ AT&T responded that parity is not the test here, because Qwest does not have to unbundle IDLC loops to serve its own end users. Rather, said AT&T, the proper question to ask is whether CLECs, which have the unique need to deal with IDLC unbundling issues, have a meaningful

²²² AT&T Loops Brief at page 19.

²²³ Qwest Loops Brief at pages 30 and 31.

opportunity to compete in the absence of access to information that will allow them, on a pre-order basis, to see if an area has sufficient copper facilities available to get around the unbundling and xDSL constraints imposed by the presence of substantial amounts of IDLC in an area it might wish to serve.²²⁴

Qwest went on to address a number of other concerns about making access to LFACs available to CLECs. First, it said that LFACs did not have an existing search capability; Qwest said that it has designed and uses LFACs to assign facilities to fit the specifications of a specific order. Because LFACs stops hunting for facilities when it finds a single set fitting the input parameters, according to Qwest, significant work (presumably programming) would be required to make LFACs useable to look for a broad range of facilities. Qwest also raised confidentiality concerns, arguing that LFACs contains confidential information about the unbundled loops of Qwest and all other CLECs using Qwest's network.²²⁵

Qwest also argued that it had agreed to make available to CLECs other tools that would provide the kind of information that AT&T was seeking. One was "Facility Check," which Qwest said was the same tool it used to search for spare facilities. Qwest also said that it was scheduled by December of this year to be able to provide spare facility information through IMA-GUI and IMA-EDI RLD on an individual facility basis. Since the Seven State workshop, Qwest has determined that this update will be implemented no later than December 2001. Qwest also testified that its ADSL tool displays spare facility information.

Proposed Issue Resolution: Parity with Qwest's retail operations is not the material standard in deciding this issue. Qwest obviously does not have the need to address the problem that CLECs do here. Moreover, access to information about IDLC deployment is also not the issue. The issue assumes that CLECs know where IDLC has been deployed; what AT&T wants to know is, where there is IDLC in an area, are there enough available copper facilities to allow them to be able to serve customers. Finally, ordering information is not the issue; the argument made is that AT&T cannot make an informed decision about whether to market to an IDLC intensive area without first knowing whether there is enough available copper to allow it to serve customers using elements consisting of facilities other than IDLC.

Having narrowed the issue, we can address the validity of AT&T's basic claim and assess whether, if it is valid, there are means for filling CLEC needs. There is sufficient evidence of record to conclude that significant Qwest deployment of IDLC in an area justifies CLEC concern about the ability to provision loops with copper, particularly where it seeks to provide data services. Giving CLECs a meaningful opportunity to compete in this case includes giving them access to tools necessary to provide a reasonably complete identification of spare copper facilities, whether they are entire loops or fragments, if such access can be provided in a manner that is consistent with other concerns and limitations.

Protection of competitive information is one of those other concerns, but not an overriding one, as protection of such information is a need common to many areas of the SGAT. The need for protection could be considered greater here, because of the breadth of information about the

²²⁴ AT&T Loops Brief at pages 19 and 20

²²⁵ Qwest Loops Brief at pages 31 and 32.

numbers and locations of Qwest and CLEC end users and their service types that is theoretically attainable from LFACs. Another key issue is what systems, whether or not they include LFACs, will provide the needed information and what it would cost to allow them to provide it.

We can first conclude that the evidence shows that LFACs does not have the capability to provide the information that AT&T seeks, but that it does contain a very broad range of information that is both very sensitive and hard to exclude from unmediated access. If other tools exist to provide what AT&T wants, it seems reasonably clear that the time and effort to modify LFACs to enable it to perform the proper queries and to provide basic data protections are not warranted. Certainly, it would be proper, if such efforts were required, to assign the costs involved to CLECs who seek access to it for purposes and in manners for which it is not designed.

Qwest has cited a number of other available tools that appear better suited to AT&T's needs. Given that potential, the preferable course at this time is to assure AT&T access to them, in order to determine if they will serve. Therefore, the SGAT should contain a language providing that:

In areas where Qwest has deployed amounts of IDLC that are sufficient to cause reasonable concern about a CLEC's ability to provide service through available copper facilities on a broad scale, the CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of such available copper facilities. Qwest shall be entitled to mediate access in a manner reasonably related to the need to protect confidential or proprietary information. CLEC shall be responsible for Qwest's incremental costs to provide such information or access mediation.

Issues Resolved During This Workshop – Line Splitting

1. Presumptions About the “Lead” CLEC

AT&T commented that the SGAT appears to presume that a CLEC providing voice service would take the lead in managing the relationship with Qwest on a split loop.²²⁶ Qwest agreed to language changes in SGAT Section 9.21 to clarify that either CLEC could serve as the “customer of record,” provided that only one could perform this role.²²⁷ This issue can be considered closed, subject to the disagreement in the fourth unresolved issue discussed below.

2. Pre-Provisioning of the Splitter in the End User's Central Office

AT&T objected to the SGAT Section 9.21.2.1.2 requirement that a splitter be previously provisioned in the end user's central office before a CLEC could order line splitting.²²⁸ Qwest agreed to delete the requirement.²²⁹ This issue can be considered closed.

²²⁶ AT&T Loop Comments at page 38.

²²⁷ Liston Rebuttal at page 92.

²²⁸ AT&T Loop Comments at page 39.

²²⁹ Liston Rebuttal at page 93.

3. Limits on Uses of the High- and Low-Frequency Loop Portions

AT&T suggested a language change that would incorporate a more expansive definition of permitted uses.²³⁰ Qwest made an alternative SGAT Section 9.21.2.1.3 change that would address AT&T's concern.²³¹ This issue can be considered closed.

4. Charges for OSS Modifications

AT&T asked that Qwest explain the OSS modification charge discussed in SGAT Section 9.21.3.1.2.²³² Qwest responded that it would incur expenses to modify its OSS to allow for the ordering and provisioning of line splitting. It agreed that the review of the reasonableness of any costs proposed should await future consideration in cost dockets.²³³ This issue can be considered closed.

Issues Decided in Earlier Workshops – Line Splitting

1. Line-At-A-Time Access to Splitters

AT&T commented that Qwest should be obliged to provide access to “outboard” (i.e., splitters that are not integrated into the DSLAM) splitters in its central offices and remote terminals. AT&T also said that CLECs should be able to gain access to them for a single line or a single shelf.²³⁴

This issue is the same as the first unresolved issue (*Ownership of and Access to Splitters*) under *Line Sharing* in the June 11, 2001 *Third Report – Emerging Services* in these workshops. No new evidence or arguments here would serve to alter the resolution made of that issue, which is therefore equally applicable here.

2. Discontinuing Megabit Service

AT&T objected to Qwest's policy of discontinuing Megabit (high-speed data) service to its own end users when they switch to a CLEC for voice service. AT&T cited the same support for its objections as it made in the emerging services workshop. The treatment of this question as the second unresolved issue (*Tying Qwest Data Service and Voice Service*) under *Line Sharing* in the June 11, 2001 *Third Report – Emerging Services* in these workshops remains valid here. No new evidence or arguments here would serve to alter the resolution made of that issue, which is therefore equally applicable here.

²³⁰ AT&T Loop Comments at page 39.

²³¹ Liston Rebuttal at page 94.

²³² AT&T Loop Comments at page 40.

²³³ Liston Rebuttal at page 94.

²³⁴ AT&T Loop Comments at page 36.

Issues Remaining in Dispute – Line Splitting

1. Limiting Line Sharing to UNE-P

AT&T commented that SGAT Section 9.21.1 impermissibly limited line sharing to cases where CLECs gained access to Qwest loops through the use of UNE-P; line sharing should be available in other configurations as well (e.g., unbundled loops, EELs, and resold voice services).²³⁵

With respect to loop splitting, AT&T's brief acknowledged that Qwest had agreed to expand line sharing to loops by adding a new SGAT Section 9.24 to address loop splitting. However, AT&T remained concerned about the lack of a commitment date by which CLECs will be allowed to use line splitting on UNE loops.²³⁶ Qwest noted that, while it had agreed to loop splitting, it did not recognize an obligation to do so, nor was it aware of any other ILEC that was providing it. Qwest argued also that it would have a very limited role in loop splitting, which would operate largely under agreement between the two CLECs involved (one providing voice services and the other providing data services). Qwest testified that there remained issues to be resolved, e.g., authority to report troubles.²³⁷

Access to line splitting over EELs was also disputed. AT&T also expressed concern about Qwest's proposal to limit line splitting in the EEL context to the Special Request Process. Qwest cited very low demand for EELs, stating that only seven existed in all of the seven states (and all of them in Utah). It objected to undertaking the development work necessary to create a standard offering. Qwest said that such an offering would require it to define methods, to create ordering functions within its OSS, and to define the LSR information that can flow through Qwest's databases and onto billing statements. Qwest agreed to do so in the event that future demand grew enough to justify it, but it argued against providing EEL splitting, except on a special request basis at present.²³⁸ AT&T's concerns about this approach included the lack of a defined and expeditious timetable for resolving special requests. AT&T also argued that the lack of demand for EELs was at least in part a function of the lack of a readily available "product."²³⁹ AT&T wanted EEL splitting to be a standard offering subject to specified terms and conditions under the SGAT.

Qwest objected to providing splitting in the resale context. Qwest noted that AT&T conceded in the workshops that this alternative was "virtually identical" to splitting over UNE-P. Qwest objected to adding an obligation that it said did not now exist under FCC requirements.²⁴⁰

Rhythms also testified generally that Qwest's specific SGAT obligations with respect to line splitting were not sufficiently defined and concrete.²⁴¹

²³⁵ AT&T Loop Comments at page 13.

²³⁶ AT&T Loops Brief at page 29.

²³⁷ Liston Rebuttal at pages 90 and 91 and Qwest Loops Brief at page 10.

²³⁸ Qwest Loops Brief at page 11.

²³⁹ AT&T Loops Brief at page 32.

²⁴⁰ Qwest Loops Brief at page 12.

²⁴¹ Kendrick Testimony at page 6.

Proposed Issue Resolution: AT&T's objection to the lack of a definitive timetable for making loop splitting available is not well founded. No issue was taken with the need for addressing issues associated with loop splitting, in order to assure that Qwest is not inappropriately asked to resolve problems or take responsibility for matters of potential disagreement between the two CLECs who will be using such a loop. Nor was there any evidence that Qwest has failed adequately to pursue resolution of those issues. On the other hand, no evidence was presented to demonstrate that such problems require consideration by industry forums. Provided that Qwest can demonstrate at the time of its filing to the FCC that it has made substantial progress in defining the specific terms and conditions applicable to loop splitting, it is reasonable to conclude that it has met its obligations under Section 271.

AT&T also failed to demonstrate that crafting a specific offering for EEL splitting is appropriate at present. Qwest's evidence showed that there is a remarkably small current demand for EELs at all, let alone for splitting them. Faced with specific evidence from Qwest about actual demand, no CLEC chose to counter with its own evidence of its likely demand for split EELs, either qualitatively or quantitatively. Rather, the only argument provided was an essentially hypothetical discussion of the reasons why demand was at the levels testified to by Qwest. It is reasonable to rely upon the special request process in cases, such as the one at issue here, where it will avoid, at least for some time, development expenses out of character with the benefits that will flow from incurring them. Therefore, should Qwest remain willing to make split EELs available on a special request basis now, and to develop a standard offering at such time as any commission determines that demand justifies one, Qwest should be deemed to have satisfied its obligations to provide line splitting in this context.

Finally, splitting resold lines is an anomalous concept. CLECs can acquire the underlying facilities as UNEs or they can resell a service. They cannot buy a service for resale, yet claim that they have secured any rights to the underlying facilities. Loops are split; services are not. In the resale context, there is no CLEC loop to split. Some CLECs must secure a loop as a UNE before a loop can be split. As Qwest's brief and AT&T's witness suggest, there is at least one solution to line splitting under a resale situation, which is first to substitute UNE-P for resold services, then to pursue the splitting options made available by that substitution.

2. Liability for Actions By an Agent

Qwest required that a single party be responsible as the "Customer of Record" for split lines. While not objecting to the concept, AT&T raised concerns that both CLECs involved (i.e., splitting the line) might have separate needs for contacting Qwest for ordering or for maintenance and repair purposes. It could be cumbersome to require the other CLEC to have to contact the customer of record who would then have to contact Qwest, merely to relay matters of more direct concern of the other CLEC. AT&T and Qwest worked out nearly all of the language required to allow the CLEC who was not the customer of record to be authorized to make ordering, maintenance, and repair contacts to Qwest.²⁴²

The agreed to solution would require that the CLEC who was not the customer of record to have access to all the identification and security passes of the other CLEC, in order to allow Qwest to

²⁴² AT&T Loops Brief at pages 34 and 35; Qwest Loops Brief at pages 14 and 15.

recognize the contact as a legitimate one with respect to the loops at issue. The parties also agreed that Qwest should generally not be held responsible for any harm due to actions by anyone to whom the customer of record has given the identification and security passes that are sufficient to allow such person to gain access to the customer of record's account at Qwest. Only in a very narrow area was there disagreement. The disagreement was whether the third person must have obtained the identification and passes "wrongfully" from the customer of record. Qwest would say "yes;" AT&T would say "no."

Proposed Issue Resolution: AT&T's brief focused on wrongful "use" of the access gaining information by the third party.²⁴³ However, the provision at issue (Section 9.2.1.7.3 from Qwest's frozen SGAT filing) does not concern itself with the use of the information but with how it was obtained. Moreover, the limitation on Qwest's liability applies only in cases of access to the information from the customer of record (i.e., one of the two CLECs); it is significant here to bear in mind that Qwest's liability is not limited in cases where Qwest provides the information to the third party. Thus, by definition, the section should limit itself to information wrongfully secured by a third party from the CLEC who is the customer of record. If a CLEC gives out information to another CLEC that can be used to make commitments with respect to its account, it should be clear that the CLEC, rather than Qwest, should be responsible for misuse of that information. Otherwise, Qwest, rather than the CLEC, becomes responsible for managing the conduct of the CLEC's representatives or agents, should they choose to act counter to or beyond the instructions that the CLEC has given them.

There is no apparent reason why Qwest should bear any responsibility, even if some negligence theory could be supported, for harm to a CLEC from the CLEC's agent's or representative's use of such information that the CLEC intentionally and "rightfully" gave to the person in question. Only where the CLEC or agent has "wrongfully" obtained the information, and only where it obtained it through negligent or willful conduct, is it proper to hold Qwest responsible for claims resulting from a concession that Qwest has made to its normal customer of record procedures for the administrative convenience of CLEC customers.

Issues Resolved During This Workshop – NID

1. Access to All NID Features

AT&T commented that SGAT Section 9.5.1 described the NID inappropriately in two respects. First, AT&T said that the section described it in relation to Qwest's "Loop Facility," thus limiting CLEC NID access to cases where a CLEC has secured an unbundled loop from Qwest. Second, the definition failed to provide CLECs with access to all of the features of the NID.²⁴⁴ As Qwest pointed out, the definition critiqued by AT&T was dated; the current version had stricken the "Loop Facility" language, and had explicitly included in the NID definition all of its "features, functions, and capabilities."²⁴⁵ WYCAS made similar points in its brief, but added that it "...will leave it to the competitive intervenors to address the extent to which the new NID

²⁴³ AT&T Loops Brief at page 35.

²⁴⁴ AT&T Loop Comments at page 42.

²⁴⁵ Liston Rebuttal at page 75.

language resolves their concerns with the NID provisions of the SGAT.²⁴⁶ This issue can be considered closed.

2. Smart and MTE NIDs

AT&T asked that the NID definition be expanded to include "Smart NIDs," which AT&T described as allowing some monitoring of maintenance on PBX trunks and DS1 loops.²⁴⁷ Qwest's frozen SGAT Section 9.5.1.2 language includes such NIDs. As requested by AT&T, Qwest also changed the SGAT to include a reference to NIDs at MTEs. This issue can be considered closed.

3. Availability of NIDs When CLEC Provides Loop Distribution

AT&T commented that SGAT Section 9.5.2.1 required CLECs to provide their own NIDs when they provided their own loop distribution to serve an end user. AT&T cited paragraph 232 of the *UNE Remand Order* as prohibiting such a requirement.²⁴⁸ Qwest responded that nothing in the section imposed such a requirement, and that CLECs could gain access to Qwest's NID in such cases.²⁴⁹ AT&T did not brief this issue and there is nothing evident in the section that would impose such a requirement. This issue can be considered closed.

4. Other Kinds of Permissible NID Access

AT&T suggested the addition to SGAT Section 9.2.1 of a number of other types of allowed NID access.²⁵⁰ Qwest responded that it had already changed the SGAT to permit most of the types of access sought by AT&T.²⁵¹ AT&T did not dispute those omitted, nor did it brief this issue. The issue can therefore be considered closed.

5. NID Ownership

AT&T objected to the SGAT Section 9.5.2.2 statement that Qwest retains ownership of the NID and its "contents on Qwest's side" as denying CLECs access to NID functions and capabilities.²⁵² Qwest responded that access to and leases of UNEs is what is required; nowhere does the FCC require an incumbent to cede ownership of any facilities that CLECs use as UNEs.²⁵³ AT&T did not brief this issue. Moreover, it is not clear why ownership is required to give CLECs access to a NID's functions and capabilities. Nor is it clear why NIDs should be distinguished from all other UNEs in terms of requiring Qwest to transfer ownership to CLECs. It is presumed that this issue is closed.

²⁴⁶ Post-workshop Brief of the Consumer Advocate Staff on Issues Relating to UNEs, Arising Out of Workshop Session 5 and Workshop Session 6.

²⁴⁷ AT&T Loop Comments at page 42.

²⁴⁸ AT&T Loop Comments at page 44.

²⁴⁹ Liston Rebuttal at page 79.

²⁵⁰ AT&T Loop Comments at page 45.

²⁵¹ Liston Rebuttal at page 80.

²⁵² AT&T Loop Comments at page 46.

²⁵³ Liston Rebuttal at page 81.

6. Rates for Other Than Single-Tenant NIDs

AT&T commented that SGAT Section 9.5.3.2 refers only to single tenant NID rates; rates for other NIDs should be included.²⁵⁴ Qwest agreed, and it changed the section accordingly.²⁵⁵ This issue can be considered closed.

7. NID Ordering Documents

AT&T commented that the SGAT Section 9.5.4 requirement for LSR use in ordering NIDs was cumbersome, because it required a loop order as well.²⁵⁶ Qwest responded that it was working to streamline NID ordering by providing a standalone NID order process. In the meantime, however, it was necessary for CLECs to use the remarks section of the LSR to isolate a NID order.²⁵⁷ This issue can be considered closed, but Qwest should provide, should CLECs request it, a report of status in designing and implementing the new NID ordering process.

Issues Remaining in Dispute - NID

1. "NID" Definition and Access to Terminals Where Qwest Owns Facilities in the Direction of the End User

While both Qwest and AT&T expounded on this subject at great length, the discussion appears to raise no issues other than that considered in the first unresolved *Subloop Unbundling* issue (*Subloop Access at MTE Terminals*) from the June 11, 2001 *Third Report – Emerging Services* from these workshops. In essence, AT&T is still seeking to argue that MTE terminals are NIDs, because it believes that winning the definition issue will give it essentially unmediated access to such terminals. Qwest, on the other hand, again effectively seeks victory by defining access at MTEs as subloop access, in the apparent hope that it can impose a set of pre-defined standard FCC collocation arguments. The only new light shed on the issue is how the matter of how access to the functionality of the NID, versus access to its physical attributes plays into the argument. It is helpful to clarify that nuance, because the parties' heated debate on that distinction heretofore had created the impression that something much larger and more significant was at stake.

Basically, the difference between them in that regard appears to boil down to this question: what the FCC meant when it distinguished between the physical NID and the functional (one might say the metaphysical without too great a stretch) NID in the *UNE Remand Order*. AT&T said that that the FCC meant that it could get access to an MTE terminal's NID functionality without the extra burdens of meeting collocation requirements. Qwest said that the FCC in fact was only saying that when a CLEC gets access to a Qwest subloop at an MTE it also gets along with it the functionality of the NID that is downstream from the MTE (of course meaning that the CLECs do have to go through the collocation burdens, which are required under the FCC's subloop access provisions).

²⁵⁴ AT&T Loop Comments at page 46.

²⁵⁵ Liston Rebuttal at page 82.

²⁵⁶ AT&T Loop Comments at page 46.

²⁵⁷ Liston Rebuttal at page 82.

Proposed Issue Resolution: These arguments bring us right back to the point of the *Subloop Access at MTE Terminals* issue noted above. Qwest's interpretation of what the FCC meant better accords with the context and construct of the language. Of course, as the previous resolution of the issue demonstrated, being on the right side of that question is not worth much in resolving the issue. As stated there, what CLECs can and cannot be required to do is not a function of who wins a semantic issue (which it is not even clear was part of what the FCC had in mind in crafting the language that each parses so carefully). Rather, it is a function of the other circumstances at play (for example, the service reliability, safety, work efficiency, cost, and engineering and operating practice concerns mentioned in the *Emerging Services* report). In other words, standard collocation requirements could be eased in cases where standard FCC rules do not make sense in terms of those circumstances, just as standard NID access requirements could be restricted for the same reasons.

We dealt with the one set of specific circumstances that the parties chose to expose in that earlier workshop. That resolution remains valid and it also remains true that the continuation of the definitional debate between AT&T and Qwest has failed to disclose any other cases and circumstances sufficiently to address them. It should remain the case, therefore, that experience between them in the future will determine whether there is a later need to define access conditions further and make additional exceptions to collocation or NID access procedures and requirements (or the lack thereof) past today.

2. Protector Connections

AT&T commented that SGAT Section 9.5.2.1 impermissibly restricts CLECs to NID access in cases where space is available without requiring Qwest to remove its loop connections to the NID. AT&T said that this policy would deny CLECs access to the NID's features and functions, which contravenes the *UNE Remand Order*.²⁵⁸ Qwest responded that nothing in the FCC's rules would oblige it to remove its connections and that doing so would violate the National Electric Code and the National Electric Safety Code.²⁵⁹ AT&T did not respond to the Qwest testimony on this issue, even though Qwest's testimony raised significant safety issues, such as how a removed Qwest NID could be grounded unless someone provided the additional NID capacity for doing so.

AT&T asked in its brief that SGAT Section 9.5.2.1 be amended to add the underlined provisions shown below:

At no time should either Party remove the other Party's loop facilities from the other Party's NID without appropriately capping off the other Party's loop facilities."

The AT&T brief cited no evidence of record to support this amendment; instead it relied upon a technical document that it submitted in these workshops for the first time in its brief. AT&T's brief called this document "Bell system policies."

²⁵⁸ AT&T Loop Comments at page 44.

²⁵⁹ Liston Rebuttal at page 80.

Proposed Issue Resolution: There was no brief from Qwest on this issue; Qwest had reason to conclude from the workshop record that the matter was not in issue. The document attached to the AT&T brief has not been authenticated; no witness has testified to its applicability generally or with specific reference to all of the relevant configurations at issue here. The document is described as a Bell system document even though it bears an AT&T identification from 1989. Its significance here and the requirements associated with its implementation (assuming without a substantial basis therefore that it was ever applicable anywhere by anybody and similarly assuming, if it was, that it remains applicable somewhere today) are by no means clear. In fact, the most directly relevant section of the document, again under the above assumptions, appears to be Section 2, which talks about what to do with a drop wire where a connection block (assuming that a connection block is what is now referred to as a NID) is left in place at the customer location. That section says, "Where station protector or connecting block is not to be removed, do not connect the outside drop at the customer building." Moreover, AT&T's proposed language addition would entitle another carrier to go wherever else in the loop facilities of Qwest it had to perform the function of "capping off," which is a term not explained by AT&T.

Apart from the irregularity of its introduction into the record here, the request of AT&T fails for being inadequate in explanation and for seeking (absent further explanation, which is untimely in any event) unmediated access to facilities other than the Qwest NID.

3. CLEC Use of Qwest's NID Protector Without Payment

AT&T raised this issue for the first time in its brief. AT&T objected to the SGAT Section 9.5.3 requirement that it pay for its use of protectors at Qwest's NID in cases where it has its own protectors. AT&T says that, where it has its own protectors, i.e., it connects to those in its own nearby NID, it may still find it necessary or "convenient" when it cross connects to Qwest's NID to do so in the protector field there. AT&T would change the section to say that it does not have to pay for the functionality of the protector field when it has its own protectors and therefore presumably is not using this "functionality."

Proposed Issue Resolution: Apart from being raised in a manner that allowed no effective response and apart from having no factual foundation, the argument that UNE prices should be based on the functionalities actually used is curious. The general rule is that a CLEC gets access to all the functionalities and capabilities that a UNE presents to it. If a CLEC has access to all those functionalities and capabilities, it stands to reason that it should be responsible for the proper costs that go into providing all those functionalities and capabilities. Moreover, it would craft a slippery slope to establish the principle that CLECs can argue for reductions from standard UNE prices where they self declare (or even prove, for that matter) that they are using only part of the capability of a UNE. The precedent established in the case of loops would seem to argue for sub-NID unbundling, presuming that AT&T's core argument has merit. Clearly, the record here, which is essentially none, does not begin to take on the dimensions that would suit an inquiry of that type.

VI. Checklist Item 5 – Access to Unbundled Local Transport

Background – Transport

Checklist Item 5 of the Section 271 checklist of the Telecommunications Act addresses access to unbundled local transport. Qwest is required to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services. 47 U.S.C. Section 271(c)(2)(B)(v).

Also addressed in this section are Enhanced Extended Links or EELs. In the *UNE Remand Order*, EELs were defined as being “comprised of unbundled loops, multiplexing/concentrating equipment, and dedicated transport...”.

Issues Resolved During This Workshop – Transport

1. Available Dedicated Transport Routes

AT&T commented that SGAT Section 9.6.1 did not allow connections between all the facilities that the FCC requires (e.g., between CLEC wire centers or switches). Qwest agreed to change SGAT Section 9.6.1.1 to address the full range of routes required by the FCC.²⁶⁰ This issue can be considered closed.

2. Requiring Multiplexers for Access to Transport

AT&T expressed concern about whether the SGAT Section 9.6.1.2 reference to an unbundled multiplexer as a stand-alone element meant that CLECs would have to acquire it to get transport as a UNE. AT&T argued that making it a requirement, rather than a CLEC option, would violate prohibitions against limiting the facilities to which transport as a UNE could be attached.²⁶¹ Qwest changed the section to clarify that such multiplexers were at the option of CLECs. Qwest also stated that, consistent with the failure of the FCC to identify them as UNEs, Qwest was not offering them as such, but as an optional feature of the UDIT UNE.²⁶²

3. Cross Connecting UDIT and EUDIT

Further addressing its concern about not separating UDIT (Unbundled Dedicated Interoffice Transport) and EUDIT (Extended UDIT) (an unresolved issue that is addressed below), AT&T objected to the requirement of SGAT 9.6.2.1 that CLECs pay for the costs of cross connecting UDIT and EUDIT when they are in fact a single element. AT&T was particularly concerned that such cross connections would require the substantial expenses associated with collocation where the cross connects had to be made in a Qwest central office.²⁶³

²⁶⁰ Stewart XX Rebuttal at pages 5 and 6.

²⁶¹ AT&T Emerging Services Comments at page 6.

²⁶² Stewart XX Rebuttal at page 6.

²⁶³ AT&T Emerging Services Comments at page 7.

Qwest objected to a general change that would require it to make all cross connections between elements, but did agree to change the section to add a provision stating that:

To the extent that CLEC is ordering access to a UNE Combination, Qwest will perform requested and necessary cross-connections between UNEs in the same manner that it would perform such cross-connections for its end user customers.

This issue can be considered closed.

Issues Decided in Earlier Workshop Reports – Transport

1. Access to the Facilities of Qwest Affiliates

AT&T's brief argued that the Commissions should require the addition of SGAT language obligating QCI and its affiliates to unbundle dedicated transport, along with other in-region facilities. AT&T argued that such a requirement is consistent with the goals of the Act, and is necessary to prevent Qwest and its affiliates from avoiding its Section 251(c) obligations. This is the same argument that AT&T made in the context of dark fiber; the report preceding this one addresses that argument fully.²⁶⁴ That argument was addressed under the first unresolved *Dark Fiber* issue (*Affiliate Obligations to Provide Dark Fiber*) in the June 11, 2001 *Third Report – Emerging Services* in these workshops. The resolution recommended there is equally appropriate here.

2. Access to Dark Fiber in Qwest's Joint-Build Arrangements

AT&T also argued, as it did previously, that Qwest is required to allow CLECs to lease dark fiber that exists in "joint build arrangements" with third parties. That argument was addressed under the second unresolved *Dark Fiber* issue (*Access to Dark Fiber in Joint Build Arrangements*) in the June 11, 2001 *Third Report – Emerging Services* in these workshops. The resolution recommended there is equally appropriate here.

Issues Remaining in Dispute – Transport

1. SONET Add/Drop Multiplexing

AT&T asked that Qwest change SGAT Section 9.6.1.2 to add SONET add/drop multiplexing as a CLEC option. AT&T commented that CLECs commonly would need to go from OCn to DS3, and would therefore benefit if Qwest were to make such multiplexing available.²⁶⁵

Qwest refused, on the basis of paragraph 324 of the *UNE Remand Order*, which states that in establishing transport unbundling obligations:

The Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to

²⁶⁴ AT&T Brief at pages 32 through 37.

²⁶⁵ AT&T Emerging Services Comments at page 6.

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.

Therefore, Qwest was not willing to offer this additional equipment as a standard offering under the SGAT.²⁶⁶

Proposed Issue Resolution: This issue is similar to the general treatment of the *Construction of New UNEs* issue above. It should be resolved in the same manner.

2. UDIT/EUDIT Distinction

AT&T argued that dedicated transport consists of a single element; therefore, Qwest's attempts to distinguish UDIT and EUDIT were impermissible.²⁶⁷ AT&T cited the FCC statement that:²⁶⁸

incumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices and serving wire centers (SWC), SWCs and IXC POPs, tandem switches and SWCs, end office or tandems of the incumbent LEC, and wire centers of incumbent LECs and requesting carriers.

Qwest offers UDIT for dedicated transport routes between Qwest's wire centers. Where one end of a transport trunk is not at a Qwest wire center, however, (e.g., where a CLEC wants dedicated transport from its wire center or an interexchange carrier seeks dedicated transport from its POP), Qwest requires the use of EUDIT. UDIT is priced on a distance-sensitive basis, while the pricing for EUDIT is not distance sensitive. AT&T claimed that both UDIT and EUDIT should be priced on a distance-sensitive basis, and that Qwest should not be permitted to carry over from the access world the average pricing reflected in non-distance-sensitive EUDIT pricing. AT&T asserted that such pricing is not cost based, is discriminatory, and discourages CLECs from mid-span meets in EUDIT situations (because the CLEC will pay the same for EUDIT whether or not it builds much of the way toward the point of interconnection).

AT&T also argued that Qwest could not provide EUDIT without the electronics necessary to permit the transmission of signals. AT&T said that the FCC definition of transport clearly requires that dedicated transport include the electronics.²⁶⁹

²⁶⁶ Stewart XX Rebuttal at page 37.

²⁶⁷ AT&T Brief at page 41.

²⁶⁸ *Local Competition Order*, ¶ 440; 47 C.F.R. § 51.319(d)(1)(A).

²⁶⁹ *UNE Remand Order*, ¶ 356. The FCC noted that the transmission equipment "can include such things as fiber distribution panels, optical terminating equipment, multiplexers, digital cross connects, test access equipment, digital loop carrier equipment, power distribution panels, and cable racks." *Id.*, n. 702 (emphasis added).

We clarify that this definition includes all technically feasible capacity-related services, including those provided by electronics that are necessary components of the functionality of capacity-related services and are used to originate and terminate telecommunications services.

Therefore, AT&T asked for elimination of the EUDIT/UDIT distinction, and that Qwest be required to provide dedicated transport between all locations on a flat rate, distance-sensitive basis. AT&T also asked that Qwest be required to provide the electronics on dedicated transport terminating at a CLEC wire center.²⁷⁰

Qwest's brief confirmed that it made the distinction between UDIT and EUDIT as a way to preserve the historical pricing differences between the two. Qwest agreed that acceptance of this distinction is not sought here; it is willing to allow the question of the costs for these facilities to be decided in cost dockets before the individual commissions.

Qwest objected to the requirement that it install new electronics or upgrade existing electronics at a CLEC wire center for the purpose of allowing existing fiber facilities to function as transport elements. Qwest cited paragraph 324 of the *UNE Remand Order*, which provides:

[W]e do not require incumbent LEC 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.

Qwest construed the installation of new or upgraded electronics as new construction. Qwest also cited the availability of dark fiber as a UNE, and noted that footnote 292 of the same order makes clear that the CLEC must install its own electronics on such fiber.²⁷¹

Proposed Issue Resolution: Whether the historical method of pricing entrance facilities continues to be appropriate in the context of providing interoffice transport is a legitimate issue. However, deciding questions about the way costs are incurred, what those costs are, and how they should be translated into UNE prices is best done on the basis of the detailed cost information that is typical of cases that address such prices. That information is not present here; we have only generalized assertions about cost incurrence and we have no information at all about what the costs are. Therefore, this forum is not the right one for determining whether the flat-rated pricing for EUDIT is or is not appropriate. Thus, with Qwest's agreement that UDIT and EUDIT are not separate UNEs, but rather, at most a single UNE with two distinct pricing components, nothing more is required.

There remains the question of Qwest's obligation to provide electronics in association with providing a transport UNE. The FCC authority that AT&T cited does not address the obligation to construct or augment capabilities or functions. It addresses the threshold issue of whether a CLEC is entitled or not entitled to all the functions and capabilities of elements that it secures from an incumbent. Whether those functions or capabilities must be provided where they do not

²⁷⁰ AT&T Brief at page 44.

²⁷¹ Qwest UNE Brief at page 13.

presently exist is more directly addressed by the provision cited by Qwest. That provision makes it clear that Qwest does not have an obligation to install new transport facilities.

There is also the related question of whether the obligation to modify existing facilities does or does not contemplate new or upgraded electronics. First, there appears to be no reason for distinguishing between new or upgraded electronics in this instance. Upgrading would appear generally to require replacement of existing equipment with new equipment; there is nothing in the record to support a contrary conclusion. Second, there is no reason for believing that electronics costs are small relative to fiber costs. Third, AT&T has presented no evidence to counter the intuitively supportable conclusion that it, like Qwest, is equally capable of installing necessary electronics, which appears to be what is contemplated by the making of dark fiber available to CLECs as a UNE. Fourth, by definition, dark fiber is not presently in active use in any network. Thus, the issue is not modifying because its current configuration for use by Qwest makes it unsuitable for use as a UNE by or to provide interconnection for a particular CLEC. The issue is providing the electronics that either Qwest or the CLEC would need to add to make it functional for use by either. Therefore, modification is not an apt term to address what AT&T seeks to have done in these circumstances.

Accordingly, AT&T's request is neither consistent with the general rule applicable to building new UNEs (discussed in more detail earlier in this report), nor does it fall within a reasonable interpretation of Qwest's obligation to modify facilities. Finally, requiring CLECs to install their own electronics does not discriminate against them or deny them a reasonable opportunity to compete to the extent that they have the same ability to light fiber as Qwest does.

3. Commingling UNEs and Interconnection Trunks

AT&T's brief argued that Qwest's SGAT applies a definition of "finished services" and uses it to preclude CLECs from connecting UNEs to trunks used for interconnection (called LIS Trunks). AT&T argued that this restriction finds no support from the FCC, which does not use this term, but uses "tariff services" in imposing restrictions on commingling with UNEs. AT&T asked that LIS Trunks be excluded from the definition of "finished services" under the SGAT.²⁷² Qwest agreed in its brief to delete LIS Trunks from the definition of "finished services" and it conceded that LIS trunks could be connected with UNEs, dropping its prior argument that such commingling should be precluded.²⁷³

Proposed Issue Resolution: With Qwest's change to the SGAT and its recognition that there is not SGAT prohibition on commingling UNEs and LIS Trunks in the same facilities, this issue can be considered closed.

4. Applying Local Use Restrictions to Unbundled Transport

AT&T argued that SGAT Section 9.6.2.4 improperly prohibits the use of interoffice transport as a substitute for special or switched access services.²⁷⁴ After the FCC's *UNE Remand Order*

²⁷² AT&T Brief at page 39.

²⁷³ Qwest UNE Brief at page 19.

²⁷⁴ AT&T Brief at pages 44 through 46.

addressed the ability of CLECs to order loop and transport combinations to provide interexchange service without any local-use requirement, the FCC modified paragraph 486 of the order to prohibit CLEC or IXC conversion of special access to loop/transport combinations, absent a significant amount of local exchange service to a particular customer.²⁷⁵ However, AT&T claimed that the FCC has not expanded the local use requirement beyond loop/transport combinations; therefore, the requirement does not extend to dedicated transport generally.

AT&T did acknowledge, however, that the *UNE Remand Order* did leave open the question of how the requirement might apply in the "discrete situation" of dedicated transport between the incumbent LEC's SWC and an IXC switch or POP. The FCC decided to take comments on the use of dedicated transport in this case.²⁷⁶ Later, the FCC suggested that the *UNE Remand Order* placed a "temporary constraint" on CLEC use of dedicated transport from the IXCs POP to the ILEC's SWC as a substitute for special access.²⁷⁷ However, AT&T argued that the SGAT language went beyond any permissible temporary constraint, because it imposed local use restrictions on dedicated transport from and to all permissible locations. AT&T would agree to language that Qwest proposed in other jurisdictions. That language is:

CLEC shall not use EUDIT as a substitute for special or Switched Access Services except to the extent CLEC provides such services to its end user customers in association with local exchange services. Pending resolution by the FCC, Qwest will not apply the local use restrictions contained in 9.23.3.7.2

Qwest did not respond to this particular aspect of the commingling issue. For the present, it is presumed that Qwest continues to agree with the language offered by AT&T, but Qwest may address any opposition to or clarification of the language in the comments to this report that it may file with the individual commissions.

Issues Resolved During This Workshop - EELs

1. Waiver of Local Use Requirements for Particular EELs

The FCC requires a CLEC to certify that EELs it secures from an incumbent be used to provide a significant amount of local exchange traffic. AT&T questioned whether the waiver language of SGAT Section 9.23.3.7 could be read to require an FCC waiver specific to a particular EEL.²⁷⁸ However, the language of the section, as set forth in the frozen SGAT requires only that the terms of any waiver secured be applicable to the EEL for which a CLEC seeks to avoid the local use requirements. Therefore, a general waiver could clearly apply to a later identified EEL, provided that such EEL met the terms of the waiver. AT&T did not brief this issue; it can be considered closed.

²⁷⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Supplemental Order, FCC 99-370 (rel. Nov. 24, 1999), ¶ 2 ("Supplemental Order").

²⁷⁶ *UNE Remand Order* at ¶¶ 489 and 492 through 496.

²⁷⁷ *Supplemental Order*, ¶¶ 4, n. 5 and 8 and 9; *Supplemental Order Clarification*, ¶ 3, n. 9.

²⁷⁸ AT&T UNE Comments at page 42.

2. Ways of Meeting the Local Use Requirements

AT&T observed that the SGAT Section 9.23.7.2 language addressing the three ways that EELs can meet the local use requirements did not precisely track the language of paragraph 22 of the FCC's *Supplemental Order Clarification*. AT&T reserved the right to inquire about the wording of the section at workshops, in order to satisfy itself that Qwest's EEL offering met all applicable requirements.²⁷⁹ AT&T did not brief this issue; it can be considered closed.

3. Audits of Local Use Certifications

AT&T wanted to change SGAT Section 9.23.3.7.2.6 to limit the frequency of Qwest audits. AT&T also wanted to clarify that Qwest's other SGAT audit rights could not be used for this purpose, nor could such audits be made a prerequisite to the provisioning of UNE combinations for CLECs. Qwest changed the SGAT to address AT&T's concerns.

ELI testified that the special audit provisions for local use certifications were unnecessary and expensive, duplicating the other SGAT audit provisions.²⁸⁰ Qwest responded that its audit language, which was modified to address CLEC concerns in another state's workshop, was adequately tailored to the specific nature of the FCC's requirements about local use certification. ELI did not brief this issue.

This issue can be considered closed.

Issues Remaining in Dispute - EELs

1. Limiting Local Use Requirements to Existing Special Access Circuits

ELI commented that Utah arbitration orders and the FCC have limited local use certification requirements to existing special access circuits; therefore, SGAT Section 9.23.3.7.1 impermissibly extends those requirements to UNE combinations to be newly acquired by a CLEC.²⁸¹ ELI made the same objection to SGAT Section 9.23.3.7.2.12.2. Qwest responded that paragraph 21 of the *Supplemental Order Clarification* clearly apply to new combinations, as well as the conversion of special access facilities.

The XO/ELI brief argued that the language of the *Supplemental Order* and the *Supplemental Order Clarification* both explicitly referred to the "conversion" of existing special access circuits, and nothing more.²⁸² Moreover, XO/ELI argued, a CLEC cannot possibly meet the obligation to certify existing local use on facilities it is not yet using at all; therefore making it impossible to meet such a requirement in any case.

²⁷⁹ AT&T UNE Comments at page 43.

²⁸⁰ Peters Testimony at page 16.

²⁸¹ Peters Testimony at page 16.

²⁸² XO/ELI Brief, citing *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-370, Supplemental Order ¶ 2 & 4-5 (Nov. 24, 1999) ("*Supplemental Order*") and *In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183, Supplemental Order Clarification ¶ 6 (June 2, 2000) ("*Supplemental Clarification Order*").

Qwest's brief pointed out that paragraph 21 of the *Supplemental Order Clarification* held that:

To reduce uncertainty for incumbent LECs and requesting carriers and to maintain the status quo while we review the issues contained in the Fourth FNPRM, we now define more precisely the "significant amount of local exchange service" that a requesting carrier must provide in order to obtain unbundled loop-transport combinations.

Qwest asserted that the use of the word "obtain" applies on its face to all combinations, not just those being converted.²⁸³ Qwest also argued that the *Supplemental Order* paragraph 8 prohibition against substituting EELs for special access could not be logically construed to intend a difference between conversions and new EELs. Finally, Qwest argued that limiting the temporary prohibition to conversions would not accomplish the FCC goal "to maintain the status quo."²⁸⁴

Proposed Issue Resolution: This issue presents the same question that was decided in the third unresolved "Dark Fiber" issue, which was addressed in the June 11, 2001 *Third Report – Emerging Services*. It was decided in that report that the following FCC language was determinative:²⁸⁵

IXCs may not substitute an incumbent LEC's unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

EELs, whether converted from special access circuits or not, are unbundled loop-transport combinations. Therefore, new EELs are subject to the same local use certification requirements as are converted special access circuits, as was more fully discussed in the *Third Report* from these workshops. Ultimately, it must be concluded that there is not a sound reason for distinguishing between the circumvention of access charges on converted UNEs versus new UNEs. The impact is the same; preservation of the status quo pending final FCC decision therefore requires that each be treated similarly.

The XO/ELI argument that a CLEC cannot make a certification about future use is puzzling. As the user of the facility, a CLEC can clearly make representations about its future use. It certainly can make no representation about current use, because there is none; however, it is not apparent why XO/ELI consider a representation about the use it commits to making over a facility that it will control is different from what the FCC had in mind in adopting the certification requirement.

²⁸³ Qwest Loops Brief at page 25.

²⁸⁴ Qwest Brief at page 26.

²⁸⁵ *Supplemental Order Clarification*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000) ¶8.

2. Allowing Commingling Where Qwest Refuses to Construct UNEs

AT&T argued that Qwest should not be permitted to refuse commingling UNEs and tariffed services in certain cases where Qwest refuses to construct UNEs. The specific situation of concern to AT&T is the case where there are no DS1 loops available as UNEs and Qwest refuses to construct facilities to provide an unbundled DS1 loop. An option for securing such a loop, according to AT&T, is to acquire it under a retail tariff.²⁸⁶

What AT&T would like to do in this case is to allow that DS1 to be multiplexed onto the same dedicated transport facilities that AT&T has acquired from Qwest as a UNE. If the DS1 in question had been acquired from Qwest as a UNE, there would be no question about the right to connect it to transport acquired as a UNE; the resulting combination would constitute an EEL, which CLECs can secure from Qwest. The problem in AT&T's postulated case, however, is that the DS1 loop was not secured as a UNE, but as tariffed service, and was only acquired in that fashion because a loop was not available. Because the DS1 loop was acquired as a tariffed service, Qwest would not allow it to be connected to a transport UNE, because Qwest would construe that connection as violating the commingling restrictions imposed by the FCC. That commingling issue is addressed elsewhere. AT&T said that this policy causes it unnecessary expense, because it must find different facilities to which it can connect the DS1 loop; Qwest will not permit it to take advantage of existing capability on the transport UNE that AT&T has acquired from Qwest.²⁸⁷

Qwest only briefly addressed this aspect of the commingling issue, which it discussed more fully in a general context that was not EEL-specific. The Qwest brief specifically responds to the EEL commingling issue by reciting paragraph 28 of the *Supplemental Order Clarification*, in which the FCC explicitly said that it would not eliminate the commingling prohibition, which it defined there as "combining loops or loop-transport combinations with tariffed special access services."

Proposed Issue Resolution: The reason why the FCC has expressed concern and placed temporary restrictions on commingling were not in disagreement. All participants who argued this issue seemed to acknowledge that concern about avoiding access charges is the central matter. Here it seems reasonably clear that the goal of a CLEC is not at all to avoid access charges, but rather to find a way to secure a service through a facility that would normally be available as a UNE, were adequate facilities available, or were Qwest willing to construct them where they were not. More particularly, the CLEC here wants to replace a UNE with an equivalent functionality without having to experience substantially greater limits on its use than would have been the case had it secured the functionality through a UNE.

In fact, not only is it clear that avoiding access charges is not the CLEC's goal; the CLEC will actually be paying access charges that would have been avoided had it secured a UNE. Thus, it does not appear that this situation falls within the zone of interests that the FCC was seeking to protect in the *Supplemental Order Clarification*. Nevertheless, if what AT&T would like to do here is expressly and plainly prohibited by an FCC rule, regulation, or order, it might prove very difficult to find a way to grant the request in a lawful way.

²⁸⁶ AT&T UNE Brief at page 50.

²⁸⁷ AT&T UNE Brief at page 52.

The language of paragraph 28 that Qwest cites (as well as the paragraph 22 prohibition against connecting loop/transport combinations to tariffed services) is not so plainly supportive of Qwest's interpretation. These provisions talk about prohibiting loops and loop/transport combinations to be commingled with tariffed services. However, we must remember that which is the UNE and which is the tariffed service. In this limited case, no loop or loop/transport UNE are being commingled with the tariffed service; the tariffed service is itself the access to the DS1 loop. AT&T seeks to connect the tariffed sought DS1 service with a transport element.

Given that the motive is not to avoid access charges, that the result is not to avoid access charges (because rate or price ratcheting will not be permitted), and that one cannot read the language cited by Qwest as having no construction consistent with AT&T's request, it is appropriate that the connection of UNEs that AT&T wants be permitted, under controlled circumstances. Therefore, the following language should be included in the SGAT:

Where a CLEC has been denied access to a DS1 loop as a UNE due to lack of facilities, and where the CLEC has requested and been denied the construction of new facilities to provide such loop, a CLEC may connect a tariffed service that it secures in lieu of that UNE to a transport UNE that it has secured from Qwest. Before making such connection, the CLEC shall provide Qwest with evidence sufficient to demonstrate that it has fulfilled all of the prior conditions of this provision. This provision shall be changed as may be required to conform to the decisions of the FCC under any proceedings related to the Public Notice referred to in document FCC 00-183.

3. Waiver of Termination Liability Assessments for EELs

AT&T argued that Qwest failed to provide EELs when required, choosing to wait until extensive litigation about the obligation to provide them ended in a 1999 decision by the U.S. Supreme Court, and subsequent federal court decisions.²⁸⁸ AT&T took the position that Qwest was required to provide UNE combinations, including EELs, as of the time of the *First Report and Order* on August 8, 1996.²⁸⁹ Only after litigation about that order ended long thereafter did Qwest begin to provide EELs. Therefore, CLECs were required up until that time to make purchases of special access/private line circuits in order to achieve the functionality of EELs. Those purchases were made under terms that impose charges for early termination and that sometimes require up-front payment of portions of the costs of construction. AT&T argued that CLECs should not now have to pay these termination charges when they seek to transform the private line purchases into EELs that should have been available in the first place. AT&T underscored the appropriateness of its recommended solution by noting that CLECs have already paid the much higher private line rates (as compared to TELRIC-based UNE rates) and in some cases up-front construction costs.

²⁸⁸ The U.S. Supreme Court decision came in the case of *AT&T Corp. v. Iowa Utils. Bd., et al.*, 119 S.Ct. 721, 737 (1999). The subsequent federal decisions were in the cases of *US WEST v. MFS*, 193 F.3d 744, 758-759 (9th Cir. 1999); *MCI v. US WEST*, 204 F.3d 1262, 1267 (9th Cir. 2000).

²⁸⁹ AT&T Brief at pages 48 and 49.

XO and ELI also addressed this issue.²⁹⁰ They argued that Qwest refused to provide EELs even after the *UNE Remand Order* in November 1999, continuing to provide their functionality only through private line or special access services under tariffs.²⁹¹ CLECs agreed to lower rates for those services in exchange for that required volume or term commitments and penalties for early termination. While not arguing against such provisions per se, these participants consider it unreasonable to enforce them when CLECs seek to migrate from such services to EELS, which are now available. Arguing that they should have been able to obtain access at UNE rates in the first place, XO and ELI take the position that they have already paid significantly more for the facilities than Qwest could have charged for them as UNEs.

XO and ELI asked that Qwest be required to waive termination liability where a CLEC has incurred such liability because it could not obtain UNEs. They would create a rebuttable presumption that such a waiver should apply until the Commission rules that Qwest has demonstrated that it is providing high capacity UNEs and EELS as required by the Act and Commission-approved interconnection agreements. They would consider the presumption rebutted by evidence that one of the following two conditions has been met:

- The termination liability is for the recovery of special construction costs on the same terms and conditions that Qwest applies to other customers
- The CLEC had an effective choice between tariff services and UNEs at the time it made an election to take tariffed services.

Qwest's brief argued that it has no obligation to waive TLAs when special access circuits are converted to EELs, which, Qwest said, it only became obligated to provide recently. Qwest argued that it would be unfair for CLECs to keep the advantages of the reductions they received from full tariff prices they have paid under long-term arrangements, while avoiding the term requirements that are Qwest's compensating side of the bargain. Qwest also said that the FCC, which is now reviewing the issue of converting special access circuits to EELs (under Public Notice, FCC-96-98, January 24, 2001), has already decided that TLAs are not an appropriate issue for Section 271 proceedings.²⁹²

During the workshops, we encouraged Qwest to seek alternate language addressing TLAs, recognizing that conversion of special access circuits would not necessarily involve a shortening of the term over which Qwest receives revenues for similar use of the facilities (even if under presumably lower UNE rates). Qwest's brief, while disclaiming an obligation to do so, did offer to waive any rights to recoup TLAs under certain specified conditions, on an individual case basis with each CLEC.²⁹³

Proposed Issue Resolution: The evidence of record in these workshops demonstrates that CLECs have purchased special access circuits in cases where Qwest is now making EELs available. More specifically, it is reasonable to conclude that CLECs are paying higher interstate access tariff rates for facilities that could now be acquired as EELs. A harsh view might suggest

²⁹⁰ XO/ELI Brief at pages 10 through 12.

²⁹¹ Exhibit WS3-ELI-THP-1.

²⁹² Qwest Loops Brief at page 28.

²⁹³ Qwest Loops Brief at page 30.

that CLECs made their choice at the time, and now must live with it. However, the fact that Qwest did not succeed in its prior arguments about EELs raises a number of considerations that are appropriate to a more balanced view of what the circumstances as a whole require.

On the one hand, it would not be consistent with the public interest to accept Qwest's baseline argument, which essentially says that there is no ill in forcing CLECs to live with the precise terms of the bargain that they made, while contesting a policy that was eventually overturned. On the other hand, it would not be fair to allow CLECs simply to walk away from their prior commitments with no analysis of the benefits that they have gained from discounted tariff prices secured through making minimum term commitments. Interestingly, no participant presented any analysis of the difference between full and discounted tariff prices, or between the likely price for EELs and the price actually paid under the arrangements made between Qwest and the CLECs involved. Accordingly, the only certainly supportable resolution suggested by the record made here would be to say that Qwest could not impose termination liability assessments in any case where continuation of facility use by the CLEC as a UNE would have allowed for the same degree of facility investment recovery as was implicit in the original agreement giving rise to the TLA. Such a solution would leave Qwest no worse off than it would have been anyway; certainly it should not be entitled to claim better results by asking for payment of TLA amounts even though a CLEC's continued use of the facilities as a UNE produces greater revenues than those implicitly guaranteed by a minimum term.

However, Qwest's proposal appears to go beyond that requirement; it would allow TLA waiver even where it might not obtain similar revenues. Therefore, it is generally acceptable. However, it contains three provisions that raise questions, which are as yet unanswered given the first appearance of this offer in Qwest's brief.

First, Qwest would waive TLAs only where they apply to facilities that Qwest had no obligation to build²⁹⁴ under requirements existing at the time that a CLEC purchases a "private line circuit." What is not clear about this provision is why there would have been a TLA in the first place if Qwest had an obligation to construct at the time. Moreover, even if there were, it is equally unclear why this issue takes on any different dimensions because Qwest had an obligation to build the facility in question.

Second, Qwest adds the condition that any conversion from a special access circuit must qualify under the local use options that the FCC has set forth to assure (temporarily) that conversions to EELs preserve the status quo with respect to avoidance of access charges. This provision is troublesome in two respects. In the first instance, Qwest can refuse any conversion for failure to meet the FCC's requirements; the provision here would not expand the right to convert; it would only deal with the application of TLAs where conversion is otherwise permitted. In the second instance, Qwest's wording would make permanent a restriction that may disappear after the FCC completes its review of the issue of avoiding access charges. Nothing in Qwest's provision would allow for a change in SGAT provisions to reflect a change at the FCC.

²⁹⁴ Qwest defines the obligation to build as similar to its provider-of-last-resort obligations as addressed in the Qwest Obligation to Construct New Facilities to Provide EELs issue in this report.

Third, Qwest would require CLECs to identify by August 1, 2001 the circuits that might qualify for TLA waiver. The date needs to be extended to November 30, 2001 to make the section meaningful, given where the Qwest 271 proceedings and these workshops stand at present.

Therefore, this issue can be considered resolved on terms consistent with the public interest if Qwest agrees to drop the second and fourth conditions of page 30 of its loops brief and to extend the circuit identification date to November 30, 2001. SGAT language to the following effect will accomplish such a resolution:

Qwest will waive any TLA charge otherwise applicable under the agreement or tariff election by which a CLEC ordered or augmented a special access circuit under interstate tariff between February 17, 2000 and May 16, 2001, provided that CLEC identifies and communicates in writing to Qwest on or before November 30, 2001 each circuit it believes to qualify hereunder. Nothing herein shall be construed as expanding the rights otherwise granted by this SGAT or by law to elect to make such conversions.

Qwest should also have the right to demonstrate, in any comments to the commissions concerning this report, why the obligation-to-build provision not accepted here would promote the public interest. This proposed language also does not explicitly incorporate Qwest's brief condition that its proposal be implemented on an individual case basis with each CLEC. The reason is that the structure of the procedure incorporated into the above-recommended language appears to make the process inherently CLEC-specific. It is not clear what, if anything, would be added by an explicit ICB clause.

4. Waiving Local Use Restrictions on Private Lines Purchases in Lieu of EELs

AT&T made a related argument about the application of use restrictions on such private lines.²⁹⁵ AT&T cited instances where special access/private line circuits may meet the local use restrictions applicable to an EEL. Where a CLEC determines that it is not economic to convert such to EELs because of TLAs, AT&T believes that it should have the option to connect special access/private lines that would qualify as EELs to UNEs. Qwest prohibits this combination of UNEs and tariffed services. AT&T argues that Qwest's previous, unjustified failure to provide EELs justifies this alternative.

AT&T also expressed concern about the consequences of a Qwest refusal to build UNEs in the transport context.²⁹⁶ Qwest does not consider itself obliged to construct new UNEs for CLEC use; however, it might undertake construction to provide a tariffed private line or retail services that CLECs would use for the same function. AT&T noted that Qwest has argued that the *Supplemental Order Clarification* supports prohibiting the connection of the CLEC's tariffed DS1 loop to an EEL.²⁹⁷ Therefore, AT&T argues that Qwest should be required to build UNEs for CLEC's, or at least be required not to apply restrictions against connecting tariff or finished services to UNEs under SGAT Sections 9.1.5 and 9.23.1.2.2.

²⁹⁵ AT&T Brief at page 50.

²⁹⁶ AT&T Brief at page 51.

²⁹⁷ *Supplemental Order Clarification*, ¶ 22.

Proposed Issue Resolution: The easing of TLA application as recommended under the immediately previous issue will serve to address adequately the concern that TLA application by Qwest would inhibit CLEC elections to convert special access circuits that it ordered while challenges to Qwest's policies were pending. No further relief is necessary to provide for a fair and equitable means of allowing access to EELs in the manner and in the cases allowed by the FCC.

5. Counting ISP Traffic Toward Local Use Requirements

XO and ELI argued that ISP traffic should be counted toward local usage requirements, because it presents no threat of avoiding special access charges, from which ISP traffic continues to be exempt.²⁹⁸ These participants argued that not doing so would produce improper discrimination, because Qwest could require CLECs to use more costly special access service for ISPs, even where Qwest provides its ISP customers with local exchange service.

XO/ELI contended that the FCC's recent order on ISP traffic and reciprocal compensation should not alter the classification of such traffic for this purpose. XO/ELI noted that, even after the recent FCC order, LECs will continue to provide ISPs with service absent charges for special access. They argued that it would be discriminatory to require CLECs to purchase significantly more expensive access services to serve ISPs, while Qwest could provide its ISP customers with less expensive local exchange service.²⁹⁹

Qwest addressed this issue in a footnote in its brief. Qwest argued that ISP traffic couldn't be defined as local, because the *ISP Remand Order* held indisputably that such traffic was interstate in nature.³⁰⁰

Proposed Issue Resolution: The FCC's recent order on reciprocal compensation leaves little doubt that ISP traffic is interstate in nature and has nothing to do with the provisions of the Telecommunications Act of 1996 as they relate to reciprocal compensation for the exchange of local traffic. Therefore, on its face, ISP traffic cannot count, under any practical application of the FCC's requirements, as local usage. It may be that the *ISP Remand Order* was issued without recognition of what its interplay with the significantly older *Supplemental Order Clarification*. Otherwise, the XO/ELI discrimination argument raises good reason for reconsidering it.

Hopefully, the FCC will address the interplay between commingling issues and the recent *ISP Remand Order*, because XO/ELI have made a credible argument that it does not serve the public interest to require CLECs in some cases to pay tariff prices that include subsidies to serve ISPs, while incumbents can serve them on a basis that conforms more closely to their costs. The FCC has been struggling for some time to bring balance to one of the more difficult issues in opening local exchange markets. It would be unfortunate if it left in place the imbalancing factor that may

²⁹⁸ XO/ELI Brief at page 9.

²⁹⁹ XO/ELI Brief at pages 8 through 10.

³⁰⁰ Qwest Brief at page 30, citing Order on Remand and Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 and Inter-Carrier Compensation for Internet-Bound Traffic*, CC Docket Nos. 96-98 and 99-68, FCC 01-131 at ¶ 58 (rel. Apr. 27, 2001).

well have been entirely unintentional. It does not satisfy the public interest to impose, absent more weighty justification, differential costs on CLECs and ILECs in serving ISPs.

VII. Checklist Item 6 – Access to Unbundled Local Switching

Background – Switching

Checklist item 6 requires Qwest to provide “[l]ocal switching unbundled from transport, local loop transmission, or other services”. Section 271(c)(2)(B)(vi). The FCC in the *Local Competition Order*³⁰¹ identified local switching as an unbundled network element, and this was confirmed in the *UNE Remand Order*:

*[w]e require incumbent LECs to provide local switching as an unbundled network element.*³⁰²

The FCC did find an exception to this rule under certain market circumstances:

*We find that, where incumbent LECs have provided nondiscriminatory, cost-based access to combinations of loop and transport unbundled network elements, known as the enhanced extended link (EEL), requesting carriers are not impaired without access to unbundled switching for end users with four or more lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs).*³⁰³

Issues Resolved During This Workshop - Switching

1. Specifying Additional Types of Switch Access

AT&T expressed concern that the language of SGAT Sections 9.10 and 9.11 were not sufficient to address access to unbundled switching in certain cases, e.g., where a CLEC provides its own loop.³⁰⁴ Qwest changed the language to address AT&T’s concern.³⁰⁵ This issue can be considered closed.

2. Availability of Switch Features

AT&T sought an explicit mechanism under the SGAT for securing all features of the switch, not merely those loaded and activated by Qwest. AT&T sought a more definitive method for describing the vertical features of given switches. AT&T also sought an exploration of whether the special request process would be sufficiently simple and expeditious for securing access to loaded features that require activation by Qwest. AT&T also sought an exploration of whether the special request process would be sufficiently simple and expeditious for securing access to loaded features that require activation by Qwest.³⁰⁶

³⁰¹ Id. at paragraphs 410-427.

³⁰² *UNE Remand Order*, at paragraph 253.

³⁰³ Id.

³⁰⁴ AT&T UNE Comments at page 22.

³⁰⁵ Simpson UNE Rebuttal at page 19.

³⁰⁶ AT&T UNE Comments at pages 22 through 24.

Qwest responded that it would make available to CLECs all loaded switch features, whether activated or unactivated. It also said that it would provide features available but not loaded into the switches as used by Qwest, where it is technically feasible to do so. Qwest provided, in testimony and on its web site a list of all loaded vertical switch features.³⁰⁷ Qwest amended SGAT Section 9.11.2.1 to clarify that unloaded or unactivated features could be secured through the special request process. The ability of the special request process to efficiently and expeditiously handle such requests was addressed in the subsequent workshop on General Terms and Conditions. Other than that consideration, this issue can be considered closed.

3. Unbundling Switch Centrex Management and Control Features

AT&T asked that the SGAT be changed to allow CLECs access to switch features that would allow it to manage its own Centrex type services.³⁰⁸ Qwest agreed to add SGAT Section 9.11.2.10 to clarify that CLECs can get access to the Centrex Customer Management System with unbundled switching.³⁰⁹ This issue can be considered closed.

4. Notice of Switch Changes and Upgrades

AT&T requested the addition of a provision requiring notification of switch changes and upgrades.³¹⁰ Qwest said that the FCC's Open Architecture rules already required such disclosure, but agreed to add SGAT Section 9.11.2.9 to confirm the obligation and to continue an obligation to provide notice should those rules change.³¹¹ This issue can be considered closed.

5. Unbundling Tandem Switches

AT&T objected to the SGAT Section 9.10 provision that limited unbundling to "local" tandem switches. AT&T argued that the modifier be eliminated, thus permitting CLEC access to all Qwest tandem switches.³¹² Qwest objected to AT&T's contention that the FCC did not differentiate between local and other tandem switches, citing the FCC Rule 51.319 reference to "local tandem switching." Qwest also agreed to amend SGAT Section 9.10.12 to unbundle an access tandem in wire centers that subtend only an access tandem switch, but not a local tandem switch.³¹³ This change responded to part of AT&T's request; AT&T did not brief this issue. Therefore, the issue can be considered closed.

6. Definition of Tandem Switching Element

AT&T asked that the description of tandem switching in SGAT Section 9.10.1 be changed to more closely conform to FCC requirements.³¹⁴ The frozen SGAT contains some changes to the section, but not all those requested by AT&T. AT&T also requested a change to SGAT Section

³⁰⁷ Simpson UNE Rebuttal at page 13.

³⁰⁸ AT&T UNE Comments at page 27.

³⁰⁹ Simpson UNE Rebuttal at page 29.

³¹⁰ AT&T UNE Comments at page 27.

³¹¹ Simpson UNE Rebuttal at page 29.

³¹² AT&T UNE Comments at page 28.

³¹³ Simpson UNE Rebuttal at pages 30 and 31.

³¹⁴ AT&T UNE Comments at page 28.

9.10.2.2 to clarify the extent of the requirement to unbundle tandem switching. Qwest added to the AT&T proposal a sentence that AT&T questioned in its comments.³¹⁵ Qwest provided responses to AT&T's questions, and suggested further amendments to the section.³¹⁶

No party briefed these issues; therefore, they can be considered closed.

7. Tandem to Tandem Connections

AT&T argued the SGAT Section 9.10.2 required more specificity with respect to what kinds of connections were necessary, how they would be provided, and by whom they would be provided.³¹⁷ Qwest amended the section to provide additional details in response to this concern.³¹⁸ This issue can be considered closed.

Issues Remaining in Dispute - Switching

1. Access to AIN-Provided Features

There are four kinds of "features" at issue here. They are as follows:

- Unloaded: Features available for the switch type involved, but not loaded into the switches that Qwest has acquired and uses to provide local exchange service
- Unactivated: Features available for the switch type involved, that have been loaded into the switches that Qwest has acquired, but that Qwest has not activated for use in providing local exchange service
- Activated: Features available for the switch type involved, that have been loaded into the switches that Qwest has acquired, and that Qwest has activated for use in providing local exchange service
- AIN Available: Features often available through switches, but which Qwest has made available through its Advanced Intelligence Network.

AT&T expressed concern about clarity in identifying which features Qwest is providing through the switch and which it is providing through AIN capabilities. AT&T then would seek a "discussion" about "why" Qwest chose not to provide them through the switch.³¹⁹ AT&T disagreed with Qwest's contention that Qwest need not make access to Qwest's own AIN features available to CLECs.³²⁰

³¹⁵ AT&T UNE Comments at page 29.

³¹⁶ Simpson UNE Rebuttal at page 32.

³¹⁷ AT&T UNE Comments at page 28.

³¹⁸ Simpson UNE Rebuttal at page 31.

³¹⁹ AT&T UNE Comments at pages 22 through 24.

³²⁰ AT&T UNE Comments at page 27.

Qwest also said that it makes available, to the full extent required by the FCC, the feature-development capabilities of its AIN. Qwest said that the FCC does not require incumbents to make available to CLECs the software that provides an end user feature. Rather, incumbents need only make available the same capabilities (AIN databases, service creation environment, SMS, and STPs) that the incumbent uses to create the feature-providing software. Qwest said that it provides CLECs with access to such capabilities, with which they, like Qwest, are able to provide features for end users. Qwest also said that, when it moves from providing a feature from the switch to providing it through AIN, it is willing to leave resident on the switch the capability to continue to provide that feature. Qwest concluded by saying that its AIN-developed features are proprietary, although not conceding that their being so is a condition to precluding CLEC use of them.³²¹

AT&T argued in its brief that the FCC failed to conduct a proper analysis in determining that it was sufficient for incumbents merely to provide CLECs with the capabilities to develop and implement AIN-based features.

Proposed Issue Resolution: First, it is clear that Qwest does provide all available switch features. It provides those that are loaded and activated. It provides through the special request process those that are loaded, but require activation. It also will both load and activate those features that are technically feasible. Finally, when it stops providing a feature from a switch (i.e., migrating the feature's provision to AIN) it will agree to leave the feature available for CLEC provision to its end users through the switch. Moreover, Qwest has provided a list of available switch features.

Therefore, the issue becomes one of determining whether and to what extent Qwest must make AIN-provided features available. No argument exists that Qwest fails to meet the current FCC standard, which is to provide the capability for CLECs to develop their own AIN-based features, rather than having to provide the results of Qwest's own use of those same capabilities to provide its own features. Rather, the argument by AT&T is that, had the FCC properly considered the applicable statutory test, it would have been forced to conclude that Qwest must make the AIN-based features themselves available for CLEC use.

AT&T presents no substantial evidence to counter the core FCC conclusion, which is that CLECs can use AIN access to develop their own features, not only ones similar to what Qwest has provided, but other and perhaps superior ones. There is no basis for concluding that Qwest should, in order to meet its checklist obligations, be required to provide CLECs with access to the AIN-developed features themselves (or the software that delivers them). To the contrary, it remains proper to rely upon the FCC conclusion that giving CLECs access to the ability to use the tools to develop competing features is sufficient.

2. Exemption from Providing Access to Switching in Large Metropolitan Areas

AT&T argued that SGAT Section 9.11.2.5 improperly limited the availability of unbundled switching in the 50 top Metropolitan Statistical Areas to end users with four or more access lines

³²¹ Simpson UNE Rebuttal at pages 14 and 15.

within a wire center. Only one wire center in the seven states could qualify; it is the Salt Lake Main wire center in Salt Lake City.

AT&T first argued that the FCC froze those 50 areas to those existing as of January 1, 1999; therefore, Qwest should be required to confirm that its claimed wire centers meet that criterion. Second, AT&T argued that some wire centers serve more than density zone one; customers in such wire centers are not within the exclusion. Qwest responded that the SGAT's identification of wire centers subject to the exclusion (See SGAT Section 9.11.2.5) do meet the January 1, 1999 qualifying date, and do not include any end users outside of density zone one.

AT&T also argued that it should not be precluded from continuing to serve a customer through loop/switch combinations secured from Qwest where that customer begins below the four-access-line limit, but adds enough lines to pass beyond it. AT&T also argued that the SGAT should prohibit disconnection of CLEC customers from service before arranging an alternative service arrangement.³²² Qwest responded by saying that, if AT&T intended its term "loop/switch combination" to be the equivalent of UNE-P, then Qwest's stated willingness to offer UNE-P (but at market-based pricing for the switching portion) even in the wire centers subject to exclusion should address AT&T's concern. Qwest also objected to the alternate service arrangement proposal. Qwest said that CLECs are in control of service continuity to their end users.³²³

AT&T also offered a number of clarifications to SGAT Section 9.11.2.5.3 to address what it said were ambiguities in determining when the exclusion applied. These changes would provide that:³²⁴

1. The addition of a fourth line or more by the customer would not preclude a CLEC from continuing to serve the customer through unbundled switching secured from Qwest
2. The exclusion applies per customer location (i.e., each of a customer's separate locations within the wire center would qualify for up to three lines served through unbundled switching secured from Qwest)
3. Aggregated customer billing for multiple locations would not prevent the second provision from applying
4. Lines other than voice lines (e.g., data, alarm, or security) would not count against the limit
5. The high frequency portion of a loop would not count as a separate line
6. End-users count individually in MTE or campus environments

³²² AT&T UNE Comments at pages 23 and 24.

³²³ Simpson UNE Rebuttal at pages 25 and 26.

³²⁴ AT&T UNE Comments at pages 25 and 26.

7. A basic rate ISDN line count as a single line.

Qwest at least partially accepted the first change, by allowing CLECs the option to continue UNE-P service to pre-existing UNE-P lines. It did not accept the second two changes. Qwest did accept the last four changes.³²⁵

Finally, AT&T sought to make the exclusion inapplicable where: (a) Qwest had insufficient space to allow multiplexing, concentration, or additional equipment needed to provide transport facilities, (b) Qwest had insufficient transport capability to provide EELs, or (c) service was provided through RSMs, which are typically used in offices too small to provide multiplexing or concentration space.³²⁶ Qwest responded by saying that the FCC had determined in the aggregate that CLECs had sufficient alternatives to unbundled switching in the country's largest metropolitan areas. According to Qwest, the FCC did not limit its ruling to wire centers that did not face exhaust issues. Moreover, Qwest's view that there is no obligation to build UNES buttresses the argument that facility exhaust is not a relevant issue.³²⁷ Therefore, Qwest objected to AT&T's request to make the exclusion inapplicable in the three cited cases.

Proposed Issue Resolution: There appears to be no further issue with respect to the January 1, 1999 qualifying date or the multiple zone issues; Qwest's rebuttal witness Simpson testified that Qwest meets the standards as interpreted by AT&T.

Qwest's brief asserted that UNE rates should not apply to the first three lines of customers who have additional lines. Qwest's argument was that the FCC's distinction was intended to measure when market conditions merit an entire elimination of the right to UNE rates.³²⁸ AT&T did not brief this issue. Qwest's interpretation of the intent of the *UNE Remand Order* is reasonable. The phrasing is in terms of which customers for whom UNE rates do not apply; it is not in terms of the lines to which UNE rates do not apply. Accepting that the basis for the FCC's distinction is the distinction between the mass and business markets, there is no material distinction to be made between a medium or large customer's first three lines and the remainder of its lines.

3. Basis for Line Counts in Applying the Four-Line Exclusion

AT&T argued that neither the FCC nor the SGAT 9.11.2.5 were clear in explaining whether the three-line maximum per customer should be applied on a per-customer or per-location basis. AT&T said that it would be proper to define the requirement as applying on a per location basis, given the FCC's focus on access to the mass market, which AT&T said the FCC meant to include the residential and small business markets. AT&T argued that it would be proper to define customer size on a per-location basis. AT&T also argued that it would be more difficult for it to implement a per-customer count, because the information it secured from customers discussing services was generally location bases; the CLEC may not even know of other locations the customer has in the wire center.³²⁹

³²⁵ Stewart UNE Rebuttal at pages 27 and 28.

³²⁶ AT&T UNE Comments at pages 25 and 26.

³²⁷ Simpson UNE Rebuttal at pages 24 and 25.

³²⁸ Qwest Loops brief at page 23.

³²⁹ AT&T UNE Brief at page 30.

Qwest argued that the FCC's requirements clearly required the count to be on a wire center basis, citing the use of the phrase "for end users with four or more access lines within density zone 1" in paragraph 253 of the *UNE Remand Order*.³³⁰

Proposed Issue Resolution: Applying the FCC's definition to a user with two lines in two separate locations within the density zone would capture customers that fit any practical definition of a small business. However, the interpretation that AT&T urges would not be limited to such limited situations. It would extend to a user with many more lines, subject only to the limit that it have no more than three at any one of many locations. Thus, AT&T's proposed definition does not come closer in more precisely defining what the FCC meant. Moreover, it could be argued that four lines in a single location itself does not make one a medium or large business; yet the FCC has clearly exempted that user from access to unbundled local switching in the relevant Salt Lake City market. Therefore, the most direct approach is to give meaning to the phrase chosen by the FCC, rather than to speculate about the objectives behind it. The language says four lines in the relevant density zone; the rule should apply on a per-customer, not a per-location, basis. This interpretation also gives the FCC credit for recognizing the obvious, which is that multiple locations are common for business customers. It is likely that the FCC therefore would have inserted the added language it takes to adopt AT&T's interpretation, had that been its intent.

4. Providing Switch Interfaces at the GR-303 and TR-008 Level

Qwest had objected to AT&T's request for such access during the workshops. However, Qwest noted in its brief that it had since incorporated into SGAT Section 9.11.1.1.2 language that it felt would give AT&T the access it sought. Qwest concluded that the issue could be considered closed.³³¹ AT&T's brief did not reflect awareness of this language change. Therefore, this issue should be considered open, in order to allow AT&T to offer any comments it may have on the language in its comments to the commissions regarding this report. The issue can be considered closed if no such comments are forthcoming.

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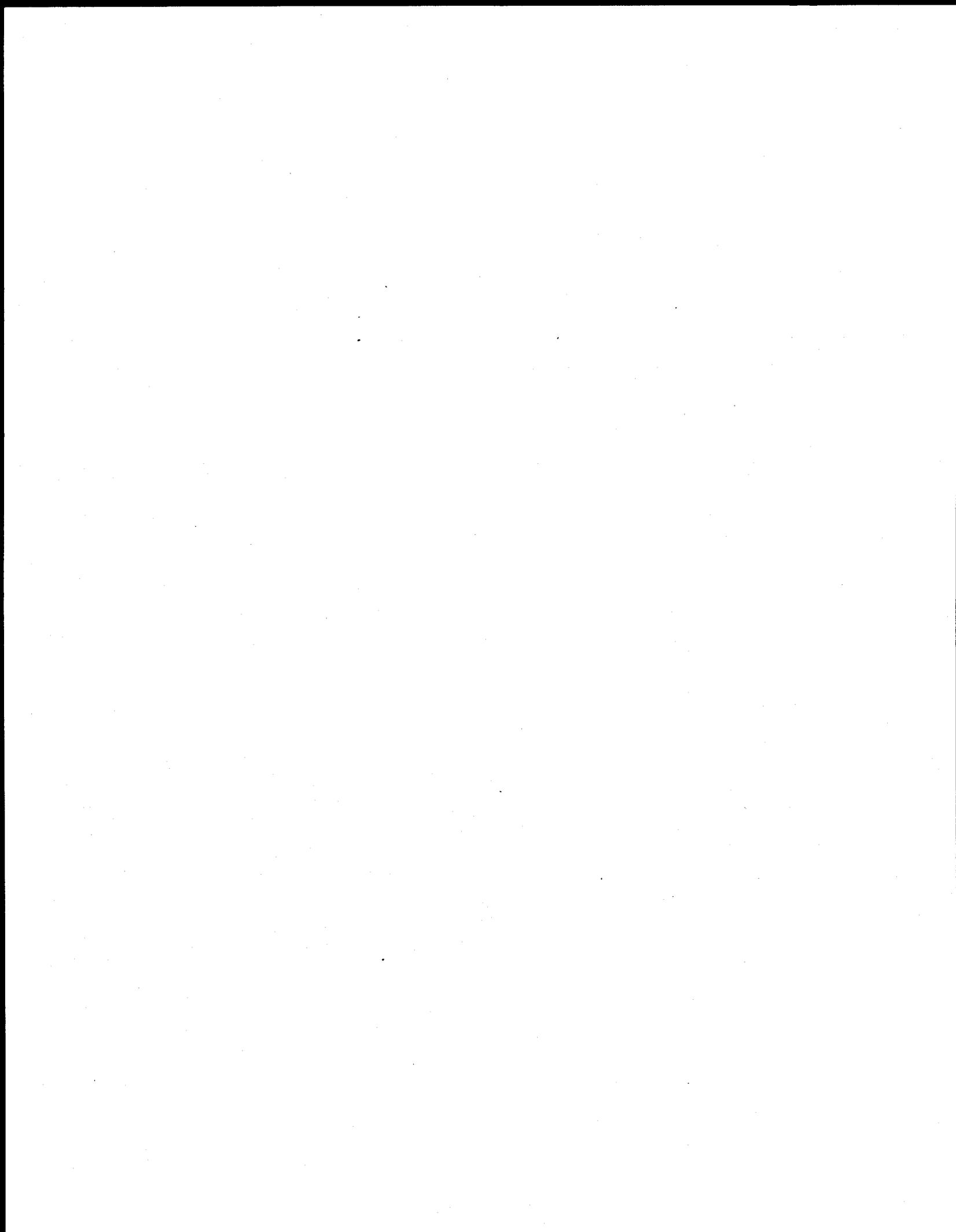
³³⁰ Qwest UNE Brief at page 40.

³³¹ Qwest UNE Brief at page 40.



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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 823

In the Matter of the Investigation into the)
Entry of QWEST CORPORATION into In-Region)
InterLATA Services under Section 271 of the)
Telecommunications Act of 1996.)
_____)

DATE: July 19, 2001

TIME: 9:00 a.m.

PLACE: Main Hearing Room
Public Utility Commission
550 Capitol Street NE
Salem, Oregon 97301-2551

BEFORE: Allan J. Arlow
Administrative Law Judge

VOLUME I

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17 ALJ ARLOW: All right. Loop-25, we want to
18 discuss the issue.

19 MR. WILSON: Yes, Your Honor. The issue here
20 is related to the issue of facilities being available.
21 In Qwest's network, when they build new facilities,
22 typically between, say, two points in their network,
23 some of those facilities will be designated as
24 inter-office facilities. And some of them will be
25 designated as facilities available for loops, which they

1 would call outside plan or distribution network. But
2 there is this distinction between those facilities
3 available for inter-office transport, in other words,
4 trunking between their end offices or their end offices
5 that are in tandems, and those available for use to end
6 users. It's AT&T's request that before Qwest would tell
7 a CLEC that there are no facilities available for loops,
8 that they would check to see if there were inter-office
9 facilities that could be redesignated as loop available
10 facilities, rather than telling the CLEC that there are
11 no facilities available, and then we go into all of the
12 disputes that you've been hearing the rest -- earlier
13 today.

14 MS. LISTON: The Qwest position is that we do
15 not make a change between inter-office facility and
16 loops. And there's several factors that come into play
17 here. First, Qwest does not redesignate inter-office
18 facilities for itself in terms of a retail service.
19 Rather what would happen is if we were in a position
20 where we had inter-office facilities that were replaced
21 by newer technology or new equipment -- or new cabling,
22 at the point that we were able to make the transition
23 off of all the inter-office facilities, we would then
24 release that later on and make it available for other
25 uses. But we would not be in a position where we would

1 look for spare inter-office facilities.

2 The way that I understand the process is that
3 on the inter-office facilities, and I'll beg for some
4 forgiveness here, because I'm not an engineer on this,
5 but it's in a waffle case, and we have it kind of
6 encapsulated. So to get at the inter-office facilities
7 is not an easy process. And it's not always spliced
8 through either. So it's not like you can just say, oh,
9 I'll just take a spare pair out of this inter-office
10 facility issue situation.

11 So Qwest's position is that inter-office
12 facilities are designated as inter-office facilities.
13 It's been sized to support that purpose. We should not
14 be taking spare out of the inter-office facility and
15 redesignating it. However, to the extent that we have
16 retired inter-office facility, and we've moved the
17 traffic off of that onto new facilities, we will go
18 ahead then and release that at a later date. But we do
19 not want to start trying at a onesy-twoisy kind of basis
20 in tapping into inter-office facility and redesignating
21 it.

22 MR. HARRIS: I have a question.

23 ALJ ARLOW: Go ahead, Mr. Harris.

24 MR. HARRIS: This issue, does it only come up
25 when the physical route down the street for the

1 inter-office facilities happens to go by the customer's
2 premises requesting? Does this come up very often?

3 MR. WILSON: Yes, we believe it will in
4 metropolitan areas where generally the fiber facilities,
5 which are the backbone of Qwest, run between their
6 central offices in general. And when they are putting
7 those in, and this is the same thing that any carrier
8 would do, when they're putting those in, they make a
9 decision based on a forecast as to what to designate as
10 inter-office and what to designate as available for
11 going into skyscrapers, high-rises, et cetera. And the
12 exact example that we're using is maybe there's a new
13 high-rise that's going up between two Qwest offices that
14 needs facilities. And it's my belief that rather than
15 digging up the street again, if Qwest is out of its loop
16 facilities, it would redesignate those for itself. And
17 we want to have the same capability.

18 And the argument that there may be no splice
19 or no convenient places to tap into this, can really not
20 be made. There's lots of -- lots of places in the
21 network where these could be available. It's very
22 difficult to make a blanket statement like that. But
23 even if there were no current convenient places
24 available, it's -- it's my belief that rather than dig

25 up the street or have the CLECs dig up the street for

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Colloquy 231

1 new facilities, that a simple redesignation is the
2 efficient and effective and best way to go for
3 everybody.

4 ALJ ARLOW: Do you have any record proof, for
5 example, that you've submitted in other jurisdictions to
6 demonstrate that Qwest has been in a situation where a
7 new high-rise came up, and they designated part of their
8 unused inter-office capacity in order to serve that,
9 change it from inter-office to loops?

10 MR. WILSON: I don't have -- I don't have that
11 much experience with what Qwest does. I know working
12 with some of the eastern RBOCs, some years ago for FTS
13 2000, that this type of situation was encountered, and
14 those RBOCs did do this very --

15 ALJ ARLOW: FTS 2000 was a pretty special
16 situation, I think. And what I'm asking is the reason
17 that you're asking for the right to designate is because
18 you believe that it's a parity question. If it's a
19 parity question, I think you have to show that it's been
20 something which has occurred in the past that Qwest has
21 done and that you are denied the opportunity to do. And
22 therefore, that Qwest has an opportunity to serve
23 businesses that you are deprived the opportunity to

24
serve, because of the fact that they have that

25 redesignation portion. Now, to the extent, my

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Colloquy 232

1 understanding is that to the extent that they may
2 redesignate facilities no longer being inter-office
3 transport, but becoming loops, that would immediately go
4 onto the Website the same time that their retail
5 marketing site would find out, you would find out as
6 well, so that that information would become available
7 simultaneously. I'm just trying to surmise what you're
8 describing. FTS 2000, I think, is not a typical
9 situation. I think you would agree that was pretty
10 special.

11 MR. WILSON: It was. But so would a new
12 skyscraper in the middle of a city. You have a big
13 customer that needs new facilities. The parity issue is
14 the fact that Qwest does have the capability to do
15 this. They can do it for themselves. And in other
16 jurisdictions, they would not say that they would never
17 do this for themselves.

18 ALJ ARLOW: Well, let's brief it. But I
19 think, again, that's a -- you're talking about a parity
20 issue. It seems to me that if their retail arm does not
21 find out about the designation of inter-office
22 transporters loops until it goes on to the same Website
23 or whatever the access software that you have the same

24 database occurs, doesn't look like a parity issue to
25 me. You can brief it. You can argue it. And we can

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Colloquy 233

1 take a look at it, but my gut reaction from what you've
2 described and your explanation for what the facts are
3 and your experience are with respect to Qwest, I see a
4 hurdle. Okay.

5 MR. WILSON: Only one other comment. I don't
6 believe Qwest has said that the only way that their
7 retail or end marketing side finds out about whether or
8 not they have spare facilities that could be
9 redesignated is off of its Website. I believe they have
10 other means of doing that.

11 ALJ ARLOW: Well, that's -- again, that's a
12 much larger parity question about whether or not you
13 have the access to the same databases that their retail
14 arm does. And to the extent that that comes up,
15 somewhere in this process that Qwest has to answer that,
16 I don't think it's been raised previously, where there
17 have been general allegations that the retail arm is
18 going around the corner. I think that's kind of a 272
19 issue, isn't it, about separation, or not?

20 MR. STEESE: That would not be a 272 issue. A
21 272 issue applies to a separate affiliate.

22 ALJ ARLOW: Okay.

23 MR. STEESE: This would be all the Bell

24 operating companies what I'm hearing Ken say, just to
25 clarify.

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Colloquy 234

1 ALJ ARLOW: Okay.

2 MS. LISTON: And my understanding is we do not
3 do any redesignation of IOF for reclassification to
4 unbundled loop for our retail services today.

5 ALJ ARLOW: All right.

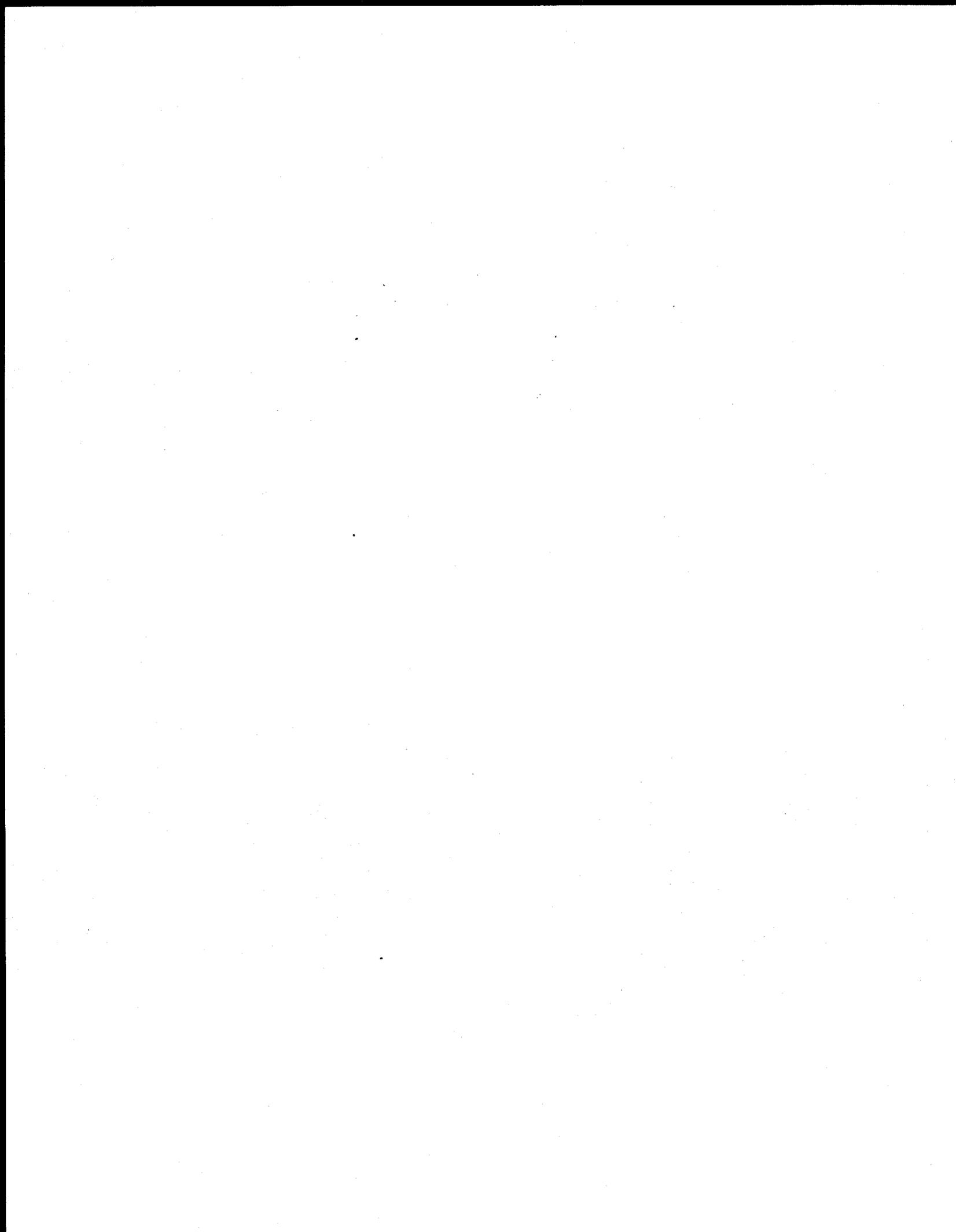
6 MR. WILSON: In other jurisdictions, other
7 witnesses of Qwest have said that they couldn't say they
8 had never done it.

9 ALJ ARLOW: If you want to submit that into
10 the record, we will look at it.

11 MS. KILGORE: Thank you. We'll consider this
12 in briefing.

13 ALJ ARLOW: Again, you can brief this, and I'm
14 not precluding the possibility, but I'm just trying to
15 understand what standards we're trying to apply here for
16 this request.

17 All right. Now, you said you had some
18 comments with respect to Loop-30 before we close up
19 here?



04140

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
4 Investigation into)
5 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
6 Compliance with Section 271 of) Volume XXX
7 the Telecommunications Act of) Pages 4140 to 4414
8 1996)
9 -----)
10 In the Matter of)
11 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003040
12 Statement of Generally)
13 Available Terms Pursuant to) Volume XXX
14 Section 252(f) of the)
15 Telecommunications Act of 1996) Pages 4140 to 4414
16 _____)
17

13 A Workshop in the above matters was held on
14 July 11, 2001, at 8:30 a.m., at 1300 South Evergreen
15 Park Drive Southwest, Room 206, Olympia, Washington,
16 before Administrative Law Judge ANN RENDAHL.

17 The parties were present as follows:

18 THE WASHINGTON UTILITIES AND TRANSPORTATION
19 COMMISSION, by PAULA STRAIN and DAVE GRIFFITH, 1400
20 South Evergreen Park Drive Southwest, Post Office Box
21 40128, Olympia, Washington, 98504-0128.

22 WORLDCOM, INC., by ANN HOPFENBECK, Attorney
23 at Law, 707 - 17th Street, Suite 3900, Denver, Colorado
24 80202.

25 AT&T, by SARAH KILGORE, Attorney at Law, and
via bridge line by REBECCA DECOOK, Attorney at Law, 1875
Lawrence Street, Suite 1575, Denver, Colorado 80202.

Joan E. Kinn, CCR, RPR
Court Reporter

04141

1 QWEST CORPORATION, by KARA M. SACILOTTO,
Attorney at Law, 607 - 14th Street Northwest,
2 Washington, D.C. 20005, and by LISA ANDERL, Attorney at
Law, 1600 Seventh Avenue, Suite 3206, Seattle,
3 Washington 98191.

4
ELECTRIC LIGHTWAVE, INC.; XO WASHINGTON,
5 INC.; and TIME-WARNER TELECOM OF WASHINGTON, by GREGORY
J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
6 1501 Fourth Avenue, Suite 2600, Seattle, Washington
98101.

7
TELIGENT SERVICES, INC., RHYTHMS LINKS, INC.,
8 AND TRACER, by ARTHUR A. BUTLER, Attorney at Law, Ater
Wynne, LLP, 601 Union Street, Suite 5450, Seattle,
9 Washington 98101.

10 SPRINT COMMUNICATIONS COMPANY, by BARBARA
YOUNG, Attorney at Law, 902 Wasco, Hood River, Oregon
11 97031.

12 COVAD COMMUNICATIONS COMPANY, by MEGAN
DOBERNECK, Attorney at Law, 7901 Lowry Boulevard,
13 Denver, Colorado 80230.

14 RHYTHMS LINKS, INC., by DOUGLAS HSIAO,
Attorney at Law, 9100 East Mineral Circle, Englewood,
15 Colorado 80218.

16 ALSO PRESENT:

17 DAVE DITTEMORE, Commission Staff
TOM WILSON, Commission Staff
18 LARRY BROTHERRSON, Qwest
LAURIE EIDE, Qwest
19 CHRIS VIVEROS, Qwest
JEAN M. LISTON, Qwest
20 BARRY ORREL, Qwest
DENNIS PAPPAS, Qwest
21 JEFF HUBBARD, Qwest
MICHAEL SCHNEIDER, WorldCom
22 CINDY MCCALL, WorldCom
MICHAEL ZULEVIC, Covad
23 MINDA CUTCHER, Covad
REX KNOWLES, XO
24 TIM PETERS, ELI
KEN WILSON, AT&T
25

04405

1 Let's be off the record.

2 (Discussion off the record.)

3 JUDGE RENDAHL: Mr. Wilson.

4 MR. WILSON: Washington loop 12 is an issue
5 of concern for AT&T. The issue here is when Qwest
6 designates -- when Qwest has either fiber runs or in
7 some instances other facilities that are ostensibly
8 going between Qwest offices, those facilities will be
9 generally designated as either distribution facilities
10 for loops or as interoffice facilities, which would be
11 trunks.

12 The concern is that if a property owner
13 between those two offices decides to put in a new high
14 rise, for instance, a sky scraper, that there could be a
15 need to redesignate some of the facilities which were
16 currently designated as interoffice facilities as
17 available for loop use. And the reason that one might
18 want to do that is that the loop facilities between
19 those two offices could be exhausted. And so rather
20 than have facilities go held for lack of facilities, and
21 from this morning we understand that now CLEC orders
22 will be canceled if there are no facilities, that rather
23 than do that, there is another alternative, which is to
24 redesignate the interoffice facilities, which could have
25 a lot of spare, as available for use as unbundled loops.

04406

1 So we think it would be appropriate to add
2 language to the SGAT that would require Qwest to
3 investigate the redesignation of interoffice facilities
4 as loop facilities rather than have the orders for
5 unbundled loops go held, so that is what this is about.
6 It's simply requesting that Qwest look at the option of
7 redesignation of facilities before they reject CLEC
8 orders as no facilities available. So I think in a
9 nutshell, that's the issue here.

10 MS. SACILOTTO: Your Honor.

11 JUDGE RENDAHL: Ms. Sacilotto.

12 MS. SACILOTTO: We have a new witness here.

13 JUDGE RENDAHL: Would you please stand and
14 state your name, please.

15 MR. HUBBARD: My name is Jeff Hubbard,
16 H-U-B-B-A-R-D, with Qwest.

17 JUDGE RENDAHL: Good evening, Mr. Hubbard.

18 MR. HUBBARD: Good evening.

19 (Whereupon JEFF HUBBARD was sworn as a
20 witness herein.)

21 MR. HUBBARD: In responding to Mr. Wilson's
22 request --

23 MS. DOBERNECK: Spiel.

24 MR. HUBBARD: -- request to have IOF
25 facilities redesignated as outside plant facilities or

04407

1 design facilities, a couple of issues I would like to
2 mention on this issue. One of these -- one of the
3 issues is that as a design engineer and outside plant
4 engineer, we don't have access ourselves to IOF
5 facilities. Even under the same -- if they're in the
6 same sheath, IOF and design, outside plant design
7 facilities, the IOF facilities are basically reduce
8 those numbers of strands of fibers are reduced from the
9 availability of the full count of that fiber. So as a
10 design engineer, we don't even see those fibers as being
11 available.

12 When you place, on the second issue, when you
13 place IOF and design facilities in the outside plant,
14 most of the times they're in what we call splice cases
15 or waffle cases. When you splice fiber in a waffle
16 case, the IOF is spliced in an inner compartment of that
17 waffle case, and the design, outside plant design
18 circuits are then placed in trays that are then separate
19 from the IOF facilities.

20 JUDGE RENDAHL: Mr. Hubbard, can you --

21 MR. HUBBARD: And they don't have access.

22 JUDGE RENDAHL: Can you explain, is that a
23 waffle case?

24 MR. HUBBARD: Waffle case, it's a splice
25 case, water tight splice case.

04408

1 JUDGE RENDAHL: Is it like what you eat, I
2 mean is it spelled like what you eat, waffle, or is it
3 an acronym for something?

4 MR. HUBBARD: No, it's spelled just like you
5 eat it.

6 JUDGE RENDAHL: Thank you, I just wanted to
7 confirm for the record.

8 Okay, go ahead.

9 MR. HUBBARD: It's kind of waffle shaped, if
10 you will.

11 Like I was stating, in the waffle case, we
12 have IOF facilities in there. They're in an inner
13 compartment that's closed and segregated from the
14 outside plant facilities or the fibers for outside
15 plant. And so basically the splicers do not have access
16 to those inner fibers that are designated as IOF.

17 MS. SACILOTTO: Jeff, could you clarify for
18 those of us who are not engineers what you mean by the
19 design circuits, are those as opposed to the IOF, which
20 was what we're talking about?

21 MR. HUBBARD: I guess what I was referring to
22 when I was talking, if I said design, I meant the
23 outside plant type of circuits, if you will, that are --

24 MS. SACILOTTO: Loops?

25 MR. HUBBARD: Loops, not loops, but the

04409

1 fibers basically.

2 MS. SACILOTTO: Okay. And just to clarify,
3 does Qwest for itself if it needs extra loop facilities,
4 does it redesignate working IOF as new facilities for
5 itself?

6 MR. HUBBARD: I could never say never on
7 that, but I haven't seen them do that. As a design
8 engineer, I could never get IOF to release any fibers to
9 me to redesignate as distribution, if you will.

10 MS. SACILOTTO: And what does Qwest do if it
11 retires IOF or replaces it with new facilities if those
12 interoffices -- what does it do with those facilities?
13 We had a discussion about this in other jurisdictions.

14 MR. HUBBARD: Yeah, it -- older trunk cables
15 that were copper facilities that were replaced with
16 interoffice facilities that are of fiber, if that copper
17 cable that was once a trunk cable or interoffice cable
18 is still in good shape, it can be redesignated as
19 distribution or feeder cables and put into a normal
20 outside plant.

21 MR. WILSON: Would Qwest do that before, for
22 a CLEC, before it would declare a route not available
23 because of lack of facilities if you had old copper that
24 had been used for trunks that could be redesignated, was
25 idle essentially, but currently designated as IOF, would

04410

1 Qwest redesignate that for a CLEC?

2 MR. HUBBARD: Like I said, that old copper
3 cable that would have been converted to fiber would have
4 to be totally spare and still in good shape to
5 redesignate, but it would be after all the IOF
6 facilities were transferred over to the fiber
7 facilities, if you will.

8 JUDGE RENDAHL: Mr. Zulevic has a question
9 and also Mr. Dittmore.

10 MR. ZULEVIC: More comment than question
11 actually. In a previous life, I did some integrated
12 planning, which consisted of both IOF as well as feeder
13 route planning, and it was my experience that while we
14 were looking at that, we took a look at our forecast and
15 allocated a certain portion for IOF and a certain
16 portion for loop on a basic route, and hopefully we got
17 our forecast right. But if not, the fiber is still
18 there and available to either be used for one or the
19 other depending on how far you taper the fiber.

20 But even though I understand the fact that
21 the loop plant people don't have ready access to all the
22 data on the IOF, I think that in situations where you
23 would have to hold an order that that data can be made
24 available, and if for some unknown reason the
25 requirement for the interoffice facility portion was

04411

1 greatly overestimated leaving a great deal of excess
2 fiber between those points that it should be made
3 available rather than holding an order.

4 MR. HUBBARD: Well, Mike, being an old
5 planner like you were and I am, no emphasis on old, but
6 in the planning on IOF fiber that I have been involved
7 with, the route and is chosen usually by the IOF
8 planners and the number of fibers that IOF is going to
9 use based on their forecast. They allow, if you will,
10 the outside plant to upsize the fiber cable to have the
11 outside plant have availability of having their own
12 fibers out there into the route. But we still do not
13 have access to the interoffice facilities.

14 And you should know as an older cable guy
15 that it was like pulling teeth to get anything out of
16 IOF. They do not release it. It's based on their
17 forecasts. And as an outside plant engineer, we didn't
18 have even available strands in our forecasting tools.
19 Those strands are already deducted from our forecasting
20 tool.

21 MR. ZULEVIC: Well, hopefully the new Qwest
22 has found a greater degree of cooperation among those
23 groups. I would also point out that with the new
24 technologies that are available, specifically DWDM or
25 dense wave division multiplexing.

04412

1 JUDGE RENDAHL: Thank you.

2 MR. ZULEVIC: You're welcome. You will
3 likely make even more fiber available, because you can
4 put so much more capacity on existing fiber.

5 JUDGE RENDAHL: Okay, I think, Mr. Dittimore,
6 you had a question, and then Mr. Wilson.

7 MR. DITTEMORE: Yes, clarifying question, if
8 you clarify your example, I believe you're talking about
9 one sheath of fiber and within your company some fibers
10 were given for distribution use and some given for
11 interoffice use. Is that my understanding of your case?

12 MR. HUBBARD: Yeah, under one sheath, one
13 cable. There are -- if it's an interoffice facility,
14 some are interoffice, and some could be for the
15 distribution plant.

16 MR. DITTEMORE: Thank you.

17 JUDGE RENDAHL: Mr. Wilson.

18 MR. WILSON: I think that we definitely need
19 a provision. It's certainly more prudent to reallocate
20 the distribution of fibers between IOF and outside plant
21 than it would be to dig up the street and bury new fiber
22 if you had spare for IOF that you weren't using. And it
23 would certainly help the situation where the CLEC order
24 would be canceled because of lack of facilities when
25 facilities are really there. I mean we could certainly

04413

1 argue that you're canceling facilities, canceling our
2 order when facilities really are available, they're just
3 not being used for the purpose or that they're not being
4 allocated for the purpose we need them to be used for.

5 JUDGE RENDAHL: Okay, so, Mr. Hubbard, one
6 more point?

7 MR. HUBBARD: Yeah, just one comment on that.
8 Ken, the IOF fibers are based on forecasts, IOF
9 forecasts, and are sized for, you know, a long period of
10 time. The availability of those in splice cases out in
11 the network to access for the distribution are not
12 readily available. Like I stated, they are in an inner
13 part of a waffle case and not available to the outside
14 technicians to pull out and splice to different points.

15 MR. WILSON: And I understand that it's not
16 generally done and there may be some difficulties. I
17 think my issue is it's easier to do that than to dig up
18 the street and bury new fiber, and it should be used or
19 available for CLEC's for the purposes of supplying end
20 users, because I have seen -- I mean I don't have
21 information on Qwest, but I have seen other RBOCs do
22 this in the past, and I know that AT&T has done this
23 sort of thing itself years ago. I'm not familiar with
24 current, but it is a lot cheaper to redesignate than it
25 is to dig up the street.

04414

1 MS. STRAIN: Mr. Wilson, for the RBOCs which
2 have provisions such as you described, do they have that
3 in their SGATs?

4 MR. WILSON: I haven't investigated it. My
5 knowledge is when AT&T was doing FTS 2000, the federal
6 government telephone system, and where I know that this
7 kind of activity was done was back East where there were
8 government facilities and they wanted fiber into the
9 buildings and fiber was redesignated and run in rather
10 than digging it up, digging up the highways again.

11 JUDGE RENDAHL: Anything further, because I
12 think we're at impasse on this?

13 Okay, let's chalk it up to impasse.

14 Is there anything further tonight? I think
15 we can do the remaining issues 10 and 11 and I think
16 that's it tomorrow.

17 MS. HOPFENBECK: There's that little
18 facilities issue.

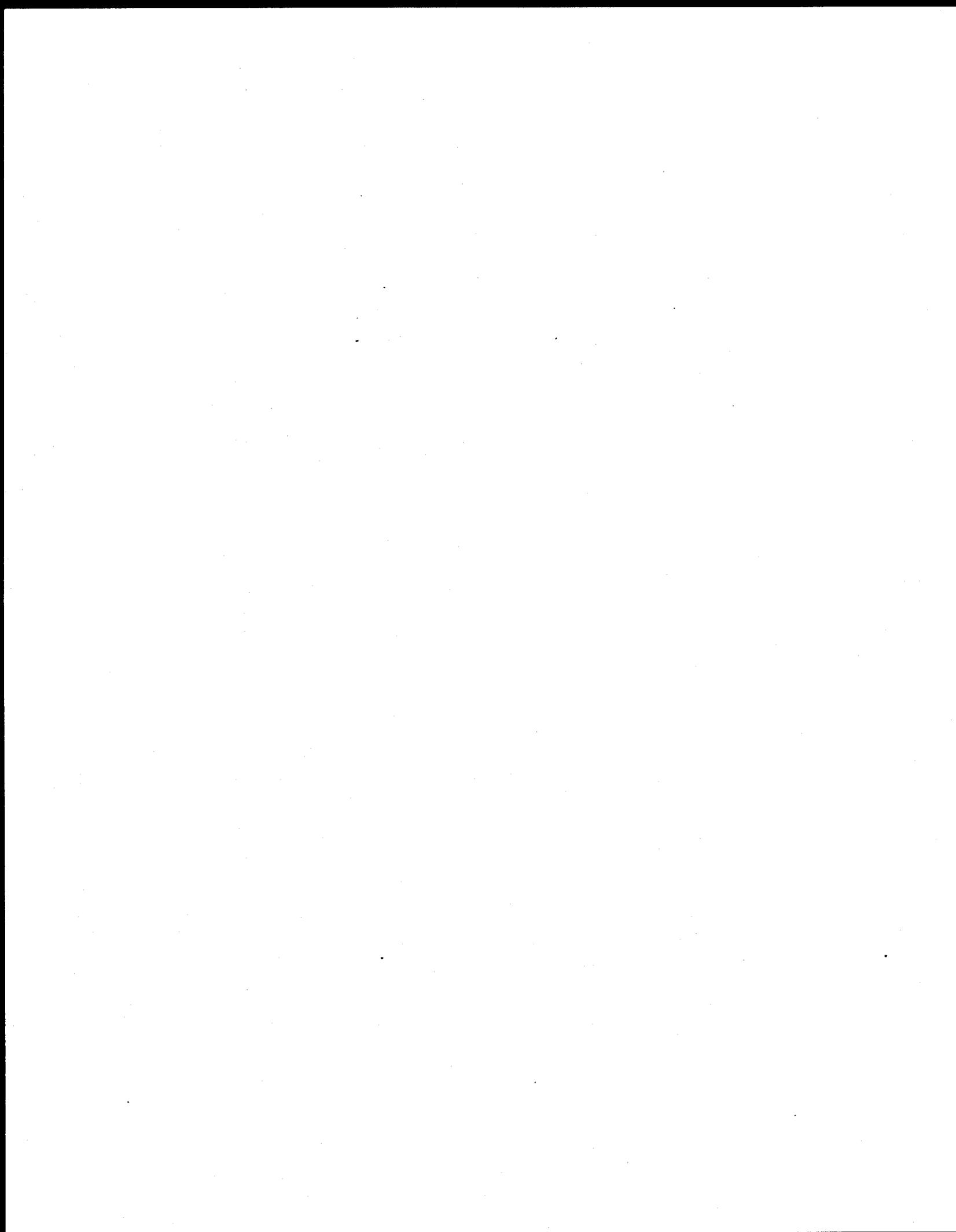
19 JUDGE RENDAHL: And then the 18 that we
20 deferred.

21 Okay, with that, we will be adjourned for the
22 evening. We will be off the record.

23 (Hearing adjourned at 7:55 p.m.)

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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.

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

APPEARANCES

(As noted in the transcript.)

24

MR. WILSON: Right. Let me see if I can

25 succinctly describe this issue. When the CLEC requests

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.

1 MR. BELLINGER: I think it's at impasse.

2 MR. WILSON: We agree.

3 MS. LISTON: We agree.

4 MR. BELLINGER: That would be Loop-37.

5 MR. WILSON: I think there was also
6 testimony in the last workshop with examples people
7 could refer to.

8 MR. BELLINGER: There's a lot on the
9 record in the last workshop.

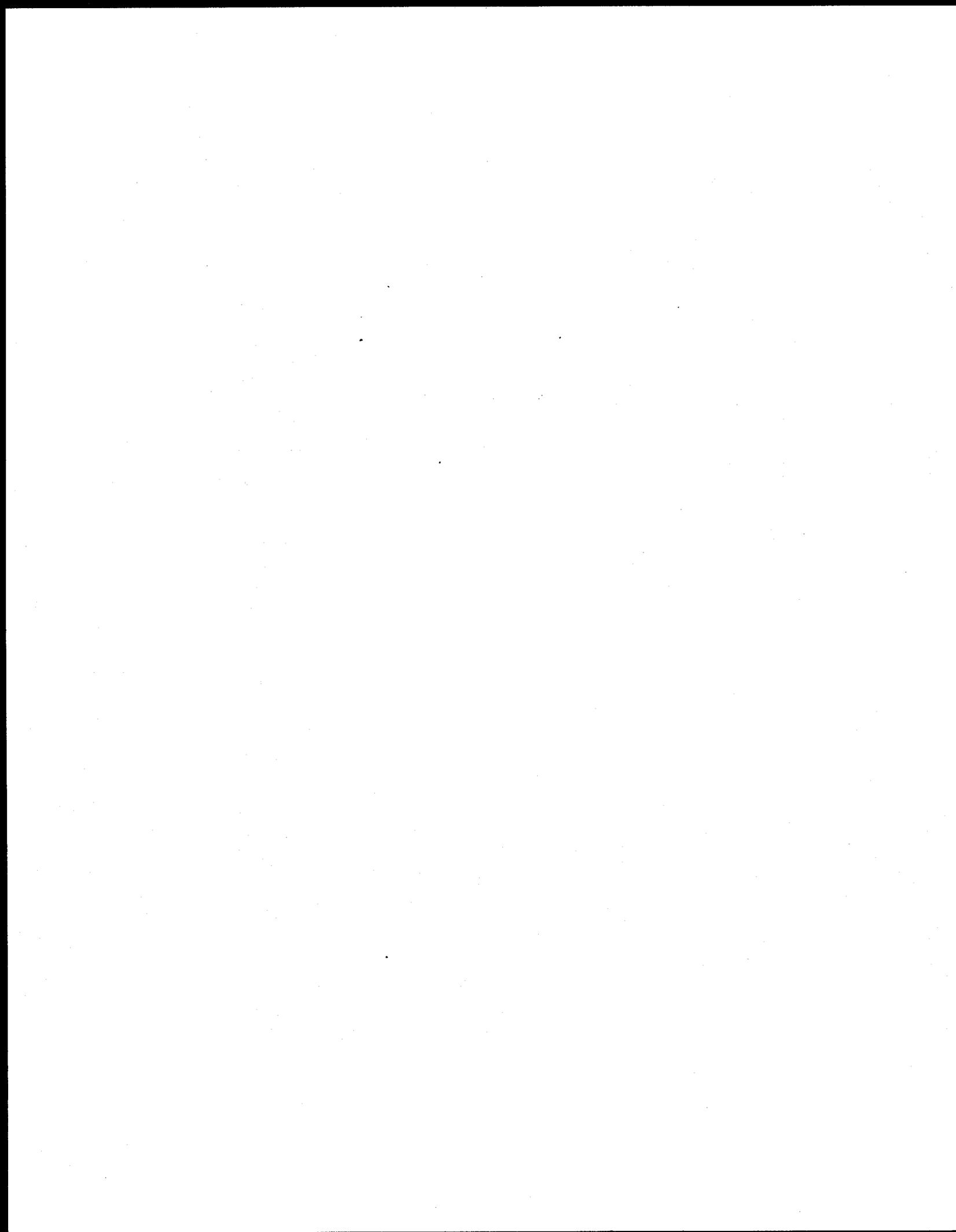
10 MR. WILSON: The discussion there was on
11 subloop.

12 MR. BELLINGER: It was actually Workshop
13 3.

14 MR. WILSON: Workshop 3 for subloop.

15 MR. BELLINGER: I believe dark fiber.

16 MR. WILSON: Exactly.



1

BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

3

4 In the Matter of the) Docket No. UT-003022
 Investigation Into US WEST) Volume XXXVII
 5 Communications, Inc.'s) Pages 5503-5695
 Compliance with Section 271 of)
 6 the Telecommunications Act of)
 1996.)

7

In the Matter of US WEST) Docket No. UT-003040
 8 Communications, Inc.'s)
 Statement of Generally)
 9 Available Terms Pursuant to)
 Section 252(f) of the)
 10 Telecommunications Act of 1996.)

11

12 A workshop in the above matter was
 13 held on August 1, 2001, at 9:21 a.m., at 900 Fourth
 14 Avenue, Suite 2400, Seattle, Washington, before
 15 Administrative Law Judge ANN RENDAHL.

16

17 The parties were present as
 follows:

18 AT&T, by Rebecca DeCook, Steven
 19 Weigler, Sarah Kilgore, and Dominick Sekich (via
 teleconference bridge), Attorneys at Law, 1875
 Lawrence Street, Suite 1575, Denver, Colorado, 80202.

20

21 QWEST, by Kara Sacilotto (via
 teleconference bridge), Attorney at Law, Perkins
 Coie, LLP, 607 14th Street, N.W., Washington, D.C.
 22 20005, and Charles W. Steese and John Munn (via
 teleconference bridge), Attorneys at Law, 1801
 23 California Street, 49th Floor, Denver, Colorado
 80202, and Laura Ford (via teleconference bridge),
 24 Attorney at Law, Perkins Coie, 1899 Wynkoop Street,
 Suite 700, Denver, Colorado 80202.

25

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1 JUDGE RENDAHL: Okay. Washington Loop
2 Issue 8, currently at impasse. Any change, other
3 than that B is now -- we're also referring to
4 Washington Loop Issue 1-C, but there's a dispute as
5 to whether it's the same issue or a related issue.
6 Okay. Loop Issue 9, at impasse. It says,
7 Discuss additional aspects in OSS test proceeding.
8 Is there anything further we need to talk about here?
9 MS. DOBERNECK: Wait. On 9?
10 JUDGE RENDAHL: On 9.
11 MS. DOBERNECK: I had the anticompetitive
12 conduct.
13 JUDGE RENDAHL: Yes, the action status here
14 in Washington is listed as impasse, and discuss
15 additional aspects in OSS test proceeding.
16 MS. LISTON: I think one of the things that
17 Qwest noted is we were kind of -- we're not sure what
18 that additional note was on there in terms of discuss
19 it in OSS test proceeding. We think it's just
20 strictly an impasse issue.
21 JUDGE RENDAHL: Okay. Then I don't know
22 why it's there, and we'll just take it off.
23 MS. STRAIN: I don't know, either, and I
24 wrote it.
25 MR. WILSON: Maybe, Your Honor, one comment

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1 on that. I think I remember that Qwest has
2 instituted additional policies regarding this issue,
3 and I think the CLECs wanted to see if these seem to
4 work over the next couple of months.

5 MS. DOBERNECK: Oh, I think that's right.

6 JUDGE RENDAHL: Would that be appropriately
7 an OSS test, or it would be just a performance issue?

8 MS. DOBERNECK: Yes. And I would actually
9 like to add one piece of evidence or add to the
10 record for Washington Loop 9. Ms. Cutcher testified
11 when she was here regarding the theft of routers from
12 some COs in -- the theft of Covad routers and cabling
13 in a series of Colorado central offices in the space
14 of two weeks between June 14th and June 26th.

15 Subsequent to concluding our first
16 workshop, we were informed by Qwest that they had
17 identified the individual who had stolen our routers
18 and tie cables and that they had suspended that
19 individual pending an investigation of appropriate
20 discipline.

21 What I'd like to put into the record here
22 is the letter we received from Ken Beck, at Qwest,
23 identifying the fact that it was a Qwest employee who
24 stole those routers, to add -- simply to add to our
25 argument that we made here, is that the code of

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1 conduct and the reminders and associated documents
2 that Qwest had sent out are not effective in
3 deterring that kind of behavior.

4 All of the documents, the code of conduct
5 and the other reminder documents that Qwest provided,
6 were all distributed to its employees prior to these
7 thefts occurring, and yet we had three -- well, four
8 thefts, three routers and a pair of cables. So I'd
9 like to introduce into evidence, and I believe it's
10 -- it would be Exhibit 973, which is the next exhibit
11 under Ms. Cutcher's set of exhibits and testimony,
12 for purposes of this workshop.

13 JUDGE RENDAHL: Response from Qwest?

14 MS. LISTON: I think a couple of things
15 that we'd like to add to the record. In the last
16 workshop, there was discussion around the interaction
17 between Qwest and Covad during this investigation,
18 and I believe my recollection is Ms. Cutcher
19 testified that there was no communication, that Qwest
20 was not responding or providing feedback in terms of
21 the investigation. At that time, I did report that I
22 knew that investigation was going on, but I wasn't
23 aware of details.

24 I just want the record to show that Qwest
25 was in contact through voice mail and e-mail with

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1 Covad throughout the investigation process. The week
2 following the workshop that we had here in
3 Washington, there was a meeting scheduled between
4 Qwest and Covad to provide them with a status of the
5 investigation. A question was asked of Covad, what
6 do you want from -- as a result of this issue, and
7 they talked about two things, one being feedback and
8 the other one being we want to know status.

9 I just want the record to show that Qwest
10 was providing feedback to Covad throughout the
11 investigation and status was provided and that action
12 was taken by Qwest. We do have a code of conduct.
13 We have a very large organization. The reason we
14 have code of conduct in place is because you can't
15 control everybody's behavior, but you can tell them
16 what consequences are associated with it.

17 And you know, I hate saying this, but, you
18 know, we have laws, we have laws within our company,
19 we have laws within our country. Not everybody
20 abides by laws. And it was an unfortunate situation.
21 We've had theft situations in our company in the
22 past. When they do occur, we, as a company, then
23 have to take action with the individual employee. It
24 was an unfortunate situation and we did take the
25 action. And it was reported the person is currently

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1 under suspension and the investigation continues. It
2 has been referred to law enforcement agencies and,
3 like I said, it continues on, the investigation. But
4 we did provide Covad updates and we have provided
5 status information throughout the process.

6 MS. SACILOTTO: To clarify, when you talk
7 about we've had thefts within the company, are you
8 talking about theft of Qwest equipment by Qwest
9 employees?

10 MS. LISTON: That's correct.

11 MS. DOBERNECK: I'll just simply respond.
12 We do very much appreciate the fact that Qwest did
13 respond to us and that Qwest did, in fact, keep us
14 apprised during this unfortunate episode. So I
15 certainly don't disagree with Ms. Liston on that
16 point. It was just to the other issues, so -- but,
17 yes, we are very pleased with the kind of
18 responsiveness and the request for input that Qwest
19 has asked of us as far as future security in COs.

20 JUDGE RENDAHL: Thank you. Thank you, both
21 of you, for providing further information on that.
22 Do you have copies?

23 MS. DOBERNECK: I do.

24 JUDGE RENDAHL: Is there any objection by
25 Qwest to this document?

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1 MS. SACILOTTO: Well, I don't know if this
2 is so much an objection as this is an incident that
3 related to Colorado, not to Washington. And also, I
4 would note that Ms. Doberneck has been providing the
5 testimony regarding it, not an actual witness. So I
6 don't know how the Commission deals with things of
7 that nature.

8 JUDGE RENDAHL: I think, to the extent, Ms.
9 Sacilotto, that this letter kind of closes the loop
10 on an issue that was testified to in the main
11 workshop, I think it provides information on the
12 incident and on Qwest's responsiveness to the
13 incident. And so I think, to that extent, I don't
14 believe it's necessarily prejudicial to the company.

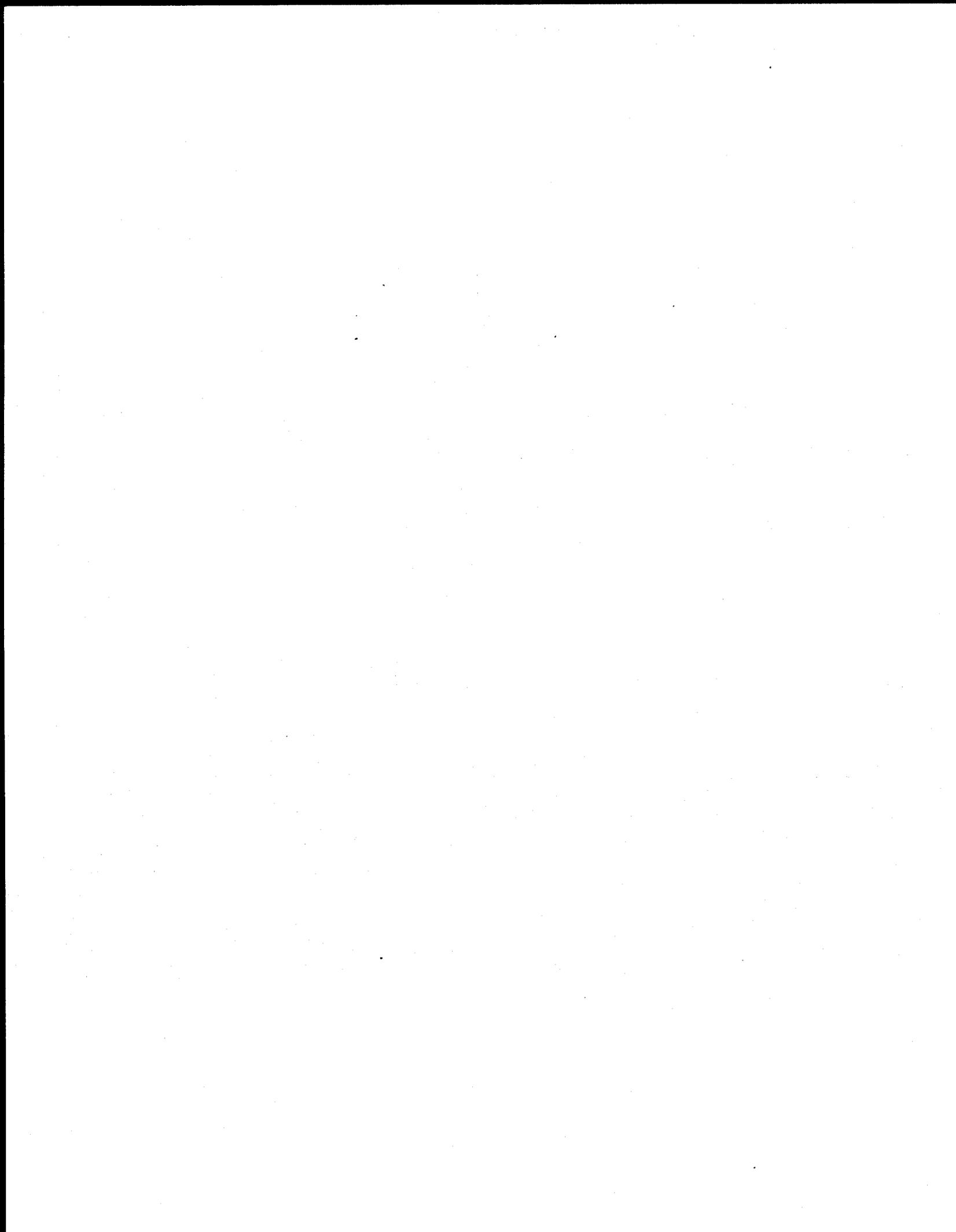
15 MS. SACILOTTO: No, nor do I.

16 JUDGE RENDAHL: So I think I would simply
17 allow it for purposes of closing the loop and let the
18 document speak for itself. So if, Ms. Doberneck, if
19 you wouldn't mind circulating that, that will be
20 marked as Exhibit 973.

21 MS. DOBERNECK: Thank you, Your Honor.

22 JUDGE RENDAHL: Is there anything further
23 on Loop Issue 9?

24 MS. DOBERNECK: No, Your Honor.



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1

BEFORE THE WASHINGTON UTILITIES AND

2

TRANSPORTATION COMMISSION

3

In the Matter of the)
Investigation into)

4

U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022

5

) Volume XXX
Compliance with Section 271 of) Pages 4140 to 4414

6

the Telecommunications Act of)
1996)

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In the Matter of)

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U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003040

10

) Volume XXX

11

) Pages 4140 to 4414

12

Statement of Generally)

13

Available Terms Pursuant to)

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Section 252(f) of the)

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Telecommunications Act of 1996)

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A Workshop in the above matters was held on

19

July 11, 2001, at 8:30 a.m., at 1300 South Evergreen

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Park Drive Southwest, Room 206, Olympia, Washington,

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before Administrative Law Judge ANN RENDAHL.

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The parties were present as follows:

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THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION, by PAULA STRAIN and DAVE GRIFFITH, 1400
South Evergreen Park Drive Southwest, Post Office Box
40128, Olympia, Washington, 98504-0128.

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25

WORLDCOM, INC., by ANN HOPFENBECK, Attorney
at Law, 707 - 17th Street, Suite 3900, Denver, Colorado
80202.

26

27

AT&T, by SARAH KILGORE, Attorney at Law, and
via bridge line by REBECCA DECOOK, Attorney at Law, 1875
Lawrence Street, Suite 1575, Denver, Colorado 80202.

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Joan E. Kinn, CCR, RPR

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Court Reporter

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1 QWEST CORPORATION, by KARA M. SACILOTTO,
Attorney at Law, 607 - 14th Street Northwest,
2 Washington, D.C. 20005, and by LISA ANDERL, Attorney at
Law, 1600 Seventh Avenue, Suite 3206, Seattle,
3 Washington 98191.

4
ELECTRIC LIGHTWAVE, INC.; XO WASHINGTON,
5 INC.; and TIME-WARNER TELECOM OF WASHINGTON, by GREGORY
J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
6 1501 Fourth Avenue, Suite 2600, Seattle, Washington
98101.

7
TELIGENT SERVICES, INC., RHYTHMS LINKS, INC.,
8 AND TRACER, by ARTHUR A. BUTLER, Attorney at Law, Ater
Wynne, LLP, 601 Union Street, Suite 5450, Seattle,
9 Washington 98101.

10 SPRINT COMMUNICATIONS COMPANY, by BARBARA
YOUNG, Attorney at Law, 902 Wasco, Hood River, Oregon
11 97031.

12 COVAD COMMUNICATIONS COMPANY, by MEGAN
DOBERNECK, Attorney at Law, 7901 Lowry Boulevard,
13 Denver, Colorado 80230.

14 RHYTHMS LINKS, INC., by DOUGLAS HSIAO,
Attorney at Law, 9100 East Mineral Circle, Englewood,
15 Colorado 80218.

16 ALSO PRESENT:

17 DAVE DITTEMORE, Commission Staff
TOM WILSON, Commission Staff
18 LARRY BROTHERSON, Qwest
LAURIE EIDE, Qwest
19 CHRIS VIVEROS, Qwest
JEAN M. LISTON, Qwest
20 BARRY ORREL, Qwest
DENNIS PAPPAS, Qwest
21 JEFF HUBBARD, Qwest
MICHAEL SCHNEIDER, WorldCom
22 CINDY MCCALL, WorldCom
MICHAEL ZULEVIC, Covad
23 MINDA CUTCHER, Covad
REX KNOWLES, XO
24 TIM PETERS, ELI
KEN WILSON, AT&T
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1 JUDGE RENDAHL: Okay. Well, then we will be
2 at impasse, and let's go back up to I guess we were
3 about to go to issue 9 unless there's something else in
4 between. And this is a Covad issue, allegations that
5 Qwest technicians engage in anticompetitive conduct.

6 MS. CUTCHER: In my testimony, I cite two
7 examples specifically in the state of Washington where
8 Qwest in the initial example, a Qwest representative
9 actively solicited an end user who had placed an order
10 with Covad promising them special deals, a package deal,
11 if they went with Qwest. And at the end of the
12 conversation, the end user ultimately called his
13 Internet service provider, canceled the Covad service,
14 and went to the Qwest representative asking them to call
15 him back and so he could sign up for Qwest DSL service.

16 In the second example I cite, Qwest notified
17 Covad that there was allegedly a lack of facilities, and
18 we ended up canceling the order with our end user
19 basically to manage his expectations around facilities
20 issue. And then we found out afterwards that Qwest
21 contacted that end user directly and stated that Qwest
22 could provide DSL service to that end user.

23 We recently had a very troubling incident or
24 series of incidents in Colorado, and we have had three
25 routers, which are basically network management or

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1 observation devices for us, stolen from three of our
2 central offices over the course of something less than
3 two weeks. And in addition to the three routers, one
4 set of cables from another central office. And what's
5 problematic about this, other than the fact that it
6 literally prevented us from monitoring our network, is
7 Qwest's lack of responsiveness in terms of bringing the
8 issues to resolution. And those are really the themes
9 with the anticompetitive behavior.

10 We have brought examples of anticompetitive
11 behavior up such as these in other forums, and Qwest has
12 indicated that they're going to address the issues with
13 training, yet these kinds of incidents continue to
14 happen. And going back to the stolen router and cut
15 cable, the first incident, the first theft happened on
16 June 14th, and we notified Qwest, and some internal
17 investigation started to take place. After the second
18 incident, which took place on June 21st, we got a little
19 bit more nervous because of the potential impact, and it
20 was starting to feel like a pattern. And after the
21 third one, we really raised the level of concern to a
22 very high level. And the last incident took place on
23 June 25th. I was assured by Ken Beck, who is in a sense
24 our account, I don't want to call him the account
25 manager, but he's vice president on the account team for

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1 us, that he would get back to me by the middle of last
2 week. And even allowing for the Wednesday holiday, I
3 did not hear back from Ken Beck. He has been out of the
4 office quite a bit. I have talked to several people to
5 whom I was referred and receive promises of a status, if
6 not a resolution, the next day. Every time I talk and
7 call and leave a message, the answer I get back is we
8 will let you know tomorrow, I will have an answer for
9 you tomorrow. And here we are July 11th, and still no
10 indication of where things stand in terms of Qwest's
11 internal investigation, and more importantly what is
12 going to be done to protect our equipment going forward,
13 which is literally protecting our customers, and most
14 importantly ensure that this kind of situation doesn't
15 happen again.

16 JUDGE RENDAHL: Response by Qwest?

17 MS. LISTON: We have had several discussions
18 around this issue, and Qwest has taken numerous steps in
19 terms of addressing some of the concerns that Covad has
20 raised, including training. We have an obligation under
21 our code of conduct requirements, which are conditions
22 for employment, associated with protection of --
23 protection of information and assets. We have recently
24 done additional follow-up training, providing the data
25 to our employees, making sure that the understanding is

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1 clear, that the linkage between code of conduct and
2 activities with the CLEC does apply, and their
3 employment depends upon that.

4 The incident in terms of the discussion about
5 Colorado, I did receive a call from security, I'm losing
6 track of time, probably a couple of weeks ago just
7 letting me know that the incident had occurred, because
8 I had contacted security during all of our discussions
9 regarding what kinds of problems occur, do we have any
10 problems with CLECs, how are we doing our investigation.
11 So when the investigation did occur, our security office
12 did call me, I know, Jean, this is an issue, I wanted to
13 make sure that you're aware of it.

14 I did not hear final resolution on it, and I
15 have to admit I did lose track of looking for the final
16 resolution on it. One of the pieces that I heard was
17 that it was also in a locked area, so I'm not sure of
18 what kind of information we were -- what the
19 investigation was. I would be more than happy to make a
20 phone call to security to find out, and we could talk
21 off line on that issue.

22 Qwest has made significant -- taken
23 significant steps to ensure that our employees
24 understand that their jobs depend upon this behavior.
25 The very last piece that just recently went out was a

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1 very explicit letter from the vice president of network
2 to all employees spelling out the different kinds of
3 activities that we're hearing about in the workshops and
4 saying, you recognize that these are violations of code
5 of conduct and can lead up to disciplinary action
6 including dismissal. We have gone back and forth with
7 the issue and been assured that they continue to remind
8 people, to train people, and to address the issue. So
9 we have taken significant steps in terms of trying to
10 prevent future activities to occur.

11 JUDGE RENDAHL: Ms. Cutcher, before you go
12 ahead though, I have a couple of questions for both
13 Covad and Qwest. What does Covad seek from Qwest and
14 also through this proceeding? I mean what sort of
15 remedy is Covad requesting?

16 MS. DOBERNECK: If I can summarize what we
17 have stated elsewhere, essentially we are seeking two
18 things. One relates to the process by which Qwest
19 investigates these incidents. The other relates to what
20 will happen upon the conclusion of the investigation.

21 With regard to the process segment of it -- I
22 have another issue, sorry. One is our concern is that
23 while Qwest has informed its employees about the code of
24 conduct and that, you know, these matters are taken
25 seriously, responsibility for investigation of

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1 particular incidents is left with the manager of the
2 particular individual involved, assuming that Covad or
3 any other CLEC provides appropriate information that
4 would permit Qwest to investigate the incident. And our
5 concern is that there's no process in place once it
6 lands with that particular manager as to what will occur
7 with the investigation, what needs to be done, and what
8 is expected of Qwest as far as that obligation as far as
9 that investigation goes. I mean while I know Jean has
10 said Qwest has been clear this is the conduct we expect,
11 when it gets to the manager, it's -- then it's sort of
12 free, I won't say free for all, but there's no specific
13 process in place, and that concerns me.

14 The second part is I certainly don't expect
15 Qwest to tell me specifically what happens. I think
16 there is clearly a privacy issue with regard to that
17 particular individual. But we want a guarantee from
18 Qwest that appropriate disciplinary action will be
19 taken, and we're not dictating what action needs to be
20 taken, but simply that Qwest will guarantee that there
21 will be disciplinary action implemented for this kind of
22 conduct in order to effectively deter and eliminate that
23 kind of conduct.

24 JUDGE RENDAHL: Okay. And, Ms. Liston, I'm
25 assuming this doesn't happen so often that this is

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1 something that Qwest has to deal with a great deal. At
2 least I'm hoping that's the case. And also as
3 Ms. Doberneck mentioned, there's a privacy issue here in
4 terms of employee, you know, there's personnel privacy
5 issues here. Have you -- is this something that's in
6 your expertise area in terms of the investigation
7 process and disciplinary process?

8 MS. LISTON: Not completely, although I have
9 done quite a bit of asking questions in terms of what
10 the overall process is. There's a couple of different
11 issues, and one is that our technicians are union
12 employees, and so I've gone -- in fact, I have just
13 recently got some additional information around this
14 area, and the process is laid out in the union contract
15 in terms of how disciplinary action is taken, so there
16 is a process in place. It is part of the overall union
17 contract for discipline purposes. In terms of the steps
18 that are even taken are also part of that overall
19 process.

20 The network training for managers includes
21 training on how to handle disciplinary actions and how
22 to handle disciplinary actions with a union employee,
23 because it usually involves getting the union involved
24 or bringing on a steward or something like that for
25 discussion. So the overall network manager training

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1 does include a discussion in terms of how to deal with
2 disciplinary actions.

3 There is also a very formal process through
4 our security department in terms of investigations, and
5 that was the organization I was just referring to that I
6 heard about when the equipment was stolen. So we have a
7 security organization that if we do encounter, you know,
8 large problems that security then gets involved, and it
9 is a full organization associated with investigations
10 and does all the tracking.

11 Part of their tracking is also what kind of
12 action takes place, so they will track was the person
13 suspended without pay, were they terminated, were they
14 put just in discussion mode and something was put in
15 their file. So there's a whole series of different
16 levels of disciplinary action that are tracked then
17 through the security department and maintained in terms
18 of when events occur.

19 JUDGE RENDAHL: Okay.

20 Ms. Cutcher, you had a question.

21 MS. CUTCHER: I would just like to respond to
22 a statement that Ms. Liston made earlier about the
23 equipment being in a locked area. We have both caged
24 and cageless central offices that were the venue in
25 which these things took place, so whether that's

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1 relevant, I just wanted to put that out there.

2 The other issue to address your concern,
3 Judge Rendahl, is around the how often. And I would
4 just like to offer the fact that my job function touches
5 all of the different ILECs across the country, and we
6 keep a log of these kinds of things. And when I talk
7 about these kinds of things, it's not just the theft,
8 but, you know, the what we will refer to as
9 anticompetitive behavior, and the incidents that occur
10 in the Qwest territory far outweigh those that take
11 place in any of the other ILECs. Very honestly, you
12 know, human beings being who they are will always
13 misbehave. And while we would like nothing
14 anticompetitive to happen, the expectation is that
15 something will happen. But it's just troublesome that
16 the vast volume occur in the Qwest territory.

17 JUDGE RENDAHL: When you say vast volume, can
18 you give me an idea of numbers so that -- I mean vast
19 sounds like a huge number, and I just want to make sure
20 it's, you know, if there's one incident in Bell Atlantic
21 versus, you know five in Colorado. I'm just trying to
22 get a sense of numbers here.

23 MS. CUTCHER: Without having a log in front
24 of me, and I may have a copy in my laptop that I can
25 check later, one in five is probably -- probably a good

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1 estimate. But very honestly, for example, something
2 happens in Verizon, the individual is removed from the
3 account kind of thing if it's someone in the center say
4 misbehaving. But, you know, I can pull up the
5 incidents. And while one is too many, you know, on
6 average, there's something going on in the Qwest region
7 at least once a month, one incident a month. Whereas
8 for many of the other ILECs, it may just be every now
9 and then, you know, every two or three or four months
10 something may pop up. So that's the other point I
11 wanted to make.

12 And lastly, in terms of this issue of the
13 code of conduct, virtually all the other ILECs'
14 employees are union employees, and all I can do is share
15 my experience with Verizon Bell Atlantic when I was
16 there, and traditional union employees are not required
17 to sign anything other than their paycheck. However,
18 the way around that is if an employee attends a session
19 at which the code of conduct is reviewed, that
20 attendance is so noted and for all intents and purposes
21 is as good as if they had signed the document.

22 MS. LISTON: We do, we go one step beyond in
23 Qwest, and you're right, with the union employees we
24 can't require them to sign the code of conduct. What
25 Qwest does do though is the manager is required to note

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1 that the employee attended the session, this one made me
2 smile when I heard it, the employee then initials the
3 letter saying that they attended the session, and then
4 that file -- that is put in their file. So even though
5 they don't sign the code of conduct, they are required
6 to initial a letter saying that they were present, and
7 then there is the reminder that even though they did not
8 sign the code of conduct form, that they are still bound
9 by the terms in the code of conduct, and their
10 employment is responsible for it.

11 You know, one of the things in terms of the
12 investigation, and I really don't know how much we want
13 to -- I don't think it's appropriate to discuss a formal
14 investigation in terms of the stolen equipment here, I
15 don't know if it's been resolved, I don't know if -- I
16 don't know if it's even been determined whose fault it
17 was or what happened, so I just want to make sure that
18 we leave it that it's not necessarily that it was a
19 Qwest employee that did this. Our central offices are
20 open. That's part of what we hear about is we have had
21 to open our central offices. There's lots of people in
22 the central offices. So it's not necessarily a Qwest
23 employee so equipment was stolen, and, you know, that
24 would be a part of the overall formal investigation, and
25 I know that our security office is actively pursuing

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1 that and has been involved in this issue.

2 JUDGE RENDAHL: Okay.

3 MS. SACILOTTO: One thing that Minda said is
4 it's also difficult to understand precisely what -- I
5 mean that what would be an incident can have a lot of
6 different interpretations. What Covad might consider to
7 be something that is anticompetitive might be something
8 where even if it were true, and we can't investigate a
9 lot of their claims because we just simply haven't been
10 given enough information regarding them, you know, we
11 don't agree that they constitute that.

12 They might be a provisioning problem that
13 happened or something, an allegation of that sort, but
14 not anticompetitive behavior, something like, you know,
15 the order went held for a really long time or the
16 technician didn't come on the day they were scheduled to
17 come and things like that. It's real hard to know what
18 qualifies as these kinds of incidents and what not. I
19 mean there's kind of a gray area there.

20 JUDGE RENDAHL: Okay, Ms. Doberneck and then
21 Mr. Zulevic.

22 MS. DOBERNECK: A couple of responses.
23 First, when we're talking about anticompetitive conduct,
24 we're not talking about the order went held. We're
25 talking about specific incidents where we were either

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1 disparaged or where a misrepresentation was made, for
2 example, you can't get Covad, but we will get it to you.
3 So we're not concerned about provisioning. I do see
4 that as a separate issue.

5 And secondly, we did provide an initial log
6 and were never requested for additional details, so it's
7 a little bit difficult to respond --

8 MS. SACILOTTO: That's not true, Megan, we
9 asked you in Arizona, and you said -- and we said we
10 can't investigate this.

11 MS. DOBERNECK: I suppose I didn't take that
12 -- I mean no one asked me, can you give us more
13 information. So I mean, you know, you also say it's
14 dated, it's late, whatever, I consider that, you know,
15 argument of counsel. I didn't consider that as a
16 request. And if I was wrong, I was wrong, and I will be
17 happy to provide whatever I can at this point.

18 I have one question for Jean. You mentioned
19 that the union employees are not obligated to sign the
20 code of conduct, but they are considered bound by it.
21 So does that mean that Qwest then can investigate code
22 of conduct violations where the particular employee
23 involved is a union employee?

24 MS. LISTON: Oh, yes, most undoubtedly.

25 MS. DOBERNECK: Okay. And then just two more

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1 comments just to sort of crystallize our concern. Other
2 than some incidents, one of the problems we have is
3 whether an investigation is undertaken. Oftentimes
4 there is no communication back to Covad that action has
5 been taken, and that's troubling, because then we simply
6 don't know what's been happening and whether Qwest is
7 actually investigating these incidents.

8 The second item of concern is, you know,
9 Qwest has certainly provided information regarding code
10 of conduct investigations, but what we haven't seen is
11 when we're talking generically about code of conduct
12 investigations, whether it involves the types of
13 incidents we're reporting. The code of conduct section
14 that sort of addresses this issue or encompasses this
15 issue goes beyond, for example, anticompetitive conduct.
16 It also talks about you can't steal CLEC's proprietary
17 information, you know, it's proprietary, it's theirs,
18 you can't take it, you can't go dumpster diving. You
19 know, so it encompasses a lot more things than what we
20 complain about, so just hearing about the fact that
21 there's code of conduct investigations doesn't
22 necessarily alleviate our concerns because of the scope
23 of the code of conduct section that encompasses
24 anticompetitive behavior.

25 And finally, I think that it -- the way the

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1 code of conduct is phrased can be difficult for the
2 average lay person to understand exactly what all is
3 encompassed. I think some of it is very straightforward
4 and very apparent but including, for example, how you
5 deal with CLECs and the context of that section. I have
6 concern that, you know, when we get down beyond all the
7 lawyers and the witnesses and the people that -- who
8 have to deal with this, that the same message may not
9 necessarily be conveyed.

10 JUDGE RENDAHL: Okay, Mr. Zulevic, I think
11 you had a comment.

12 MR. ZULEVIC: Yeah, I will keep it real
13 brief. Actually, Ms. Doberneck actually covered some of
14 the things that came to mind. But this is something
15 that's not brand new to us. Shortly after I finished
16 building out the network in Minneapolis, we had a number
17 of incidents similar to the ones that we're experiencing
18 right now in Denver. And I know that these kinds of
19 things unfortunately do happen from time to time, but
20 the thing that I found most disappointing was the fact
21 that I was not given an update or a lot of information
22 on what was being done with respect to the
23 investigation. And I found, you know, I was given no
24 information on what the final resolution was, and it
25 seems that we've got the same problem now two years

04396

1 later.

2 JUDGE RENDAHL: So is one of Covad's primary
3 concerns the lack of communication? I mean obviously a
4 concern about the incidents occurring, and there's, you
5 know, but secondly lack of communication from Qwest.

6 MS. DOBERNECK: Absolutely. Having the
7 certainty that something is being done really does
8 alleviate a lot of concern on our part as to whether it
9 is actually happening.

10 JUDGE RENDAHL: Mr. Wilson had a comment and
11 then Ms. Cutcher.

12 MR. WILSON: I just wanted to say that AT&T
13 in its preparation of data for the data workshop that
14 will be discussed next time, we have been seeing a
15 number of incidents where a circuit's in service and
16 then it goes out of service, and the comments our people
17 write down are missing jumpers or boards missing in the
18 Qwest facilities. And while we don't have any evidence
19 that this is some intentional sabotage, we are curious
20 in these what is causing this, and the number of
21 instances are enough that it is causing concern. We
22 were going to bring this up in the data workshop, but I
23 thought I would mention it here, because we're not sure
24 what's going on, and it is of concern.

25 MS. SACILOTTO: Yeah, I got to object. If we

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1 don't have data and we don't have evidence, I really
2 don't feel comfortable addressing speculation if, you
3 know.

4 JUDGE RENDAHL: I understand your concern,
5 and I think if, you know, if there are allegations
6 similar to what Covad has documented, then I think it's
7 incumbent upon whichever CLEC is raising the issue to
8 document the problem. In part, it becomes purely
9 anecdotal information that there's not much, you know,
10 the Commission can do without verified information.

11 MS. SACILOTTO: Well, I appreciate that.

12 JUDGE RENDAHL: So I understand your concern,
13 and I also understand your concern, Mr. Wilson. So if
14 this is something you want to bring forward, then I
15 think you need to document it for the Commission to
16 review.

17 MR. WILSON: And we are preparing
18 documentation. The reason I brought it up now is that
19 we have been preparing actually testimony for what we
20 believe will be a workshop where we go over data, and
21 the person doing that has told me that he is puzzled by
22 these incidents, and we will present --

23 JUDGE RENDAHL: Then why don't we address it
24 there instead of raising it here.

25 MS. SACILOTTO: Well, I don't want to agree

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1 that -- this is what we're stuck with all the time, this
2 kind of, you know, maybe we have something in the future
3 to maybe tell you about when we feel like it kind of
4 thing. You know, our view is that this is all kind of a
5 let's get more and more workshops piled on kind of
6 situation, and I just don't feel -- I can not agree that
7 information that they might have now is appropriately
8 deferred to another day just because they haven't, you
9 know, seen fit to tell us about it.

10 JUDGE RENDAHL: Well, I guess my question is,
11 is it -- this workshop is about loops, NIDs, and line
12 splitting, and I'm not sure general anticompetitive
13 conduct necessarily is restricted to that topic, and so
14 -- and I don't even know what the future process will be
15 at this point in this proceeding. So I think at this
16 point, let's stick to Covad's issue. We will be talking
17 in the follow-up workshop about future process in this
18 proceeding, and I think that is the point at which we
19 talk about what topics still need to be discussed, if
20 any, and what future process and what witnesses and what
21 topics will be covered, and I think that's the time to
22 do it.

23 MS. SACILOTTO: That's fine, Your Honor, I
24 just need to register my objection to a manana approach
25 to life that, you know, these things didn't -- it's not

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1 like these are new -- issues that couldn't have been
2 raised earlier.

3 JUDGE RENDAHL: Okay, well, at this point, we
4 are focusing on Covad's allegations documented in the
5 testimony and here today and obviously something
6 Ms. Liston is aware of, a documented event. So,
7 Ms. Cutcher, I think you had a comment, and then I will
8 go back to AT&T.

9 MS. CUTCHER: Yeah, I just wanted to add some
10 specificity to the communication issue, because in the
11 past, whenever anything significant comes up, we do
12 bring it to the attention of the account team
13 immediately. But in the past, really, and I would say
14 up until sort of the new organizational structure was in
15 place, all we got was, you know, it's been taken care
16 of. As Megan stated earlier, I don't need to know the
17 name of the employee, but I would like to know, you
18 know, that some disciplinary action has taken place. If
19 Qwest cares to share that, that would be great, the
20 employee was terminated or suspended, and what is being
21 done to ensure that that particular incident doesn't
22 happen again. And again, if it's that particular work
23 group, if it was a center, if it was a bunch of
24 technicians, a garage, that would be really helpful
25 information for us, and it would show a good faith

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1 effort on Qwest's part that the situation is being
2 addressed in the area in which it happened.

3 MS. LISTON: And I think that part of the
4 feedback I have been given, and I am in regular contact
5 with the Covad account manager, and what we have worked
6 through is part of this communication issue. And I know
7 that there was an incident. It was not on the scale of
8 the stealing, but there was another incident where there
9 was concerns raised by Covad. The account
10 representative did contact me to let me know that it
11 occurred, and I received E-mails, copies of E-mails that
12 were also sent back to Covad advising them that, you
13 know, we have taken actions, we have investigated it.

14 So we have also put that working through
15 those issues and saying we need to make sure that that
16 continues happening. We did send, because the account
17 teams are kind of the interface, the liaison between the
18 CLECs and Qwest, we did send a follow-up letter to the
19 account teams advising them that you need to follow
20 through on any concerns that you hear from the CLECs and
21 make sure that it's then passed along to the correct
22 organization to be handled.

23 The other thing, and I know this goes back to
24 what Megan said about the language in the code of
25 conduct, we heard that in other workshops, and the

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1 letter that went out from the vice president of network
2 very explicitly stated the kinds of activities that
3 we're talking about. So they brought it down into, you
4 know, lay person's language and took it out of the code
5 of conduct. I did file that letter in my rebuttal
6 testimony, and what we -- one of the things I requested
7 is go through the specific kinds of things, what are we
8 talking about when we talk about violation of code of
9 conduct. And what they did is they did specifics, you
10 know, making negative or disparaging comments about the
11 CLECs and/or their product, no one disconnecting CLEC
12 services, discussing the virtues of Qwest services in
13 the terms to make sales, attempting to persuade the
14 customer, so it was very, very clearly spelled out,
15 these are the things that we view as violations of code
16 of conduct and was sent to the network employees.

17 JUDGE RENDAHL: Okay, and what was your JML
18 number?

19 MS. LISTON: The JML number is 51.

20 JUDGE RENDAHL: Thank you. I think we have,
21 hold that thought, I think we're close to addressing
22 this issue, and I think it's important that it be
23 raised, but I think we have done as much as we can at
24 this point. Is this something the parties -- is this
25 something Covad believes needs to be brought up in brief

04402

1 for a remedy in the 271 proceeding, or is this something
2 you needed to bring to Qwest's attention?

3 MS. DOBERNECK: It's been brought to Qwest's
4 attention. I mean it's my position, excuse me, Covad's
5 position that this is something that needs to be
6 briefed. I mean I would hope on a going forward basis
7 that some of the things we have seen happen recently
8 will stick, that it will become institutionalized. But
9 until such time, I think it is something that would need
10 to be briefed, because it is of serious concern to us.

11 JUDGE RENDAHL: Okay, AT&T.

12 MS. KILGORE: Kilgore.

13 JUDGE RENDAHL: Ms. Kilgore, I'm sorry, I'm
14 having a problem remembering your name today.
15 Ms. Kilgore.

16 MS. KILGORE: We can have our witness
17 available by phone tomorrow to talk about the data that
18 Ken mentioned and would be happy to submit statistics
19 tomorrow as well.

20 MS. SACILOTTO: No, I mean come on, it's 7:30
21 at night, we haven't seen any testimony, there is a
22 process, they had plenty of time. We're not going to
23 agree to that. I mean we need -- I just think that's
24 totally inappropriate to just parachute that in,
25 especially if there's data. I mean, you know.

04403

1 JUDGE RENDAHL: At this point, I tend to
2 agree with Ms. Sacilotto, that if, Mr. Wilson, you
3 stated that this is something you were planning on doing
4 for a future workshop, and I think with this type of
5 information, it's important to give sufficient warning.
6 And to the extent that -- I'm not going to allow it for
7 this workshop. And as I mentioned, we can discuss it,
8 you know, for whatever the future process is in this
9 state and whether it fits into, you know, any other
10 remaining issues that need to be addressed. But I think
11 given the detail, at this point I'm not -- I'm not going
12 to allow it.

13 Ms. Kilgore.

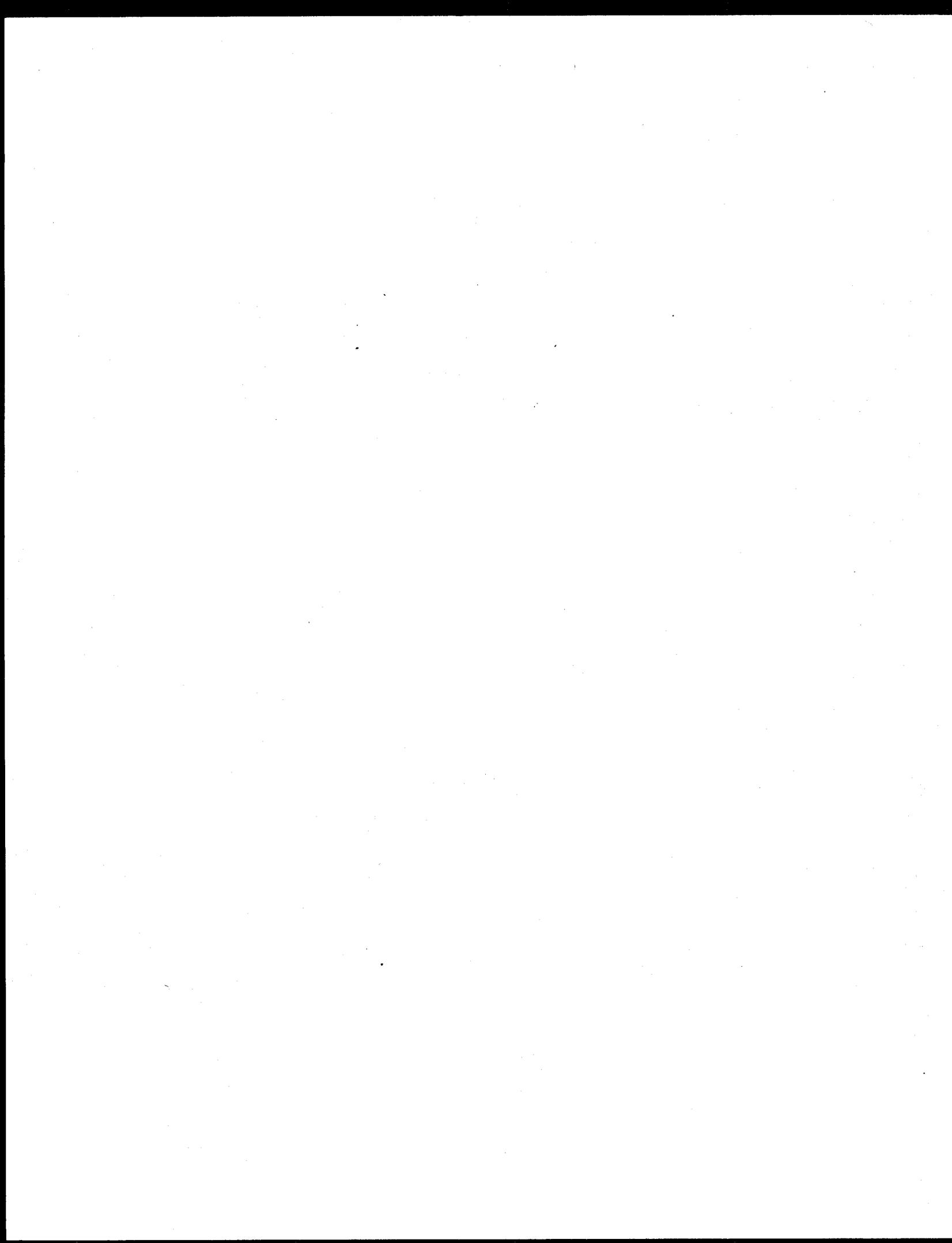
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15 stumbled upon this pattern as we were reviewing data in
16 preparation for what we expect will be a data workshop.
17 I know that the Commission hasn't determined yet whether
18 that workshop will occur, but it was the preparation for
19 that that caused us to stumble on this, which is
20 relevant to the topic, and that's why we thought it
21 might be helpful here, but I respect your decision.

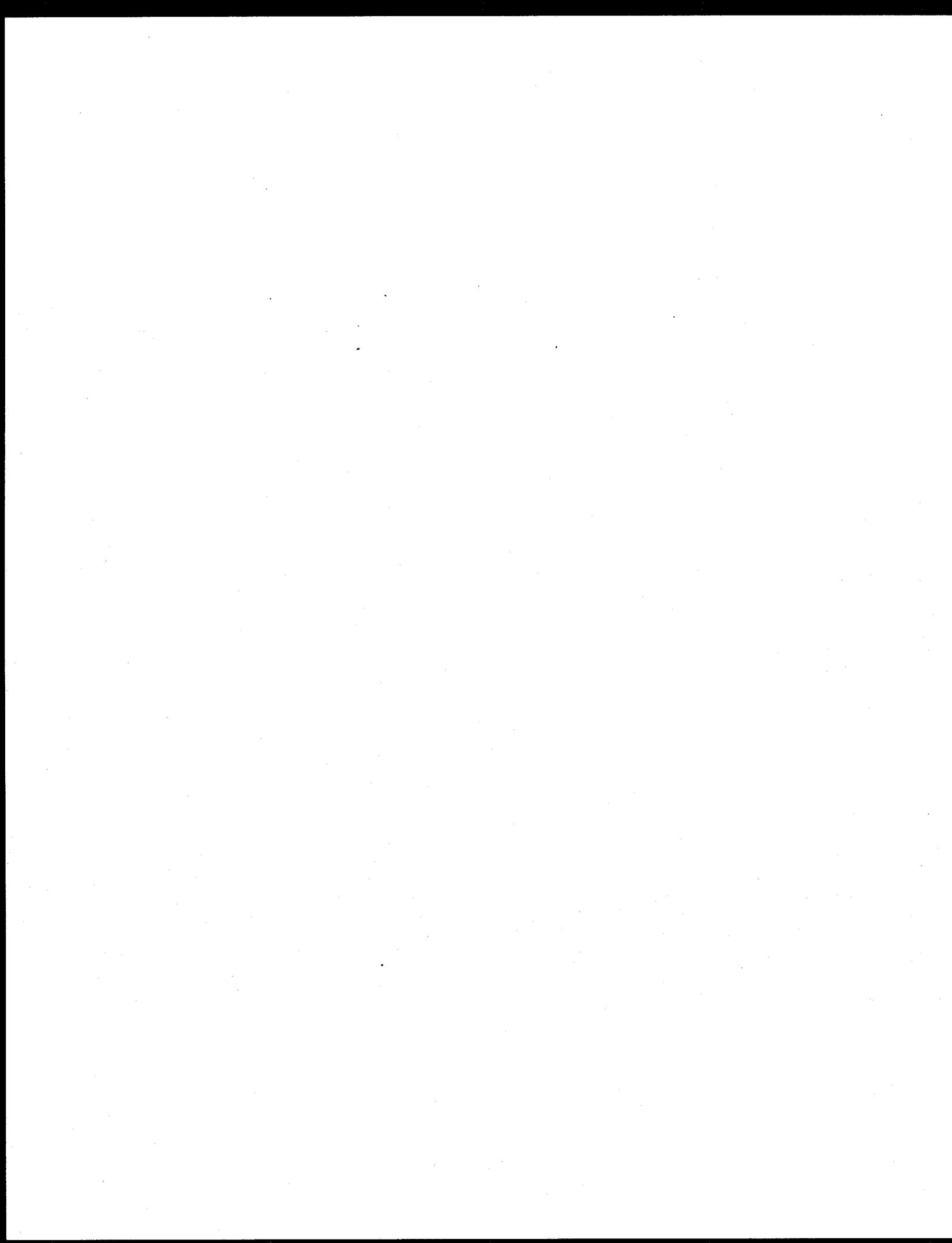
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23 know, I'm not going to allow it period in this process.
24 As I said, I don't know what future process will occur
25 post, after this workshop. But I think it's

04404

1 inappropriate for this particular workshop at this point
2 given the late notice to Qwest.
3 All right, have we -- let's be off the
4 record.

PHX/1227217.1/67817.150
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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.

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

APPEARANCES

(As noted in the transcript.)

04403

1 JUDGE RENDAHL: At this point, I tend to
2 agree with Ms. Sacilotto, that if, Mr. Wilson, you
3 stated that this is something you were planning on doing
4 for a future workshop, and I think with this type of
5 information, it's important to give sufficient warning.
6 And to the extent that -- I'm not going to allow it for
7 this workshop. And as I mentioned, we can discuss it,
8 you know, for whatever the future process is in this
9 state and whether it fits into, you know, any other
10 remaining issues that need to be addressed. But I think
11 given the detail, at this point I'm not -- I'm not going
12 to allow it.

13 Ms. Kilgore.

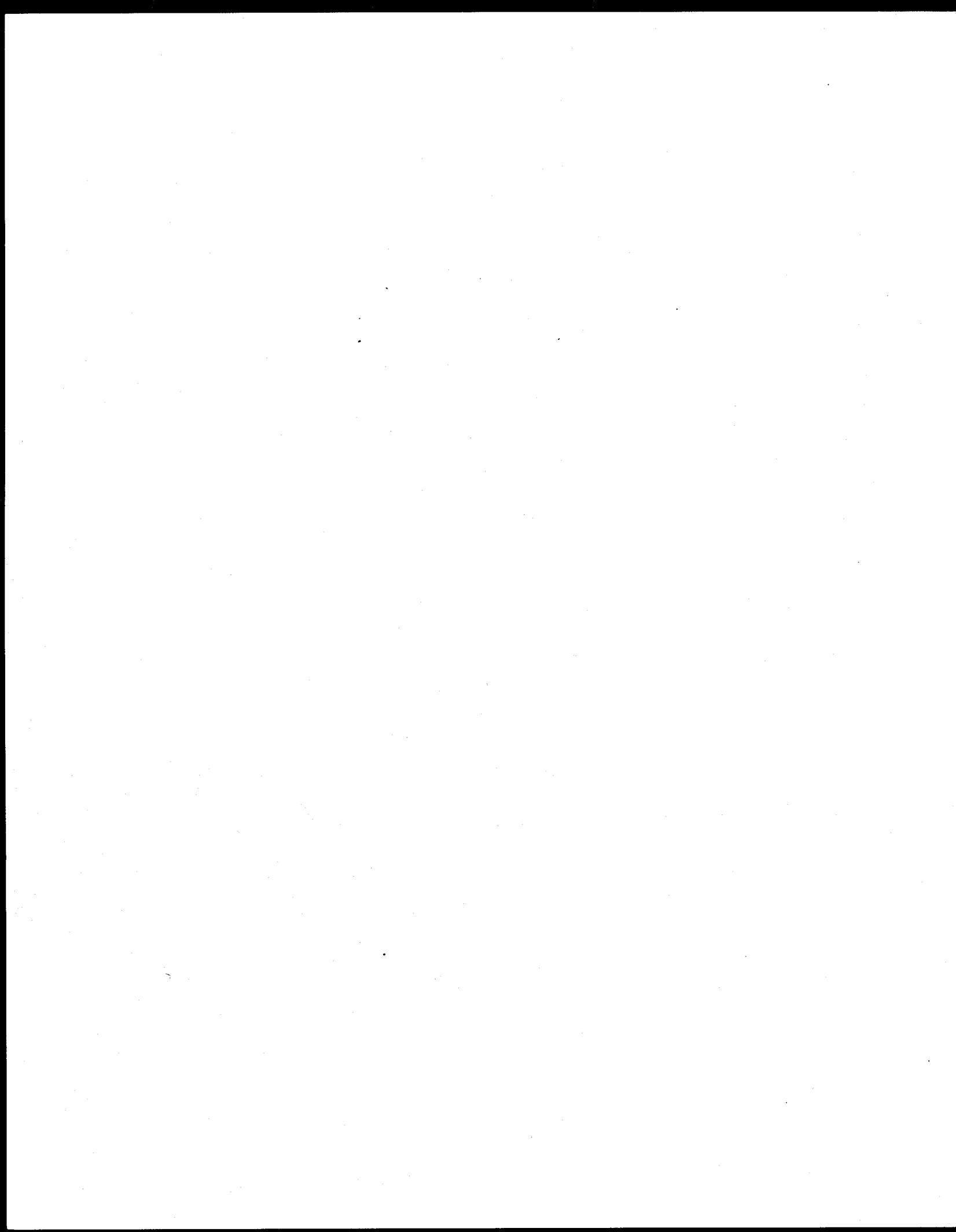
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16 preparation for what we expect will be a data workshop.
17 I know that the Commission hasn't determined yet whether
18 that workshop will occur, but it was the preparation for
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21 might be helpful here, but I respect your decision.

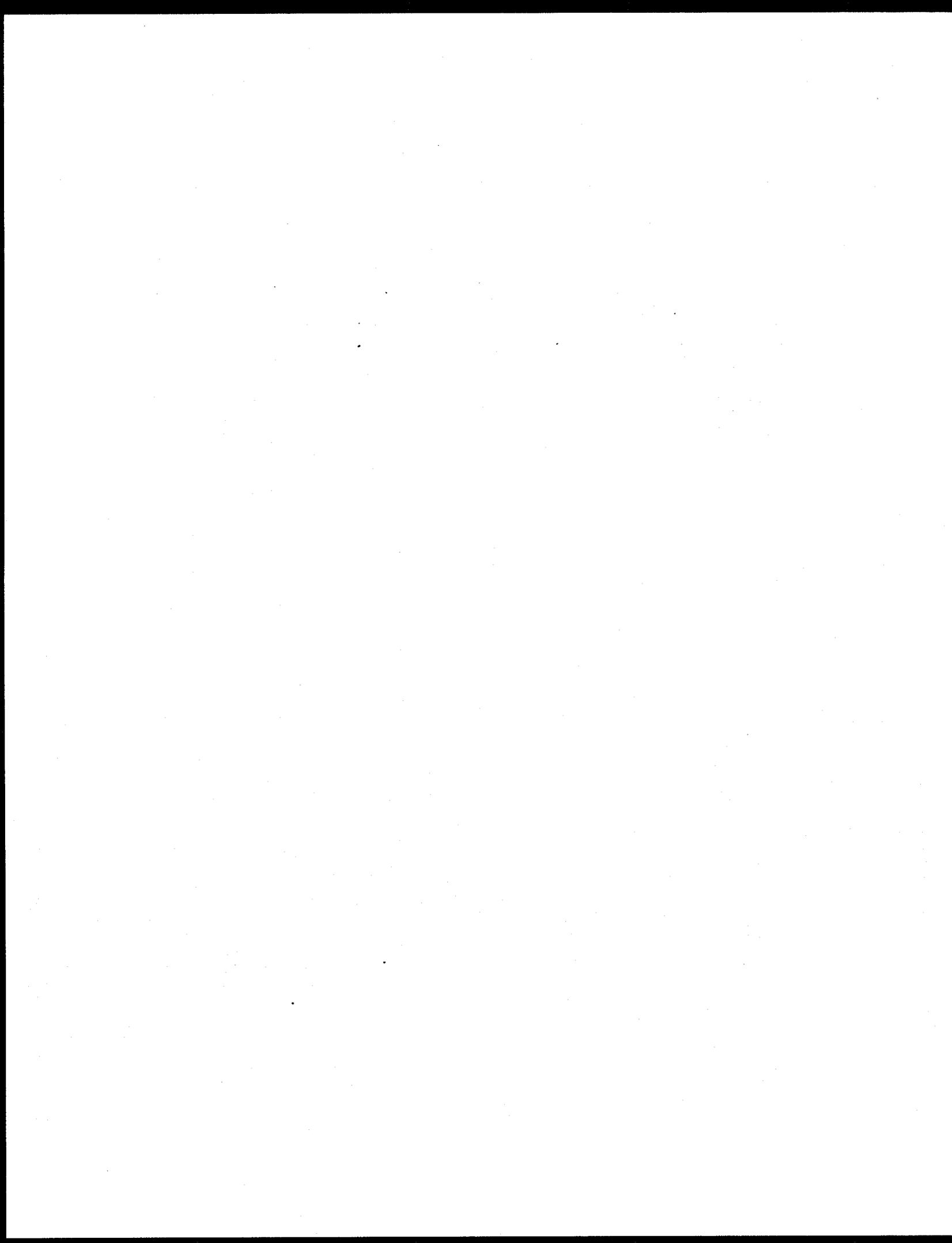
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24 As I said, I don't know what future process will occur
25 post, after this workshop. But I think it's

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1 inappropriate for this particular workshop at this point
2 given the late notice to Qwest.
3 All right, have we -- let's be off the
4 record.

PHX/1227217.1/67817.150
9/24/01





15 MS. LISTON: I am going to pass out one
16 more. We were asked for a revised version of JML-8,
17 one of the exhibits that went out in my testimony on
18 the CICMP notification for build policy. We have that
19 with us.

20 MR. BELLINGER: That issue was?

21 MS. LISTON: It was associated with
22 Loop-31.

23 MR. BELLINGER: Loop-31.

24 MS. SACILOTTO: We'll mark this
25 5-Qwest-77.

1 (Whereupon Exhibit No. 5-Qwest-77 was marked
2 for identification.)

3 MS. LISTON: I did also ask the question
4 regarding, during the CICMP process, what -- if there
5 were any concerns raised and who raised the concerns.
6 I was told that there were concerns raised by Echelon.
7 The concerns raised by Echelon was requests for
8 information regarding future build plans. And
9 Echelon's concern was covered through the negotiation
10 that we have done here in the 271 process, where we
11 have now said we would make available to the CLEC
12 future build plans.

13 So, that was the only one that I was --
14 that I have been made aware of, that came up, and we
15 were able to share the information with Echelon that we
16 will now -- I mean, I don't know if that loop has been
17 completed, now that we have negotiated here in 271,
18 that we will do the future build plans, but that was
19 the issue they raised also. So, we will make sure that
20 they are also aware that we are doing that. They
21 would, of course, be notified of it by the CICMP
22 process, once we finalize how we'll do the future build
23 plans.

24 MR. BELLINGER: Okay. So this is just
25 additional information. It doesn't go to anything.

1 MS. LISTON: Yeah. The latest version.

2 MR. BELLINGER: This is so we can brief
3 it, right?

4 MS. LISTON: Right. The other thing,
5 there was questions yesterday regarding building.
6 Would we build for the CLECs.

7 MR. BELLINGER: Right.

8 MS. LISTON: And I just want to make sure
9 it's clear, if the CLECs are asking for Qwest to build
10 on their behalf, there is still some Qwest discretion
11 in terms of the build -- you know, building. Will we
12 just automatically build? I can't say that we could
13 blanketedly just say, yes, we would build on your
14 behalf. And so, there is some discretion there. I
15 think that's been shared in other workshops. If the
16 CLEC pays up front, you know, there's a chance we are
17 going to go ahead and do the building for them, but
18 there's still some discretion in terms of whether we'll
19 do special construction, but it will be under the
20 special construction provisions.

21 MS. SACILOTTO: As you will see, just so
22 you know -- it probably was clear yesterday -- but the
23 change that was made to the document is the note that's
24 at the bottom, so you don't have to read the whole
25 thing again.



15 MR. BELLINGER: Okay. So that takes us
16 to Loop-31. Maybe you want to go back and pick up some
17 of the other issues?

18 MR. DIXON: I don't think we did 30. Am
19 I wrong?

20 MR. BELLINGER: 30 is closed.

21 MS. LISTON: I was going to 32. Thanks.
22 Loop-31 has to do with held orders. And we did discuss
23 this briefly when we had the discussion on held orders
24 for high-cap facilities also. Qwest has issued,
25 through the CICMP process, the policy regarding held

1 orders. It's explained in Section 9.1.2.1. Also, in
2 Exhibit JML-8, is a copy of what the plan was. And,
3 basically, the policy is that Qwest will build for DS0
4 level primary service, but we will not build new
5 facilities for other types of loops.

6 Qwest did distribute earlier Qwest --
7 5-Qwest-57. That is an exhibit that shows what some of
8 the other ILECs are currently doing in relationship to
9 building new facilities. It's Qwest's position that
10 the FCC said that we need to provide access to our
11 existing network. It does not say that we need to
12 build a new network for the purposes of unbundling.
13 So, the policy has been put in place. We noticed it
14 through the CICMP process, and we are moving forward
15 with, if there are no facilities -- basically, it's a
16 multi-step process. The CLEC issues a LSR, and we do
17 have facilities available, it flows through and it's
18 automatically provisioned. If the CLEC issues an
19 order, and there are no current facilities, but there
20 is a planned job, and we have a ready-for-service date
21 associated with that job, Qwest will accept that LSR
22 and incorporate it with the ready-for-service date of
23 the new facility build. If there are no facilities and
24 there are no plans to build, then Qwest will reject
25 those orders.

1 MR. BELLINGER: So, if you have no plans
2 to build, you said you would reject the order, or, you
3 mean, cancel?

4 MS. LISTON: If there are no plans, we
5 will reject the order, correct.

6 MR. BELLINGER: Reject means?

7 MS. LISTON: We will send it back to the
8 CLEC, saying this order is rejected due to lack of
9 facilities.

10 MR. BELLINGER: Okay. Mana.

11 MS. JENNINGS-FADER: In the material that
12 Sunwest provided, in the supplemental comments filed by
13 Sunwest on May 9th or 10th, it appears, from looking at
14 the documentation that is accompanied -- that
15 submission -- excuse me -- that Qwest is rejecting or
16 sending cancellation notices to, with respect to orders
17 that are held 30 days, or, when it gets to the 31st
18 day, Qwest is now sending out a cancellation notice
19 with respect to the previously held orders. Is that
20 related to this, and could you explain how that works
21 and when this was implemented?

22 MS. LISTON: The, when I mentioned
23 earlier we did the -- a notification through CICMP on
24 the overall build policy, included in that CICMP
25 notification was information to the CLECs explaining

1 bucket was held for customer reasons. In some cases,
2 we had orders sitting held where we actually had done
3 some build jobs. We had gotten a ready-for-service
4 date. We contacted the CLEC and said, you know, you
5 had placed the order a while back, or maybe even been
6 months ago, and we now have facilities, we need to
7 coordinate with you for a due date. And we never got a
8 response. So they were sitting there, pending a
9 customer. So, we had those kinds of three buckets of
10 orders that were sitting in the backlog.

11 In the CICMP process, we said what we
12 were going to be doing is we're going to put in a
13 30-day review cycle, and it was kind of a combination
14 of, here's the CICMP process review cycle. We want to
15 alert you that over the next 30 days, if we don't hear
16 from you on any of your orders that are sitting out
17 there pending, after the 30 days is up we'll start
18 cancelling the backlog. And we'll cancel those orders.
19 So it was a one-time event on the 30-day cycle for
20 clearing out the pending past-due backlog. On a
21 going-forward basis, we wouldn't accept the order. We
22 wouldn't have them sitting there in the backlog.

23 So when I read through Sunwest's
24 testimony, where they started talking through the
25 30-day cycle, it had to do with this one-time event of

1 cleaning out the backlog.

2 MR. BELLINGER: Mana.

3 MS. JENNINGS-FADER: Jean, so that I am
4 clear on this, there is -- is it correct that there is
5 no policy in Qwest to cancel held orders that are 30
6 days old or older, other than this, what you have
7 described as a one-time event to clear out the backlog?

8 MS. LISTON: That's correct.

9 MS. JENNINGS-FADER: One should never see
10 this again; is that correct?

11 MS. LISTON: That's correct.

12 MS. JENNINGS-FADER: How many orders, if
13 you know, were cleared out or cancelled or -- yeah,
14 cleared out from the backlog as a result of this
15 one-time policy?

16 MS. LISTON: I don't have that number.

17 MS. SACILOTTO: Jean, can you let Mana
18 know, like, when the 30 days started ticking?

19 MS. LISTON: The 30 days started at the
20 beginning of this month. It was in the beginning of
21 May that we started that, the 30-day cycle was up and
22 we were working through it. I have not gotten the
23 latest status reports on how far we are through that
24 whole process right now, but it began the beginning of
25 this month that we did -- the 30-day clock was up

1 beginning of May.

2 MS. JENNINGS-FADER: Okay. So it would
3 have started, presumably, on or about the first of
4 April, so that there would have been some notice given
5 to everyone saying, oh, and by the way, you have X
6 number or -- well, let me ask a different question.
7 How did you -- outside of the CICMP process, was there
8 any other notice given to CLECs who may have had held
9 orders related to the lack of facilities that you have
10 discussed?

11 MS. LISTON: There's another process in
12 place associated with held orders, where the CLEC
13 elects to receive reports of what sits in their
14 backlog, what orders are held on their behalf. So they
15 do receive regular information updates in terms of
16 what's sitting in the past-due category. So they would
17 have had that in conjunction with the CICMP.

18 MS. JENNINGS-FADER: Now, all right.
19 Aside from the CICMP notification, was there any other
20 notification sent out? For example, if these reports
21 go out on a monthly basis, reports to the CLECs on what
22 their current backlog is, was there any notification
23 sent with that monthly report, for example, saying, we,
24 Qwest, are doing this, and this is what's going to
25 happen to these orders, unless we hear from you within

1 this 30-day time period?

2 MS. LISTON: I don't know if they sent
3 out something with that report. I am not aware of
4 anything that went out with that.

5 MS. JENNINGS-FADER: So, it was just a
6 CICMP notification, whatever that may have been.

7 MS. LISTON: That was my understanding.

8 MR. WILSON: Won't that change the
9 intervals that are being reported in the ROC process
10 for -- I mean, eventually, when orders would have been
11 completed, the intervals would have been longer than
12 they will show now, assuming the orders are
13 resubmitted.

14 MS. LISTON: Well, to the extent they
15 would be resubmitted, it would have to be that they --
16 that the only way that they would make it back into the
17 system, if we have facilities available, because what
18 will happen, on a going-forward basis, is that we will
19 do the upfront rejection when there are no facilities.

20 MR. WILSON: Are you sure that none of
21 these facilities were DSO loops that would fall under
22 your POLR obligations?

23 MS. LISTON: That's one of the things
24 that I have a question out on, Ken, was to ask how they
25 handled that situation in terms of the DSO level. I

1 don't know that, but I do have a question out regarding
2 DSO level services.

3 MR. WILSON: Any of the orders that were
4 cancelled would be with regard to the unbundling of
5 integrated digital loop carrier?

6 MS. LISTON: Also, my understanding is,
7 based on what we heard from Sunwest's supplemental
8 testimony, that did occur, that there was some
9 cancelling of the IDLC. We have subsequently sent out
10 some information to plug that hole. It was done in
11 error that IDLC orders were cancelled. They should not
12 have been during that 30-day process. So, we have just
13 recently sent back the word that says, let's look and
14 see what happened. Why did those get cancelled? They
15 should not have been.

16 MR. WILSON: I guess I would question the
17 propriety of cancelling orders when there's a disputed
18 issue that kind of overhangs the whole question,
19 namely, the issue that we're addressing at the moment,
20 which is on building of facilities. It sounds to me
21 like you simply unilaterally cancelled a whole lot of
22 orders that applied to this issue. And if you lost the
23 issue, then those would still be valid orders and the
24 interval should apply.

25 MS. LISTON: Well, Qwest believes that,

1 under the FCC rules, we are not obligated to build.
2 We're not obligated to build. The FCC says we provide
3 access to the existing network. Based on what we have
4 seen from the other ILECs, what I have distributed this
5 morning, they are saying the same thing; that there is
6 no -- that there's not a requirement to build.

7 To the extent that a CLEC wants something
8 built, we can do it on special construction. That
9 information is also available by the other ILECs also.
10 They are doing the same thing on special construction.
11 These orders, in terms of on a going-forward basis, we
12 did say, though, that we will provide a build for
13 DSO-level primary services, because there would be a
14 kind of correlation between collo responsibilities,
15 that if they were our retail customer, we would be
16 obligated to build for them, so we'll build. Qwest
17 does not believe we have any obligation to build a
18 network for wholesale purposes for interconnection when
19 the network does not exist.

20 MS. SACILOTTO: And, you know, Ken, your
21 question doesn't get to the incompatibility issue, when
22 a CLEC submits an order for a facility, that we might
23 have a facility but we don't have the one they
24 requested.

25 MR. WILSON: Let's investigate that for a

1 moment. Can you give an example of such an order that
2 would be cancelled?

3 MS. LISTON: That was the one I mentioned
4 earlier, where they have asked for two-wire nonloaded
5 loop, and we don't have copper to go into the
6 community. Where they are asking for the facility,
7 where we do not have copper, and we have no plans to
8 build copper.

9 MR. WILSON: It would seem that, perhaps,
10 that's an example that might be valid, but I can think
11 of many examples where Qwest might -- said that the
12 order was incompatible, but, in point of fact, it
13 wouldn't be, such as maybe a DSL circuit was required.
14 It wasn't immediately available with the technology
15 that was existing, but could have been provided with
16 another type of technology. Would those types of
17 orders be cancelled?

18 MS. LISTON: I did not follow your
19 example at all, Ken. I am sorry.

20 MR. WILSON: Well, say that you're
21 normally providing DSL circuits using the traditional
22 repeater technology. And the order was put on hold,
23 and eventually cancelled, but, in point of fact, it
24 could have been, through some additional investigation,
25 could have been provided over a DSL-type of facility.

1 I am -- I mean, I guess what I am pointing out is
2 you're judging what's incompatible without input from
3 the CLEC. I mean, this whole process seems to be
4 pretty one-sided.

5 MS. LISTON: No, the judgement of
6 incompatibility has to do with service type and type of
7 service the facilities are riding on, based on
8 technical parameters. And that's why I am struggling
9 with what your example was. To the extent that we're
10 looking for DSL-capable facilities, the assignment
11 process will look for what kind of facilities support
12 that. We don't have something called "DSL facilities."
13 We have got copper facilities, and we have stuff that
14 rides on pair gain. And we have got fiber facilities,
15 so we would be looking for something that would support
16 DSL-level service, if that's what you requested to meet
17 those technical parameters.

18 And to the extent that we don't have
19 facilities that support that, like the example that I
20 gave, which is the two-wire nonloaded loop that
21 requires copper, and we have no copper, that is an
22 incompatibility issue. We don't have facilities that
23 support it.

24 MR. WILSON: Well, I guess I was just
25 investigating, since it appears that you cancelled IDLC

1 orders, where I guess you ruled it was incompatible,
2 but we, as we have seen, there are other ways you can
3 provide them. I was just looking at other situations
4 where the same thing could happen. Where the primary
5 technology is not available, but secondary technology
6 could provide the service. There are other examples
7 where that could be the case.

8 MS. LISTON: I just wanted to say
9 something on this one, Ken. That is, I believe you
10 mischaracterized what I testified to. I did not say we
11 cancelled the IDLC orders because they were
12 incompatible. I said I was investigating to find out
13 why they were cancelled, because there was a hole in
14 the process, that they should not have been cancelled.

15 MR. WILSON: Sorry. I assumed that they
16 were cancelled because of incompatibility. That's the
17 most logical reason.

18 MS. LISTON: That's not what I testified
19 to.

20 MR. WILSON: Well, I assumed that, but
21 maybe there was another reason. Maybe, I don't know,
22 you don't like Sunwest. I don't know.

23 MS. SACILOTTO: Ken, that's just
24 inappropriate.

25 MR. WILSON: Well, I mean, you didn't

1 provide a reason. I was making a reasonable assumption
2 that --

3 MS. SACILOTTO: That's not a reasonable
4 assumption, and, you know, I find that a bit offensive.

5 MR. WILSON: My reasonable assumption.

6 MR. BELLINGER: Okay.

7 MR. WILSON: That it was incompatible.

8 MR. BELLINGER: You have taken that far
9 enough. The point was made. They didn't provide a
10 reason other than it wasn't there, I guess.

11 MS. KILGORE: When a disconnect order
12 is -- or disconnect request -- cancellation request --
13 there we go -- is given to a CLEC, is there a reason on
14 the notice that goes to the CLEC for why?

15 MS. LISTON: Yes, there is. It would say
16 it was cancelled due to lack of facilities.

17 MS. KILGORE: Would there be another
18 reason? You said there were several, three, I think
19 buckets of reasons.

20 MS. LISTON: The buckets that I was
21 talking about were the ones that were sitting in the
22 pending past-due bucket, which was because we had them
23 -- we had accumulated them over a period of time, they
24 fell into different categories. On a going-forward
25 basis, it would be that there were -- it would be done

1 right upfront, and you would receive the information
2 upfront saying that there were no facilities available.

3 MS. KILGORE: Okay. Just to make sure I
4 understand this. Historically, when a CLEC submitted a
5 request, and let's say there was switch exhaust, and
6 what they were ordering required something off the
7 switch, that order would have gone into the held order
8 status and basically just sat there, right?

9 MS. LISTON: Correct.

10 MS. KILGORE: Today, what you said is
11 those orders that were just sitting there have been
12 requested to be cancelled. Just a one-time shot.

13 MS. LISTON: Right.

14 MS. KILGORE: On a going-forward basis,
15 if an order is submitted and the switch is at exhaust,
16 what you said is that that order would simply be
17 rejected.

18 MS. LISTON: That's correct. I don't
19 know if I would use the example of switch exhaust.
20 Rather, we have no facilities would be one that would
21 apply to unbundled loops; that we don't have the
22 facilities to support the request.

23 MS. KILGORE: Okay. Is there any way
24 that Qwest is maintaining records of CLEC requests when
25 there is facilities at exhaust, since the orders are

1 simply being rejected on a going-forward basis?

2 MS. LISTON: To my knowledge, there is
3 not any tracking of those orders.

4 MS. KILGORE: Is there a reason why there
5 won't be any kind of attempt to keep track of who is
6 requesting what, and there is facilities exhaust, other
7 than your stated agreement, which is, we don't build.

8 MS. LISTON: Once those orders are
9 rejected, I mean, we don't have anything in our systems
10 or on our databases that reference that. Plus, the
11 other thing we would have -- there really would be not
12 much for us to track. The LSR would have come in. We
13 would have turned around, rejected. It would have
14 never really made it through our systems. It would
15 have been erased through our systems. We're not
16 tracking it, and we don't see a need for us to track
17 it, because we're not doing a build policy.

18 MS. DOBERNECK: This is Megan Doberneck
19 with Covad. Jean, I have a question, or a couple of
20 questions. First, does Qwest or has Qwest, in any way,
21 kept track of those orders that were placed in held
22 status? Is that captured in the PIDs, on what is the
23 basis for the hold, do you know?

24 MS. LISTON: I am trying to remember
25 which -- I did a state check.

1 MS. DOBERNECK: I tried to pull up my
2 PIDs, and I couldn't.

3 MS. LISTON: I did a state check. OP-15
4 tracks pending past dues. And the way that the pending
5 past-due measurement is defined has to do with an order
6 that has missed a due date and has not yet been
7 completed. And it tracks the interval -- the length of
8 interval that it's being held for.

9 MS. DOBERNECK: Do you, assuming that
10 somehow Qwest captures -- or the PIDs capture the
11 percentage of the orders that are held, due to lack of
12 facilities, do you know how that percentage compares
13 with other ILECs, with regard to the number of orders
14 that are held by another ILEC that are out of
15 facilities?

16 MS. LISTON: I don't know that.

17 MR. BELLINGER: There's an FCC report on
18 held orders, by ILEC, by state.

19 MS. DOBERNECK: The reason I think -- the
20 reason why it matters, one of the things Qwest has done
21 is looked at what other ILECs have done. I certainly
22 don't dispute Qwest is trying to say we're acting
23 consistent with other ILECs who have gotten 271. I
24 think to the extent that, for example, for Qwest it's a
25 bigger problem than another ILEC, it may cast a cloud

1 on Qwest's ability to allow what another ILEC would do,
2 for example. So that's where I am going, if you don't
3 have the data that's, obviously, to rely on.

4 MS. LISTON: I guess the one concern that
5 I would have -- this is just kind of thinking off the
6 top of my head. To the extent they are not building
7 for CLECs, they wouldn't have a measurement of
8 something that says that it's held for facility
9 purposes because they are not building. So, I don't
10 know. I mean, they may have their held-order reports
11 in terms of their retail services, but on the wholesale
12 side, if they are not building, what would they be
13 reporting on? So I feel just, you know, I am just -- I
14 am kind of shaking my head. You did trigger a thought.
15 I did want to add to my answer in terms of
16 held-for-facilities reasons.

17 In addition to the OP-15, Qwest did
18 provide information on orders that are delayed due to
19 facility reasons. So, if you look at the performance
20 measurements associated with OP -- I shouldn't talk off
21 the top of my head, but there's delay days, where we
22 say how many days --

23 MR. BELLINGER: OP-6.

24 MS. LISTON: OP-6, thank you. I always
25 want to go 5, because I know it comes in order, but I

1 know it's wrong. On OP-6, it says how many days is the
2 order held past the due date, and it breaks it out
3 between facility and nonfacility reasons. Now, for
4 instance, on conditioned loops, if we don't -- the way
5 that measurements are done today, and we don't make the
6 five-day interval for conditioned loop, because it's
7 not five days, it's 15 days, it would show up on that
8 OP-6 saying we missed the due date by the X number of
9 days for facility reasons.

10 MR. BELLINGER: Julia, did you have
11 something?

12 MS. WAYSDORF: Yeah. I had a couple of
13 clarifications. When, Jean, you answered that now --
14 under the procedure that is now in place, the LSR would
15 be rejected if there were no facilities and it would
16 come back rejected for no facilities, does that
17 indicate that it's an incompatibility issue at all, or
18 does it just say, "no facilities"?

19 MS. LISTON: I don't know if there's a
20 distinction between that or if it's just a generic
21 statement. So, I am not sure if there's a difference
22 between the two.

23 MS. SACIOTTO: How could, Jean, how
24 could a CLEC try to sort of preempt that kind of
25 situation?

1 have analyzed early on there was no copper in that
2 community, and there never was, so why weren't those
3 just kicked out earlier?

4 MS. LISTON: It was because we did not
5 have the policy in place just to kick the orders out.
6 As we looked at this, we realized it was a flaw in the
7 policy, just to have them sit there and go no place.
8 It was causing a lot of backlog issues, both for the
9 CLECs and for Qwest. I know that we have had a lot of
10 discussions through -- with some of the CLECs, in terms
11 of managing the reports, because when they get their
12 reports with their updates, it included all of these
13 same orders over and over again, and but we knew that
14 they would never go anyplace. We didn't have copper.
15 That was part of the impetus for saying, we need to
16 really address this issue upfront. We need to do
17 something drastic and clean this all out, because it's
18 just -- it's not going to go anyplace.

19 MS. WAYS DORF: So, the report, the
20 monthly report that would go out, it would just list
21 the same orders. It wouldn't indicate why they were
22 being held, or that it was an incompatibility issue.
23 There would be no way for the CLEC reading that report
24 to go, this order is never going to go anywhere?

25 MS. LISTON: That was my understanding.

1 It just listed the order.

2 MS. WAYS DORF: Are those monthly reports
3 still going to be issued under this new --

4 MS. LISTON: Right. It will be for
5 anything that's currently held, or does go held. So if
6 it's DSO level, and it's held for lack of facilities,
7 it would be on there. If it's a -- in a situation
8 where it's on IDLC, and we're looking for alternatives,
9 it would go on there. If it was a situation where it
10 was conditioned, and we did not -- we are not able to
11 do the conditioning right away, they would also show on
12 the reports that it was being held, waiting for the
13 conditioning to be completed.

14 MS. WAYS DORF: Okay. So it would give
15 that explanation, waiting for conditioning to be
16 completed?

17 MS. LISTON: I don't know if it shows the
18 explanation on it or not.

19 MS. WAYS DORF: I guess the last question.
20 I am a little confused for when that 30-day -- I don't
21 want to call it a trial. It's not a trial, but when
22 the period, where you were sending out notices, and the
23 CLEC had to react, when did that start? In the
24 beginning of May? I was a little confused by that.

25 MS. LISTON: The end of the 30 days was

1 the beginning of May. I believe it was May 5th.

2 MS. WAYS DORF: So, okay. It began
3 sometime in April. That was Mana's question. And
4 CICMP notification to the CLEC about it was sometime
5 prior to that date.

6 MS. LISTON: Correct.

7 MS. WAYS DORF: Sometime prior to the
8 beginning of April?

9 MS. LISTON: It was in April, when the
10 CICMP notice went out alerting the policy, and then
11 going into the 30-day cycle.

12 MS. WAYS DORF: So, do you know how many
13 days there were between the notice going out and cycle
14 beginning? Were there any?

15 MS. LISTON: I do, but I don't remember.
16 My memory just ran out. The actual notification was
17 distributed on March 22nd, and it included an effective
18 date of May 1st.

19 MS. WAYS DORF: Effective date when the
20 CLEC had to --

21 MS. LISTON: The effective date of May
22 1st was when the process would begin for the
23 cancellation of orders.

24 MS. WAYS DORF: Okay.

25 MS. LISTON: That was spelled out in the

1 CICMP letter. The letter was part of my rebuttal
2 testimony, and the exhibits.

3 MS. SACILOTTO: The April 2nd rebuttal?

4 MS. LISTON: JML-8.

5 MS. WAYS DORF: Okay. Thank you.

6 MR. BELLINGER: Okay. Mike.

7 MR. ZULEVIC: Yeah. I have been trying
8 to work through something in my mind here, having to do
9 with the obligation to build. If we send in an order,
10 and it is rejected because of no facilities, there is
11 an option, then, that Qwest would offer, that you would
12 build additional facilities for us if we pay for it,
13 outside of your normal bill.

14 MS. LISTON: Under the special
15 construction, yes.

16 MR. ZULEVIC: Okay. The thing that's
17 running through my mind has to do with the way that
18 Qwest recovers its costs for facilities in the first
19 place. Can that -- and that you assume, in developing
20 your cost, that there is a certain fill factor
21 associated with the facility, the plant facility that
22 you are looking at setting rates for. And let's say
23 it's 90 percent fill factor, and in a, again, for
24 outside plant. And you reach 100 percent because --
25 and that's what caused our order to be rejected,

1 because of no facilities. Haven't you actually
2 ultimately recovered more than you should have
3 recovered for that particular plant, because you are at
4 100 percent fill rather than 90 percent, at which you
5 set your rates?

6 MS. LISTON: I don't think I would
7 characterize it that way. And, again, I am going to go
8 on record as saying I am not the cost witness. But my
9 understanding of the fill factors has to do with some
10 basic assumptions that are made in the cost study, but
11 are not driving for additional facilities or building
12 facilities or anything like that. And, so, I disagree.
13 I would defer to the experts in terms of cost issues,
14 but I don't think that the fill factor relates to --
15 directly to the issue on whether we have an obligation
16 to build or have an additional recovery process in
17 there.

18 MR. WILSON: Well, I would disagree with
19 that. I was involved, to some extent, in the use of
20 fill factors in the models, and there was also a large
21 dispute between Qwest, or U S West at that time, and
22 the CLEC community, about what the fill factor should
23 be. And Qwest was arguing that the fill factor should
24 be low, because that effectively raises the price of
25 the loops. And CLECs were arguing for higher fill

1 factors.

2 And I think, as Mr. Zulevic has
3 indicated, if the Qwest policy of not building for
4 CLECs is maintained, then, effectively, the fill
5 factors will be higher than was anticipated. Said
6 another way, it is my opinion that the fill factors
7 do -- and the resulting costs to the CLECs do imply
8 building new facilities, and if we are not getting
9 that, then we are paying for facilities that we're not
10 getting.

11 MS. LISTON: Well, we disagree on that,
12 and it is directly a cost issue. My understanding of
13 the fill factor is it's based on our existing network
14 plant issues, on what we traditionally run at, and is
15 not related directly to the build policy.

16 MR. BELLINGER: Mana.

17 MS. JENNINGS-FADER: I would like to go
18 back to the PIDs, please. And I have done what
19 research I can do sitting here, and it includes looking
20 at my old-fashioned paper copy of the PIDs. OP-15 has
21 two measures contained within it. Measure A -- OP-15A
22 measures the average number of business days that
23 pending orders are delayed beyond the original due date
24 for reasons attributed to Qwest. OP-15B is a report of
25 the number of pending orders measured in the numerator

1 of OP-15A that were delayed for Qwest facility reasons.

2 I have now looked at all of these
3 exclusions that are shown in OP-15, and there's no
4 exclusion for Qwest's decision not to build, or Qwest
5 not building the facilities. So, I have a couple of
6 questions. One is, if Qwest is now rejecting all order
7 LSRs that come in that would require a facility build,
8 or that falls within one of the three bases that you
9 gave, right, isn't that essentially wiping out OP-15B,
10 because all of the facilities based delays will never
11 show up anywhere, because the orders can never be
12 placed?

13 MS. LISTON: The ones that will show up
14 in 15B would be the ones that had held at the DS0 level
15 for lack of facilities. That will still show up in
16 15B. The ones that are held for --

17 MR. BELLINGER: I am sorry. It is the
18 DS0 level?

19 MS. LISTON: Right. The DS0 primary
20 service level. So, it would be there, DS0 primary
21 service.

22 MR. BELLINGER: Primary service.

23 MS. LISTON: Primary service.

24 MR. BELLINGER: Which deals with your
25 obligation, is that it?

1 MS. LISTON: That's correct. Those would
2 still show there. If it was held for -- because it was
3 an IDLC issue, and we can't unbundle it, and we have
4 not provisioned it yet, that would show up there,
5 because that would also be the facility reason. And
6 the third category that would still appear there are
7 the ones that are held due to conditioning reasons,
8 that we have not worked, and that would also be
9 considered a facility reason.

10 MS. JENNINGS-FADER: Okay. My concern is
11 that the new approach which Qwest has taken recently
12 appears not to be consistent with the PIDs as they were
13 originally developed, and the process in effect at the
14 time the PIDs were originally developed.

15 And the question that flows from that to
16 Qwest is, have you informed the ROC OSS test about this
17 change in Qwest's approach, and has that been debated
18 or discussed in the ROC OSS test process in order to --
19 that the impact, if any, on the PIDs, might be
20 discussed?

21 MS. LISTON: I don't know if it was
22 brought to the ROC from a PID perspective. We'll, you
23 know, we can find that out, but I don't know if it
24 occurred -- if the discussion occurred. And I think,
25 you know, in terms of what has changed is the amount of

1 information that's going to make it into that
2 evaluation process, you know, in terms of what's -- if
3 you look at the PIDs, and it really does reflect the
4 ones that are pending past due, it will continue to
5 reflect pending past due.

6 What we're saying right now is we will
7 not have as many in the denied pending past due,
8 because we won't just accept them and let them sit and
9 go nowhere. So it's -- part of it was also, let's be
10 upfront about things, and that was part of the whole
11 decision on the plan was, let's be upfront. We viewed
12 it as kind of, you know, almost a win-win kind of
13 situation. Rather than just letting them sit there and
14 go no place, we would rather tell a CLEC, upfront, this
15 is -- we're not going to be able to do it. So, the --
16 but the measurement was based on what was pending past
17 due. There will still be pending past due, we just
18 don't expect we will have as many in that bucket as we
19 used to have.

20 MR. BELLINGER: Okay. Mana.

21 MS. JENNINGS-FADER: And Jean, I think
22 telling folks sooner rather than later is a good thing,
23 right? My concern purely goes to what was understood
24 and what process was in place at the time the PIDs were
25 developed, what the folks who developed those PIDs

1 thought they were getting as opposed to what they may,
2 in fact, be getting when the PID is audited and the
3 results start coming out. I would -- I think it would
4 be appropriate for Qwest to inform the ROC OSS group
5 about this change.

6 And I must say, I get all of the E-mails,
7 and I do my best to read them, and I do not recall
8 seeing anything that informs the ROC OSS about this
9 change.

10 MS. LISTON: We'll check into that and
11 report back.

12 MS. JENNINGS-FADER: Thank you.

13 MS. SACILOTTO: Also, I don't know if it
14 got subsumed within the discussion, but when we were
15 discussing this issue in other places, another part of
16 the -- allowing the CLEC to know upfront, what you are
17 talking about, Mana, would also be included within our
18 agreement to post some of our build plans for them on
19 the ICON database that we have added to the 9.1.2.4 of
20 the SGAT. That was, and, in large part, that
21 discussion arose in the context of this particular
22 issue.

23 MR. BELLINGER: Okay.

24 MS. JENNINGS-FADER: Okay. Thank you.

25 MS. YOUNG: On 9.2.9.1.2.1, you refer to

1 primary basic local exchange service with regard to
2 your carrier-of-last-resort obligations. I think that
3 varies somewhat, but my understanding of what's
4 included in that is just residential, one-party
5 service, or is business included in that?

6 MS. LISTON: The primary business line is
7 included also.

8 MS. YOUNG: So, in the event that you
9 would have, on the retail side, a multi-line business
10 customer calling up and requesting additional lines,
11 and you have no facilities left, are those orders being
12 rejected also?

13 MS. LISTON: For additional lines, they
14 would be rejected.

15 MS. YOUNG: So it's not showing up?

16 MR. BELLINGER: Wait a minute. You said
17 retail, right?

18 MS. YOUNG: Uh-hum.

19 MS. LISTON: Oh, I am sorry. Thank you.

20 MS. YOUNG: Retail. A multi-line
21 business customer asks for additional lines, you are
22 totally out of facilities, are those orders getting
23 rejected or do those show up in our held-order status?

24 MS. LISTON: Retail side shows up in our
25 held-order status.

1 MS. YOUNG: Even though you really have
2 no obligation to build in that scenario either?

3 MS. LISTON: We don't have a POLR
4 obligation to build in that scenario. We do take the
5 held order -- we do take the order. It goes held, and
6 it can sit, and sometimes can sit for a long time. So
7 there isn't -- so the orders do -- they are taken, they
8 are held. I know for myself, when I called in for any
9 additional lines, we didn't have facilities, there was
10 no commitments made to me that I would get an
11 additional line or when I would get it. Basically, I
12 was a retail customer. You can place the order if you
13 want. We don't know for sure if you will get it, or
14 when it will come, and the decision was left to me, and
15 whether or not I wanted to place the order.

16 MS. YOUNG: Would it show up in your held
17 order as far as your retail service quality reporting
18 goes?

19 MS. JENNINGS-FADER: We can maybe
20 clarify.

21 MS. QUINTANA: We can clarify that the
22 definition of held orders only goes to basic local. It
23 does not go to additional lines.

24 MS. YOUNG: Okay. So, it's just primary
25 rest and bis?

1 MS. JENNINGS-FADER: Yes.

2 MS. YOUNG: That's the only thing that
3 shows up in reporting, then. Okay. Thanks. That's
4 what I was getting at.

5 MR. BELLINGER: Okay. Any other comments
6 on this? Okay.

7 MR. DIXON: This is Tom --

8 MS. DOBERNECK: Okay.

9 MR. BELLINGER: I really called on
10 Sarah, Tom.

11 MR. DIXON: I didn't know who you called
12 on.

13 MS. KILGORE: Just a follow-up on what
14 Barb said. So, Jean, basically you said your retail
15 customers are given the option of placing an order,
16 knowing it's just going to sit there until facilities
17 become available, if they ever do. And that sounds
18 like a different policy than what you said to the
19 CLECs. I just wanted to make sure that I understood
20 that correctly.

21 MS. LISTON: You did.

22 MR. BELLINGER: Tom.

23 MR. DIXON: Thank you. I have some
24 questions, Jean, relating to, first, 9.1.2.1, which is
25 the section that's referenced with this loop issue.

1 There's a reference on the first line to, "Qwest will
2 build facilities dedicated..." Can you define what's
3 included in facilities?

4 MS. SACILOTTO: This was done in the UNE
5 workshop. So I think it's intended to be -- it's not
6 loop-specific.

7 MS. LISTON: My understanding is they are
8 using the term generically, basically to refer to any
9 kind of plant that would support the service that's
10 being requested. So, you know, it would be any of the
11 outside plant kind of situations, or if it's being used
12 for other services, like in the UNE world, building the
13 network to support that particular service that was
14 requested.

15 MR. DIXON: All right. Then I want to
16 turn to a reference in the 9.1.2.1.3. I am focusing on
17 the first clause, where it says, "During the normal
18 assignments process..." Is there someplace where the
19 normal assignment process is described, or CLECs have
20 some visibility as to what that is?

21 MS. LISTON: I know that there is -- this
22 goes back to the discussion we had this morning on the
23 normal assignment process. And we have been talking
24 about it a lot. I don't believe it's defined in the
25 SGAT in terms of the normal assignment process, but

1 that's the one where we continually refer to the
2 eleven-step process. And, in fact, I will go ahead and
3 distribute the eleven-step process. Now is as good a
4 time as any.

5 What we realized is that in the -- when
6 we release the information associated with the FOC
7 trial, here in Colorado, we included the eleven-step
8 process as part of that information-sharing. So, it
9 was not one of my exhibits, but rather a part of the
10 FOC definition. In the other jurisdictions, it made it
11 into an exhibit, because we used the Colorado
12 information as an exhibit. So the eleven-step process
13 is the basic assignment process. We discussed it here
14 in Colorado in conjunction with the FOC trial, but it
15 basically walks through how we will look for the
16 facilities that are compatible with the service being
17 requested.

18 MR. DIXON: Okay. Did you want to mark
19 this as an exhibit?

20 MS. LISTON: Thank you. I was going to
21 ask you to let us do that before we went further.

22 MS. SACILOTTO: What are we up to?

23 MR. BELLINGER: 67. Yes.

24 (Whereupon Exhibit No. 5-Qwest-67 was marked
25 for identification.)

1 MR. DIXON: I have some more questions.
2 I am not going to deal with that exhibit, frankly,
3 because I haven't read through it enough to do anything
4 with it, but I will move on.

5 When Qwest builds facilities under
6 9.1.2.1, does Qwest take into account the nature of the
7 facilities requested by the CLEC, or is that determined
8 solely by Qwest? And by that, I am talking about, for
9 example, whether it's a copper facility, a copper that
10 has some digital capabilities, or whether even a fiber
11 facility. Is that something that the CLEC controls, or
12 Qwest controls, again, under 9.1.2.1, not 9.19.

13 MS. LISTON: I am going to give a
14 "depends" answer. To the extent that we are building
15 facilities to our POLR requirements, we would be
16 building facilities to support that overall process.
17 So, it would be whatever is compatible with those
18 services. We're looking, basically, at voice-grade POT
19 service. So, we have some flexibility in terms of how
20 much of that network would be built to support a POT
21 service. So it would not dictate putting a copper
22 network in place.

23 However if we were to, in a situation
24 where the CLEC went into the second part of that
25 paragraph, where they wanted to do some kind of special

1 construction, where they are talking about they want us
2 to build on behalf of them, and they would -- they were
3 providing DSL service, then we would have to put a
4 copper facility in place, because that's what they have
5 asked for.

6 MR. DIXON: With respect to this same
7 paragraph, 9.1.2.1, does the same limitation,
8 concerning the obligation to build, to meet the POLR
9 obligation or the ETC obligation, apply to Qwest when
10 it's building retail facilities? Does that same
11 limitation apply?

12 MS. LISTON: I didn't follow the
13 question.

14 MR. DIXON: In other words, in
15 determining whether you have an obligation to build
16 facilities to meet any retail obligations you have to
17 maintain sufficient and adequate facilities to serve
18 customers, is it your opinion that, for purposes of the
19 constructing network for retail purposes, that this
20 POLR limitation is applicable to you as well, and that
21 you have no obligation to build beyond a POLR
22 obligation?

23 MS. SACILOTTO: Well, I think you are
24 asking her a legal question.

25 MR. DIXON: Well, I am asking her how

1 this applies to the retail level to see if we're
2 getting discriminatory or nondiscriminatory treatment.

3 MS. SACILOTTO: I can tell you, I have
4 the Colorado commission rules here. And what they
5 apply to is basic local exchange service.

6 MR. DIXON: So, Kara, is that your
7 position, then, that's broader than the POLR
8 obligation?

9 MS. SACILOTTO: That is what Colorado put
10 in its POLR obligations, or I don't know if they call
11 them "POLR" or "COLR". I can give you that citation,
12 Tom.

13 MR. DIXON: I think it's Rule 17 of 4 CCR
14 723-2.17. So it appears you are agreeing with me, that
15 for purposes of the retail construction that Qwest does
16 in its network, it follows that rule, the one I have
17 just cited, and the one you referenced, Kara, but for
18 purposes of wholesale construction, it limits
19 construction activity to the POLR obligation.

20 MS. SACRILOTTO: I don't follow that at
21 all.

22 MR. DIXON: I am asking, is it your
23 position, since you raised the rule, that Qwest will
24 comply with, certainly, the retail requirement to
25 provide basic local change service for under, lack of a

1 better term, Rule 17. That's what your position is.
2 That that's the obligation under which Qwest has to
3 build, when it comes to retail facilities?

4 MR. McDANIEL: Tom, this is Paul. What
5 exactly are you citing to?

6 MR. DIXON: 4-CCR-723-2, the service
7 quality rules, and then Rule 17 is the definition of
8 the basic local exchange service. And Kara indicated
9 that you'll build for basic local exchange service.
10 There's also a construction rule in there. I believe
11 it's Rule, maybe even 19.

12 MS. JENNINGS-FADER: Sounds right.

13 MR. DIXON: I guess Kara has the rules.
14 Maybe we can check.

15 MS. SACILOTTO: I am trying to find it.
16 I had the rule.

17 MR. DIXON: I can't get it on the
18 Internet here, or I would get it for you.

19 MS. JENNINGS-FADER: Old days of
20 Tri-State.

21 MR. BELLINGER: Let him finish, unless
22 you wanted to add something.

23 MR. DIXON: I am just waiting for them to
24 find it.

25 MS. KILGORE: I have a different

1 question.

2 MR. BELLINGER: Let's finish this, then.

3 MR. DIXON: Maybe while she is looking, I
4 can move on. I guess this will be a legal question,
5 Kara, so while we're talking about one of the issues,
6 does Qwest have any obligation to build wholesale
7 facilities under state law, that it's aware of, that
8 should be incorporated into this rule, beyond the POLR
9 obligation? I realize that's a legal question. I will
10 throw it out for your consideration, and, perhaps,
11 briefing.

12 MS. SACILOTTO: Yeah. I think we're at
13 impasse on the obligation to build in the UNE workshop,
14 and so I know that that issue has been thoroughly
15 hashed out there.

16 MR. DIXON: I have a couple of other
17 questions, and I would also say, we're dealing with
18 loops now, so it has a little different flavor. In the
19 event a CLEC chooses to request construction under
20 Section 9.19 of the SGAT, it's my understanding, under
21 that provision, assuming Qwest chooses to build that
22 facility, that the CLEC pays for the entire facility;
23 is that correct?

24 MS. LISTON: I am not sure of how the
25 charges in that section of the SGAT work.

1 MR. DIXON: Why don't we turn to that
2 section to see if it will help us, then. If it isn't
3 clear in the section, it probably ought to be made
4 clear.

5 MS. JENNINGS-FADER: That would be page
6 110.

7 MR. DIXON: That's correct.

8 MS. JENNINGS-FADER: Called "construction
9 charges."

10 MR. DIXON: Why don't you go ahead and
11 review that for a minute, then.

12 MS. SACILOTTO: Well, Tom, looks like
13 this was discussed, also, in the UNE workshops, and I
14 don't know to what extent you went to impasse on this
15 provision in that workshop. I mean, it's obvious we're
16 already at impasse on the obligation to build.

17 MR. DIXON: I understand that, but I
18 think we have the right to develop a record for this
19 workshop, and how we might want to brief it here.

20 It appeared to me, and I will let you --
21 it may be subject to check and discussion with your
22 attorney. It appears to me that, under Section 9.19,
23 that the CLEC pays for the entire construction project.
24 And, in fact, that you agree to bid that out and try to
25 get the lowest bidder to do that. Assuming for the

1 moment that's correct -- and, of course, if I am in
2 error, we would get back on record, perhaps after
3 break, and your attorney can correct me -- who owns the
4 project or the facility once -- assuming the CLEC pays
5 for it in its entirety?

6 MS. SACILOTTO: I guess I want to know,
7 was this a subject that was discussed in the UNE
8 workshop?

9 MR. DIXON: I have no clue. I don't
10 remember.

11 MR. McDANIEL: This is Paul. Let me help
12 you out a minute. We did discuss this in the UNE
13 workshop. We did put in this language which references
14 our retail tariffs. As I recall, I don't think we have
15 any problem in doing the same thing. To the extent we
16 would be in the POT basic local exchange service, we
17 would give the same credit that we give on the retail
18 side. If that's under the commission order in our cost
19 docket, we would have to do that. We certainly would
20 be willing to do that.

21 MR. DIXON: It was my recollection
22 Mr. Wendling told us that the line extension tariffs
23 that you used to give credit, all of that no longer --
24 customers' credit -- no longer existed.

25 MR. McDANIEL: That's incorrect. It's

1 still on file. We have filed to change that line
2 extension tariff, but there would still be credit
3 involved. And, so, if you are on the wholesale side,
4 you are provided POT basic local exchange service. You
5 would get the same credit and same requirements as our
6 retail side, consistent with the order in our cost
7 docket.

8 MR. DIXON: Paul, since you appear to
9 understand it, it is my understanding the CLEC does not
10 pay for the entire project and facility under 9.19, if
11 Qwest agrees to build upon CLEC request under this
12 provision.

13 MR. McDANIEL: For basic POT service, if
14 that's what we're talking about.

15 MR. DIXON: This is actually for building
16 UNEs. 9.19 addresses the construction of UNEs.

17 MS. SACILOTTO: You wanted to know about
18 loops. That was --

19 MR. DIXON: I know. I am also asking
20 about it as it relates to UNEs.

21 MS. SACRILOTTO: You are going to have to
22 go to your colleagues that did that, did the UNE
23 workshop, Tom.

24 MS. QUINTANA: I think, just for
25 clarification, this was discussed in the UNE workshop.

1 If my recollection is correct, some of this language in
2 9.19 was actually added after the conclusion of our
3 workshop.

4 MS. SACILOTTO: I don't think it was
5 added in our loop workshop, though.

6 MS. QUINTANA: I think it was added by
7 E-mail, when they did -- the different versions of the
8 SGAT were sent out. That's my recollection.

9 MR. BELLINGER: I think that's correct.
10 It was added after the workshop.

11 MR. DIXON: Of course the UNE workshop is
12 closed, unless we reopen the UNE workshop, if you add
13 new language -- we add this and ask for a further
14 workshop.

15 MS. SACILOTTO: We didn't add any
16 language, I can assure you, in the loop workshop. We
17 have not added one word to this section.

18 MS. QUINTANA: I didn't say during the
19 loop workshop. After the conclusion of the UNE
20 workshop, in one of the following on SGAT sections that
21 was sent out, this language was added, not in any
22 particular workshop, but just in the version that was
23 sent out after, probably as a result of another state
24 or what, I don't know. I understand this language is
25 directed towards UNE. I believe it's applicable to

1 loops, and while we probably shouldn't spend a whole
2 lot of time on it, I think the discussion was valid.

3 MR. DIXON: I guess that means the
4 objection has been overruled, although we don't have
5 any formal objection.

6 MS. JENNINGS-FADER: Thank you for
7 pointing that out.

8 MR. BELLINGER: Glad you understood.

9 MS. SACILOTTO: I am not suggesting that.
10 What I was trying to head-off was a discussion where
11 Tom went on about all of the other UNEs. We're not
12 here talking about all of the other UNEs. We're here
13 talking about loop. Mr. McDaniel answered that
14 question, and so now, you know, we're ready to go to
15 impasse. We discussed it yesterday, and we have
16 discussed it now for an hour today.

17 MR. BELLINGER: Quite a bit has been
18 developed on this.

19 MR. DIXON: I don't mind moving on.
20 Obviously, Qwest apparently doesn't want to answer
21 anymore on this.

22 MS. LISTON: If I look at Section 19, one
23 of the things that was made is a change from making it
24 specific to loops to applying it to all UNEs. I was
25 not in those workshops. But I am making a guess here;

1 that what happened in those workshops was the agreement
2 was made that this does not specifically apply to
3 unbundled loops, but rather applies to all UNEs. A
4 loop is a UNE, and to that extent, this section
5 applies.

6 MR. DIXON: Let me move on. How does
7 Qwest prioritize the planned-for new construction
8 projects under Section 9.19, limited to loops. How
9 does it determine whose project gets built first?

10 MS. LISTON: I don't know the
11 construction process prioritization issues. Jeff, do
12 you have any?

13 MR. HUBBARD: As jobs are funded and fall
14 into the queue, they are basically worked together, if
15 you will. I don't think there's a process to exclude
16 a, if you would, a special construction job from a
17 normal job, or however -- there's no process to exclude
18 anything, Tom. So, I guess I am trying to follow your
19 question completely.

20 MR. DIXON: My point is, presumably Qwest
21 has limited funds and therefore it has to -- it builds
22 some projects and it doesn't build others, or it
23 chooses to build a project in May and another project
24 in June, or whatever. I am just trying to figure out
25 how Qwest prioritizes which projects go in what order.

1 MS. SACILOTTO: That's not what's covered
2 by this provision. This is a CLEC request for
3 construction. It isn't covering our construction.

4 MR. DIXON: That's exactly my point. If
5 there's four CLECs seeking to have projects built under
6 Section 9.19, how does Qwest prioritize whether it's
7 going to build CLEC 1's first, CLEC 2's first, CLEC 3's
8 first or CLEC 4's first. Or do they just build them
9 all simultaneously, as long as the CLEC pays whatever
10 they are supposed to pay.

11 MR. HUBBARD: Tom, that's based on the
12 timing of when the CLEC wants their job. We do have
13 quite a few contractors out there, and if they are
14 working simultaneous jobs, then they're working at the
15 same time, but it's basically on a ready-for-service
16 type of date given to us by the CLEC.

17 MR. DIXON: So, in other words, if I
18 understand you right, the goal would be to meet the
19 CLEC's due date for the project.

20 MR. HUBBARD: That's the goal, yes.

21 MR. DIXON: When a project is constructed
22 for a CLEC, does the CLEC control the size and quality
23 of facilities under Section 9.19? In other words, do
24 you build to our specs or some other specs?

25 MR. HUBBARD: Tom, we build to industry

1 standards, to our specs.

2 MR. DIXON: So, by that, would I also
3 assume, if the CLEC wanted to employ a different fill
4 factor for those facilities, that Qwest would not abide
5 by that fill factor request unless it was consistent
6 with industry standards? In other words, CLEC wanted a
7 higher fill factor and/or a lower fill factor from the
8 traditional industry standard you just made reference
9 to, can the CLEC get that?

10 MR. HUBBARD: Tom, I don't believe that
11 we would build a job based on a fill factor for you.
12 You would basically request us to build a facility with
13 the number of pairs that you want there.

14 MR. DIXON: Right.

15 MR. HUBBARD: That's what we would build
16 for you. Now, if you wanted --

17 MR. DIXON: Fill factor has no impact?
18 It would just be number of pairs we wanted?

19 MR. HUBBARD: Under a special
20 construction type of arrangement, it would be what you
21 wanted, probably to the next cable size. If you want
22 20 pairs to this location, of course we have to get a
23 cable and 25 pair complement.

24 MR. DIXON: Jean, I would like to turn to
25 your Exhibit JML-8, which is entitled -- this was an

1 exhibit that was attached with your testimony on -- I
2 think it's the rebuttal testimony filed in May. It's
3 entitled, "Network Build Position for Unbundled Loop
4 Product."

5 MS. SACILOTTO: That would be your April
6 one, Jean. That's the build policy we have been
7 discussing for two days now.

8 MR. DIXON: I guess we're going to take
9 it on in a third day. Do you have it?

10 MS. LISTON: I do.

11 MR. DIXON: Would you agree with me that
12 the terms and conditions contained in that document are
13 not contained, in their entirety, in the SGAT?

14 MS. LISTON: The SGAT information in the
15 section that we referenced earlier was to tie into
16 that. We did not create a document in the SGAT that
17 has all of the variations in it. But I believe that
18 the SGAT captures the essence of what's in this
19 document and --

20 MS. SACILOTTO: Does the SGAT -- I mean,
21 does the SGAT reference the CICMP process?

22 MS. LISTON: Yes. The SGAT does
23 reference the CICMP process. This was notified through
24 CICMP, and I believe that the SGAT does contain the
25 information; that is, the key essence of what's in this

1 document is also in the SGAT.

2 MR. DIXON: Okay. Then I have got my
3 last point, and that is dealing with the CICMP process.
4 Are you indicating that this particular notice is now
5 in the CICMP process, in fact, going through that
6 review?

7 MS. LISTON: It's already been through
8 that review, and I think I stated earlier that this
9 CICMP -- this document, in my testimony, was the CICMP
10 letter that was distributed on March 22nd to the CLECs.

11 MR. DIXON: Okay. What's the status of
12 this particular product notification here that's in
13 the -- I am sorry -- I guess it's called "Qwest's
14 release notification form." Has it been finalized?

15 MS. LISTON: Yes, it has.

16 MR. DIXON: You can -- so JML-8 is the
17 final version, or is there something different than
18 that?

19 MS. LISTON: I believe there was a
20 revision to it.

21 MR. DIXON: That has been provided in
22 this workshop?

23 MS. SACILOTTO: Served on all of the
24 CLECs through the CICMP process.

25 MR. DIXON: That wasn't my question. I

1 asked if it had been provided in this workshop.

2 MS. LISTON: I don't remember if we
3 brought the revision into this process.

4 MS. DOBERNECK: If it is the same as what
5 was then produced last week, on the build policy, I do
6 have copies here. I don't know if that's the same --

7 MS. SACILOTTO: I would need to see it.

8 MS. JENNINGS-FADER: While we're doing
9 that, just for the record, Tom, the document to which
10 you have been referring, I believe, is Exhibit JML-8 to
11 Ms. Liston's rebuttal testimony, which is 5-Qwest-15,
12 the rebuttal testimony filed in April.

13 MR. DIXON: I believe you said that was
14 5-Qwest-15. That's what my records also reflect.
15 Thank you. Lastly, for -- I am sorry. I will let you
16 review it.

17 MS. LISTON: I was just reminded there
18 was one that -- and we did talk about this. There was
19 a revision to this document, that just went out
20 recently, that had to do with the addition of the
21 language that said, if there are state rules that apply
22 associated with build policies, that the state rules
23 took precedence. That announcement went out, I
24 believe, just recently, through the CICMP process, and
25 we have not brought that in as an official SGAT. We

1 did have discussion about that here though this week.

2 MR. DIXON: Again, I am not trying to get
3 into the legal issue. Are those the same states rules
4 that we just talked about that your attorney brought up
5 was a legal question?

6 MS. LISTON: The state rules that we were
7 talking about was the specific state rules where we
8 have wholesale agreements, and we had quite a bit of
9 discussion about this in the beginning, that there are
10 state rules that say we have got -- you introduced it
11 as an exhibit.

12 MR. DIXON: What's that?

13 MS. LISTON: The issue around the state
14 rules. Oh, that's right. You did it in forecast, we
15 talked about it. Then later on, the CICMP process on
16 the build deal. Same issue. State rules associated
17 with the wholesale -- that we have wholesale merger
18 agreements that have requirements for building. We
19 included that in this policy, and it has been
20 distributed through the CICMP process.

21 MS. SACILOTTO: Was there any other
22 change to the document, Jean?

23 MS. LISTON: To my knowledge, there was
24 no other change to the document.

25 MR. DIXON: Last question I have on that

1 document. Do you know if any CLECs objected to the
2 final form of the document, or was there unanimous
3 consensus?

4 MS. LISTON: I do not know. I do not
5 know that.

6 MR. DIXON: Thank you.

7 MR. BELLINGER: I guess we have discussed
8 this quite a bit. Unless there's something new --
9 Sarah.

10 MS. KILGORE: Sarah Kilgore. I would
11 like a clarification on the exhibit we were just
12 talking about, JML-8. I have looked through it, and I
13 can't find anything that addresses the situation where
14 there is a build for the requested facilities in
15 process, although not completed, and the CLEC submits
16 an order that those facilities could fill. What would
17 happen with that order? Let's say, for example, the
18 build is scheduled to be completed in two months, and
19 the CLEC submits an order today.

20 MS. LISTON: Those are situations where
21 we have a ready-for-service date. And in the current
22 plan, they would not be rejected upfront, because there
23 would be a build plan. In the policy that we would
24 distribute, if there was a ready-for-service date, it
25 would have that information on the order, with the

1 ready-for-service date, and it should not have been
2 cancelled.

3 MS. SACILOTTO: Sarah, that language is
4 included in the SGAT, I believe, and in 9.1.2.1.3.

5 MS. KILGORE: Where is it in this policy,
6 though? The CICMP policy that you sent through? Kara,
7 I guess, if the order isn't cancelled, is it then
8 delayed status with an expected date? What's the
9 status of that order?

10 MS. LISTON: Of which order? I lost you.

11 MS. KILGORE: The CLEC's order where you
12 have an -- I forget what you called it, a build date or
13 expected --

14 MS. LISTON: Ready-for-service date?

15 MS. KILGORE: Ready-for-service date.
16 What status would that order have?

17 MS. LISTON: It would be held pending a
18 job, so it's a held order.

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1 MR. BELLINGER: Okay, anything.

2 MS. KILGORE: Okay, because it's in the
3 delayed status then when your people do the 30-day
4 check on a held order, they would just move past
5 that -- excuse me, because there's an expected date.

6 MS. LISTON: The 30-day -- the 30-day
7 check was a one-time event. We just did it the one
8 time to clean out the backlog, it's not going to be on
9 a going-forward basis. We're not going to be taking
10 the orders up front. The 30-day issue strictly was the
11 one-time event.

12 In the future, going forward, the order
13 will be taken. If there's a planned job and there is a
14 ready -- there is a plan job it will be given the ready
15 for service date and it will be put into the held
16 facility, held for no facilities. It will show up on
17 our reports as held for no facilities.

18 We will not be going through and doing a
19 cancellation of those orders going forward. The 30-day
20 was just a one-time event.

21 MR. BELLINGER: Okay, can we move on?

22 MR. DIXON: I just have one favor to ask:
23 Could we be provided with a copy of the revised JML-8
24 that shows issues about the state laws she made
25 reference to -- or state rules? Could we get that as a

1 copy, please?

2 MR. BELLINGER: We have been exploring
3 this for over an hour, hour and a half now. We've
4 built quite a record on it.

5 MR. DIXON: I would just like a copy.

6 MR. BELLINGER: I'm not questioning you,
7 Tom; I was really not referring to you.

8 MR. DIXON: I'm sorry.

9 MR. BELLINGER: I was thinking we've
10 beaten this up pretty good. If there is something new
11 we can take it, but I don't know that -- we know it's
12 at impasse. I don't know what else to do with it, you
13 know?

14 Megan?

15 MS. DOBERNECK: I have just one question.

16 MR. BELLINGER: Okay.

17 MS. DOBERNECK: Jean -- this little
18 preface there -- if I understand on the retail side, if
19 it's -- if an order is held for more than 30 days, the
20 customer has the choice of hanging on or not; is that
21 correct?

22 MS. LISTON: Um, there isn't a -- there
23 is no 30-day provision on the retail side. It's an
24 up-front decision: Do you want to place the order or
25 don't you want to place the order? We currently have

1 no facilities.

2 MS. DOBERNECK: Isn't it correct that
3 under Qwest's retail tariff that for your retail
4 customers if an order is held for more than 30 days
5 that they are -- that they then receive a credit every
6 month past 30 days during which that order is held?

7 MS. LISTON: That's the -- under our COLR
8 requirements, so it's only for primary basic service.

9 MS. DOBERNECK: Okay, thank you.

10 MS. LISTON: And I don't know if -- I
11 don't know what the Colorado rules are in terms of how
12 that's handled, so I don't know if it's specifically a
13 credit. But it's the only for the services under COLR
14 rules.

15 MS. DOBERNECK: Thank you.

16 MR. BELLINGER: I think we're at impasse
17 without any doubt.

18 MS. DeCOOK: Hagood, I have a question
19 for you.

20 MR. BELLINGER: Yes.

21 MS. DeCOOK: It seems to me that we have
22 multiple issues under this -- this loop issue and maybe
23 we want to create an A and B. It seems to me that A is
24 the held-order issue and B is the build issue.

25 MS. SACILOTTO: Well, can we put B into

1 the previous -- we already have a build one.

2 MR. BELLINGER: What's --

3 MS. DeCOOK: You tell me where.

4 MS. KILGORE: Loop 3 -- no, never mind.

5 MS. SACILOTTO: It's up near the
6 beginning.

7 MR. BELLINGER: I think it's all right.

8 A is the held order process.

9 MS. SACILOTTO: 9-C --

10 (Pause.)

11 MR. BELLINGER: 9-C is high capacity,
12 OC-N loops.

13 I have no problem with A being held
14 orders and B -- which is the held order process, and B
15 being the build requirement.

16 MS. DeCOOK: Okay.

17 MR. BELLINGER: Okay, Mana.

18 MS. JENNINGS-FADER: I'm sorry, I have a
19 factual question to Qwest with respect to the 30-day
20 processes that has been concluded -- the one time
21 event. We have seen some reaction to that processes
22 from Sunwest in their written submission in this
23 workshop. What other response if any has Qwest
24 received from CLECs whose previously held orders have
25 now been canceled?

1 MS. LISTON: I'm not aware of any other
2 comments. I don't know if there are -- I have not --
3 none have been brought to my attention.

4 MS. JENNINGS-FADER: I'm sorry.

5 MS. LISTON: None have been brought to my
6 attention. I'm not aware of any.

7 MS. JENNINGS-FADER: Okay, thank you.

8 MR. WILSON: I think to that note, the A
9 issue probably has the two parts, one would be the
10 removal of the backlog and two would be the change in
11 going forward where orders won't be held for lack of
12 facilities. It's two little different issues.

13 MS. LISTON: But isn't the lack of
14 facility issue the one we just said was B?

15 MR. WILSON: I think that's the -- that's
16 the build policy, it's not -- it's not whether or not
17 you accept them and keep them in -- as part of a PID
18 process -- that event, because eventually that might
19 get resolved.

20 MR. BELLINGER: So you want to make the
21 removal the one-time event on the backlog as a subset
22 of A?

23 MR. WILSON: I think that's probably
24 better.

25 MS. SACILOTTO: Well, can I find out if

1 any of the CLECs here have posted any kind of
2 objections through the CiCMP process to this -- to the
3 build policy. Did any of the CLECs here do that?

4 MR. DIXON: I'll have to take that as a
5 take-back because I don't have anyone here that was
6 involved in the CiCMP process, but I'll see if I can
7 find out.

8 MS. DeCOOK: I don't know either.

9 MS. DOBERNECK: I'm sorry, I missed your
10 question.

11 MS. SACILOTTO: I wanted to know if any
12 of the CLECs here lodged any objection to the build
13 policy in the CiCMP process.

14 MR. ZULEVIC: Mike Zulevic with Covad.

15 Actually I again don't know that we
16 really have any significant involvement yet in the
17 CiCMP process; based upon Mr. Dinwiddie yesterday,
18 including me on the mailing list, I can assure you we
19 will have going forward; but I have no knowledge at all
20 that we were in any way involved with the item being
21 discussed right now, which leads me to another
22 question -- and maybe this needs to be taken up in
23 general terms an conditions -- but I'm kind of curious
24 whether or not there is a tracking that takes place
25 concerning how many people or what companies do

1 voice -- and into in a particular issue, and what the
2 disposition is of that particular show of interest.

3 MR. BELLINGER: Okay. Mana.

4 MS. JENNINGS-FADER: I'm sorry, I was
5 wrong. I had another factual question.

6 With respect to the -- shoot -- the
7 held -- right, with respect to the notice, I asked you
8 if anyone had commented back -- besides Sunwest had
9 commented back. My -- this question is slightly
10 different: Has Qwest sent out notification to the
11 CLECs for every previously held order which is no
12 longer held as a result of this one-time get rid of the
13 backlog -- the backlog push?

14 MS. LISTON: My understanding is that
15 when the order is canceled it would trigger the CLEC
16 notification and so the CLECs would be notified of all
17 the orders that were canceled.

18 MS. JENNINGS-FADER: So -- but do you
19 know whether that notification of cancellation process
20 is complete?

21 MS. LISTON: It would be tied -- it would
22 be tied to when the order is canceled. So I don't
23 know -- I don't know if we've actually completed the
24 whole process yet of canceling all the orders. To the
25 extent that we have canceled it, it would trigger the

1 notification. What I don't know is if we've actually
2 completed the whole cycle yet.

3 MS. JENNINGS-FADER: Okay, good.

4 Thanks.

5 MS. SACILOTTO: Can we --

6 MR. BELLINGER: What was the second part
7 of A, Ken? Was that the order cancellation part, Ken?

8 MR. WILSON: I beg your pardon?

9 MR. BELLINGER: You had 1-A was the
10 one-time event, the second part was the cancellation
11 policy.

12 MR. WILSON: Yes, the fact that new
13 orders that are not -- that have no facilities
14 available will simply be canceled.

15 MR. BELLINGER: The LSR rejections?

16 MR. WILSON: Right. It gets back to the
17 discussion on the PIDs.

18 MR. BELLINGER: It has an effect on the
19 PIDs, yes.

20 MS. SACILOTTO: I'm sorry, I don't know
21 what B is in --

22 MR. BELLINGER: B is the build policy,
23 itself.

24 MS. WAYSORF: A has two parts?

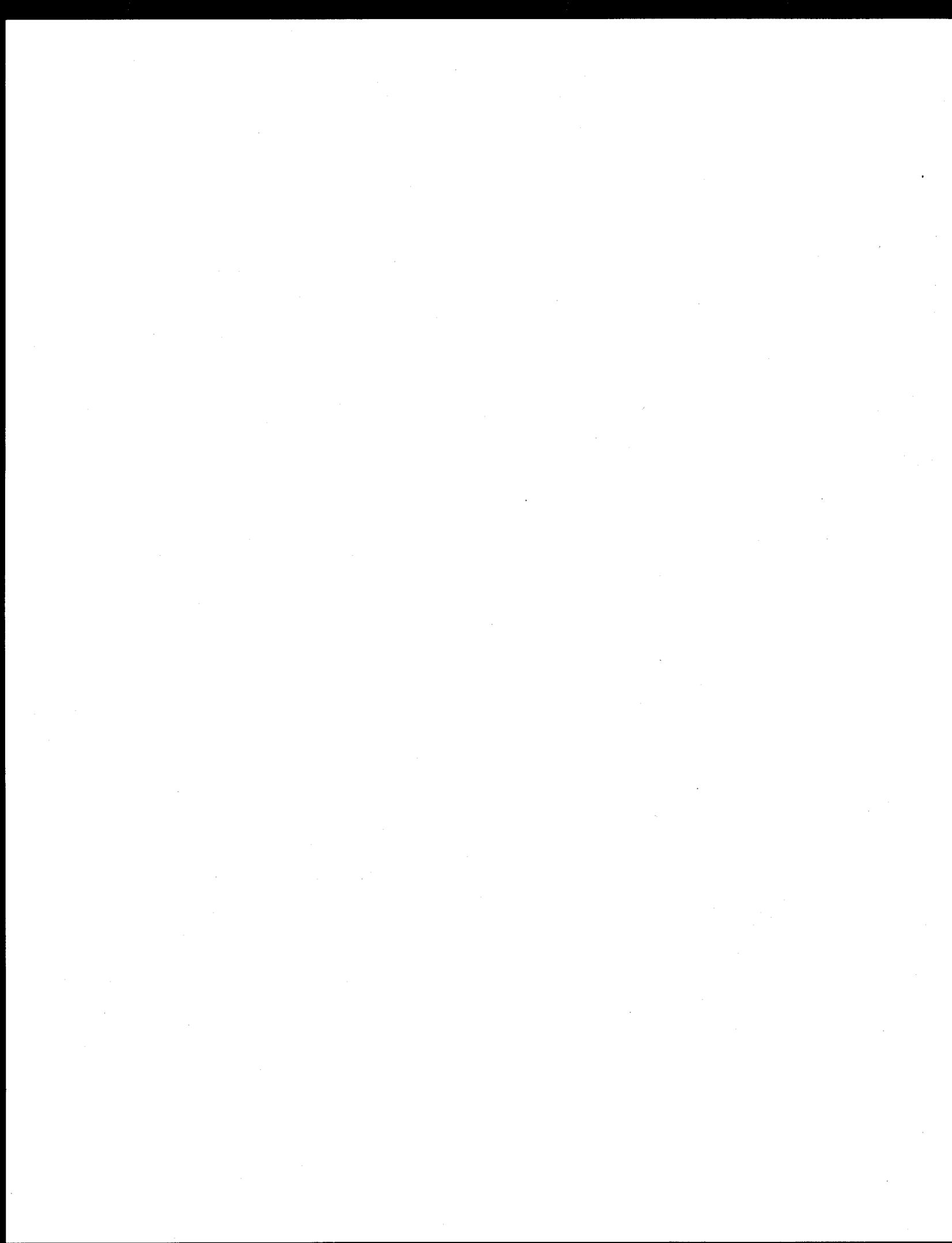
25 MR. BELLINGER: Yes.

1 MS. SACILOTTO: Then, okay, then I missed
2 what part -- A has two parts.

3 MR. BELLINGER: A has two parts. One is
4 the one-time event of the removal of the backlog; and
5 the second part is the LSR rejection policy.

6 So I think we've finished this. I hope
7 the rest don't take as long. We've got a lot to cover
8 this afternoon. So let's try to be back in 15 minutes
9 and see if we can finish.

10 (Recess.)



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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.

Pursuant to continuation, the Technical Workshop
was held at 8:35 a.m., May 23, 2001, at 3898 Wadsworth
Boulevard, Lakewood, Colorado, before Facilitators
Hagood Bellinger and John Schultz.

APPEARANCES

(As noted in the transcript.)

MS. SACILOTTO: We just have some

1 additional information to present regarding what other
2 BOCs are doing with respect to their build policies.

3 MR. BELLINGER: Okay. Want to mark this?

4 MS. SACILOTTO: Yes. This will be
5 5-Qwest-57. At another workshop we were asked to -- if
6 we had any information about what other BOCs are doing
7 with respect to their build policies. That's what this
8 is.

9 MS. JENNINGS-FADER: I am sorry. With
10 respect to their build policies?

11 MS. SACILOTTO: (Nodding in the
12 affirmative.)

13 MS. JENNINGS-FADER: Thank you.

14 MR. BELLINGER: Any comments on
15 5-Qwest-57? I guess not. So the C, I assume, remains
16 at impasse.

17 MR. NICHOLS: I guess. I do have one
18 question on 5-Qwest-57.

19 MR. BELLINGER: Okay. Robert.

20 MR. NICHOLS: That's just, is the
21 language that appears here taken from SGATs or
22 documents, or is it Qwest's interpretation of something
23 they have seen from these RBOCs or do you know?

24 MS. LISTON: If you look on the exhibits,
25 the first one is a Bell Atlantic, and it's based on

1 their SGAT. And it gives the SGAT section number. The
2 next one is SBC's Texas agreement. And then the last
3 one is on BellSouth, based on their template
4 interconnection agreement, and it gives the date and
5 the section numbers. So, this is based on our -- it's
6 not a direct quote from them, but based on our reading
7 of those specific documents in those sections.

8 MR. NICHOLS: Okay. So, it's your
9 reading of their agreement, but you have given the
10 citations to the documents?

11 MS. LISTON: Correct.

12 MR. NICHOLS: Thank you.

13 MS. HINES: I want to bring something up.
14 In Arizona, last week, we got into this discussion as
15 well. Is this where Barry came up with the language
16 about notifying the CLEC community of future builds? I
17 think it was tying into this issue.

18 MS. SACILOTTO: It was within the
19 penumbra of this issue, and we can certainly discuss
20 that language now, if you would like.

21 MS. HINES: I think that would be
22 helpful, especially for those folks that weren't there
23 and don't know about that notification agreement.

24 MS. LISTON: Thank you for reminding us.
25 I had forgotten we had added that new SGAT language in

1 on this issue.

2 MR. BELLINGER: I think that got
3 mentioned earlier, even though, as we pointed out, the
4 COIL that have been working off of was issued prior to
5 those two workshops. There were developments in those
6 workshops that I think are worthwhile, and we would ask
7 that you cover them here.

8 MS. SACILOTTO: We'll be happy to hand
9 that out. We're not sure which issue this fell under,
10 but this is as good as any.

11 MS. DOBERNECK: I think, generally, it
12 came under Covad's issue, which is Loop-3, regarding
13 held orders and building of facilities. Generally
14 that's where. It has come up elsewhere, but we can
15 certainly move it up. We have had problems with that.

16 MR. BELLINGER: It's your option. You
17 want to do it on 31? That's coming up. Why don't we
18 go ahead and do that.

19 MS. KILGORE: I just want to clarify,
20 Megan, we're
not addressing Loop-31 at this time.

21 We're going to talk about this language proposal. I
22 think we still have some discussion to do under
23 Loop-31.

24 MR. BELLINGER: Yeah, we will.

25

MS. KILGORE: I want to clarify, if we're

113

1 going to do Loop-31, there's more.

2 MS. DOBERNECK: That's my understanding.

3 MS. SACILOTTO: This document might
4 transcend both issues.

5 MR. BELLINGER: It's 5-Qwest --

6 MS. SACILOTTO: 58. This is some SGAT
7 language that was developed in a prior workshop. Mr.
8 Orrel's not here to describe this generous offer, I
9 think it was described as. So Jean will.

10 MS. LISTON: Qwest has added this section
11 to the SGAT, Section 9.1.2.1.4, and the discussion
12 revolves around providing the CLEC notification when we
13 have large outside plant facility jobs scheduled.
14 There will be information made available so that the
15 CLEC has knowledge, in advance, of these outside plant
16 jobs.

17 The language that we presented here, we
18 did discuss quite a bit and went through several
19 iterations on fine-tuning the language. Then we did
20 reach consensus on this language. I do believe that we
21 will take it back. I was going to say I wasn't sure if
22 it was in the SGAT Lite or not. I don't think it made
23 it to the SGAT Lite. We didn't have enough time.

24 MR. BELLINGER: Mana.

1 listed in the second paragraph go through what your
2 notification shall include. Is that an exclusive list?

3 MR. BELLINGER: That's my understanding.
4 Okay. Minda.

5 MS. CUTCHER: How does the CLEC access
6 the ICON database?

7 MS. LISTON: My understanding, that's the
8 same database where we do our network disclosure
9 information for switches, or anything like that, you
10 know, facility issues. So, in the same fashion as you
11 would access it for any other kind of network
12 disclosure issues.

13 MS. CUTCHER: Do we have to get a special
14 password?

15 MS. LISTON: I don't believe so.

16 MS. CUTCHER: How much is that database
17 updated?

18 MS. LISTON: My understanding is it's
19 updated, you know, as things change. So, once we have
20 information -- new information that needs to be loaded
21 in, it gets loaded in. So it's on an ongoing basis, so
22 that it's updated. So, whenever -- we have an existing
23 process right now for, like, switches. We had to
24 upgrade switches. Once we have everything in place, we
25 go ahead and move that information to the database. I

1 don't know if it's on a specific update process or if
2 it's just automatic. We may be able to ask Jeff later
3 on, when he comes back in.

4 MS. KILGORE: Section 12 says its updated
5 every two weeks.

6 MR. BELLINGER: Wait, wait. I don't
7 think Minda is quite finished.

8 MS. LISTON: Jeff, the question was on
9 the ICON database. Do you know how often it's updated?

10 MS. CUTCHER: My concern goes back to
11 outside plant jobs may be modified or cancelled. You
12 know, is the database updated as changes are made to
13 each job, or on a regular basis, once a month, once
14 every quarter?

15 MR. HUBBARD: I can't answer that right
16 now because I don't know when the ICON database is
17 updated. When we talked about this issue before, we --
18 and it is in here, I think, in the language, that the
19 date will slip in this and/or could be cancelled
20 completely. So I don't know about an update to the
21 ICON database on this right now.

22 MS. CUTCHER: Okay. I would just
23 suggest, in order for the database to be useful to the
24 CLEC community, ideally we're going to use this to help
25 us sell, if you will. Knowing that a large job has

1 been provided in a certain area, we may opt to sell to
2 that area, so when we get close to a ready-for-service
3 date --

4 (Discussion off the record.)

5 MR. BELLINGER: Speak into the mike. I
6 think that would help.

7 MS. CUTCHER: So when we get close to a
8 ready-for-service date, and the sooner we know when and
9 if those dates will change, it's going to impact our
10 ability to sell, or the advisability of our selling in
11 a particular area.

12 MS. SACILOTTO: When we were here, when
13 we discussed this issue, and in another place, there
14 was a -- we were -- we made this and developed this
15 language rather quickly, and there was a discussion
16 about system implementation issues, and how we were
17 going to need until at least August, or approximately
18 August 1st, 2001, to work through those system
19 implementation issues. And your concern -- I mean, I
20 can try to fold it into that.

21 MS. CUTCHER: Okay.

22 MR. BELLINGER: Okay. Megan.

23 MS. DOBERNECK: One of the things that
24 was part of the agreement, in terms of this language,
25 at least from Covad's perspective, were the

1 representations Qwest made with regard to the date by
2 which this information would be put into the database,
3 as well as the effort that Qwest would make to get it
4 up and running as soon as possible.

5 So I think it would be worthwhile for
6 this record to have Qwest make the same representations
7 regarding the timing of this particular information.
8 And from Covad's perspective, it was, Qwest would use
9 its best effort to have this information available, and
10 in the ICON database on or before August 1, 2001. In
11 the event Qwest determined that the processes would not
12 permit that date, Qwest would use its best effort to
13 get the information up and running as expeditiously as
14 possible.

15 MR. HUBBARD: Qwest did agree, and that
16 stipulation was added in other states, and we'll agree
17 to it here, as you stated.

18 MS. DOBERNECK: Thank you. I think it
19 probably still -- we would still want to know, even
20 once, setting aside the date by which this information
21 will be available, we would request that Qwest confirm
22 on what kind of basis that the ICON database is
23 updated, whether it's on a time basis, weekly, monthly
24 or on a developmental basis, so to speak, when there
25 are changes to a network or additional disclosures,

1 okay?

2 MR. HUBBARD: We would provide that
3 information as we have it. Right now, we don't have
4 it.

5 MR. BELLINGER: Okay. Sarah.

6 MS. KILGORE: I was unfortunately not
7 there when you discussed this language in the other
8 states, so I have a couple of observations. I don't
9 know if this was discussed or not. Building on how
10 frequently the ICON database is updated, I would note I
11 had an opportunity to look at Section 12 of the SGAT in
12 the last few days. And that section -- I don't have
13 the reference, unfortunately, okay? That ICON is
14 updated every two weeks, for whatever it's worth.

15 My concern is at what point will the ICON
16 database be loaded with new-build information? How far
17 in advance of the build will that happen? Was that
18 discussed? I don't know. At what point.

19 MR. HUBBARD: That was not discussed.
20 Until we work through the processes on this, and the
21 procedures on how we're going to implement this in
22 the -- by the August 1st time frame, I can't answer,
23 really, any of the questions on this, because we just
24 don't know how everything is going to be loaded yet in
25 our system.

1 MR. BELLINGER: Okay.

2 MS. LISTON: What we did say, though, is
3 that we would not load jobs until we had -- until we
4 knew that they were committed to jobs. So, we weren't
5 going to put speculation in there, or plans in there,
6 but once we knew that a commitment had been made to the
7 job, and we're into the overall process of making it
8 happen, we would put it in. So we didn't want to put a
9 lot of extraneous stuff in there that may not actually
10 ever go to funding approval or any of those kinds of
11 things. We're only going to put them in, once we
12 actually have confirmation that there really is a job
13 that's going to occur.

14 MR. HUBBARD: I believe we address that
15 as funded jobs, after they have been signed off and
16 funded.

17 MS. DOBERNECK: That was my recollection,
18 that the trigger for that information going in was,
19 once a decision had been made on Qwest's part that job
20 was funded, the information would go in the database.

21 MR. HUBBARD: That's correct.

22 MR. BELLINGER: Mana.

23 MS. JENNINGS-FADER: And knowing that you
24 probably had this discussion elsewhere, would you let
25 us, you know, hear what the definition of funded is

1 that you are using in this provision?

2 MR. HUBBARD: Yeah. I can address that a
3 little bit. A funded job -- our planners and our
4 design engineers submit jobs based on forecasts or
5 requirements, and they go through an approval process,
6 go through a configuration group, if you will, to
7 determine if they are using the right technology. It
8 depends on the price of a job for the approving, the
9 level, if it's the director or a VP.

10 And, after that, after the appropriate
11 signatures are on the job, it goes through our, I think
12 it's called "Resource Allocation Group," to provide the
13 funding, and we get a stamp of approval that the job is
14 funded.

15 MS. JENNINGS-FADER: Okay. Thank you.

16 MR. BELLINGER: Okay. Sarah.

17 MS. KILGORE: I would ask that a phrase
18 be inserted, to the effect of loading -- what he just
19 said, to that first sentence, that phrase; that
20 notification would be made when Qwest has funding
21 approved for the facility build.

22 MS. LISTON: That's in the SGAT. Doesn't
23 it say that we shall include the identification of any
24 funded outside plant in the third line?

25 MS. KILGORE: Could you tie that to the

1 timing of when the ICON database would be updated.

2 MS. SACILOTTO: We just said we couldn't
3 do that right now. We're working through the issues.

4 MS. KILGORE: As soon as practicable
5 after funding is obtained, something to that effect.
6 Without that, we have no comfort that we won't get this
7 notice two weeks before the build is completed.

8 MR. HUBBARD: Sarah, my concern about
9 this, right now, is that we will try and do this, I
10 would imagine, on an automated basis. And I don't know
11 the process -- how long it would take, once a job is
12 funded, to be loaded down into an ICON database. I
13 have no idea at this time. So, I can't answer your
14 question.

15 MR. BELLINGER: As was stated, the
16 processes were not worked out, and this was a generous
17 offer made by Qwest that was gladly accepted, but it
18 was done at the last minute. The agreement was that
19 processing would be developed and everyone would be
20 notified how the process would really work in detail.
21 So, I think that hasn't happened yet. And I don't know
22 that they can answer it until they do that.

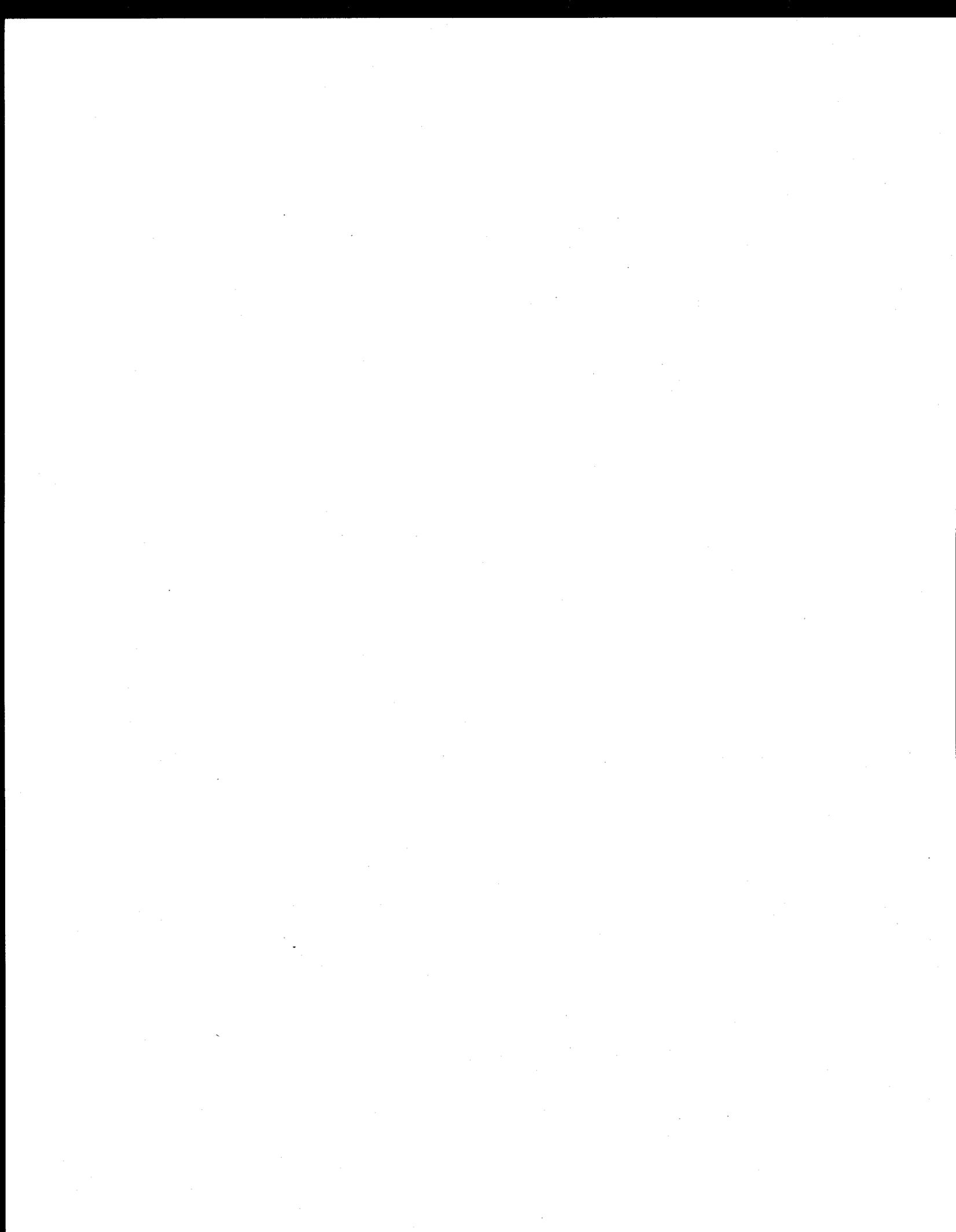
23 MS. LISTON: We also did say that when it
24 was fully developed, we would go through the CICMP
25 process for notification to the CLECs. So, again,

1 there, that's the CICMP process where you have the
2 overall review and comment phase.

3 MR. HUBBARD: Sarah, we just made this
4 generous offer less than a week ago.

5 MS. KILGORE: I appreciate that. But I
6 would point out that this offer was made in conjunction
7 with an issue that we'll discuss under Issue-31. And
8 so, it was in response to a policy change that Qwest
9 made. So, it was not without a tit for tat.

10 MR. BELLINGER: Okay. Very good. I
11 think we have pretty much covered that particular
12 point. I think it's time for a lunch. So we'll see
13 you at 1:40.



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1 BEFORE THE WASHINGTON UTILITIES AND

2 TRANSPORTATION COMMISSION

3 In the Matter of the)
4 Investigation into)
5 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
6 Compliance with Section 271 of) Volume XXX
7 the Telecommunications Act of) Pages 4140 to 4414
8 1996)
9 -----))
10 In the Matter of)
11 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003040
12 Statement of Generally) Volume XXX
13 Available Terms Pursuant to) Pages 4140 to 4414
14 Section 252(f) of the)
15 Telecommunications Act of 1996)
16 -----))

17 A Workshop in the above matters was held on
18 July 11, 2001, at 8:30 a.m., at 1300 South Evergreen
19 Park Drive Southwest, Room 206, Olympia, Washington,
20 before Administrative Law Judge ANN RENDAHL.

21 The parties were present as follows:

22 THE WASHINGTON UTILITIES AND TRANSPORTATION
23 COMMISSION, by PAULA STRAIN and DAVE GRIFFITH, 1400
24 South Evergreen Park Drive Southwest, Post Office Box
25 40128, Olympia, Washington, 98504-0128.

26 WORLDCOM, INC., by ANN HOPFENBECK, Attorney
27 at Law, 707 - 17th Street, Suite 3900, Denver, Colorado
28 80202.

29 AT&T, by SARAH KILGORE, Attorney at Law, and
30 via bridge line by REBECCA DECOOK, Attorney at Law, 1875
31 Lawrence Street, Suite 1575, Denver, Colorado 80202.

32 Joan E. Kinn, CCR, RPR
33 Court Reporter

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1 QWEST CORPORATION, by KARA M. SACILOTTO,
Attorney at Law, 607 - 14th Street Northwest,
2 Washington, D.C. 20005, and by LISA ANDERL, Attorney at
Law, 1600 Seventh Avenue, Suite 3206, Seattle,
3 Washington 98191.

4
ELECTRIC LIGHTWAVE, INC.; XO WASHINGTON,
5 INC.; and TIME-WARNER TELECOM OF WASHINGTON, by GREGORY
J. KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
6 1501 Fourth Avenue, Suite 2600, Seattle, Washington
98101.

7
TELIGENT SERVICES, INC., RHYTHMS LINKS, INC.,
8 AND TRACER, by ARTHUR A. BUTLER, Attorney at Law, Ater
Wynne, LLP, 601 Union Street, Suite 5450, Seattle,
9 Washington 98101.

10 SPRINT COMMUNICATIONS COMPANY, by BARBARA
11 YOUNG, Attorney at Law, 902 Wasco, Hood River, Oregon
97031.

12 COVAD COMMUNICATIONS COMPANY, by MEGAN
13 DOBERNECK, Attorney at Law, 7901 Lowry Boulevard,
Denver, Colorado 80230.

14 RHYTHMS LINKS, INC., by DOUGLAS HSIAO,
Attorney at Law, 9100 East Mineral Circle, Englewood,
15 Colorado 80218.

16 ALSO PRESENT:

17 DAVE DITTEMORE, Commission Staff
TOM WILSON, Commission Staff
18 LARRY BROTHERRSON, Qwest
LAURIE EIDE, Qwest
19 CHRIS VIVEROS, Qwest
JEAN M. LISTON, Qwest
20 BARRY ORREL, Qwest
DENNIS PAPPAS, Qwest
21 JEFF HUBBARD, Qwest
MICHAEL SCHNEIDER, WorldCom
22 CINDY MCCALL, WorldCom
MICHAEL ZULEVIC, Covad
23 MINDA CUTCHER, Covad
REX KNOWLES, XO
24 TIM PETERS, ELI
KEN WILSON, AT&T
25

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1 talking with Qwest about sharing with us their network
2 plans for building out, you know pair gain fiber versus
3 copper. And they said, that's an interesting idea,
4 we'll think about it, we'll get back to you. And here
5 we are six, eight months later with no specifics back
6 from Qwest.

7 MR. ORREL: Minda, one of the things that we
8 did discuss in Arizona was providing certain network
9 build information. In fact, I think it's in our SGAT
10 language.

11 MS. SACILOTTO: 9.2.1.4.

12 MR. ORREL: And we have committed to do just
13 that.

14 MS. CUTCHER: By when?

15 MR. ORREL: August 1st.

16 MS. LISTON: And that was agreed to in the
17 Arizona workshop, we agreed to -- we talked about
18 building, it's a mechanized process, it will be
19 available on the Web, to build plans, it's in the SGAT
20 that we will do that. And during the workshop, we
21 talked about -- we asked the parties, you know, we want
22 to get it mechanized, we'll shoot for August 1st, is
23 that acceptable to the parties, and we got a yes answer
24 at the Arizona workshop. So we have been working
25 towards that August 1st deployment for mechanized

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1 information for build plans.

2 MS. SACILOTTO: And, you know, just -- I mean
3 we -- not only did we put the offer on the table, but
4 before we made it live for prime time, we reviewed it
5 with Covad to make sure that it was acceptable to them,
6 and the only --

7 MS. CUTCHER: I apologize, I wasn't in
8 Arizona.

9 MS. SACILOTTO: -- the only push back we got
10 was to make sure that we made the commitment on the
11 record with regards to timing, and which is what we have
12 done. We are working towards the August implementation
13 date with a good faith commitment to let people know if
14 there's going to be a slippage in that, and I'm sure
15 that Barry -- how are we doing?

16 MR. ORREL: We're doing fine.

17 MS. DOBERNECK: And let me just be clear,
18 because Ms. Cutcher wasn't there, and I had not
19 communicated it to her because we still didn't have a
20 fixed date by which I could guarantee when I could
21 disseminate internally and say, hey, here's some
22 notification that Qwest will be providing to us. So I
23 am assuming from the colloquy on that side of the room
24 that, in fact, August 1 is the target date and that
25 there is at this point no indication that it's going to

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1 be pushed beyond August 1st.

2 MR. ORREL: That's correct, the only issue
3 we're struggling with right now is pass word protecting
4 the information so that CLECs and CLECs alone can access
5 it.

6 MS. DOBERNECK: Okay.

7 MR. ORREL: And that's the only stumbling
8 block that I'm aware of.

9 MS. DOBERNECK: Okay.

10 JUDGE RENDAHL: Mr. Zulevic then Mr. Wilson.

11 MR. ZULEVIC: Just briefly. I apologize for
12 not bringing my fellow worker up to speed on that
13 because I was obviously in Arizona and a part of that
14 discussion, and I do appreciate the fact that that
15 information will be available after August 1st.

16 The only thing that I would like to say is
17 that it didn't go as far as Covad would like to have
18 seen it go in that it does -- it will provide us
19 information on builds, I believe it was over \$100,000
20 and so forth as it's characterized in the SGAT.
21 However, we had also requested that we be provided
22 information as to when you're converting over to a
23 digital carrier scenario in those areas as well and the
24 type of equipment that would be provided in those areas,
25 and Qwest declined to provide that specific information.

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1 MR. ORREL: We had some specific reasons for
2 that, Mike, as you probably recall. The actual
3 equipment information, it's not of as much value to the
4 CLEC in light of the fact that if we're not deploying
5 packetized type technologies over that platform, it's
6 irrelevant for you. Where we have deployed or are going
7 to deploy our remote DSLAMs and remote terminals or
8 remote terminal like structures, we are providing that
9 information to the CLECs. You can request that
10 information any time today. After August 1st, the CLLI
11 codes associated with remote terminals where digital
12 loop carriers exists along with the distribution areas,
13 the DAs, will be made available through the ICON data
14 base. All of this information is being provided and is
15 going to be made available on a Web based application so
16 the CLECs can access it.

17 MR. ZULEVIC: Okay, thank you. I had
18 understood from our discussion in Arizona that it was
19 not going to be provided because it was considered
20 proprietary.

21 MR. ORREL: I will restate that. The
22 equipment type itself, in other words, the type of
23 digital loop carrier we're deploying in our remote
24 terminal, that won't be made available on any Web site.

25 MS. SACILOTTO: But the presence of it will,

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1 right, Barry?

2 MR. ORREL: Right. You will know that there
3 is a digital loop carrier at a specific CLLI code. You
4 will also know if we are deploying DSLAMs remotely. You
5 will know where those are located as well. You just
6 won't know what the equipment type is.

7 MS. SACIOTTO: Jean, could you speak to
8 whether any of that information is available on loop?

9 MS. LISTON: If a circuit is served from a
10 remote terminal, it's shown in the loop, in the loop
11 qualification data base, in the raw loop data. So if
12 it's served from a remote, that will also be in the raw
13 loop data. That's not plan information, but what's
14 currently in existence.

15 JUDGE RENDAHL: Mr. Zulevic, Mr. Wilson,
16 Ms. Cutcher, and Mr. Dittemore, just so we don't lose
17 who is out there wanting to speak.

18 MR. ZULEVIC: I'm still on.

19 JUDGE RENDAHL: Go ahead, Mr. Zulevic.

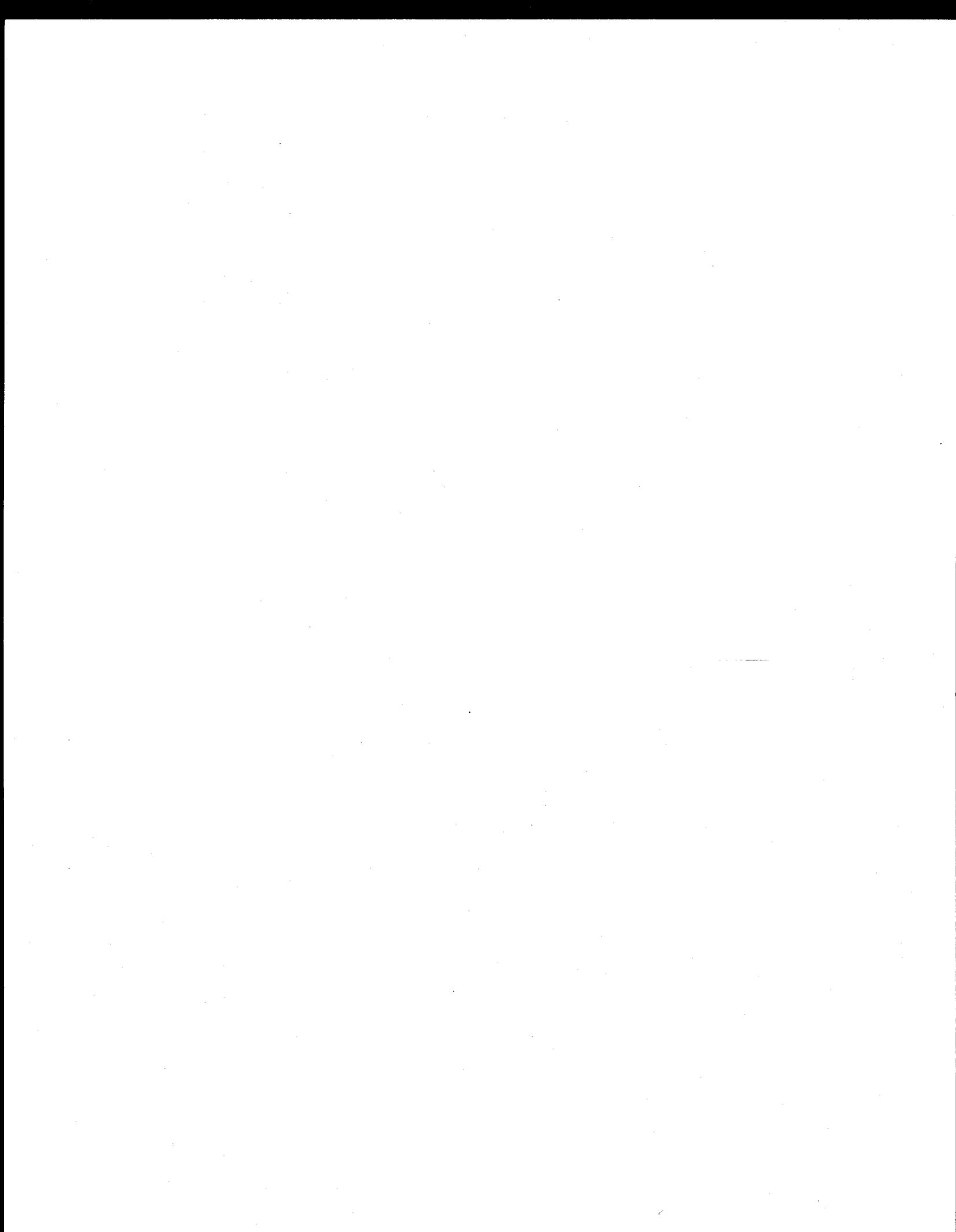
20 MR. ZULEVIC: Okay, and I will make it brief.
21 One of the things that we have an interest in so far as
22 knowing what type of equipment is being deployed is that
23 not all of them will support the types of service that
24 we wish to provide. Some of the digital loop carrier
25 will not support iDSL, for instance. So that's one of

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1 to make is that it's been Covad's experience over time
2 that roughly, in the state of Washington, roughly 37% of
3 our orders placed with Qwest have gone held, and the
4 issue that's problematic for us is that Covad's
5 customers throughout the Qwest territories, specifically
6 in Washington, have basically become conditioned to
7 expect that 40% of the time that they place an order,
8 it's going to go held and now basically not be
9 provisioned, and we have set some customer expectations
10 in that respect.

11 Again, while I applaud Qwest's new build
12 policy and sort of the honesty up front in terms of the
13 ability to provision, I would just suggest that a
14 significant amount of damage has already been done. And
15 just to give some anecdotal evidence to I think the
16 point that AT&T was trying to make, we found in the CLEC
17 world that because of what's going on in the industry,
18 customers or end users, the ultimate user of the
19 service, tend now not to have as great a degree of
20 comfort with the CLEC and are opting instead even though
21 it may gall them to place an order with the ILEC.

22 So what's happening is, for example, if a
23 customer places an order with Covad and it may have been
24 held in the past or is rejected for facilities, then
25 what the end user will do very often is go to the ILEC,



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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.

Pursuant to continuation, the Technical Workshop
was held at 8:35 a.m., May 23, 2001, at 3898 Wadsworth
Boulevard, Lakewood, Colorado, before Facilitators
Hagood Bellinger and John Schultz.

APPEARANCES

(As noted in the transcript.)

24 MS. LISTON: Loop 17 is in reference to
25 SGAT Section 9.2.2.9. Qwest has made revisions to this

1 section of the SGAT and has gone through the definition
2 of the various types of installation options that are
3 available. There are five different installation
4 types. They are spelled out in the SGAT in terms of
5 what the installation type that's available. You can
6 get basic installation, basic installation with
7 cooperative testing, basic installation with
8 coordinate -- with performance testing; and then there
9 are two coordinated installation options, one with
10 cooperative testing and one without cooperative
11 testing.

12 The SGAT spells those sections out in
13 quite a bit of detail in terms of what they are
14 offering. And this has been revised since we've been
15 here in Colorado.

16 MS. SACILLOTTO: We've also added a
17 fourth -- I don't know how many there were, but we've
18 added an additional option at the request of AT&T which
19 appears in 9.2.2.9.7, the project coordinated
20 installation.

21 MS. LISTON: Thank you.

22 MR. BELLINGER: So any questions on these
23 topics?

24 MR. WILSON: I think AT&T is okay with
25 the changes in the language so we can close this issue.

1 I think there will be performance issues on these that
2 will be addressed further in the --

3 MR. BELLINGER: Okay.

4 MR. WILSON: -- in the performance
5 process.

6 MR. BELLINGER: Any other concerns?

7 (No response.)

8 MR. BELLINGER: How about 15?

9 MS. DOBERNECK: I'm sorry, Hagood, I
10 apologize. I don't really see our specific issue in
11 Loop 15 which is whether the cooperative testing that's
12 ordered is actually performed.

13 MS. SACILLOTTO: Go to B.

14 MS. DOBERNECK: Pardon?

15 MS. SACILLOTTO: B as in boy.

16 MS. DOBERNECK: Oh, okay. Sorry. 15-A.
17 Let's move on. I apologize.

18 MR. BELLINGER: Okay, you want to talk
19 about B then?

20 MS. DOBERNECK: Yes, please.

21 MR. BELLINGER: We will let Qwest start
22 if they have anything on B -- anything new.

23 MS. LISTON: B has to do with -- with the
24 performance results associated with coordinated
25 installation and also cooperative testing. In my

1 opening, I gave some information regarding the
2 coordinated testing. The new QCCC -- there are three
3 Cs on that -- is working towards the improving the
4 overall process for coordinated installations. And I
5 presented the three-part test that was done by the FCC
6 for New York on coordinated installations.

7 We've taken a very aggressive steps to
8 improve the overall performance on coordinated
9 installations.

10 In terms of the cooperative testing,
11 based on the information that we had received from
12 Covad, Qwest did -- did go back and look at the
13 cooperative testing issue and come -- we have been
14 working with Covad on this issue that there were
15 instances where it appeared that maybe the tests were
16 not always done. Qwest, as we went back to check that
17 information, found that we were not keeping records
18 associated with, did the cooperative testing actually
19 occur or did not occur?

20 We've made a modification to our internal
21 process so that we will record that information on a
22 going-forward basis. And we will be able it had some
23 checks on that.

24 We've also added SGAT language that --
25 it's in SGAT section -- I'll have to double-check on

1 the section number -- that says if the cooperative test
2 did not occur and the CLEC foregoes the test and says
3 basically, you know, you can't do the cooperative test,
4 Qwest is not ready to do it; and CLEC says, you know,
5 just turn the circuit up anyway, I'll skip doing the
6 cooperative test with you if you aren't ready to do it
7 right now; Qwest will refund the nonrecurring charge
8 for the entire installation option.

9 So if we do not perform the cooperative
10 test and the CLEC -- and it's our fault -- so Covad or
11 whoever it is is ready to do it, Qwest is not ready to
12 do it; and they say, go ahead and give me the circuit
13 anyway, we will waive the nonrecurring charges. And
14 that's spelled out in Section 9. --

15 MS. SACILLOTTO: 9. -- we're going to
16 distribute some new language hopefully in minute but
17 the waiver of the charge appears in 9.2.2.9.3. And
18 9.2.2.9.5.3. The first provision relates to
19 coordinated installation with cooperative testing and
20 then the second one is basic installation with
21 cooperative testing.

22 MR. BELLINGER: Would you give that
23 second reference again.

24 MS. SACILLOTTO: 9.2.2.9.5.3.

25 And we have some additional language. It

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1 might transcend two issues on our list; but it all

2 related to the same SGAT provision, so we put it on one
3 document and we want to call this 5-Qwest-62.

4 (Exhibit No. 5-Qwest-62 marked for
5 identification.)

6 MS. SACILLOTTO: This is as much new to
7 me and Jean. This is language that we have presented
8 that relates to a request that we've received -- I'm
9 not sure if it's an issue number here. It sort of
10 appears like it may relate to Loop 28-C, but I'm not
11 sure because I don't recall. It sort of sounds like it
12 would. But it was a request -- it could -- it
13 certainly relates to this loop issue as well, 15-B.
14 And that was a request that we provide a written copy
15 of the tests that we perform to the CLEC.

16 And we discussed this in another
17 jurisdiction and I believe we reached consensus on
18 this; we just didn't have the language ready at the
19 time because it belonged in several provisions of
20 9.2.9. And to capture them all we had to go back to a
21 computer.

22 So you will see in 9.2.2.9.2.2, that
23 we've agreed that we'll E-mail the performance test
24 results within two business days to a single permanent
25 CLEC address.

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1 That same sort of commitment appears in

2 9.2.2.9.3.1, 9.2.2.9.3.2, 9.2.2.9.5.1, and that's it.

3 And the second change that we made
4 appears in 9.2.2.9.3 and 9.2.2.9.5.3. And this was
5 based on some language recommended by Covad. And we've
6 tried to -- to implement that language here -- I
7 thought it was provided by Covad.

8 MS. DeCOOK: I just have a question on
9 the permanent aspect of the CLEC E-mail address. Does
10 that mean we can never change and give you notice of
11 the change of the E-mail address?

12 MS. SACILLOTTO: Well, what we were
13 concerned about was sending it to John Smith and John
14 Smith leaves and so then he's replaced by John Jones
15 and John Jones leaves. What we were hoping is it could
16 be an E-mail to a place as opposed to a person, because
17 places tend to stay and people tend to go. And we're
18 trying to do this in a way that it could be as
19 mechanized as possible. So to the extent that you can
20 give us a permanent address as we discussed in Arizona,
21 it facilitates that.

22 MR. BELLINGER: A designated might be --

23 MS. DeCOOK: I would --

24 MS. SACILLOTTO: Well, designated doesn't
25 help us with personnel issues, you know, the John

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1 Jones' of the world.

2 MR. BELLINGER: Well, permanent sounds

3 like a long term.

4 MS. DeCOOK: Permanent strikes me as you
5 can never, never, never, ever change the designated
6 E-mail address; and I understand your concern about the
7 personnel issue, but it seems to me that we can
8 designate an E-mail address and then on notice give you
9 a change of that E-mail address.

10 MR. PAPPAS: Dennis Pappas.

11 What's the E-mail address that AT&T uses
12 that to get test results back for the PTA process.

13 MS. DeCOOK: Got me.

14 MR. PAPPAS: I don't know if you could
15 find out --

16 MS. DeCOOK: AT&T.com?

17 MS. SACILLOTTO: That's what we were
18 wondering, if you could find out for us if you have a
19 permanent -- such a single place; it might be whoever
20 sits behind that desk changes all the time, but it's a
21 central repository. And that's what we're looking for
22 is just a single place to send it, rather than to do
23 system upgrades every time there is a change to the
24 person.

25 MS. DeCOOK: And I understand that. And

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1 I have no objection to that; but when you use the term
2 permanent, it suggests that you can never change that;

3 and there may be occasion where we even though we
4 designate an E-mail address and the person changes, we
5 may need to change the E-mail address. So that was my
6 only concern.

7 MR. PAPPAS: Can we do a center-specific
8 E-mail address?

9 MS. DeCOOK: That's -- that's fine.

10 MS. SACILLOTTO: I don't know if that
11 works for --

12 MS. DeCOOK: I don't know if it works for
13 everybody though.

14 MS. SACILLOTTO: A single permanent CLEC
15 E-mail address or single CLEC center E-mail address?

16 MS. BEWICK: Center would probably be
17 better. In the dictionaries we keep in our offices in
18 the CLEC community, we don't have the word permanent in
19 it.

20 MS. SACILLOTTO: I don't want to presume
21 that anybody has centers. I mean some people might be
22 rather small -- a small CLEC may not have a center
23 per se; so I wanted to capture the small as well as the
24 large.

25 MS. LISTON: Well --

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1 MR. BELLINGER: I still think --

2 MS. DeCOOK: And all I'm trying to
3 capture is that you may have on occasion a need to

4 change the designated E-mail. And I just want to make
5 sure we have the ability to do that.

6 MS. SACILLOTTO: Well, if you want to
7 give us some language -- and it would be great if we
8 could have it to -- as expeditiously as possible; and
9 how you could of the craft that in a way that would be
10 capture both of our concerns, we could consider that.

11 MS. BEWICK: I know that, you know, on
12 various different things we have to supply the
13 commissions with addresses, telephone numbers, and so
14 forth. And I can't recall how, for instance in tariffs
15 and so forth, that when they ask for information, what
16 the commissions ask for, but they are looking for what
17 would be a somewhat consistent address.

18 MS. SACILLOTTO: Yeah, but --

19 MS. BEWICK: I don't know what that
20 language is that -- I can't recall what that language
21 is.

22 MS. LISTON: But you might not want your
23 test results going to that person.

24 MS. BEWICK: I'm talking about the
25 language they use when they ask this for that address.

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1 MR. BELLINGER: Okay, designated office
2 E-mail address? Everybody has an office, I hope, of
3 some kind.

4 MS. DeCOOK: It could be your home desk.

5 MR. BELLINGER: It might be. That's
6 their office.

7 MS. SACILLOTTO: John --

8 MS. DeCOOK: I mean, that eliminates the
9 person problem.

10 MS. LISTON: Yeah, but it might -- CLEC
11 designated --

12 MR. PAPPAS: I think that would -- my
13 concern is what happens when you get an auto reject on
14 an E-mail you send because of a change like that? But
15 I guess we'll cross that bridge. If you could --

16 MR. BELLINGER: Call your account
17 representative and say, we need to know what the new
18 address is.

19 MR. PAPPAS: This evening, if you could
20 take a look at performance testing and acceptance,
21 there is a database you get test results back on your
22 retail side today from Qwest, and just see how they
23 administer that E-mail address and it would probably
24 mirror that.

25 MS. DeCOOK: Where would I find that?

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1 MR. PAPPAS: Probably on the retail side
2 of your business.

3 MR. DIXON: Do you happen to know if
4 there is something like that for WorldCom?

5 MR. PAPPAS: The participants I know are
6 AT&T and Covad that do that for the retail services.

7 MR. DIXON: My suggestion -- on behalf of
8 WorldCom, I like Hagood's proposal.

9 And to answer your question, if you can
10 get an auto reject, I think you have complied with the
11 terms of the requirement which was to send it to the
12 designated E-mail.

13 MR. PAPPAS: Very good.

14 MR. DIXON: I don't think -- it's kind of
15 like, you know, when people send us mailings certified
16 mail and we don't go pick them up, it still qualifies
17 as service that they sent it to us. So I would suggest
18 if you send it to the designated a address and get an
19 auto reject or something like that, you have met your
20 obligation.

21 MS. DeCOOK: Dennis, are you talking
22 about where you send our CLEC specific performance
23 data?

24 MR. PAPPAS: No, that's for your retail
25 side of the house, where we send performance test

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1 results on the circuits we turn up for you.

2 MS. DeCOOK: But like the UNE-Ls?

3 MR. PAPPAS: No, retail. That's a
4 finished service.

5 MS. DeCOOK: Like special access?

6 MR. PAPPAS: Yeah.

7 MS. DeCOOK: Okay.

8 MR. BELLINGER: Can we finish this one
9 up? Is that satisfy -- do you want to come back on
10 this?

11 MS. SACILLOTTO: Let's close it and if we
12 get some more robust information overnight -- but I
13 think this language will probably be okay. We'll
14 just --

15 MR. BELLINGER: Do you want designated --

16 MS. SACILLOTTO: Designated office?

17 MR. BELLINGER: Designated CLEC office
18 E-mail address.

19 MR. DIXON: We're going to strike single
20 and permanent.

21 MS. SACILLOTTO: No, it's going to stay
22 single.

23 MR. BELLINGER: Say single and --

24 MR. DIXON: We're stripping permanent and
25 inserting designated; and after CLEC, we're adding

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1 office.

2 MR. BELLINGER: Yes, we can close it with
3 that.

4 MR. DIXON: We'll do that conforming
5 change throughout?

6 MR. BELLINGER: Unless somebody comes
7 back.

8 And then Becky has an issue.

9 MS. QUINTANA: I have a concern that I'm
10 rather surprised one of the CLECs didn't bring up with
11 the addition in 9.2.2.9.3 and 9.2.2.9.5.3, the caveat
12 for the refund reads: Pursuant to the billing dispute
13 provisions.

14 MS. DOBERNECK: We were just simply
15 waiting to get there.

16 MS. JENNINGS-FADER: We're there now.

17 MS. DeCOOK: That's another issue.

18 MS. QUINTANA: Well, go ahead then.

19 MR. DIXON: But, thanks.

20 MS. DOBERNECK: One thing I thought we
21 should do before we get to the language issues
22 specifically is I want to make sure that we have a
23 complete record here as to why this language was added
24 in the first place which was to address the issue of
25 the failure to perform proper testing. So I'll let my

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1 witness who is under oath talk about that.

2 MS. CUTCHER: Yeah, the underlying issue
3 is really that since Qwest agreed to engage in
4 cooperative testing with Covad, specifically, Qwest has
5 never met that obligation 100 percent of the time. And

6 while it's admirable that they are agreeing to pay
7 Covad for not testing 100 percent of the time, for us
8 the real issue is, what is going to be done to ensure
9 that Qwest's technicians do test as close to
10 100 percent of the time as possible, because that is
11 really our assurance policy that we install good loops
12 on the date that we told the customer that they would
13 have that loop and those loops have a chance of being
14 viable throughout the life of their installation.

15 MS. LISTON: Um --

16 MS. DOBERNECK: Could I just ask --
17 Ms. Cutcher, could you describe the process by which
18 this cooperative testing is supposed to take place?

19 MS. CUTCHER: The process that was agreed
20 to between Covad and Qwest goes something like this:
21 Ideally on the FOC date the Qwest technician, upon
22 completion of the loop, will call into the Covad test
23 center and the Covad is given a recognition that
24 perhaps a technician will have to wait and hold for a
25 certain period of time; and we have agreed that if a

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1 Qwest -- or any other ILEC technician for that
2 matter -- has to wait and hold for more than ten
3 minutes, we will allow -- they basically to drop off
4 and Covad would then own the loop without an acceptance
5 test.

6 Covad has installed pretty sophisticated

7 ACD equipment which is able to track how many folks
8 call in, how many folks are on hold, and if so for how
9 long -- how long a time period, and standard means and
10 deviations and all that stuff.

11 And our data shows that there really has
12 been no instance in the recent past where a Qwest
13 technician has had to wait on hold for ten minutes or
14 longer. So that's -- that's a concern.

15 If that condition is not met, what I
16 heard earlier is that Qwest does not have data to
17 support or deny that that has been the case, then why
18 have Qwest technicians not been calling in to
19 cooperatively test with us?

20 MS. LISTON: And I think the testimony
21 that I gave was that we did not have data to confirm or
22 deny it, as opposed to why they weren't holding or why
23 they weren't doing -- we had no data to support or
24 deny. We did not have the tracking information.

25 We have had several discussions on this

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1 issue regarding the -- the problem associated with
2 cooperative testing. And -- and there's a couple of
3 things that are happening: One is we need to do some
4 of that follow-up in finding out with the ten-minute
5 hold -- the information I had received was many cases
6 there is no one available to do the test and that's why

7 the test is not occurring and that Qwest was making
8 that test available.

9 When we had no facts to back it up is
10 when I asked for the tracking to be put in place to
11 make sure we do have that as a tracking and that has
12 been implemented. It's recently implemented since the
13 workshops when this issue was raised.

14 MS. CUTCHER: Do you know when the -- do
15 you know whether or not the requirement to test and
16 process is part of the technician training that you
17 spoke of earlier?

18 MS. LISTON: It is part of the technician
19 training. And we are doing retraining on that also.
20 We're doing retraining in conjunction with the change
21 in the process that we will be tracking and recording
22 when the tests are performed. We also are making sure
23 that there is a clear understanding of the ten-minute
24 hold process for Covad.

25 I have, in another jurisdiction, also

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1 volunteered to meet with the Covad account team and
2 Covad around this issue because there was major
3 concerns around what installation option was being
4 purchased and what the internal interpretation within
5 Qwest was on what was being done. And we're -- I am
6 scheduled to go and meet with Covad's account team and
7 Covad operational people -- I'm hoping in the next

8 couple weeks that we'll be able to do that, to make
9 sure that there is a clear understanding because there
10 were -- there was some confusion regarding the
11 installation options and how they were being recorded
12 on the orders.

13 And we want to make sure that we've got a
14 clear understanding going across the board in terms of
15 that issue. So it is something that's -- that is being
16 worked on. We've put the tracking in place going
17 forward and we've done some additional retraining
18 issues around the cooperative testing.

19 MR. BELLINGER: Do you have some more
20 issues or --

21 MS. DOBERNECK: Well, I want to ask about
22 the language that's been added to -- well, look at sort
23 of as an example 9.2.2.9.5.3 and it discusses the
24 scenario in which cooperative testing has been ordered,
25 the CLEC has been charged for the cooperative testing,

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1 but no cooperative testing was undertaken. And the
2 question I have in reading this, if it's -- when I
3 proposed something like this in another jurisdiction my
4 concern was being compensated for all the times in
5 which we have been able to demonstrate we have provided
6 the data previously when we have paid for cooperative
7 testing -- and we have been charged 100 percent of the

8 time regardless of whether cooperative testing has been
9 performed. And I think this language responds to that,
10 but it certainly doesn't indicate that it provides us
11 with an option to try and recover those costs. And so
12 I think it is deficient in that respect.

13 The second issue I have --

14 MR. BELLINGER: I'm sorry, recover what
15 cost?

16 MS. DOBERNECK: The cost for example that
17 we've incurred in 2001.

18 MR. BELLINGER: In the past?

19 MS. DOBERNECK: In the past.

20 MR. BELLINGER: That's all I wanted to
21 know.

22 MS. DOBERNECK: Because we can document
23 that. We can provide the data and we have provided the
24 data and I understand that Qwest hasn't tracked it
25 itself, but we have the data and we think that should

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1 be sufficient to document and a claim for refund.

2 The second issue is what Becky pointed to
3 is the -- the refund is done in the context of the
4 billing dispute provisions of this agreement. No way.
5 You know, this is something that should happen in --
6 you know, on an ongoing monthly basis. It should not
7 have to be postponed until some dispute resolution
8 process is invoked.

9 MS. SACILLOTTO: I can't address the
10 first issue. I did not interpret our discussion in
11 Arizona as a request for a refund under your contract
12 with Qwest. As you have proposed SGAT language I
13 thought I interpreted it as a going forward basis.

14 So I can address number two, which is,
15 this might not be the most elegantly worded part here.
16 I don't think the intent is to have this go through the
17 six to nine months billing thing; the idea is that --
18 my understanding was that it needed to -- it somehow is
19 an issue that's addressed by billing folks as opposed
20 to -- as opposed to a technician or something. And I
21 was trying to incorporate the concept of how it would
22 be handled in a mechanical sense. And perhaps I'm
23 being even less coherent now, talking, so I would
24 welcome a suggestion.

25 MS. LISTON: Could we just take a couple

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1 minutes off line?

2 MR. BELLINGER: Sure.

3 MS. LISTON: We may be able to resolve
4 this one.

5 MR. BELLINGER: That would be good.

6 (Discussion off the record.)

7 MR. BELLINGER: Back on the record.

8 MS. YOUNG: The language you put forth in

9 5-Qwest-36 for 9.2.2.9.3 appears to be much more
10 liberal and open-ended with regard to waiving
11 nonrecurring charges than the language that you are
12 putting forth in 5-Qwest-62. Can you explain -- I
13 can't imagine CLECs wanted more stringent language
14 between the two; what would happen there?

15 MS. LISTON: And I was getting stuck
16 where you were too. And that's why I called for the
17 break to take a look at it again.

18 If you look at the exhibit that we just
19 handed out, 5-Qwest-62, and you look at Section
20 9.2.2.9.3 the -- in -- above the area where it has the
21 highlighted underlined new section language, if you go
22 right above it, there is a sentence that starts: If
23 Qwest fails to perform cooperative testing due to
24 Qwest's fault, Qwest will waive the nonrecurring charge
25 for the installation option. The parties will attempt

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1 to set a new appointment time the same day; if unable
2 to do so -- and if we can't do it, we'll set a jeopardy
3 and we'll do it.

4 So basically the provision still exists
5 in the SGAT that says if you forego the test we're
6 going to waive the nonrecurring charge right then and
7 there, we're not going to bill for it. And that was
8 the piece -- I was missing it myself a minute ago,
9 wondering where the language was. So what we're saying

10 on a going-forward basis is if a cooperative test was
11 ordered on the installation option, and for whatever
12 reason at turn over to the CLEC, Qwest is not able to
13 perform the cooperative test with the CLEC at that time
14 and the CLEC foregoes the test, says, you know what,
15 just give me the circuit, I don't want to do the
16 cooperative test, and reschedule it; we're not going to
17 do it, Qwest will waive the nonrecurring charge for the
18 entire installation option at that time and will not
19 bill it.

20 And that is going to be at the discretion
21 of the CLEC saying, I don't want to do the test or I
22 want it to be rescheduled, when you can get it back on.

23 The following provision really had to do
24 with, if for some reason they believe there is a
25 dispute issue where we billed it incorrectly, on a

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1 going forward basis we will not be charging when we do
2 not do the cooperative test due to our fault. That's
3 going to be our internal methods and procedures. So
4 this last one -- we think we may have to take this as a
5 take-back because Qwest's -- Qwest's position when we
6 put this additional language in was saying, if there is
7 any kind of dispute, it goes to billing dispute, but we
8 weren't taking away the option that said, if at the
9 point in time it does not occur, we will just

10 automatically waive that nonrecurring charge. That's
11 still in the SGAT.

12 MS. YOUNG: That's my confusion, that
13 implies it would be waived regardless whether
14 rescheduled or not. And I think what I'm understanding
15 you to say is your intent with that paragraph was you
16 would waive it, assuming the CLEC chose to forego the
17 test, period; but you would not waive it if the CLEC
18 rescheduled the test. And that's not what this says to
19 me.

20 MS. LISTON: And we did have an error in
21 the SGAT language that we picked up the last time and
22 it carried over to the SGAT Lite in terms of foregoing
23 the test.

24 The reason that Qwest had originally --
25 why the Qwest position is if the test is for -- if they

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1 forego the test, is because we would not actually be
2 performing it and we'll waive all charges. So it has
3 to do with basic installation, everything; we're going
4 to have waive it -- not just the cooperative testing
5 piece of it. If we do the test, even though we
6 reschedule it, we do believe that we should be allowed
7 to recover the nonrecurring charge associated with the
8 installation and with cooperative test.

9 MS. SACILLOTTO: Yeah, I think, Megan, I
10 apologize; I think we have to take the language back.

11 I wasn't thinking about the interplay between the two
12 and I also did not interpret it as related to a
13 specific request from Covad for refund. I can't -- you
14 know, that's -- that's something that has to be
15 disputed under your interconnection agreement. So I
16 think we have to take that language out as it's
17 written. It's not -- it's not implementable properly.

18 We'll keep the original one that Jean is
19 talking about waiving the entire installation charge if
20 CLEC foregoes.

21 MR. DIXON: I'm sorry, when you talk
22 about taking language out, you are talking about the
23 new language at the end of not only 9.2.2.9.3, but also
24 9.2.2.9.5.3?

25 MS. SACILLOTTO: Correct.

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1 MR. DIXON: Right. And it would seem to
2 me, based on what I heard Jean say, that that language
3 seems to work wonderful if we just strike the language
4 that says, pursuant to the billing dispute provisions
5 of this agreement; because I didn't -- I thought it
6 comes back either way. And the only time that's
7 relevant is if there is a dispute over that issue or
8 whether you got your money back. So -- I just throw
9 that out, recognizing you are taking it back.

10 MR. BELLINGER: Mana?

11 MS. JENNINGS-FADER: Jean, with respect
12 to the original
13 language of 9.2.2.9.3, before the new
14 stuff was added at the end, okay, the sentence that
15 starts -- that states: If Qwest is not ready within 30
16 minutes of scheduled appointment time, Qwest will waive
17 the nonrecurring charge for the installation option,
18 period unquote. That sentence, you mean that -- Qwest
19 meant that to -- thought that that meant waive it if
20 the CLEC opts to take the line without the testing?

21 MS. LISTON: There's -- there's really
22 two issues in this -- in this paragraph. And it does
23 get kind of confusing in here. We really have two
24 different refund -- not refund, but waiver policies
25 embedded in the same language. There is one that says,
if we miss the appointment time by 30 minutes, we'll

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1 waive the nonrecurring charges, period. So if we miss
2 the appointment, we have the nonrecurring charges --

3 MS. SACILLOTTO: Irrespective of whether
4 the test is later rescheduled and done some other time.

5 MS. LISTON: Correct.

6 MS. JENNINGS-FADER: Okay.

7 MS. LISTON: So in that scenario we will
8 automatically waive the nonrecurring charges if we miss
9 our appointment.

10 MS. JENNINGS-FADER: Okay.

11 MS. LISTON: We went one step further and
12 said, if we make the appointment on time but we fail to
13 do the cooperative test and it was our fault that we
14 failed to do the cooperative test, that's another
15 condition that would kick in the waiver policy. So,
16 you know, we've got kind of a double hit here.

17 If Qwest doesn't perform on time, we'll
18 waive the nonrecurring; and furthermore, if we make the
19 time, but we don't make the cooperative testing and
20 it's our fault that we didn't make the cooperative
21 testing, that would be another condition that we would
22 waive the nonrecurring charges.

23 MS. JENNINGS-FADER: But the second
24 condition you will waive it only if the CLEC elects to
25 forego the testing in its entirety?

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1 MS. LISTON: That's correct.

2 MS. JENNINGS-FADER: And that's the
3 additional language that was added in Exhibit
4 5-Qwest-62?

5 MS. JENNINGS-FADER:

6 MS. SACILLOTTO: I don't think that was
7 add questioned in 5-Qwest-62. I think it should have
8 appeared in the -- in the SGAT Lite.

9 MS. YOUNG: I think the confusion is that
10 it doesn't. There is nothing that talks about
11 foregoing that test.

12 MS. SACILLOTTO: Oh.

13 MS. YOUNG: That's why the language is
14 just really great -- and we'll take it.

15 MR. BELLINGER: You think you have a
16 take-back. I think that's -- take it back and redo it
17 and then we'll start over.

18 Penny?

19 MS. BEWICK: Yeah, again in the
20 multi-state workshop, the last one I brought up this
21 question in regards to this language and I will bring
22 it up again here because I believe it is going to be a
23 take-back there; and that is what I think I heard you
24 say, Jean, is if we missed -- if you miss the
25 appointment, it's your fault, you failed to do -- and

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1 you don't -- or you make the appointment but you fail
2 to do the cooperative testing and we decide we want the
3 cooperative testing done, I thought I heard you say you
4 were going to charge for that cooperative testing
5 because you should be reimbursed for doing that. And
6 my question to you would be, if you failed to do the
7 cooperative testing so we have to reschedule it for a
8 later date, would Qwest be willing to discount the
9 nonrecurring charges for the cooperative testing for
10 the inconvenience of the CLEC? If they were going to
11 charge anything at all, I don't think it should be the

12 full nonrecurring charges, there should be some
13 compensation contemplated because of the fact that you
14 didn't do the cooperative testing.

15 And I believe that when I brought that up
16 before that that was something you were going to think
17 about. And I don't know if that's been thought about
18 or what, but I wanted to bring it up here because I do
19 think that if in fact you haven't done the cooperative
20 testing and it's your fault you haven't done it, that
21 the CLEC shouldn't have to pay the full burden of that
22 nonrecurring charges.

23 MS. LISTON: Um, at this point the Qwest
24 position is that to the extent that we actually do
25 perform the cooperative test for the CLEC, that we

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1 should be compensated for that activity, both for the
2 basic installation which we performed and the
3 cooperative testing. So we are not willing to put a
4 prorated or discounted option in place if we -- if we
5 had to reschedule the appointment.

6 MS. DOBERNECK: Kara, I just wanted to be
7 clear -- and I assume you probably recognize this -- I
8 certainly don't object when talking about the language
9 when there is on a going-forward basis a charge for a
10 cooperative test that wasn't actually performed, we
11 certainly don't object on a going-forward basis of
12 getting a refund in that context. The question is

13 whether it would be more in terms of on a looking
14 backwards for a test that had not been performed in the
15 past; so I just wanted to be clear that I don't object
16 to the going forward, I just simply want more.

17 MS. SACILLOTTO: I didn't think you
18 objected.

19 MS. DOBERNECK: Okay, I just wanted to be
20 clear.

21 MS. SACILLOTTO: I had misinterpreted
22 what you wanted on the refund thing. And I can't --
23 based upon now what I'm hearing, I can't put that
24 language in.

25 MS. DOBERNECK: That's fine.

232

1 MR. BELLINGER: Mana?

2 MS. JENNINGS-FADER: With respect to the
3 existing SGAT Lite language about when Qwest will or
4 will not waive the nonrecurring charges for a failure
5 to test, if you compare the language of 9.2.2.9.3 to
6 the language of 9.2.2.9.5.3, you will see that the
7 proviso in the first sentence of 5.3.4 has the language
8 about if -- you will waive if the CLEC foregoes the
9 testing. So you might want to consider matching those
10 two texts up.

11 MS. SACILLOTTO: It appears it used to
12 match. Something happened in just -- in the crush of

13 getting the SGAT Lite out. So we'll fix it.

14 MR. BELLINGER: Okay. I show it's 5:00.

15 MR. DIXON: Me too. I have a brief to
16 write for tomorrow and so it's time to quit.

17 MS. JENNINGS-FADER: I thought that would
18 be Hagood's decision or staff.

19 MR. BELLINGER: It will be staffs, not
20 mine.

21 MS. JENNINGS-FADER: We're done.

22 (Whereupon, the workshop recessed at 5:05
23 p.m.)

24

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CERTIFICATE

2

KRISTY TURNER, JAMES L. MIDYETT, and

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HARRIET S. WEISENTHAL, Certified Shorthand Reporters in

4

and for the State of Colorado, do hereby certify that

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we reported the foregoing proceedings in the first

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instance, and that later the same was reduced to

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typewritten form under our direct supervision and

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control; we further certify that the foregoing is a

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true and complete transcription of our stenographic

10

notes then and there taken.

11

Dated _____, 2001.

12

KRISTY TURNER

13

14

JAMES L. MIDYETT

15

16

HARRIET S. WEISENTHAL
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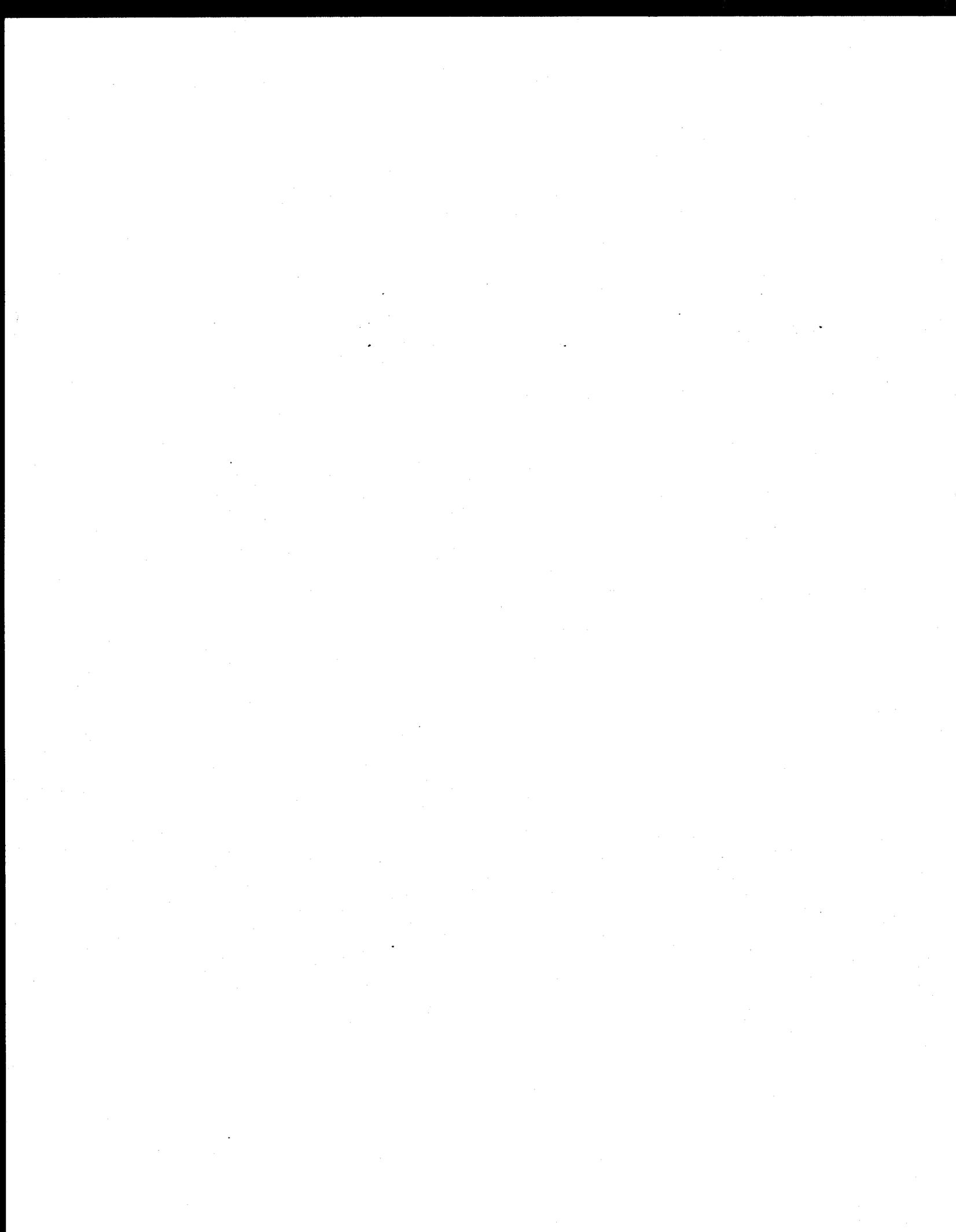
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO
Docket No. 97I-198T - Workshop 5

* * *

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 24, 2001, at 3898
Boulevard, Lakewood, Colorado, before Facilitators
Hagood Bellinger and John Schultz.

APPEARANCES

(As noted in the transcript.)

1 P R O C E E D I N G S

2 MR. BELLINGER: Looks like we could
3 probably get started.

4 Let's go ahead and do introductions.

5 I'm Hagood Bellinger with DCI.

6 MR. SCHULTZ: John Schultz, DCI.

7 MR. ZULEVIC: Mike Zulevic, Covad.

8 MS. BEWICK: Penny Bewick, New Edge
9 Networks.

10 MS. WAYSORF: Julia Waysdorf, Nichols
11 and Pena.

12 MS. HINES: Lealani Hines, WorldCom.

13 MS. DeCOOK: Becky DeCook, AT&T.

14 MR. WILSON: Ken Wilson, AT&T.

15 MS. KILGORE: Sarah Kilgore, AT&T.

16 MS. YOUNG: Barb Young, Sprint.

17 MR. BROTHERS: Larry Brothers, Qwest.

18 Maybe I'm on the wrong side.

19 MR. PAPPAS: Denies Pappas, Qwest.

20 MS. ARMES: Judy Armes, Qwest.

21 MR. McDANIEL: Paul McDaniel, Qwest.

22 MS. LISTON: Jean Liston, Qwest.

23 MS. SACILOTTO: Kara Sacilotto,

24 Perkins Coie, for Qwest.

25 MR. HUBBARD: Jeff Hubbard, Qwest.

1 MR. OVERTON: Jim Overton, Qwest.

2 MS. NORCROSS: Michelle Norcross,
3 Office of Consumer Counsel.

4 MS. STILES: Bridge Stiles, Commission
5 staff.

6 MR. EPLEY: John Epley, Commission
7 staff.

8 MR. JEZIERSKI: Stan Jezierski,
9 Commission staff.

10 MR. EMANUEL: Jim Emanuel, Commission
11 staff.

12 MR. BELLINGER: Any opening comments
13 anybody wants to make?

14 Qwest, do you want to pick up with --
15 we had a take-back on 15B.

16 MS. SACILOTTO: Joanne Ragge is
17 right now copying -- I think what we have, if this
18 is acceptable, is a replacement exhibit for 62 that
19 reflects the corrected language for 9.2.2.9 and then it
20 also --the changes we discussed yesterday regarding
21 the e-mailing of the test results, we went ahead and
22 put that on this document. So when we have that we'll
23 pass it out.

24 The change was to incorporate in
25 9.2.2.9.3. I think the concept that the waiver of the

1 total coordinated installation charge if Qwest fails
2 to perform cooperative testing due to Qwest's fault
3 applies if the CLEC does not get -- if the CLEC elects
4 to forego the cooperative testing. We deleted the
5 other language that was on the previous -- that was
6 brand-new that was on the previous Exhibit 62.

7 Upon reflection it was -- it caused
8 confusion and part of it was raised by Barb's comment
9 that it seemed to be -- we're going to deal with it on
10 an up-front basis is basically how the language is now
11 drafted.

12 I think we now have the language.
13 I guess this would be our replacement Exhibit 5-62,
14 if that's an okay way of doing it.

15 MR. BELLINGER: Should be fine.

16 (Exhibit 5-Qwest-62-Replacement was
17 marked for identification purposes by the court
18 reporter.)

19 MS. YOUNG: This is what I expected to
20 see, unfortunately.

21 Let me tell you what my issue would be
22 with it. I'm sure we won't go anywhere. I understand
23 your position that you feel that if you did cooperative
24 testing you should get paid for it. My view would be
25 if you miss the first appointment time what incentives

1 will you have to meet that appointment time if you
2 always get paid for the testing? That's where I have
3 the rebuttal.

4 MS. LISTON: Qwest's position is that
5 we did the overall installation the first time. We
6 were out there for whatever reason, the test did not
7 happen. Whether it's our installer left before we made
8 the call or there was somehow delay in the process, but
9 we were out there to do the basic installation the
10 first time. We will roll the truck a second time if
11 we have to roll the truck the second time to do the
12 cooperative testing.

13 Basically the position is, if we've
14 done all the work, all of the installation work and
15 the cooperative testing, that we will be charging the
16 nonrecurring charge. The flip side is, if we miss it
17 we're going to waive the entire charge.

18 So we're not saying we're going to only
19 waive the cooperative testing charge but rather we'll
20 waive the entire installation charge so that the chunk
21 of basic service installation -- we're waiving that
22 charge also.

23 Qwest looked at this approach and said,
24 it's not -- one way of dealing with it, and it's the
25 way we've dealt with if we miss the appointment time

1 for the overall cooperative test, we're going to waive
2 the charge, if we don't do -- back up. If we miss the
3 coordinated time we're going to waive the charge, then
4 if we miss the cooperative test and we don't actually
5 have to perform due to our fault, we'll waive the full
6 charge. Qwest is not in a position to say we'll do
7 some kind of a prorated charge if we have to schedule
8 a second appointment.

9 MR. BELLINGER: Any other comments on
10 the new language?

11 MS. KILGORE: I think yesterday Penny
12 mentioned that she was in favor -- her company in favor
13 of providing some sort of discounted charge for the
14 cooperative testing if the CLEC will ask to go ahead
15 and have the test done when Qwest facilities to do it.
16 AT&T supports that position.

17 I think we've been through this before.
18 The reason that AT&T has closed on this language
19 previously is simply because we've had so many problems
20 with cooperative testing, our company has decided not
21 to pursue those at this time, so we're letting it go.
22 We would love to see the discounted rate.

23 MS. SACILOTTO: Do you have any data on
24 your allegation there?

25 MS. DeCOOK: We provided a discovery

1 response to Qwest on this.

2 MS. BEWICK: I would just reiterate--
3 I don't need to spend a lot of time on the record,
4 Hagood--that I think that if -- that the language
5 indicates that if the cooperative testing is not done
6 and it's Qwest's fault, then that's what I'm talking
7 about. I think when Jean was just explaining the
8 language and she said that for some reason the tech
9 wasn't there.

10 I want to make it clear that my
11 suggestion was that if in fact the cooperative testing
12 was not done and it was Qwest's fault, not the CLEC's
13 fault, that I don't think the CLEC should be obligated
14 to pay the full bore for that particular nonrecurring
15 charge if they have to go to the inconvenience and the
16 cost to their company of rescheduling and putting
17 people back on the phone and whatever they need to do.

18 So I think some sort of a discounted
19 rate would be appropriate or a lesser rate than the
20 full amount.

21 MR. ZULEVIC: As Ms. Cutcher explained
22 yesterday, we do have data to support the fact that
23 cooperative testing has not been done satisfactorily in
24 the past. Again, we're attempting to go back and take
25 care of the billing on that because that should never

1 have happened either.

2 Going forward, I think there needs to
3 be some additional steps taken by Qwest to ensure that
4 they're going to take care of this problem, and some
5 sort of a compromise with respect to the charges I
6 think is more than appropriate given the fact that the
7 CLECs will definitely have resources tied up initially
8 trying to make this cooperative test work and they have
9 to reschedule their people in order to do it.
10 Something has to change here to make sure that this
11 is done satisfactorily going forward.

12 MS. LISTON: In you made a statement
13 in terms of your techs being tied up and waiting.
14 Does Covad have a test center, so to speak, where a
15 call would go in -- Qwest is -- we do it on appointment
16 basis for Covad, the cooperative testing?

17 MR. ZULEVIC: Yes, we did have a test
18 center for that.

19 MS. LISTON: Are they scheduled for
20 specific times?

21 MR. ZULEVIC: That's my understanding,
22 yes.

23 MS. LISTON: My understanding is that
24 Covad is doing it without appointment times any longer
25 and that would just -- we'd call and say we're doing it

1 and Covad has told us that it doesn't matter what time
2 it is, that they've got testers that are dedicated to
3 do that and we'll get in queue for the next tester
4 available. That's what I've been told at least for
5 Covad..

6 MR. ZULEVIC: I'll have to recheck
7 that, but it was not my understanding. I thought
8 these were scheduled.

9 MS. LISTON: We need to sit down
10 between two companies and work things out because
11 I think we've got a breakdown in the process between
12 Qwest and Covad right now on the performance test date
13 of the cooperative testing, because what I'm being told
14 is that there aren't appointment times and Covad has
15 said we don't care when it happens, call us when you're
16 ready, and we will put you in queue to do the test.

17 I have made a commitment to work with
18 the Covad account team and the Covad operational people
19 on this very issue to get to the point where we can
20 find out where our problem is and the gap is. In fact,
21 I spoke with Susan early last night to try to make the
22 arrangements to meet with their account team and also
23 your operational team to work through this very issue
24 because from the information I'm hearing, we've got a
25 gap in terms of how we're communicating on the testing.

1 MS. DOBERNECK: Essentially Covad has
2 been willing to do whatever Qwest has said will work
3 best to get this cooperative testing done. So we have
4 gone back and forth between either trying to schedule
5 times or schedule windows of time versus call whenever,
6 we'll make sure we have somebody there.

7 So we've essentially said Qwest, tell
8 us what to do and we've gone back and forth, so it has
9 been both at one point in time or another.

10 MR. BELLINGER: The issue is whether
11 there's a discounted rate or not. Where are we with
12 that?

13 MS. BEWICK: I would say we're at
14 impasse.

15 MS. SACILOTTO: I would say we're at
16 impasse on that particular issue.

17 MR. BELLINGER: Paragraph 9.2.2.9.3?

18 MS. SACILOTTO: Yes.

19 MR. BELLINGER: Could I get one of the
20 CLECs to state what you would like this issue to be
21 stated.

22 MS. BEWICK: I think I brought it up.
23 That if Qwest does not perform the cooperative testing
24 as originally scheduled and it's Qwest's fault, that
25 some form of discounted rate or nonrecurring charge

1 should apply as opposed to the full nonrecurring
2 charge.

3 MR. SCHULTZ: For the cooperative test?

4 MS. BEWICK: For the cooperative test.

5 MR. DIXON: Does that also relate to
6 the last section of the 5-Qwest-62, the replacement,
7 which also talks about waiver of nonrecurring charges?
8 We cited 9.2.2.9.3, but I think since this same concept
9 is contained in 9.2.2.9.5.3 it would have equal
10 applicability?

11 MS. BEWICK: Yes, it does.

12 MR. DIXON: Both sections should be
13 identified.

14 MR. BELLINGER: That was the last
15 section?

16 MR. DIXON: Very last section on the
17 exhibit, Exhibit 5-Qwest-62.

18 Is that going to be given a separate
19 number?

20 MR. BELLINGER: I thought it was 15B.

21 Go to C.

22 MS. SACILOTTO: This shows the issue is
23 open, 15C. This was AT&T's request that requires us to
24 wait 30 minutes for the CLEC, and the action and status
25 shows we made that change, so I would think that the

1 status should be just changed to closed.

2 MR. WILSON: Yes, we can close that.

3 MR. BELLINGER: 16.

4 MS. SACILOTTO: I think at the original
5 workshop the quick loop product was newly announced, so.

2

MS. LISTON: Qwest would like to go

3 back to issue 15. No, 15 is not the right number --
4 yes, 15. 15B. I know no one will believe I want to go
5 back to 15B. That was about the cooperative testing.

6 When we were on the record before, I
7 did say that at this point in time Qwest wouldn't make
8 any change in terms of if we rescheduled it. I have
9 new information.

10 Qwest will waive in entirety the
11 cooperative nonrecurring charge if we are not ready to
12 do the cooperative test due to our fault at the time we
13 turn over the circuit to the CLEC. Even if the CLEC
14 reschedules for another time we'll waive the entire
15 charge.

16 MR. BELLINGER: You're going to give us
17 some language that says that?

18 MS. LISTON: Yes, we will. We don't
19 have it ready right now, but I want to put it on the
20 record that at break we got the approval to do that.

21 MS. WAYS DORF: Would you mind repeating
22 it.

23 MS. LISTON: If Qwest -- if the
24 cooperative test is not performed due to Qwest's fault,
25 Qwest will waive in entirety the nonrecurring charge

1 even if we reschedule the appointment.

2 MS. BEWICK: Thank you.

3 MS. JENNINGS-FADER: Jean, will Qwest
4 then be submitting a substitute for Exhibit 5-Qwest-62
5 which has the language that I understand is now being
6 clarified and changed based on your discussion?

7 MS. LISTON: We have not worked on
8 that, on the new language. We did get that -- like I
9 said, we just got that information over break that we
10 can waive the charge even if we reschedule it, and
11 being that I knew it was an important issue I wanted
12 to share that immediately.

13 MS. JENNINGS-FADER: Thank you.

14 MR. DIXON: Presumably we change 15B
15 from an impasse issue to a Qwest take-back?

16 MS. LISTON: You could have at least
17 given me a closed --

18 MS. DeCOOK: Closed subject to SGAT
19 language.

20 MR. BELLINGER: You do well when your
21 attorney is not here.

22 MS. DOBERNECK: In the SGAT language
23 that was circulated this morning there was the deletion
24 of the language regarding if cooperative testing is not
25 performed and Qwest charges the CLEC that Qwest will

1 refund that amount. I know it's been taken out of the
2 SGAT. Is that because it's Qwest's understanding that
3 that will be dealt with as a billing matter between the
4 parties?

5 MS. LISTON: That's correct.

6 MS. DOBERNECK: Thank you.

1 that Qwest agreed to look at the language of 9.2.5.2,
2 to determine how to insert a specific statement having
3 to do with refund of inappropriately billed
4 maintenance-of-service charges. So, I think that was
5 another thing you all were going to look at.

6 MS. SACILOTTO: I think, that one, we
7 just need to put the words on paper.

8 MR. BELLINGER: Okay. Anymore on this
9 one?

10 MS. DOBERNECK: Not this one, but it has
11 raised an issue for me. And my question, or my issue,
12 simply is -- and it gets back to Loop-15 and the
13 cooperative testing, and the initial agreement that
14 Qwest would refund CLECs for -- where it charged for
15 cooperative testing, it was not actually performed.
16 And that has been deleted. And I guess I am struggling
17 to understand what kind of distinction, or how Qwest
18 can possibly draw the distinction between an
19 inappropriately billed maintenance-of-service charge
20 and an inappropriately billed charge for cooperative
21 testing. I think it's the same issue, different
22 context.

23 So, if Qwest agrees, in this context, to
24 refund it, I think Qwest should agree, in the
25 cooperative testing context, to refund it.

1 MR. BELLINGER: They will refund the
2 charge they made. I thought that's what they said.

3 MS. DOBERNECK: They agreed to waive it
4 if the cooperative testing was not performed.

5 MR. BELLINGER: Right.

6 MS. DOBERNECK: I am addressing the issue
7 where we have actually been charged for cooperative
8 testing, and it was not performed.

9 MR. BELLINGER: I thought you waived
10 that. That's what I am saying.

11 MS. SACILOTTO: That's how I would
12 respond to Megan. We're dealing with it upfront, with
13 the waiver of the nonrecurring charge for the entire
14 isolation. If we, in all three of these scenarios, if
15 we fail to perform the coordinated installation on
16 time, if we fail to perform the cooperative test, and
17 if we -- I believe while I was out, we had a little --

18 MS. LISTON: Giveback.

19 MS. SACILOTTO: -- giveback that if we
20 reschedule the cooperative test, that's how we're
21 dealing with it, is on an upfront basis.

22 MS. DOBERNECK: Maybe I guess we just
23 need to clarify. When I think of waiver, the way it
24 was discussed was it wouldn't be billed. And here I am
25 talking, where, in fact, it has been billed and it

1 showed up on the invoice that we received.

2 MS. SACILOTTO: That I think would have
3 to be a billing dispute, Megan. There's just too much,
4 you know, what we can do in this part of the section
5 would be to deal with it on the upfront basis.

6 MS. DOBERNECK: But you are agreeing to
7 refund an inappropriate billed maintenance-of-service
8 charge, correct? So why is that not a billing dispute,
9 just like an inappropriately charged for cooperative
10 testing? I mean, I don't want -- Qwest has made that
11 commitment here.

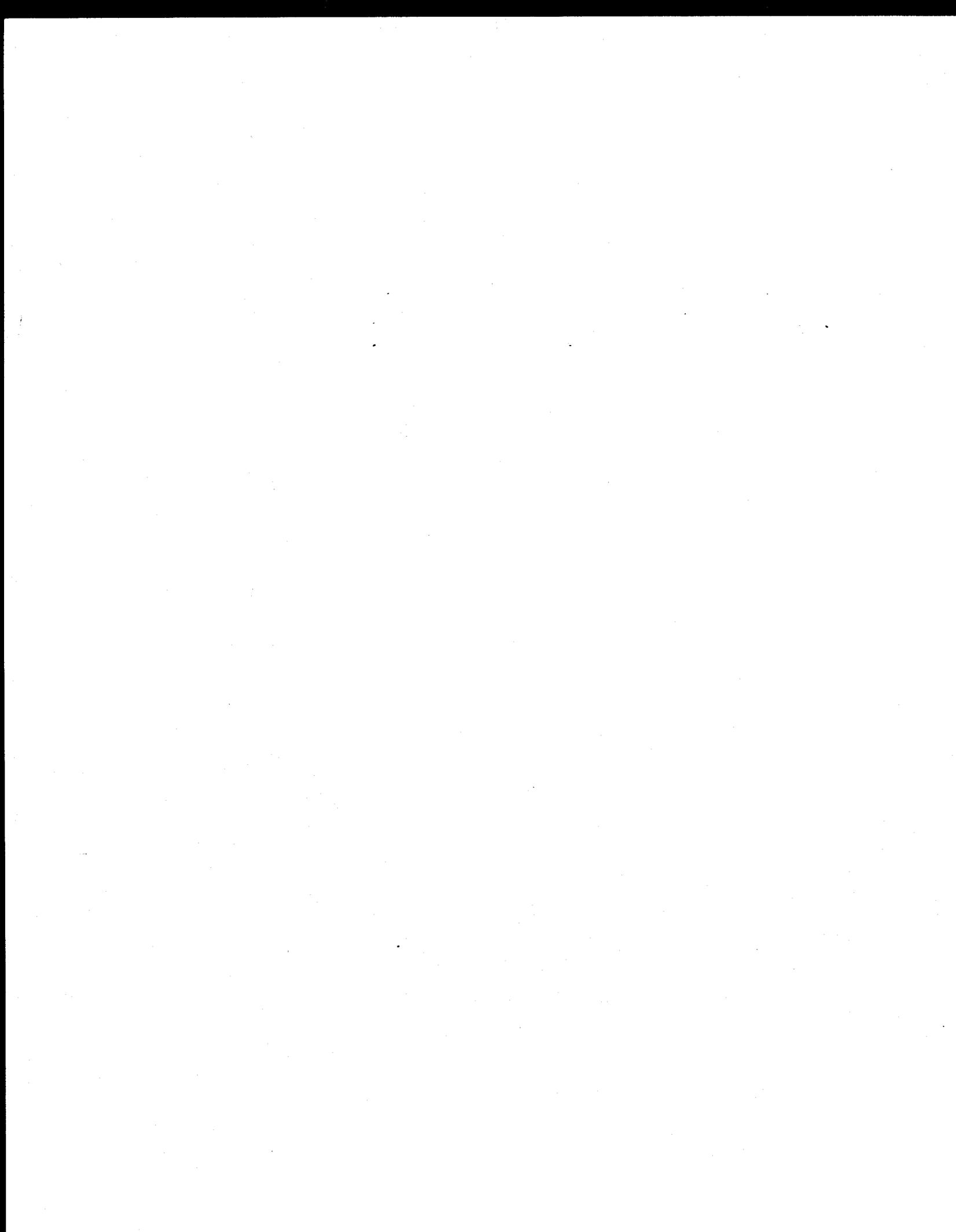
12 MS. LISTON: I think the only distinction
13 that we can look at is in a situation with the
14 performance testing, we would not be in a
15 back-and-forth situation. So, we close out the order
16 and the billing charges apply. But what we're talking
17 about, in the maintenance-of-service issue, is that
18 we're in the process of doing a repair, and we find
19 out, during that process, that it was truly a mistake.
20 It was not -- we should not have handed it back to the
21 CLEC. It's coming back to Qwest. So, we're in the
22 process of still handling that repair issue, and we
23 should not have assessed that charge because of that
24 problem.

25 So, in one situation, we're dealing with

1 an ongoing situation, and we identify there's a
2 problem. For the performance testing issue, there
3 would not be a reiteration process, so to speak.
4 Rather, it would come up at the end. You received a
5 bill, you saw there was a billing charge on there, it
6 would have been possibly an error, maybe not an error.
7 That's why it would go to a billing dispute, because it
8 is associated with a bill that was rendered.

9 MS. DOBERNECK: Not to belabor the point
10 obviously, I disagree. I think it's a similar issue
11 that -- when you have back and forth, and, in effect,
12 Qwest put the burden on the CLEC to then review every
13 single bill, and verify whether we have been charged
14 appropriately or not, but I will stop with that.

15 MR. BELLINGER: Okay. Want to move to
16 15 -- yeah, 28B.



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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 MR. BELLINGER: All right. I think we
2 can get -- let's, hopefully, finish up. First going
3 back to the original agenda we had, for this morning,
4 was to deal with AT&T's concerns on -- about IC -- or
5 IF rather.

6 MS. SACILOTTO: Can we move that
7 particular takeback a little bit back, because I need
8 Mr. Hubbard here in case we're going to discuss
9 anything.

10 MR. BELLINGER: Sure.

11 MS. SACILOTTO: Sorry.

12 MR. BELLINGER: Then we can deal with the
13 other takebacks, then.

14 MS. SACILOTTO: We're handing out, right
15 now, two takebacks that I had. One was to put in
16 writing the impasse on spectrum management that arose
17 in the seven-state workshop.

18 MR. SCHULTZ: Issue number?

19 MS. SACILOTTO: COIL No. 34. And the
20 other thing that we're handing out is some fairly minor
21 amendments. There's a lot of red-lining on it because
22 we used what was in the SGAT Lite. This is -- the
23 change that's reflected in this document is in
24 9.2.2.9.3, and 9.2.2.9.5.3, regarding the waiver of the
25 charge on the cooperative testing that was discussed

1 yesterday.

2 Oh, and I would like to mark this, the
3 spectrum management -- I don't know if we need to mark
4 it as an exhibit, but -- okay. We won't mark that as
5 an exhibit.

6 MS. JENNINGS-FADER: Just -- I think what
7 we needed was the statement so it could be put in the
8 issue log.

9 MR. BELLINGER: This is for the issue
10 log.

11 MS. SACILOTTO: Oh, okay.

12 MR. BELLINGER: We'll put these on the
13 log, under Loop-34, shown as impasse.

14 MS. SACILOTTO: Yeah.

15 MR. BELLINGER: Is the way to handle
16 this.

17 MS. SACILOTTO: Yeah. And, you know, I
18 did my best, with my limited spectrum knowledge, to
19 accurately capture the issue. I think I am in the
20 ballpark, and the seven-state record will crystallize
21 it.

22 The other document, I guess we should
23 probably mark it as an exhibit, and what number are we
24 up to now?

25 MS. JENNINGS-FADER: 73.

1 MS. SACILOTTO: 5-Qwest-73.
2 MS. DOBERNECK: 5-Covad-73.
3 MS. JENNINGS-FADER: 72 was your
4 material.
5 MR. BELLINGER: Yours was 72.
6 MS. SACILOTTO: So, it is 5-Qwest-73.
7 MR. BELLINGER: Yeah. 5-Qwest-73.
8 MS. SACILOTTO: So that's --
9 MR. BELLINGER: What issue is this?
10 MS. SACILOTTO: It's --
11 MS. LISTON: Loop-15.
12 MS. SACILOTTO: Yeah. Loop-15.
13 MS. DOBERNECK: This is the agreement we
14 reached when Kara was out of the room.
15 MS. SACILOTTO: I knew about it, though.
16 MR. DIXON: Just out of curiosity, I
17 thought we were going to mark a replacement exhibit for
18 5-Qwest-62, and not renumber it. So I just thought I
19 would check and see if that was not our intent.
20 MS. SACILOTTO: That we have already
21 replaced 5-Qwest-62, I think. I have it as having been
22 replaced one time.
23 MR. BELLINGER: Yeah. It did.
24 MS. SACILOTTO: You want to replace it
25 again? Is that acceptable to you guys?

1 MR. BELLINGER: Yeah.

2 MS. SACILOTTO: Okay.

3 MS. JENNINGS-FADER: We're very amenable
4 when it comes to that.

5 MR. DIXON: This will be the second and
6 final replacement.

7 MS. JENNINGS-FADER: Final answer, right.

8 MR. BELLINGER: This is the final answer.

9 MS. LISTON: The changes that were made
10 were just to reflect what I shared yesterday, after
11 lunch, in 9.2.2.9.3. We deleted the words, "If CLEC
12 elects to forego cooperative testing." And then, in
13 9.2.2.9.5.3, the very last section, we again eliminated
14 the words, "If CLECs elects to forego cooperative
15 testing." We have also expanded that section to make
16 sure it was clear that the CLECs still had the
17 opportunity to ask for a cooperative test, even in this
18 scenario. We realized, as we went back, that had not
19 been there originally, so we just used the same
20 language from the previous section and brought it
21 forward here.

22 MS. SACILOTTO: Is that -- how did we
23 leave the status of this? Does this close the issue?

24 MS. LISTON: It was 15B. My notes from
25 yesterday said that we had -- said it was closed,

1 subject to bringing the SGAT language back in today.

2 That's just what my notes showed.

3 MR. BELLINGER: I don't disagree with
4 you.

5 MS. DOBERNECK: Kim, it looks good to me.

6 MR. BELLINGER: Good. Any other --

7 MS. DOBERNECK: I think the language
8 looks good. I guess the only question I have is about
9 Covad's performance-based issue and cooperative
10 testing. I know we're working on a process to try and
11 get that resolved. And, so, maybe we need to separate
12 that out as another subissue, because the language is
13 fine. So, we can close 15B, but we have raised the
14 issue of the failure to perform cooperative testing,
15 which --

16 MR. SCHULTZ: It's been given a new
17 number, hasn't it?

18 MS. DOBERNECK: Was that a new number?

19 MR. BELLINGER: That's the performance
20 issue.

21 MS. DOBERNECK: Yes.

22 MR. BELLINGER: We haven't -- I don't
23 know whether you carried performance issues, per se --
24 I don't know where we had it.

25 MS. DOBERNECK: Well, I mean the

1 manner --

2 MR. BELLINGER: I think we have had it,
3 but then we said, subject to testing.

4 MS. DOBERNECK: I don't see it designated
5 elsewhere in my notes from the COIL as a separate
6 issue, but I could simply be remembering that.

7 MR. BELLINGER: I don't know.

8 MS. DOBERNECK: What I would suggest,
9 15B, to make sure we separate that out as a specific
10 issue, which is the failure to perform cooperative
11 testing, renumber that, and closed subject to results
12 of the OSS testing.

13 MR. SCHULTZ: Just make that notation on
14 15B.

15 MS. DOBERNECK: That's fine.

16 MR. BELLINGER: So, we'll add a note,
17 Covad's concern about the performance --

18 MS. DOBERNECK: The actual performance of
19 cooperative testing.

20 MR. BELLINGER: Will be deferred to the
21 OSS test.

22 MS. DOBERNECK: Correct.

1 investigate.

2 MR. BELLINGER: All right. Do you have
3 anymore?

4 MS. SACILOTTO: I think that's it.

5 MS. DeCOOK: I have one comment on
6 Loop-15. We closed it, subject to Qwest's providing
7 language on that. Did you provide that?

8 MS. SACILOTTO: Yes. That was like the
9 first or second thing we handed out.

10 MS. DeCOOK: Today?

11 MS. DOBERNECK: They aren't charging at
12 all. Is that --

13 MS. SACILOTTO: Right. We struck the --

14 MS. DeCOOK: That's the
15 maintenance/repair thing again.

16 MS. DOBERNECK: The cooperative testing.
17 If Qwest does not perform the cooperative testing in
18 the first place.

19 MS. SACILOTTO: You may not have been in
20 the room, in all fairness.

21 MS. DeCOOK: I don't know that I got that
22 one. Was it on this one?

23 MS. LISTON: Is that the one that says
24 "installation options"?

25 MS. SACILOTTO: 5-Qwest-62.

1 MS. DeCOOK: Never mind.

2 MS. LISTON: We did it. We promise.

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