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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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MARC SPITZER  
COMMISSIONER

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S  
COMPLIANCE WITH  
SECTION 271 OF THE  
TELECOMMUNICATIONS  
ACT OF 1996

Docket No. T-00000A-97-0238

NOTICE OF FILING

Staff of the Arizona Corporation Commission ("Staff"), through its undersigned attorneys, hereby files its Final Reports on Checklist Item 5, Unbundled Local Transport, and Checklist Item 6, Unbundled Switching.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of October 2001.

Maureen A. Scott  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007  
Telephone: (602) 542-6022  
Facsimile: (602) 542-4870  
e-mail: maureenscott@cc.state.az.us

Arizona Corporation Commission

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1 Original and ten copies of the foregoing  
2 were filed this 15<sup>th</sup> day of October, 2001 with:

3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, Arizona 85007

6 **CERTIFICATE OF SERVICE**

7 Copies of the foregoing were mailed this  
8 15<sup>th</sup> day of October, 2001 to:

9 Charles Steese  
10 Andrew Crain  
11 QWEST Communications, Inc.  
12 1801 California Street, #5100  
13 Denver, Colorado 80202

14 Maureen Arnold  
15 QWEST Communications, Inc.  
16 3033 N. Third Street, Room 1010  
17 Phoenix, Arizona 85012

18 Michael M. Grant  
19 GALLAGHER AND KENNEDY  
20 2575 E. Camelback Road  
21 Phoenix, Arizona 85016-9225

22 Timothy Berg  
23 FENNEMORE CRAIG  
24 3003 N. Central Ave., Suite 2600  
25 Phoenix, Arizona 85016

26 Mark Dioguardi  
27 TIFFANY AND BOSCO PA  
28 500 Dial Tower  
1850 N. Central Avenue  
Phoenix, Arizona 85004

Nigel Bates  
ELECTRIC LIGHTWAVE, INC.  
4400 NE 77<sup>th</sup> Avenue  
Vancouver, Washington 98662

Thomas L. Mumaw  
Jeffrey W. Crockett  
SNELL & WILMER  
One Arizona Center  
Phoenix, Arizona 85004-0001

Eric S. Heath  
SPRINT COMMUNICATIONS CO.  
100 Spear Street, Suite 930  
San Francisco, CA 94105

Thomas H. Campbell  
LEWIS & ROCA  
40 N. Central Avenue  
Phoenix, Arizona 85007

Andrew O. Isar  
TRI  
4312 92<sup>nd</sup> Avenue, N.W.  
Gig Harbor, Washington 98335

Michael W. Patten  
Roshka Heyman & DeWulf  
400 North 5<sup>th</sup> Street, Suite 1000  
Phoenix, Arizona 85004

Charles Kallenbach  
AMERICAN COMMUNICATIONS  
SERVICES INC  
131 National Business Parkway  
Annapolis Junction, Maryland 20701

Thomas F. Dixon  
MCI TELECOMMUNICATIONS CORP  
707 17th Street, #3900  
Denver, Colorado 80202

Kevin Chapman, SBC  
Director-Regulatory Relations  
5800 Northwest Parkway  
Suite 125, Room 1-S-20  
San Antonio, TX 78249

Richard S. Wolters  
AT&T & TCG  
1875 Lawrence Street, Room 1575  
Denver, Colorado 80202

1 Joyce Hundley  
2 UNITED STATES DEPARTMENT OF  
3 JUSTICE  
4 Antitrust Division  
5 1401 H Street NW, Suite 8000  
6 Washington, DC 20530

7 Joan Burke  
8 OSBORN MALEDON  
9 2929 N. Central Avenue, 21st Floor  
10 P.O. Box 36379  
11 Phoenix, Arizona 85067-6379

12 Scott S. Wakefield, Chief Counsel  
13 RUCO  
14 2828 N. Central Avenue, Suite 1200  
15 Phoenix, Arizona 85004

16 Mark J. Trierweiler  
17 Vice President – Government Affairs  
18 AT&T  
19 111 West Monroe St., Suite 1201  
20 Phoenix, Arizona 85004

21 Daniel Waggoner  
22 DAVIS WRIGHT TREMAINE  
23 2600 Century Square  
24 1501 Fourth Avenue  
25 Seattle, WA 98101-1688

26 Douglas Hsiao  
27 RHYTHM LINKS, INC.  
28 6933 S. Revere Parkway  
Englewood, CO 80112

Raymond S. Heyman  
Randall H. Warner  
ROSHKA HEYMAN & DeWULF  
Two Arizona Center  
400 N. Fifth Street, Suite 1000  
Phoenix, Arizona 85004

22 Diane Bacon, Legislative Director  
23 COMMUNICATIONS WORKERS OF  
24 AMERICA  
25 5818 North 7<sup>th</sup> Street, Suite 206  
26 Phoenix, Arizona 85014-5811

27 Gena Doyscher  
28 GLOBAL CROSSING LOCAL  
SERVICES, INC.  
1221 Nicollet Mall  
Minneapolis, MN 55403-2420

Karen L. Clauson  
ESCHELON TELECOM, INC.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402

Mark P. Trnichero  
Davis, Wright Tremaine  
1300 SW Fifth Avenue, Suite 2300  
Portland, OR 97201

Traci Grundon  
Davis, Wright & Tremaine LLP  
1300 S.W. Fifth Avenue  
Portland, OR 97201

Bradley Carroll, Esq.  
COX ARIZONA TELCOM, L.L.C.  
1550 W. Deer Valley Rd.  
Phoenix, AZ 85027

Mark N. Rogers  
EXCELL AGENT SERVICES, L.L.C.  
2175 W. 14<sup>th</sup> Street  
Tempe, AZ 85281

Barbara P. Shever  
LEC Relations Mgr.-Industry Policy  
Z-Tel Communications, Inc.  
601 S. Harbour Island Blvd., Suite 220  
Tampa, FL 33602

Jonathan E. Canis  
Michael B. Hazzard  
Kelly Drye & Warren L.L.P.  
1200 19<sup>th</sup> Street, NW, Fifth Floor  
Washington, D.C. 20036

Ms. Andrea P. Harris  
Sr. Manager, Reg.  
ALLEGIANCE TELECOM, INC.  
2101 Webster, Suite 1580  
Oakland, California 94612

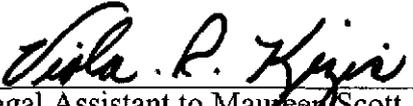
Dennis D. Ahlers, Sr. Attorney  
Eschelon Telecom, Inc.  
730 Second Ave. South, Ste 1200  
Minneapolis, MN 55402

1 Garry Appel, Esq.  
TESS Communications, Inc.  
2 1917 Market Street  
Denver, CO 80202

3 Todd C. Wiley Esq. for  
4 COVAD Communications Co.  
GALLAGHER AND KENNEDY  
5 2575 East Camelback Road  
Phoenix, Arizona 85016-9225

6 K. Megan Doberneck, Esq. for  
7 COVAD Communications Co.  
7901 Lowry Blvd  
8 Denver, CO 80230

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
Legal Assistant to Maureen Scott

**IN THE MATTER OF QWEST CORPORATION'S  
SECTION 271 APPLICATION**

**ACC Docket No. T-00000A-97-0238**

**FINAL REPORT ON QWEST'S COMPLIANCE**

**With**

**CHECKLIST ITEM: NO. 5 - UNBUNDLED LOCAL  
TRANSPORT**

**OCTOBER 1, 2001**

## I. FINDINGS OF FACT

### A. PROCEDURAL HISTORY

1. On October 10, 2000, the first Workshop on Checklist Item No. 5 (Unbundled Local Transport) took place at Qwest's offices in Phoenix. Parties appearing at the Workshops included Qwest Corporation<sup>1</sup>, AT&T, MCI WorldCom, Sprint, Electric Lightwave, Inc., e-spire, Eschelon Telecom, Inc. and Allegiance Telecom. Qwest relied upon its supplemental testimony submitted in July, 2000 and its second supplemental affidavit filed on September 21, 2000. Additional Comments were filed on September 21, 2000 by AT&T, WorldCom, e-spire, Eschelon and Z-Tel. ELI filed comments on September 22, 2000. Qwest filed Rebuttal Comments on September 29, 2000 and a supplemental rebuttal affidavit on October 31, 2000.

2. On April 9, 2001, an additional Workshop was conducted on Checklist Item 5.

3. The Parties resolved many issues at the two Workshops held on October 10, 2000 and April 9, 2001. Outstanding issues from the October 10, 2000 Workshop included a commitments by the parties to address take back issues for resolution at the follow-up workshop held on April 9, 2001. At the conclusion of the April 9, 2001 workshop, a number of impasse issues remained to be resolved. Staff filed its Proposed Findings of Fact and Conclusions of Law for Checklist Item 5, Unbundled Local Transport on August 14, 2001. Comments were filed in response to the Staff's Proposed Report by AT&T, WorldCom and Qwest on August 27, 2001. Following is Staff's final Report on Qwest's compliance with Checklist Item No. 5.

### B. DISCUSSION

#### 1. Checklist Item No. 5

##### a. FCC Requirements

4. Section 271(c)(2)(B)(v) of the Telecommunications Act of 1996 requires a section 271 applicant to provide or offer to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."

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<sup>1</sup> As of the date of this Report, U S WEST Communications, Inc. has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. Therefore, all references in this Report to U S W E S T have been changed to Qwest.

5. Section 271(c)(2)(B)(ii) requires a section 271 applicant to provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1).”

6. Section 251(c)(3) establishes an incumbent LECs “duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms,” and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252.”

## **b. Background**

7. The FCC has required that BOCs provide both dedicated and shared transport to requesting carriers. *Bell Atlantic New York Order* at para. 337.<sup>2</sup>

8. Dedicated transport consists of BOC transmission facilities dedicated to a particular customer or carrier that provide telecommunications between wire centers owned by BOCs or requesting telecommunications carriers, or between switches owned by BOCs or requesting telecommunications carriers.

9. Shared transport consists of transmission facilities shared by more than one carrier, including the BOC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the BOC’s network.

10. Qwest currently tracks 10 different performance measures for dedicated unbundled transport. 5-Qwest-2 at p. 74. These measurements concern either the installation/provisioning of DS1 and above, DS1 UDITs and the repair/maintenance of these facilities. *Id.* The ten measures are listed below.

OP-3	Installation Commitments Met
OP-4	Installation Interval
OP-5	New Service Installation Without Trouble Reports for 30 Days After Installation
OP-6	Delayed Days
MR-5	Out Of Service Cleared Within 4 Hours (designed repair process)
MR-6	Mean Time to Restore
MR-7	Repair Repeat Report Rate
MR-8	Trouble Rate

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<sup>2</sup> *In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295 (Rel. December 22, 1999).

**c. Position of Qwest**

11. On July 21, 2000, Qwest witness Karen A. Stewart provided testimony indicating that Qwest is currently providing unbundled transport to CLECs in Arizona in a timely, nondiscriminatory manner. 5-Qwest-2 at p. 65. Qwest is currently providing UDITs to six CLECs in Arizona. 5-Qwest-2 at p. 66. Specifications, interfaces and parameters are described in Technical Publication 77389.5. Id. The Interconnect & Resale Resource Guide (IRRG) also provides CLECs with product information, rates and availability. Id.

12. Qwest, in its SGAT at Sections 9.6.1.1 and 9.8.1.1, offers both dedicated and shared transport:

9.6.1.1 Unbundled Dedicated Interoffice Transport (UDIT) provides CLEC with a network element of a single transmission path between two Qwest Wire Centers in the same LATA and state. Extended Unbundled Dedicated Interoffice Transport (EUDIT) provides CLEC with a bandwidth specific transmission path between the Qwest Serving Wire Center to CLEC's Wire Center or an IXC's point of presence located within the same Qwest Serving Wire Center area.

9.8.1.1 Shared Transport is defined as interoffice transmission facilities shared by more than one carrier, including Qwest, between end office switches, between end office switches and tandem switches, and between tandem switches.

5-Qwest-2 at p. 66.

13. UDIT is a distance-sensitive, flat-rated bandwidth-specific interoffice transmission path designed to a DSX in each Qwest Wire Center. 5-Qwest-2 at p. 68. EUDIT is a flat-rated, bandwidth-specific interoffice transmission path. Id.

14. Shared Transport allows CLECs to share the exact interoffice transmission facilities that Qwest utilizes for itself. 5-Qwest-2 at p. 69. The shared transport facilities connect Qwest end office switches with other Qwest end office switches and/or with Qwest tandem switches for the delivery of traffic within the local calling area. Id. Shared transport is a product available only in conjunction with unbundled switching. 5-Qwest-2 at p. 69. Shared transport is billed on a minute-of-use basis in accordance with section 252(d)(1). 5-Qwest-2 at p. 72.

15. Qwest provides unbundled access to dedicated transmission facilities between Qwest end offices or between Qwest end offices and CLEC end offices. 5-Qwest-2 at p. 68. Qwest provides interoffice facilities between its end offices and serving wire centers ("SWC"), its SWCs and IXC POPs, its tandem switches and SWCs,

and between its end offices or tandems and the wire centers of Qwest and requesting carriers. Id.

16. Qwest's SGAT offers unbundled dedicated interoffice transport between Qwest wire center in the same LATA and the state. 5-Qwest-2 at p. 68. EUDITs and UDITs are available in DS1, DS3, OC-3 and OC-12 bandwidths and such higher capacities as evolve over time where facilities are available. Id. UDIT is also available in DS0 bandwidth. Id.

17. Shared transport provides CLECs who serve their customers via unbundled switching, a means of transporting traffic from their customers to distant end offices or interexchange carriers. 5-Qwest-2 at p. 70. When a CLEC's customer served by unbundled switching and shared transport originates a call, the Qwest switch uses the same routing table to determine the availability of an outgoing trunk port for the CLEC's call that would be used by a Qwest call. Id. The CLEC has access to the same routing table capabilities, the same trunk ports, and the same mix of direct and tandem-routed interoffice facilities available to Qwest end users. Id.

18. CLECs can also use custom routing to direct their end user's operator service and/or directory assistance (DA) calls in a different manner than Qwest routes its own operator services and directory assistance calls. 5-Qwest-2 at p. 70. Qwest's SGAT provides for customized routing that enables CLECs to self provide, or select among other providers, operator and /or DA services. 5-Qwest-2 at p. 71. Customized routing is a software function of the switch that may be ordered with unbundled switching or resale applications. Id.

19. Qwest will provision unbundled dedicated transport in Arizona utilizing a defined order and provisioning flow. 5-Qwest-2 at p. 72. The same process and provisioning flows can be used for unbundled switching, in combination with shared transport, since shared transport is automatically provisioned with unbundled switching unless the CLEC specifically selects otherwise. Id. When the CLEC purchases unbundled switching and shared transport, the CLEC calls follow the same transmission path as Qwest's traffic. 5-Qwest-2 at p. 72.

20. Qwest maintains unbundled transport in Arizona utilizing defined maintenance flows. 5-Qwest-2 at p. 73. Maintenance and repair of dedicated and shared transport facilities are the sole responsibility of Qwest. Id.

21. As of July 1, 2000, Qwest has processed 35 DS1 UDIT orders and 41 orders for DS3 UDITs in Arizona. 5-Qwest-2 at p. 74.

#### **d. Competitors' Position**

22. In their July 22, 1999, preliminary Statements of Position on Qwest's compliance with all Checklist Items, AT&T stated that Qwest has failed to comply with the requirements that it offer nondiscriminatory access to local transport. AT&T Ex. 1 at

p. 9. Qwest continues to refuse to offer shared transport as a network element, instead defining it as an "Ancillary Service" in its SGAT. *Id.* As a result, Qwest refuses to offer cost-based pricing for shared transport, instead charging approximately twenty times more than the cost for this element. *Id.* In addition, Qwest's dedicated transport offering does not comply with the requirements of the Act. AT&T Ex. 1 at p. 9. Qwest has limited the facilities to which a new entrant may connect dedicated transport to transmission paths between Qwest's wire centers, not to other facilities, such as end offices and tandem switches. *Id.* Finally, AT&T states that Qwest has failed to put forth any credible testing evidence of its ability to provide, maintain and repair unbundled transport for CLECs. AT&T Ex. 1 at p. 10.

23. MCIW stated that Qwest has failed to comply with Checklist Item 5. MCIW states that since local transport is a network element, there is very little data that allows MCIW to determine if it is receiving local transport in a manner that is at a level of quality at least equal to the level that Qwest provides to itself. MCIW also stated that the monthly service reports it receives by Qwest are inadequate.

24. NEXTLINK stated that Qwest's dedicated transport offering does not comply with the requirements of the Act. Qwest has refused NEXTLINK's requests for dedicated transport to a customer premise and to connect DS-1s to DS-3s at offices where NEXTLINK is not collocated. Qwest has also failed to offer any credible testing evidence of its ability to provide, maintain and repair unbundled transport for CLECs.

25. Sprint stated that it is not clear that Qwest offers shared transport as required under the Act. Sprint had been engaged in extensive interconnection contract negotiations with Qwest and believes that Qwest's claim that it offers shared transport is not what it appears. Sprint claims that Qwest seems to be playing word-games with the term "shared transport", offering a product quite different than that which the Act and the FCC intend.

26. Other CLECs filing comments on July 22, 1999, included Cox, ELI, e-spire and Rhythms. ELI stated it joined in the position statements filed by the other CLECs. Cox and e-spire stated that it had inadequate information to determine whether Qwest is in compliance with Checklist Item 5. Rhythms joined in AT&T's comments.

27. AT&T and MCIW filed additional comments on Checklist 5 on September 21, 2000.

28. AT&T had numerous concerns relating to language contained in Qwest's SGAT. AT&T states that the definition of dedicated transport contained in Section 9.6.1 of the SGAT fails to track the requirements outlined by the FCC. AT&T 4-1 at p. 26. Specifically, the definition fails to identify all of the permissible routes (e.g. between central offices, tandems of the BOC) and fails to provide for all feasible transmission capabilities (e.g. OC48 and OC192) which creates discriminatory and unreasonable burdens on the CLECs. *Id.*

29. Section 9.6.1.1 does not provide for dedicated transport between the full panoply of facilities required by the FCC, such as between CLEC wire centers or switches. AT&T 4-1 at p. 26. This section also creates an unwarranted and artificial distinction between dedicated transport provided between two Qwest wire centers ("UDIT") and dedicated transport provided between a Qwest wire center and a CLEC wire center or IXC POP. Id. The FCC makes no such distinction and there is no legal authority permitting Qwest to make such a distinction. Id. AT&T states that Qwest must modify Section 9.6.1.1 to closely track the requirements of law and eliminate the unreasonable and discriminatory bifurcation of dedicated transport facilities. AT&T 4-1 at p. 27.

30. Section 9.6.1.2 describes an "Unbundled Multiplexer" that is "offered as a stand-alone element associated with a UDIT." AT&T 4-1 at p. 27. The SGAT is unclear whether this multiplexer is required as a part of a CLEC's access to dedicated transport as a UNE. Id. Qwest should clarify the language of section 9.6.1.2. to indicate whether it is being offered as a UNE under the SGAT or if it is not being offered as a UNE. Id. Multiplexing in this context should be offered as an option available to the CLEC and as an option, Qwest should add SONET add/drop multiplexing to Section 9.6.1.2 since the CLEC needs to have the option to order this type of multiplexing. AT&T 4-1 at p. 27.

31. AT&T also requested amendment of SGAT Sections 9.6.2.1 and 9.6.2.2. AT&T 4-1 at p. 28. These two sections require the CLEC to provide for its own regeneration for transmission facilities. AT&T 4-1 at p. 27. Qwest should deliver dedicated transport to the CLEC with the appropriate template signal, whether it be DS0, DS1, DS3 or OCN. Id. These sections must be amended to eliminate the requirement that a CLEC order or provide regeneration and add an affirmative statement to the SGAT that requires Qwest to deliver transport with the proper template signal. AT&T 4-1 at p. 28.

32. Section 9.6.2.1 also states that the CLEC is responsible for cross connections between UDIT and EUDIT. AT&T 4-1 at p. 28. The effect of this provision is to require the CLEC to pay for cross connection between these two fictitious elements, or worse, to have collocation in the Qwest office where UDIT becomes EUDIT. Id. AT&T does not agree that there is a distinction between UDIT and EUDIT and that cross connection cannot be a requirement between the two. Id.

33. AT&T further requested that Qwest delete Section 9.6.2.3 of the SGAT that requires the CLEC to have collocation at both ends of UDIT, except for pre-existing combinations provided as combinations. AT&T 4-1 at p. 28. AT&T states that this requirement is unreasonable and discriminatory. Id. CLECs must be allowed to order combinations that include UDIT, whether or not the combination is preexisting. Id.

34. AT&T also expressed concern over SGAT Section 9.6.2.5 regarding dedicated transport at rates above DS1 that will be provided via an optical interface at the location requested by the CLEC. AT&T 4-1 at p. 29. As Qwest has written it, AT&T assumes this section means that an optical interface will be provided at the CLEC wire

center or IXC POP side of the dedicated transport, not at the Qwest wire center side. Id. AT&T states that this is not appropriate if a CLEC orders DS3 dedicated transport, Qwest should provide a DS3 templated signal at both ends and that anything else is an incomplete UNE. Id. AT&T recommends that Section 9.6.2.5 be deleted. Id.

35. AT&T commented that Section 9.6.2.9 requires the CLEC to provide space for Qwest equipment in the CLEC wire center for the terminating end of the dedicated transport. AT&T 4-1 at p. 29. Qwest's use of space in a CLEC wire center is collocation of Qwest equipment. Id. Qwest does not offer in this section, nor in the interconnection section, to compensate the CLEC for collocation of Qwest's equipment. Id.

36. AT&T stated that in Section 9.6.3, Qwest lists the rate elements for dedicated transport. AT&T 4-1 at p. 29. AT&T stated that the Wholesale Pricing Docket should address not only the prices for the elements but also the appropriateness and application of each element in various configurations. Id.

37. AT&T states that SGAT section 9.8 (Shared Transport) should be revised to more closely track the requirements of the FCC. AT&T 4-1 at p. 30. Section 9.8 should include an affirmation of the requirement that CLEC traffic shall use the same routing table resident in Qwest's switch and that this element may carry originating and terminating access traffic from, and to customers to whom the requesting carrier is also providing local exchange service. Id.

38. MCIW had a number of concerns with the proposed SGAT language regarding Checklist Item 5. MCIW stated that Qwest should be required to revise its definition of unbundled dedicated transport to meet the definition established by the FCC. MCIW 4-1 at p. 15. Qwest proposes two definitions of unbundled dedicated transport: one for UDIT and one for EUDIT. MCIW 4-1 at p. 15. Qwest's definition is too limited since it does not include a transmission path between wire centers or switches of requesting CLECs. Id. SGAT section 9.6.1.1 should be revised to comport with the FCC's definition. Id. Additionally, section 9.6.1 should be revised to be consistent with the FCC's *UNE Remand Order* which specifies at what transmission speeds ILECs must make unbundled dedicated transport available to CLECs. MCIW 4-1 at p. 16. Qwest's proposed language limits the higher capacity to OC-12 rather than OC-192. Id. Section 9.6.1 also states that the specifications, interfaces and parameters are described in Qwest's Technical Publication 77389. MCIW 4-1 at p. 16. Qwest's technical publications must be consistent with, or must incorporate, recognized industry standards. Id.

39. MCIW also had concerns over the use of the term "finished services" used in SGAT section 9.6.2.1. MCIW 4-1 at p. 16. Qwest has not properly defined the term "finished service" and by not doing so, it would potentially free Qwest to refuse connections based on ambiguous language. Id. This is particularly harmful to carriers such as MCIW who is both an IXC and a CLEC should Qwest define "finished service" to include access services. Id.

40. MCIW had concerns with the language of SGAT section 9.6.2.3 which states that CLECs must be collocated at both ends of the UDIT, except for pre-existing combinations. MCIW 4-1 at p. 17. This language is in direct conflict with the FCC's *UNE Remand Order*. Id. Also, MCIW claims that this Commission has rejected Qwest's argument that the phrase "currently combined" describes pre-existing combined unbundled network elements and that any and all references to the term "pre-existing" in the context of combinations should be removed. MCIW 4-1 at p. 17-18.

41. MCIW also expressed concern that rate elements and corresponding rates in the SGAT should be Commission approved. MCIW 4-1 at p. 18. Since Qwest has defined unbundled transport into UDIT and EUDIT, Qwest has effectively created a new service category service (EUDIT) with corresponding new rate elements, which are reflected in section 9.7.8 of Appendix A to the SGAT. Id. Qwest has provided no rational or legal basis for distinguishing between UDIT and EUDIT. Id. Additionally, the proposed rates for EUDIT have not been addressed in the Arizona Cost Docket, nor has the non-recurring rates for UDIT and the rates for OC-3 and OC-12 UDIT not been addressed by the Commission. Id. Therefore, MCIW states that these rates should be subject to true up upon Commission approval in a new Cost Docket. Id. Qwest should also be required to propose rates for unbundled dedicated transport at OC-48, OC-96 and OC-192 to be consistent with the *UNE Remand Order*. Id.

42. Finally, MCIW stated that language should be added to the SGAT that once performance measurements from the Commission's separate proceeding have been established, Qwest will revise its proposed SGAT to include such measurements and any appropriate remedy plans. MCIW 4-1 at p. 19.

#### e. Qwest Response

43. In its September 29, 2000 written response, Qwest addressed several of AT&T and MCIW's concerns.

44. With respect to Section 9.6.1 and MCIW's concern regarding Qwest's Technical Publications, Qwest stated that it is committed to being consistent with mandatory industry standards. Qwest 4-1 at p. 20.

45. As to AT&T and MCIW's concern over Qwest's definition in section 9.6.1.1 failing to provide for all feasible transmission capabilities, Qwest stated that EUDIT and UDIT are available in all technically feasible bandwidths where facilities exist and include all OCN level services existing in the Qwest network at the time of the CLEC's request for UDIT and EUDIT. Qwest 4-1 at p. 20. However, given the extremely limited demand and spare capacity availability of the OCN level services, Qwest recommends that OCN level requests be handled on an individual case basis (ICB). Id. Qwest will amend its SGAT language to reflect the FCC requirement. Qwest 4-1 at p. 21.

46. With respect to AT&T's concern regarding the distinction between dedicated transport provided between two Qwest wire centers ("UDIT") and dedicated transport provided between a Qwest wire center and a CLEC wire center or IXC POP, Qwest agrees to provide existing unbundled dedicated transport between all locations identified in the FCC rules and related orders. Qwest 4-1 at p. 21. By delineating the unbundled dedicated transport between the Qwest serving wire center and the CLEC central office as "EUDIT", Qwest's intent was to clearly identify that this segment of dedicated transport has historically been recovered in cost models and resultant rate schedules as a non-distance sensitive rate element. *Id.* All other "interoffice" transport has typically been "cost modeled" and rated on a fixed and per mile basis. *Id.* The practice used by Qwest on how to rate dedicated transport is not an inappropriate rate structure but a standard industry practice. Qwest 4-1 at p. 21. Qwest recommends that the cost and rate structure issues associated with the EUDIT portion of unbundled transport be deferred to the Cost Docket. *Id.*

47. Regarding AT&T's concern over whether "Unbundled Multiplexer" is required as a part of a CLEC's access to dedicated transport as a UNE, Qwest confirms that multiplexing is an option in the SGAT available to the CLEC. Qwest 4-1 at p. 22. Multiplexing is not a UNE because it is not identified in the FCC unbundling rules as a separate UNE. *Id.* Multiplexing is a feature: functionality of transport that Qwest is offering as part of the UDIT UNE. *Id.* In addition, AT&T requested that Qwest add SONET add/drop multiplexing to Section 9.6.1.2. Qwest 4-1 at p. 22. The FCC in the UNE Remand Order specifically noted that incumbent LECs have limited requirements as it relates to SONET rings. *Id.* Therefore, Qwest does not agree to accept AT&T's request. *Id.* Qwest believes that requests to access SONET add/drop multiplexers are so situation specific that it is a classic ICB situation. *Id.*

48. To address MCIW's concern over the definition of the term "finished service" in section 9.6.2, in the context of the SGAT a "finished service" is a complete end to end service that is provided to a wholesale or retail customer. Qwest 4-1 at p. 23. This would generally include everything other than UNEs or UNE combinations. *Id.*

49. Regarding AT&T's question if a cross connection is required between EUDIT and UDIT, if a CLEC must make the necessary cross connection, Qwest did not agree to modify this section to make Qwest responsible for all requested cross connections. Qwest 4-1 at p. 23. Qwest stated that it is only required to "cross connect", that is to combine, unbundled elements. *Id.* Qwest does not agree that in Arizona it would be required, upon request of the CLEC, to make any necessary cross connections between unbundled network elements including EUDIT and UDIT when ordered as a combination. Qwest 4-1 at p. 24. Qwest recommends that AT&T's position on cross connection be referred to the Cost Docket for consideration with other EUDIT cost and pricing issues. *Id.*

50. With regard to AT&T's position that Qwest should deliver dedicated transport to the CLEC with the appropriate template signal, Qwest did agree that it will provision the appropriate template signal, whether it is DS0, DS1, DS3 or OCN level

UDIT. Qwest 4-1 at p. 25. However, regarding AT&T's request to amend language to eliminate the requirement that a CLEC order or provide regeneration, Qwest does not agree. Qwest 4-1 at p. 25.

51. Qwest agreed to remove reference to the term "pre-existing" with regard to currently combined network elements at MCIW's request. Qwest 4-1 at p. 26. MCIW's other concern was that Qwest's collocation requirement for UDIT should be rejected since the FCC has ruled that collocation is not a requirement for CLECs to gain access to incumbent's interoffice transport network. Qwest 4-1 at p. 26. Qwest will provide a CLEC access to UNEs at any demarcation point mutually agreed to by the parties. Id.

52. As to AT&T's concern over SGAT section 9.6.2.6 that Qwest does not offer to compensate the CLEC for collocation of Qwest's equipment, Qwest recommends the review of this issue be completed in the Collocation workshop. Qwest 4-1 at p. 27.

53. AT&T and MCIW both raised concerns over rate elements discussed in Section 9.6.3. Both CLECs indicated that many rate elements for dedicated transport should be addressed in the Cost Docket and approved by the Commission. Qwest 4-1 at p. 27. Qwest agrees that rate elements and rates for UDIT and EUDIT should be reviewed in the Cost Docket. Qwest 4-1 at p. 28.

54. Addressing MCIW's proposal that Qwest revise its proposed SGAT to include intervals, service quality measurements, and any appropriate remedy plans, Qwest added UDIT standard installation intervals 07/21/2000 Exhibit C to its SGAT. Qwest 4-1 at p. 29. Once the Arizona Corporation Commission adopts a Post-271 Performance Assurance Plan, the Plan will become an Exhibit of the SGAT. Id.

55. With regard to MCIW's position that SGAT Section 9.8.3.1 be revised to reflect all rates in the SGAT, Qwest proposes to delete the last sentence in section 9.8.3.1 and to charge UNE rates in density Zone 1 MSAs for shared transport. Qwest 4-1 at p. 30.

56. Finally, Qwest agreed to modify its SGAT language to incorporate a new Section 9.8.2.3 to address AT&T's recommendation that Section 9.8 be revised to more closely track the requirements of the FCC. Qwest 4-1 at p. 29. Specifically, AT&T stated that section 9.8 should include an affirmation of the requirement that CLEC traffic shall use the same routing table resident in Qwest's switch and that this element may carry originating and terminating access traffic from, and to customers to whom the requesting carrier is also providing local exchange service. Id.

## **f. Workshops**

57. On October 31, 2000, Qwest witness Karen Stewart filed a supplemental rebuttal affidavit to address a number of issues from the October 11-13 workshops.

58. To address CLECs concern over the definition of UDIT, Qwest agreed to revise the first sentence of Section 9.6.1 as follows:

Unbundled Dedicated Interoffice Transport (UDIT) provides 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.

Qwest 4-6 at p. 7.

59. AT&T and WCOM both objected that the definition of UDIT failed to provide for all feasible transmission capabilities (e.g. OC48 and OC192). Qwest 4-6 at p. 7. Qwest agreed that EUDIT and UDIT are available in all technically feasible bandwidths where facilities exist, to include all OCN level services existing in the Qwest network at the time of the CLEC's request for UDIT or EUDIT. Id. Qwest has amended the language of Section 9.6.1 to indicate that "EUDITs and UDITs are available in DS1 through OC192 bandwidths where facilities are available." Id. However, given the extremely limited demand and spare capacity availability of OCN level services, OCN level requests will be handled on an individual case basis. Id.

60. Qwest has not agreed to eliminate the distinction between EUDIT and UDIT as the CLECs have requested. Qwest 4-6 at p. 8. Qwest believes that this is a pricing issue. Id. By delineating the unbundled dedicated transport between the Qwest serving wire center and the CLEC central office as "EUDIT", Qwest's intent was to clearly identify that this specific segment of dedicated transport has historically been recovered in cost models and resultant rate schedules as a non-distance sensitive rate element. Id. All other "interoffice" transport has typically been "cost modeled" and rated on a fixed and per mile basis. Id. Therefore, Qwest will not make this change.

61. With regard to AT&T's concerns that CLECs must order each UDIT and EUDIT element separately, even though they may be for transport of the same traffic and that CLECs may be required to perform connections between UDIT and EUDIT if they are ordered in combination, Qwest has added the following language to Section 9.6.2.1:

To the extent that CLEC is ordering access to a UNE Combination, Qwest will perform requested and necessary cross-connections between UNEs.

Qwest 4-6 at p. 8.

62. To address AT&T's concern that the SGAT is unclear whether multiplexing is required as a UNE as a part of a CLEC's access to dedicated transport, Qwest has modified Sections 9.6.1.2 and 9.6.2.2 to clarify that multiplexing is optional. Qwest 4-6 at p. 8. Multiplexing is not a UNE but a feature, functionality of transport that Qwest is offering as part of the UDIT UNE. Id.

63. Qwest has agreed to MCIW's request to define the term "finished service" by adding to the definitions section of the SGAT: 'Finished Service' means a complete end-to-end service that is provided to a wholesale or retail customer." Qwest 4-6 at p. 9.

64. Qwest has agreed to AT&T's request to deliver dedicated transport to the CLEC with the appropriate template signal, whether it is DS0, DS1, DS3 or OCN level UDIT. Qwest 4-6 at p. 9.

65. To address MCIW's objection to the requirement in Section 9.6.2.3 that CLECs have collocation at both ends of the UDIT, Qwest will revise Section 9.6.2.3 to allow CLECs to use any form of collocation. Qwest 4-6 at p. 9.

66. Qwest has agreed to MCIW's proposal to revise its SGAT to include intervals, service quality measurements, and any appropriate remedy plans. Qwest 4-6 at p. 10. Once the Arizona Commission adopts a Post-271 Performance Assurance Plan, the Plan will become an exhibit to the SGAT, as will the PID from the 271 Workshop process. Id.

67. Finally, AT&T recommended that Section 9.8.2 be revised to more closely track the requirements of the FCC as identified in the Texas 271 order. Qwest 4-6 at p. 10. Specifically, AT&T suggested that Section 9.8 should include an affirmation of the requirement that CLEC traffic shall use the same routing table resident in Qwest's switch and that this element may carry originating and terminating access traffic from and to customers to whom the requesting carrier is also providing local exchange service. Id. Qwest does not agree that the language was not sufficient, but nevertheless has added language in a new section 9.8.2.3. to address AT&T's concern.

### **g. Disputed Issues**

68. At the conclusion of the October 9, 2000 and April 10, 2001 workshops, the parties were unable to agree on a number of issues that went to impasse involving unbundled local transport. Statements of Positions on the impasse issues were filed by AT&T, MCIW, Covad and Qwest on May 18, 2001.

#### **DISPUTED ISSUE NO. 1: Whether the CLEC should be required to pay a separate regeneration charge to receive dedicated transport at its collocation? (TR-5 and CL2-10)**

##### **a. Summary of Qwest and CLEC Positions**

69. AT&T argues that CLECs should not pay for regeneration from the interoffice frame to the CLECs' collocation since Qwest has control over the location of the CLECs' collocation arrangements. AT&T May 18, 2001 Brief at p. 35. As long as Qwest has the sole ability to determine the location of the CLECs' collocation arrangements, the CLECs should not have to pay for regeneration charges. Id. at p. 35-36.

70. Covad argues that the Qwest SGAT directly and indirectly charges CLECs for channel regeneration in two different circumstances. Covad May 18, 2001 Brief at p. 3. First, as stated in SGAT Section 9.1.10, a CLEC must pay a regeneration charge where “the distance from the Qwest network to the leased physical space . . . is of sufficient length to require regeneration.” *Id.* Second, as stated in SGAT Sections 9.6.2.1 and 9.6.2.2, CLECs must supply their own channel regeneration and associated equipment for transport transmission facilities. *Id.* This results in an “additional cost” and is prohibited under controlling law. *Id.* at p. 4. Qwest seeks to disregard the clear import of the *Second Report and Order*, arguing that regeneration is “necessary,” as contemplated by the United States Court of Appeals for the District of Columbia in *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 423, 424 (D.C. Cir. 2000). *Id.* Qwest’s argument is fundamentally flawed because channel regeneration may never be deemed “necessary,” as a matter of law, since regeneration should never be required in the first place. *Id.* at p. 4-5. Therefore, Covad recommends that the Commission order Qwest to modify its SGAT to include the requirement that all transport delivered by Qwest to CLECs be accompanied by a sufficient and proper template signal. *Id.*

71. Qwest stated that it believes that AT&T and Covad are simply trying to avoid paying for the costs they cause Qwest to incur. Qwest May, 18, 2001 Brief at p. 8. Qwest states that costs can be recovered in one of two ways, both of which are acceptable to Qwest- averaged across UDITs, or the cost of regeneration can be applied in a situation-specific fashion. *Id.* When Qwest first developed its Expanded Interconnection Channel Terminations (“EICT”) functionally to provide a CLEC access to a UNE in its collocation space, it included the “jumper” functionality and regeneration as required. *Id.* During arbitration proceedings, Qwest was required to remove the charges for regeneration, and to charge regeneration only when required and as requested by the CLEC. *Id.* By taking the contrary position now, AT&T is attempting to force Qwest into a position where it is not able to recover its costs. *Id.*

72. Further, with regard to AT&T’s claims that Qwest has control over where a CLEC is collocated, AT&T’s premise is neither factually nor legally correct. *Id.* at p. 8. The selection of collocation space is not without practical limits, especially in those wire centers with high demand for collocation and limited additional space options. *Id.* Where regeneration is unavoidable, CLECs should incur the cost of this service as part of the cost of accessing UNEs. *Id.* at p. 9. Neither the law nor the constitution requires Qwest to provide services to CLECs at no cost and therefore, Qwest is entitled to recover its costs associated with providing access to UNEs. *Id.*

**b. Discussion and Staff Recommendation**

73. In its Proposed Findings of Fact and Conclusions of Law, Staff recommended that the SGAT be modified to remove charges associated with regeneration.

74. Staff believes that this will provide Qwest an incentive to design the most efficient network. As AT&T stated, Qwest, for all practical purposes, has the sole ability to determine the location of the CLEC's collocation arrangements, which could lead to regeneration, over which the CLEC would have no control. This result could lead to unequal treatment of all carriers since some may be required to pay regeneration charges while others do not, thus allowing Qwest to discriminate in its provisions of service as and between CLECs and itself.

75. Further, Staff believes that Qwest's position in this Docket is inconsistent with its position recently taken in the Wholesale Pricing Docket. Staff believes that in the Wholesale Pricing Docket, Qwest recently agreed not to assess CLECs regeneration charges.

76. In its Comments in response to Staff's Proposed Findings of Fact and Conclusions of Law, Qwest stated that channel regeneration is required when the collocation is greater than a certain distance from its power source. Qwest Comments at p. 1. Qwest stated that contrary to what was stated in the Report, Qwest does not have the sole ability to determine the location of the CLEC's collocation arrangements. Qwest Comments at p. 2. The basic layout of the central office itself might preclude collocation sufficiently close to the power source. *Id.* Qwest also stated that Staff's resolution of the issue in the Collocation Report was consistent with Qwest's position in the Cost Docket, and that the Checklist 5 Report should be modified to reflect this outcome. In the Wholesale Pricing Docket, Qwest conceded that it cannot recover for channel regeneration when alternative locations exist that would not require channel regeneration. *Id.*

77. AT&T cited the FCC's recent Fourth Report and Order in CC Docket No. 98-147<sup>3</sup>. AT&T Comments at p. 2. AT&T stated that in that Order, the FCC found that an ILEC "must not assign physical collocation space that will impair the quality of service or impose other limitations on the service a requesting carrier wishes to offer." (Citing FCC Order at paras. 89-91). AT&T Comments at p. 2.

78. In the recent FCC Order cited by AT&T, the FCC stated that "an incumbent LEC has powerful incentives that, left unchecked, may influence it to allocate space in a manner inconsistent with this statutory duty. *Advanced Services Fourth Report and Order* at para. 92. However, the FCC went on to impose several additional safeguards in its Order. The FCC concluded that in order to meet the statutory standard, an incumbent LEC must act as a neutral property owner and manager, rather than as a direct competitor of the carrier requesting collocation, in assigning physical collocation space. *Id.* The FCC took several additional measures in the *Fourth Advanced Services Order* to ensure that CLECs would be treated in a nondiscriminatory manner including

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<sup>3</sup> In the Matter of the Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Fourth Report and Order (Rel. August 8, 2001) ("Advanced Services Fourth Report and Order").

requiring an incumbent LEC to allow a requesting carrier to submit physical collocation space preferences prior to assigning that carrier space. *Id.* at para. 96.

79. With the additional safeguards put in place by the FCC, and to achieve consistency with other decisions and dockets, Staff agrees with the qualification requested by Qwest. Thus, Staff recommends that Qwest be required to modify its SGAT to remove the regeneration charge where there exists alternative locations that would not require channel regeneration, or where there would be such a location, had Qwest not reserved space for its future use in the affected premises. Collocation Report at para. 417. Staff further recommends that Qwest be required to authenticate all instances where it claims that there are no locations available that do not require regeneration. Thus, Staff recommends that Qwest be required to file with the Commission a plan for how it intends to authenticate each of the instances where it must charge for regeneration. The plan should also detail how Qwest intends to authenticate that it is complying with all of the collocation safeguards laid out in the FCC's *Advanced Services Fourth Report and Order*. Staff believes that this plan should be filed by Qwest and approved by the Commission before the Commission endorses Qwest's 271 application with the FCC.

**DISPUTED ISSUE NO. 2: Whether there should be a distinction between UDIT and EUDIT? (TR-12)**

**a. Summary of Qwest and CLEC Positions**

80. AT&T argued that there is no legal basis to make the distinction as Qwest has done to divide dedicated transport into two elements - Unbundled Dedicated Interoffice Transport (UDIT) and Extended Unbundled Dedicated Interoffice Transport (EUDIT). AT&T May 18, 2001 Brief at p. 31. Such distinction creates unintended consequences, to the CLEC's detriment, and perpetuates an outdated rate structure that is inapplicable to carrier-to-carrier relationships. *Id.*

81. Under Qwest's UDIT-EUDIT distinction, UDIT is Qwest's proposal for dedicated transport between Qwest's wire centers. *Id.* at p. 32. If a CLEC wants dedicated transport from its wire center (or an IXC from its POP) to a Qwest wire center (the first wire center is called the SWC by Qwest), the CLEC would order EUDIT. *Id.* UDIT is a distance-sensitive, flat-rated rate element. *Id.* EUDIT is flat-rated, non-distance sensitive. *Id.* The CLEC end of EUDIT also does not contain the electronics necessary to provide the CLEC with the capability of the UNE. *Id.* The FCC did not make a distinction between dedicated transport between ILEC wire centers and dedicated transport between an ILEC wire center and a CLEC wire center. *Id.* It is all defined as dedicated transport. *Id.* AT&T's position is that the entire dedicated transport link from point A to point Z should be based on a distance sensitive, flat rate charge which will more accurately reflect the costs to the CLEC. *Id.*

82. AT&T also stated that the FCC requires dedicated transport to be recovered through a flat rate charge. *Id.* at p. 32. Qwest's rate structure for EUDIT does not follow the FCC's guidelines, because the rate for the EUDIT is non-distance sensitive but is an average rate. *Id.*

83. Additionally, AT&T stated that the EUDIT/UDIT distinction also imposes disincentives on the CLEC to build facilities to a meet point between the CLEC wire center and Qwest SWC. *Id.* at p. 33. Other problems include the ordering of EUDIT/UDIT on separate ASRs unless the EUDIT and UDIT are of the same bandwidth and do not require multiplexing which could add days to the standard intervals. *Id.* The Qwest proposal is also discriminatory because CLECs are also carriers, and the same ability to obtain dedicated transport on a distance-sensitive rate from Qwest wire center to the CLEC wire center should also be available. *Id.* at p. 33-34.

84. Finally, the EUDIT does not have electronics on the CLEC end which the FCC made clear that dedicated transport includes the electronics: "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." *Id.* at p. 34. AT&T recommends this Commission order Qwest to eliminate the EUDIT/UDIT distinction, provide dedicated transport between all required locations on a flat rate, distance-sensitive basis and require Qwest to provide the electronics on dedicated transport terminating at a CLEC wire center. *Id.* at p. 35.

85. MCIW also argued that Qwest improperly disaggregates unbundled dedicated transport into various subparts and concurs with AT&T's concerns on this issue. MCIW May 18, 2001 at p. 4. As an unbundled network element, CLECs are permitted to use UDIT with none of the restrictions imposed by Qwest by its disaggregating of UDIT into separate subparts, UDIT and EUDIT. *Id.* The sole effect of this disaggregation is to raise the costs of doing business for CLECs as is evident from the prices proposed in Exhibit A to the SGAT for these subparts. *Id.*

86. Qwest is requiring CLECs to build triplicate facilities that are inefficient, costly, and a barrier to entry as described in three exhibits depicting the variations of constructing its network under Qwest's approach that addressed: 1) dedicated transport only, 2) dedicated transport, and EF, UDIT, and EUDIT, and 3) dedicated transport, EF, UDIT, EUDIT, and private line network. *Id.* MCIW requests that Qwest provide a single transport "pipe" where services can be delivered to gain efficiencies in its network. *Id.* at p. 4-5. MCIW also recommends that the Commission allow MCIW and other CLECs the ability to build efficient networks, without having to build triplicate facilities required by Qwest. *Id.*

87. Covad argued that Qwest's SGAT Section 9.6.1.1 created an unwarranted and artificial distinction between: (1) dedicated transport from one Qwest wire center to another (UDIT), and (2) dedicated transport from a Qwest wire center to a CLEC wire center (EUDIT). Covad Brief at p. 5. This distinction is grounded in neither a principled basis upon which to differentiate the two transport scenarios, nor applicable law. *Id.*

88. Covad went on to state that Qwest has utilized EUDIT as an anti-competitive device and that Qwest extorts from CLECs significantly greater amounts of money for the purchase of EUDIT than UDIT. *Id.* at 6. Through the creation of EUDIT, Qwest artificially inflates the price for transport and forces CLECs to shoulder a greater financial burden when purchasing transport thereby placing CLECs on an uneven competitive footing. *Id.*

89. Finally, Covad stated that Qwest's ordering requirements for, and provisioning of, EUDIT (e.g. the submission of two ASRs and the assignment of two separate circuit identification numbers), interposes unnecessary delay and administrative complication where none should exist – to the detriment of the CLECs. *Id.* at p. 6-7. Because EUDIT does not comport with the FCC rules, Qwest must modify its SGAT to eliminate the EUDIT product and to make all necessary conforming SGAT changes, including but limited to, ordering changes (one ASR), rate changes (the UDIT rate) and interval changes (the standard UDIT interval in Exhibit C). *Id.*

90. Qwest argued that its proposed rate design is consistent with the way costs for facilities analogous to UDIT and EUDIT have historically been recovered. Qwest May 18, 2001 Brief at p. 33. By delineating the unbundled dedicated transport between the Qwest serving wire center and the CLEC central office as "EUDIT", Qwest's intent was to clearly identify that this specific segment of dedicated transport has historically been recovered as a non-distance-sensitive rate element. *Id.* All other interoffice transport has typically been cost modeled and rated on a fixed and per mile basis. *Id.*

91. Since Qwest's position is that the distinction between UDIT and EUDIT is a question of rate design, Qwest recommends that the cost and rate structure issues associated with the EUDIT portion of unbundled transport be deferred to the Cost Docket. *Id.* at 34.

**b. Discussion and Staff Recommendation**

92. Staff agrees with AT&T, MCIW and Covad. The FCC Orders do not make a distinction between dedicated transport between ILEC wire centers and dedicated transport between an ILEC wire center and a CLEC wire center. As AT&T, MCIW and Covad pointed out in their Briefs, Qwest, through this differentiation, has introduced an unwarranted distinction which creates inherent disadvantages for the CLECs and their ability to effectively compete with Qwest in the future. The problems arising from this separate classification were well documented by the CLECs, i.e., rate structure differences, including what on its face appears to be discriminatory treatment of CLECs by charging them a different rate structure for dedicated transport, potential problems in ordering and provisioning resulting from the distinction, and failure to include the necessary electronics to provide CLECs with full functionality as required under the FCC Orders. Staff recommends that Qwest be required to modify its SGAT to eliminate the EUDIT product altogether.

93. As for rate structure issues, Staff agrees with the parties that the actual rates for UDIT and other transport elements should be established in the pending Arizona Cost Docket.

94. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T noted that while it agreed with Staff's conclusion, Staff never concluded that Qwest must provide electronics at the CLEC end of dedicated transport. *Id.* at p. 2. AT&T cited the *UNE Remand Order*, para. 323, among others. In that paragraph, the FCC clarified that the definition of dedicated transport included "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." *Id.* As to the issue of channel regeneration and associated equipment for transport transmission facilities, Staff agrees with AT&T on this point, that according to the *UNE Remand Order* this is included within the definition of dedicated transport. This does not mean, however, that Qwest cannot recover its costs associated with channel regeneration, as part of its UNE rate.

**DISPUTED ISSUE NO. 3: Applicability of the local use restriction to EUDIT (may CLECs use EUDIT as a substitute for special access services?) (TR-13)**

**a. Summary of Qwest and CLEC Positions**

95. AT&T argued that Section 9.6.2.4 of the SGAT imposes unlawful restrictions on the use of unbundled interoffice transport. AT&T Brief at p. 36. The language prohibits the use of interoffice transport 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 or to the extent that such UNEs meet the significant amount of local exchange traffic requirement set forth in section 9.23.3.7.2". *Id.*

96. The FCC has made it clear that ILECs cannot place any restrictions on the use of UNEs and reaffirmed its position in the *UNE Remand Order*. *Id.* at p. 36. In the *UNE Remand Order*, the FCC made clear that requesting carriers can order loop and transport combinations to provide interexchange service without any requirement to provide a certain amount of local exchange traffic. *Id.* The FCC modified its conclusion in paragraph 486 of the *UNE Remand Order*, stating that CLECs or IXC's could not convert special access to combinations of loop and transport unless it provided a significant amount of local exchange service to a particular customer. *Id.* at p. 36-37.

97. AT&T argues that Qwest's language in Section 9.6.2.4 must be rejected as inconsistent with the provisions of the *UNE Remand Order*. *Id.* at p. 38.

98. MCIW also argued that Qwest's SGAT section 9.6.2.4 does not address EELs or the combination of an unbundled loop, multiplexing/concentrating equipment and dedicated transport but rather addresses UDIT, which the FCC has defined as a

network element. MCIW May 18, 2001 at p. 3. An EEL, on the other hand, is not a network element, but a combination of network elements. Id. Section 9.6.2.4 imposes improper limitations and restrictions on this network element by precluding the use of UDIT as a substitute for special or switched access services except to the extent a CLEC provides “a significant amount of local exchange traffic” to its end users over the UDF. Id. Accordingly, MCIW recommends that Section 9.6.2.4 of Qwest’s SGAT be deleted. Id.

99. Qwest argued that the language in Section 9.6.2.4 that CLECs may not use EUDIT as a substitute for special access is consistent with the FCC’s *UNE Remand Order*. Qwest May 18, 2001 at p. 34. Paragraph 489 of the FCC’s *UNE Remand Order* states:

We conclude that the record in this phase of the proceeding is insufficient for us to determine whether or how our rules should apply in the discrete situation involving the use of dedicated transport links between the incumbent LEC’s serving wire center and an interexchange carrier’s switch or point of presence (or “entrance facilities”). . . We believe that we should fully explore the policy ramifications of applying our rules in a way that potentially could cause a significant reduction of the incumbent LEC’s special access revenues prior to full implementation of access charge and universal service reform. Therefore, we set certain discrete issues for further comment below

Id. at p. 34-35. The FCC has asked for comment regarding whether EUDIT and unbundled transport in general could be used as a substitute for special or switched access services. Id. While Qwest believes that this language is proper and appropriate, until the FCC rules on this issue, Qwest will concede this issue. Id. at p. 35. Qwest has included the following SGAT language in Section 9.6.2.4 in the SGAT that memorializes Qwest’s agreement not to apply the local use restriction EUDIT until the FCC resolves the issue:

9.6.2.4 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.

**b. Discussion and Staff Recommendation**

100. With Qwest’s agreement not to apply the local use restrictions contained in SGAT Section 9.23.3.7.2, Staff considers this issue to be temporarily resolved. As noted by Qwest in its Brief, the FCC has asked for comment regarding whether EUDIT and unbundled transport in general could be used as a substitute for special or switched access services. Qwest has stated that until the FCC rules on this issue, it will concede the issue to the CLECs and has proposed modifications to its SGAT Section 9.6.2.4.

101. Therefore, in its Proposed Findings of Fact and Conclusions of Law, Staff supported Qwest's proposed modification to SGAT Section 9.6.2.4 and recommended that the modified language be adopted.

102. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, WorldCom stated that in view of Staff's proposed resolution of Disputed Issue No. 2 (elimination of the EUDIT distinction) that any reference to EUDIT in the SGAT is inappropriate. Therefore, WorldCom recommended that Section 9.6.2.4 be stricken as proposed by WorldCom since it continues to refer to EUDIT.

103. AT&T concurred, however it stated that it did not oppose adoption of SGAT Section 9.6.2.4 if modified to be consistent with the conclusion in the Staff Report to eliminate the EUDIT product altogether. AT&T Comments at p. 3. AT&T went on to state that the word "EUDIT" should be removed and in lieu thereof the following language should be inserted: "UDIT between a Qwest wire center and CLEC's wire center." *Id.* Staff agrees that with the elimination of the EUDIT product altogether, Qwest should make conforming changes to Section 9.6.2.4 of its SGAT, including the change recommended by AT&T. Staff assumes that this will resolve WorldCom's concerns as well.

**DISPUTED ISSUE NO. 4: Whether it is appropriate for EUDIT to be used exclusively to carry internet traffic? Also, does the local use restriction apply to EUDIT?**

**a. Summary of Qwest and CLEC Positions**

104. Covad argued that Qwest prohibits CLECs from using EUDIT to transport internet traffic which is improper and unlawful for five reasons: First, Qwest's local use restriction on EUDIT comes cloaked in the guise of "cooperation" to resolve issues with CLECs. Covad May 18, 2001 Brief at p. 8. Since Qwest provided no evidentiary basis upon which to ground its local use restriction on EUDIT, it must be eliminated from the SGAT. *Id.* at p. 9. Second, Qwest's local use restriction is nothing more than a thinly veiled attempt to drive DLECs out of business. *Id.* at p. 10. Qwest's attempt to preserve and require the purchase of switched and special access services operates to eliminate completely Covad's ability to transport data traffic within its network. *Id.* Third, EUDIT is Qwest's creation and the direct result of Qwest's refusal to permit Covad to collocate its ATM in its collocation space in Qwest central offices. *Id.* at p. 10. At the same time Qwest necessarily creates a demand on the part of Covad for EUDIT, however, it simultaneously prohibits Covad from using that product for the very purpose for which it was ordered – to transport internet traffic to its network equipment. *Id.* at p. 11. Fourth, the EUDIT restriction improperly discriminates between CLECs. *Id.* Qwest imposes on those CLECs who are required to purchase both UDIT and EUDIT a local use restriction, whereas CLECs purchasing only UDIT are free from any such obligation. *Id.* Finally, Qwest's positions on EUDIT are logically and legally inconsistent. *Id.* The Commission must require that Qwest eliminate the local use restriction on EUDIT. *Id.* at p. 12.

105. Qwest argued that Internet traffic is interstate traffic, not local traffic and that therefore, the EEL UNE cannot be used to carry 100% interstate internet traffic. Qwest May 18, 2001 Brief at p. 35. However, Qwest believes that the issue of whether the local use restriction applies to EUDIT should be closed because, as stated in Disputed Issue No. 4 (TR-13), Qwest has agreed not to apply the local use restriction to EUDIT pending resolution of the issue by the FCC as shown by SGAT Section 9.6.2.4. Id. Until the FCC resolves the issue, Qwest will not apply the local use restriction to EUDIT. Id. at p. 36.

**b. Discussion and Staff Recommendation**

106. Covad's arguments center primarily on application of the local use restrictions to EUDIT which would act to prohibit CLECs from using EUDIT to transport purely Internet traffic. However, as noted by Qwest in its Brief, Qwest has agreed to modified language in its SGAT which would prohibit it from applying the local use restriction to EUDIT (UDIT) pending resolution of the issue by the FCC. Therefore, this appears to be a non-issue at this point in time pending a determination by the FCC.

107. The FCC is also apparently addressing this issue as it uniquely pertains to internet bound traffic. Staff considers this issue to be resolved and recommends that Qwest's proposed SGAT language discussed in the Impasse Issue 3 be adopted.

**h. Verification of Compliance**

108. The parties resolved all outstanding issues regarding Qwest's compliance with Checklist Item 5, with the exception of the four impasse issues discussed above.

109. Qwest has also agreed to allow all CLECs to opt into the revised SGAT provisions resulting from these Workshops.

110. After considering the record herein and subject to Qwest's modifying its SGAT language consistent with the resolution of the impasse issues discussed above, Staff recommends that Qwest be found to comply with Checklist Item 5 which requires Qwest to provide or offer to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."

111. Upon consideration of the record herein and subject to Qwest's modifying its SGAT language consistent with the resolution of the impasse issues discussed above, Staff recommends that Qwest be found to comply with Section 271(c)(2)(B)(ii), which requires Qwest to provide nondiscriminatory access to local transport in accordance with the requirements of Sections 251(c)(3) and 252(d)(1).

112. Qwest's compliance with Checklist Item 5 is dependent upon its satisfactory performance with regard to any relevant performance measurements in the Third Party OSS Test in Arizona.

## II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.
2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.
3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).
4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).
5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).
6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.
7. Section 271(c)(2)(B)(v) of the Telecommunications Act of 1996 requires a Section 271 applicant to provide or offer to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."
8. Section 271(c)(2)(B)(ii) requires a Section 271 applicant to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."
9. Section 251(c)(3) establishes an incumbent LECs "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252."
10. As a result of the proceedings and record herein, and subject to Qwest modifying its SGAT language consistent with the resolution of the impasse issues contained above, Qwest meets the requirements of Section 271(c)(2)(B)(v) and provides

or offers to provide local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

11. Qwest's compliance with Checklist Item 5 is also contingent on its passing of any relevant performance measurements in the third-party OSS test now underway in Arizona.

**IN THE MATTER OF QWEST CORPORATION'S  
SECTION 271 APPLICATION**

**ACC Docket No. T-00000A-97-0238**

**FINAL REPORT ON QWEST'S COMPLIANCE**

**With**

**CHECKLIST ITEM: NO. 6 -      UNBUNDLED LOCAL  
SWITCHING**

**OCTOBER 1, 2001**

## I. FINDINGS OF FACT

### A. PROCEDURAL HISTORY

1. On October 10, 2000, the first Workshop on Checklist Item No. 6 (Unbundled Local Switching) took place at Qwest's offices in Phoenix. Parties appearing at the Workshops included Qwest Corporation<sup>1</sup>, AT&T, MCI WorldCom, Sprint, Electric Lightwave, Inc., e.spire, Eschelon Telecom, Inc. and Allegiance Telecom. Qwest relied upon its supplemental testimony submitted in July, 2000 and its second supplemental affidavit filed on September 21, 2000. Additional Comments were filed on September 21, 2000 by AT&T, WorldCom, e-spire, Eschelon and Z-Tel. ELI filed comments on September 22, 2000. Qwest filed Rebuttal Comments on September 29, 2000 and a supplemental rebuttal affidavit on October 31, 2000.

2. On April 9, 2001, an additional Workshop was conducted on Checklist Item 6.

3. The Parties resolved many issues at the two Workshops held on October 10, 2000 and April 9, 2001. Outstanding issues from the October 10, 2000 Workshop included commitments by the parties to address take back issues for resolution at the follow-up workshop held on April 9, 2001. At the conclusion of the April 9, 2001 workshop, a number of impasse issues remained to be resolved. Parties filing briefs on the impasse issues on May 18, 2001, included AT&T, MCIW, Covad and Qwest. Staff filed its Proposed Findings of Fact and Conclusions of Law on August 27, 2001. Qwest filed comments on Staff's Proposed Findings of Fact and Conclusions of Law on September 6, 2001. Staff hereby files its Final Report on Checklist Item No. 6.

### B. DISCUSSION

#### 1. Checklist Item No. 6

##### a. FCC Requirements

4. Section 271(c)(2)(B)(vi) of the Telecommunications Act of 1996 requires a section 271 applicant to provide or offer to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."

5. Section 271(c)(2)(B)(ii) of the Act requires a section 271 applicant to show that it offers "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."

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<sup>1</sup> As of the date of this Report, U S WEST Communications, Inc. has merged with Qwest Corporation, which merger was approved by the Arizona Commission on June 30, 2000. Therefore, all references in this Report to U S WES T have been changed to Qwest.

6. Section 251(c)(3) establishes an incumbent LECs “duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252.”

7. In the *Second BellSouth Louisiana Order*,<sup>2</sup> the FCC required BellSouth to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.

8. In the *Second BellSouth Louisiana Order*, the FCC required BellSouth to permit competing carriers to purchase unbundled network elements, including unbundled switching, in a manner that permits a competing carrier to offer, and bill for, exchange access and the termination of local traffic.<sup>3</sup>

9. In the *Second BellSouth Louisiana Order*, the FCC also stated that measuring daily customer usage for billing purposes requires essentially the same OSS functions for both competing carriers and incumbent LECs, and that a BOC must demonstrate that it is providing equivalent access to billing information.<sup>4</sup> The ability of a BOC to provide billing information necessary for a competitive LEC to bill for exchange access and termination of local traffic is an aspect of unbundled local switching. *Id.* The FCC found that there is an overlap between the provision of unbundled local switching and the provision of the OSS billing function. *Id.*

10. In the *Second BellSouth Louisiana Order*, the FCC also stated that to comply with the requirements of unbundled local switching, a BOC must also make available trunk ports on a shared basis and routing tables resident in the BOC’s switch, as necessary to provide access to shared transport functionality. *Id.* The FCC also stated that a BOC may not limit the ability of competitors to use unbundled local switching to provide exchange access by requiring competing carriers to purchase a dedicated trunk from an interexchange carrier’s point of presence to a dedicated trunk port on the local switch. *Id.*

## **b. Background**

11. Unbundled local switching includes line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.

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<sup>2</sup> *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provisions of In-Region, Inter-LATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, at 20715 (1998)(“*Second BellSouth Louisiana Order*”).

<sup>3</sup> *Id.* at 20723, 20733-34.

<sup>4</sup> *Id.* at 20723.

12. The features, functions, and capabilities of the switch include the basic switching function as well as the same basic capabilities that are available to the incumbent LEC's customers.

13. Additionally, local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.

14. Given the demand for stand-alone unbundled local switching, the Arizona Technical Advisory Group (TAG) has not identified specific performance measurements for stand-alone unbundled switching. 5-Qwest-2 at p. 87. The Arizona Third Party Operation Support System (OSS) Test and Workshops have determined testing of unbundled switching as part of a UNE combination is more appropriate. Id. Therefore, the Cap Gemini Ernst & Young ("CGEY") OSS test will specifically review Qwest's ability to provide CLECs nondiscriminatory access to unbundled switching in conjunction with combinations of loop and transport unbundled network elements. Id.

### **c. Position of Qwest**

15. On July 21, 2000, Qwest witness Karen A. Stewart provided testimony indicating that Qwest provides CLECs with access to unbundled switching. 5-Qwest-2 at p. 91.

16. Under Qwest's SGAT Section, 9.11.1.1, and Qwest's signed interconnection agreements, Qwest has a concrete legal obligation to provide unbundled local switching:

Unbundled Local Switching encompasses line-side and trunk-side facilities, plus the features, functions, and basic switching capabilities of the switch. The features, functions, and capabilities of the switch include the basic switching function, as well as the same basic capabilities that are available to Qwest end-users. Unbundled Local Switching also includes access to all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions. . .

5-Qwest-2 at p. 77.

17. Qwest's SGAT requires it to provide unbundled circuit switching that includes the line-side and trunk-side cards, plus the features, functions, and basic switching capabilities of the switch. 5-Qwest-2 at p. 79. Unbundled switching includes access to all vertical features that the switch is capable of providing, such as customized routing functions. Id. A CLEC can use a combination of a trunk-side port and custom routing to direct originating traffic to a dedicated trunk group such as a directory assistance trunk group. Id. Additionally, a CLEC may purchase unbundled switching in a manner that permits it to offer, and to bill for, exchange access and termination of local

traffic. 5-Qwest-2 at p. 79. Qwest's SGAT provides the CLEC with analog and digital line ports that include the following attributes:

- Telephone Number
- Directory Listing
- Dial Tone
- Signaling (loop or ground start)
- On/Off Hook Detection
- Audible and Power Ringing
- Automatic Message Accounting (AMA) Recording
- Access to 911, Operator Services and Directory Assistance
- Call Type Blocking Options (e.g. 900 services)

5-Qwest-2 at p. 79-80.

18. The FCC has also determined that an ILEC must meet the following requests for vertical services:

A BOC must activate any vertical feature or combination of vertical features requested by a competing carrier unless . . . (it) is not technically feasible.

A BOC can require a requesting carrier to submit a request for such a vertical feature through a predetermined process that gives a BOC an opportunity to ensure it is technically feasible.

19. Qwest's SGAT provides CLECs with both of these options: 1) A CLEC may order vertical features in association with unbundled switching, and 2) CLECs have access to all vertical features loaded in a Qwest switch, not just access to the features Qwest is providing its retail customers. 5-Qwest-2 at p. 80-81. Qwest's unbundling switching element also includes the option for the CLEC to order custom routing which will allow a CLEC to route its customers' calls to special trunk groups designated by the CLEC. Id.

20. Qwest also offers CLECs unbundled tandem switching which is contained in section 9.10.1 of the SGAT. 5-Qwest-2 at p. 82.

21. Unbundled switching is no longer a Section 251(c)(3) UNE in the top fifty metropolitan statistical areas (MSAs), in areas that are "Density Zone One," for businesses with four lines or more, when the ILEC offers Enhanced Extended Links (EELs). 5-Qwest-2 at p. 76. Two central offices in the Phoenix-Mesa MSA meet this definition. Id. Qwest has a concrete obligation to offer EELs in the two wire centers listed above and as a result, does not offer unbundled switching as a TELRIC priced UNE in those offices. Id.

22. Qwest does offer the FCC required combination of loop and transport, i.e. "EELs" that permits Qwest to withdraw unbundled switching as a UNE in the Phoenix MSA. 5-Qwest-2 at p. 77. To meet its checklist requirements, Qwest will offer stand-alone unbundled circuit switching to CLECs (at market based rates) in areas that are "Density Zone One" for use by businesses with four lines or more. 5-Qwest-2 at p. 78. As of July 1, 2000, no Arizona CLEC has ordered stand-alone unbundled switching. Id. Unbundled switching has had virtually no demand as an individual stand-alone UNE across the Qwest region. 5-Qwest-2 at p. 79. CLECs are primarily interested in unbundled local circuit switching as part of a UNE combination, or UNE-P. Id.

23. If demand for a Checklist Item is low or a BOC has received no requests for a Checklist Item, the FCC permits the BOC to submit testing results to demonstrate that it is ready to furnish the Checklist Item on demand. 5-Qwest-2 at p. 82. Qwest has conducted a "Bench Test" which demonstrates that Qwest can, upon CLEC request, provision and maintain unbundled transport and switching in a timely and nondiscriminatory manner. Id. The Bench Test tested: 1) the provision of unbundled switching, transport and Unbundled Customer Controlled Reconfiguration Element ("UCCRE") orders in Phoenix, Arizona as well as: 2) the repair and maintenance of these elements. 5-Qwest-2 at p. 83. In the Bench Test, actual orders were placed and completed for each unbundled element tested. Id.

24. The 1999 Bench Test did identify provisioning issues that needed to be addressed. 5-Qwest-2 at p. 85. As these errors were identified, the provisioning systems were corrected. Id. In all cases, after the error on the initial order was corrected, the initial and all subsequent orders were successfully processed through the Qwest systems. Id. According to Qwest, the Bench Test clearly demonstrates that the processes are in place for Qwest to successfully provision CLEC orders for unbundled transport and switching in a timely, accurate and non-discriminatory manner. 5-Qwest-2 at p. 86. Qwest argues that it also demonstrates that Qwest is able to install, repair/maintain and bill these elements. Id. According to Qwest, it further proves that Qwest can provision and install, within standard installation intervals, unbundled transport and switching when requested by a CLEC. Id.

#### **d. Competitors' Position**

25. In their July 22, 1999, preliminary statements of position on Qwest's compliance with all Checklist Items, AT&T stated that Qwest has failed to comply with the requirement to provide nondiscriminatory access to unbundled switching. AT&T Ex. 1 at p. 10. Qwest has failed to offer all of the features of the switch and has failed to offer vertical features at cost-based prices. Id. Qwest has also failed to offer all of the operations and systems capabilities of the switch to CLECs. Id. Qwest's refusal to offer unbundled loops and unbundled shared transport has been such a serious impediment to local competition that none of the CLECs in Arizona have yet ordered unbundled switching. Id. Finally, AT&T states that Qwest has failed to put forth any credible testing evidence of its ability to provide, maintain and repair unbundled switching for CLECs. AT&T Ex. 1 at p. 10.

26. MCIW also argued that Qwest has failed to comply with Checklist Item 6. MCIW states that Qwest has failed to provide the business processes for ordering unbundled switch elements and does not contemplate doing so until it issues its Technical Publication release in October 1999. Qwest has also refused to provide MCIMetro with code conversion. MCIW also stated that the monthly service reports it receives from Qwest are inadequate.

27. Other CLECs filing comments on July 22, 1999 included Cox, ELI, e-spire, Sprint and Rhythms. ELI stated it joined in the position statements filed by the other CLECs. Cox and e-spire both stated that they had inadequate information to determine whether Qwest is in compliance with Checklist Item 6. Sprint did not comment on Checklist Item 6 in that it has not yet attempted to obtain access to Qwest's unbundled local switching in Arizona. Rhythms did not provide comments on Checklist Item 6.

28. AT&T and MCIW filed additional Comments on Checklist Item 6 on September 21, 2000.

29. AT&T had numerous concerns relating to language contained in Qwest's SGAT. Specifically, Qwest suggests that SGAT Sections 9.10 and 9.11 are sufficient to demonstrate Qwest's compliance with the requirements to provide unbundled switching. AT&T 4-1 at p. 31. AT&T claims that Qwest's SGAT language focuses on unbundled switching as an element and does not actually address access to the element. Id. Access should be provided at both the DS0 level for copper loops and at the DS1 level for PBX Trunks, ISDN trunks, and Digital Loop Carrier. Id. Standard Digital Loop Carrier interfaces should be provided to the switch, including GR303 and GR008, or any other interface used by Qwest. Id. AT&T states that the SGAT must be amended to include the above types of access. Id.

30. Sections 9.11.1.8 and 9.11.1.9.2 presents Qwest's list of vertical features that are provided by the switch. AT&T 4-1 at p. 31. There is some issue with respect to which customer features are provided by the switch and which features are provide via AIN capabilities in the Qwest signaling network. AT&T 4-1 at p. 31-32. AT&T suggests that Qwest clarify which features are provided by the switch and which by AIN capabilities. Id. Section 9.11.1.9.2 also states that "Additional Vertical Features in each switch are available on an individual case basis." AT&T 4-1 at p. 32. Qwest must modify this provision to describe with more precision a definite process pursuant to which it will specify and make available the vertical features of a given switch. Id.

31. Section 9.11.2.1 states that a CLEC may purchase vertical features that are loaded but not activated on a switch, but only after it makes a request through the BFR process. AT&T 4-1 at p. 32. The BFR process is a lengthy and expensive process and Qwest should modify this provision to establish a simpler, more expeditious process for activation. Id.

32. In Section 9.11.2.5, Qwest attempts to describe the limited exception to the national unbundled local switching requirement established by the FCC. AT&T 4-1 at p. 33. Qwest imperfectly captures the FCC's exception and fails to create a workable solution to accommodating the exception. Id. First, the FCC has made clear that only those density zone 1 classifications "frozen" as of January 1, 1999, are appropriate to use in applying the unbundled switching exclusion. AT&T 4-1 at p. 33. Qwest must make conforming changes to confirm that the wire centers identified meet the FCC's requirement and if the identified wire centers include other density zones, make clear in its SGAT that customers in such density zones are not covered by the exclusion, even if their lines are located in the named wire centers. Id.

33. Second, the FCC has made clear that the exception to the local switching unbundling requirement only applies if CLECs have nondiscriminatory, cost-based access to the EEL. AT&T 4-1 at p. 33. Qwest needs to modify its EELs offering in order to comply with the FCC's requirements. Id.

34. Third, if a CLEC is currently serving a customer using a loop/switch combination, and the customer adds a fourth (or more lines), then a CLEC should be able to continue to serve that customer using loop/switch combinations. AT&T 4-1 at p. 34. This section of the SGAT should provide language to allow a CLEC to continue serving a customer under these circumstances. Id. This section should also contain a provision requiring that in no event may Qwest disconnect from service any CLEC customer before arranging for continued uninterrupted service. Id.

35. Fourth, there is no clarity regarding the terms "end-user", "customer", and "end user customer" which are apparently used interchangeably in Section 9.11.2.5. AT&T 4-1 at p. 34. Also, the phrase "located within the Wire Center" is ambiguous. Id. AT&T proposes language to the SGAT to clarify the exclusion. Id.

36. AT&T also believes that the restriction on unbundled switching should not apply in offices that have severe space or capacity limits. AT&T 4-1 at p. 35. If space in the Qwest office is insufficient for multiplexing, concentration or the additional equipment needed for providing transport facilities or Qwest has insufficient Interoffice Facilities ("IOF") to provide the transport capability for EELs, there should be no restriction on CLEC use of unbundled switching. Id. Also, the restriction should not apply where service is provided using Remote Switching Modules ("RSMs"). Id.

37. AT&T also asked that Qwest address two areas that are not currently contained in the SGAT. AT&T 4-1 at p. 36. First, the SGAT does not include provisions for unbundling the Centrex management and control features of the switch. Id. SGAT language must be included that will allow CLECs to control, manage and maintain their own Centrex services using the Qwest unbundled switch. Id. Second, the SGAT does not include any provisions notifying CLECs of changes to the switch, including generic software upgrades, etc. AT&T 4-1 at p. 36. The SGAT must be modified to provide for prompt and complete notification as well as a process for CLECs to avail themselves of new features, functions and capabilities. Id.

38. AT&T comments that in Section 9.10, Qwest's provisions imperfectly reflect its requirements to provide tandem switching. AT&T 4-1 at p. 36. SGAT Section 9.10 also provides Qwest's definition of tandem switching. Id. Qwest cannot avoid its obligation to provide access to all tandem switches simply by changing the name of the switches and attempting to limit the tandem switch's functions. Id. Qwest's tandem switching product refers nominally to "local tandem switching" and this should be clarified as to whether this offering intends to limit a CLECs access to all of Qwest's tandem switches. AT&T 4-1 at p. 36-37. AT&T states that all Qwest's references to "local tandem switches" be changed to "tandem switches" to more closely track the FCC's requirements. Id.

39. SGAT Section 9.10.1 does not fully conform to the requirements set for the by the FCC. AT&T 4-1 at p. 37. AT&T proposes that this section be revised to more closely reflect the FCC's orders. Id.

40. SGAT Section 9.10.2 is the provision in which Qwest sets forth certain terms and conditions for access to tandem switches. AT&T 4-1 at p. 37. Qwest requires "tandem to tandem connections" between Qwest and third party tandem providers. Id. AT&T does agree that "connections" must be made, but Qwest must provide more detail regarding what specific "connections" it deems are necessary, how they will be provided and by whom. Id.

41. Finally, AT&T proposes adding a section as 9.10.2.2. that tracks the FCC's Orders as follows:

9.10.2.2 The requirement to provide unbundled tandem switching includes: (i) trunk-connect facilities, including but not limited to the connection between trunk termination at a cross-connect panel and a switch trunk card; (ii) the base switching function of connecting trunks to trunks; and (iii) the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features.

AT&T 4-1 at p. 37-38.

42. MCIW's primary concern was with SGAT Section 9.8.3 which states that UNE Rates apply unless the end-user to be served has four access lines or more and the lines are located in density zone 1 in the MSAs specified in the UNEs Local Switching Section. MCIW 4-1 at p. 19. *In the latter circumstances, market rates apply.* Id. MCIW's position is that all rates should be properly reflected in the SGAT and proposes that this section be revised to state, "In the latter circumstances, Qwest will charge market rates in accordance with Exhibit A." Id.

### e. Qwest Response

43. In its September 29, 2000 written response, Qwest addressed AT&T's and MCIW's concerns. Qwest responded to the parties concerns on a section by section review of the SGAT.

44. With respect to Section 9.10.1.1 regarding the description of the local tandem switching element, AT&T wanted Qwest to clarify whether this offering intends to limit a CLEC's access to Qwest's local tandem switches. Qwest 4-1 at p. 32. AT&T also requested that all references to "local tandem switches" be changed to "tandem switches". Id. Qwest's unbundled tandem switching offering is limited to local tandems. Qwest 4-1 at p. 32. Qwest does not agree with AT&T's assertion that no FCC Order or rule on this issue distinguishes between local and other kinds of tandems. Id. Qwest does not accept AT&T's recommendation to expand section 9.10 to cover unbundling of access tandems. Id.

45. Regarding AT&T's concern over Qwest providing more detail regarding what specific "connections" it deems are necessary, how they will be provided and by whom, Qwest agrees to add a new section 9.10.2.2 as proposed by AT&T with the understanding that Qwest can unbundle access to call recording equipment only to the extent any such recording equipment is to be installed in a Qwest local tandem. Qwest 4-1 at p. 33.

46. AT&T had listed a number of concerns regarding section 9.11 - 1) that Qwest's SGAT language focuses on unbundled switching as an element and does not actually address access to the element; 2) access should be provided at both the DS0 level for copper loops and at the DS1 level for PBX Trunks, ISDN trunks, and Digital Loop Carrier; and 3) standard Digital Loop Carrier interfaces should be provided to the switch, including GR303 and GR008, or any other interface used by Qwest. Qwest 4-1 at p. 34. Qwest agrees that Unbundled Local Switching includes access to the line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. Qwest 4-1 at p. 34. This access encompasses all features, functions, and capabilities of the switch to include the DS1 level for PBX trunks and ISDN trunks. Id. Qwest does not conceptually disagree that a CLEC would have access to all digital loop carrier system interfaces. Id. Qwest is currently reviewing the technical feasibility and the practical application of this type of access and will present its findings on the feasibility study on providing unbundled TR303 access to the parties at the workshop. Id.

47. AT&T also expressed many other concerns over SGAT section 9.11. AT&T requested clarity on which features are provided by the central office switch and which by Advanced Intelligence Network ("AIN") capabilities, and why certain features are provided by AIN and not by the switch. Qwest 4-1 at p. 35. AT&T also wanted modification of this provision to describe with more precision the definite process pursuant to which it will describe the vertical features of a given switch. Id. Finally, AT&T recommended Qwest modify this provision to establish a simpler, more

expeditious BFR process. Id. The Qwest unbundled local switching UNE includes access to the Service Creation Environment ("SCE") and AIN database but does not include access to AIN features. Qwest 4-1 at p. 36. Qwest argues that this is consistent with the FCC Order that specifically stated ILECs are not required to unbundle AIN features. Id. Qwest agreed to provide information to CLECs who are converting Qwest retail customers to UNE-P, by USOC, all of the AIN features and to clarify that AIN features are not available with UNE-P configurations. Id. Qwest also agreed to expand the list of central office features identified in the SGAT. Id.

48. Regarding AT&T's concern on the FCC's Density Zone 1 classifications "frozen" as of January 1, 1999 and that the wire centers identified meet the FCC's requirement, Qwest asserts that the two Phoenix wire centers meet the FCC definition and are both in Zone 1 and do not include any end user customers outside of Zone 1 density area as defined by the FCC. Qwest 4-1 at p. 40.

49. To address AT&T's concern that there is no clarity regarding the terms "end-user", "customer", and "end user customer", Qwest agreed to modify Section 9.11.24 to consistently use the term end user customer throughout. Qwest 4-1 at p. 41.

50. With regard to clarification on if a CLEC is currently serving a customer using a loop/switch combination, and the customer adds a fourth (or more lines), then a CLEC should be able to continue to serve that customer using loop/switch combinations, Qwest does not agree. Qwest 4-1 at p. 40. Under the FCC unbundled switching exemption, Qwest need not offer unbundled switching in Zone 1 wire centers to a CLEC wanting to serve an end user customer with four or more lines in that wire center. Id.

51. Regarding AT&T's request for clarification on how the four or more lines for one customer in a Density Zone 1 central office is determined, the unbundled switching exemption refers to four or more lines for one end user customer served by a Zone 1 wire center with no reference to a per location requirement. Qwest 4-1 at p. 40. Qwest also agrees with AT&T's recommendation that there should be a transition period to assure no disconnection of service for any CLEC 's end user customer previously served by Qwest unbundled switching. Id.

52. Qwest did agree to AT&T's last three subsections of proposed language and a portion of another regarding lines counted for exclusion, high frequency portion of the loop, end users considered in MDUs and ISDN-BRI but did not agree to their first three additions. Qwest 4-1 at p. 41.

53. Regarding AT&T's belief that the restriction on unbundled switching should not apply in offices that have severe space or capacity limits, Qwest does not agree. According to Qwest, the FCC made it clear that Qwest has no obligation to build unbundled dedicated transport so the suggestion to link the switching exemption with sufficient transport facilities is unfounded.<sup>5</sup> Qwest 4-1 at p. 42.

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<sup>5</sup> See UNE Remand Order at para. 324.

54. Finally, regarding AT&T's two concerns over the SGAT not including provisions for unbundling the Centrex management and control features of the switch and no provisions notifying CLECs of changes to the switch, including generic software upgrades, etc., Qwest does not agree that Centrex Customer Management is a feature of the switch. Qwest 4-1 at p. 42. Qwest does agree to provide access to all central office based Centrex features and functions, plus Qwest agrees to add access to unbundled Centrex Customer Management System as a feature of unbundled local switching. Id. Qwest does not agree to add language to its SGAT regarding notification of generic software upgrades as, according to Qwest, the current network disclosure processes are more than adequate to notify CLECs of generic software upgrades. Id.

55. Eschelon also expressed many concerns over SGAT section 9.11. Specifically, Eschelon wanted Qwest to commit to document and make readily available a list of features, including Centrex features that Qwest is obligated to provide with unbundled switching. Qwest 4-1 at p. 35. Additionally, Eschelon recommended that the SGAT state that the use of the BFR process is only required when a feature is ordered for the first time, and Qwest does not offer it to its retail customers but the switch is capable of providing it. Id. Qwest provides two ways through the IRRG located at <http://www.uswest.com/wholesale/guides/index.html> for CLECs to determine the features available in an end user's serving central office: 1) using a pull down menu shown called "Tariff & Network Info" and following that to a new menu called "Interconnection Databases and finally selecting "Central Office Find"; and 2) selecting "Switch Features" when the CLI code of the serving office is already known. Qwest 4-1 at p. 36. CLECs who use IMA can also determine "feature availability" through IMA. Id. Regarding the BFR process, Qwest also agrees that the traditional BFR process would only be invoked the first time a new feature is required for a given switch. Qwest 4-1 at p. 37. Qwest will augment the existing ICB process to handle requests for features where a technical feasibility assessment needs to be completed to assure compatibility before an order can be accepted. Id.

#### **f. Workshops**

56. On October 31, 2000, Qwest witness Karen Stewart filed a supplemental rebuttal affidavit to address a number of issues from the October 11-13 Workshops.

57. Qwest did not agree to AT&T's recommendation to expand Section 9.10 to cover unbundling of access tandems. Qwest 4-6 at p. 11. Qwest once again stated that it did not agree with AT&T's assertion that no FCC Order or rule on this issue distinguishes between local and other kinds of tandems. Id.

58. Qwest has revised the definition of local tandem switching in Section 9.10.1 to meet concerns expressed in the Workshop that the definition did not adequately track FCC requirements. Qwest 4-6 at p. 11. According to Qwest, the new language tracks the FCC's definition in paragraph 426 of the *First Competition Order*. Id.

59. To address the issue regarding how “four lines” or more will be calculated for the purposes of the unbundled switching exception in the top 50 MSAs, Qwest has modified the SGAT to provide CLECs with the following guidelines which Qwest feels capture the agreements reached at the Workshop:

- 9.11.2.5.2 This exclusion will be calculated using the number of DS0-equivalent access lines CLEC intends to serve an end user customer within a Wire Center specified above.
- 9.11.2.5.3 UNE-P is not available for end user customers with four or more access lines located within one of the Wire Centers specified above.
- 9.11.2.5.4 Only dial-tone lines shall be used in counting the exclusion. Private line type data lines, alarm or security lines, or any other type of non-dial-tone lines shall not be used in the count.
- 9.11.2.5.5 The high frequency portion of a loop shall not count as a second line.
- 9.11.2.5.6 End-users shall be considered individually in MDU buildings or any other multiple use or high-rise.

Qwest 4-6 at p. 12.

60. To address the discussion at the Workshop regarding how a CLEC can determine which features are available with unbundled switching, Qwest will list the three ways in which CLECs, through the IRRG, can determine the features available in an end user’s serving central office at <http://www.uswest.com/wholesale/guides/index.html>. Qwest 4-6 at p. 12. Additionally, a CLEC who uses IMA can also determine “feature availability” through IMA. *Id.* at p. 13.

61. Regarding a discussion at the Workshop on feature packages, Qwest stated that it does provide CLECs access to individual features, and not feature packages, so that a CLEC is not required to purchase and/or activate any features it does not want to have on an individual customer’s local exchange line. Qwest 4-6 at p. 14.

62. In addressing AT&T’s concern over AIN features, Qwest states that all of its AIN features are proprietary and therefore, it is not required to provide access to AIN features. Qwest 4-6 at p. 14. Qwest has patents that have been issued by the United States Patent Office for AIN services and other applications have been filed with the patent office. *Id.* Qwest also has trademarks on several of the service names. *Id.* The AIN services that Qwest has developed are also unique in regard to their actual implementation (that is, the “code”). *Id.* at p. 15. Qwest has specified the requirements for all services based on its unique customer base, region, and in some cases, based on State PUC requirements. *Id.* In addition, the service implementations are also unique

because of the framework that Qwest has developed for the execution and support of AIN services. Id.

63. To address CLEC concerns of whether a process was in place for CLECs to access the AIN platform to design their own features, Qwest clarified that Section 9.14 of the SGAT sets forth the procedure, complete with timeframes. Qwest 4-6 at p. 15.

64. CLECs requested that Qwest develop a process for activating features in switches. Qwest 4-6 at p. 15. In response, Qwest has developed the Special Request Process ("SRP") for CLECs to use to activate features in the switch or to request that features be loaded into the switch. Id. SGAT Section 9.11.2.1 sets for the Special Request Process. Id.

65. AT&T had concerns that the SGAT focuses on unbundled switching as an *element* and does not actually address *access* to the element. Qwest 4-6 at p. 16. AT&T recommended that access should be provided at both the DS0 level for copper loops and at the DS1 level for PBX trunks, ISDN trunks, and Digital Loop Carrier. Id. AT&T further stated that standard Digital Loop Carrier interfaces should be provided to the switch, including GR303 and GR008, or any other interface used by Qwest. Id. Qwest agrees that Unbundled Local Switching includes access to the line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch and that this access encompasses all features, functions, and capabilities of the switch to include the DS1 level for PBX trunks, and ISDN trunks. Id.

66. Qwest does not agree with AT&T that a CLEC may continue to serve an end user customer in a Zone 1 density wire center with (UNE based) unbundled local switching if the customer adds a fourth line. Qwest 4-6 at p. 16. Under the FCC unbundled switching exemption, Qwest need not offer unbundled switching in Zone 1 wire centers to a CLEC wanting to serve an end user customer with four or more lines in that wire center. Id. Qwest does agree that it would be reasonable to agree to a transition period to assure no disconnection of service for any CLEC's end user customer previously served by Qwest unbundled switching. Id. at p. 17.

67. AT&T stated that it believes that the restriction on unbundled switching should not apply in offices that have severe space or capacity limitations. Qwest 4-6 at p. 17. AT&T stated that if space in the Qwest office is insufficient for multiplexing, concentration or the additional equipment needed for providing transport facilities, there should be no restriction on CLEC use of unbundled switching. Id. If Qwest has insufficient Interoffice Facilities to provide the transport capability for EELs, there should be no restriction on CLEC use of unbundled switching. Id. In addition, the restrictions should not apply where service is provided using Remote Switching Modules. Id. Qwest does not agree that the FCC's unbundled switching exemption is dependent upon capacity availability for other services in the two Phoenix wire centers. Id. According to Qwest, the FCC made it clear that Qwest has no obligation to build unbundled dedicated transport so the suggestion to link the switching exemption with sufficient transport facilities is unfounded. Id.

68. Finally, Qwest did agree to add language per CLECs request to Section 9.11.2.10 of the SGAT to indicate that Qwest will deliver to CLECs usage records necessary for billing. Qwest 4-6 at p. 18.

**g. Disputed Issues**

69. At the conclusion of the October 9, 2000 and April 10, 2001 Workshops, the parties were unable to agree on a number of issues that went to impasse involving unbundled local transport. Statements of Positions on the impasse issues were filed by AT&T, MCIW, Covad and Qwest on May 18, 2001.

**DISPUTED ISSUE NO. 1: Whether Qwest must provide unbundled access to Advanced Intelligence Network ("AIN") features? (SW-1)**

**a. Summary of Qwest and CLEC Positions**

70. AT&T argued that Qwest's reading of the FCC's *UNE Remand Order* regarding AIN platform is too broad and that the FCC disregarded its own standards for determining whether a network element is proprietary or necessary. AT&T May 18, 2001 Brief at p. 19. The FCC has made it clear that the ILEC must provide all features, functions and capabilities of the switch as part of the local switching element which "includes all vertical features that the switch is capable of providing including custom calling, CLASS features, and Centrex, as well as any technically feasible customized routing functions." *Id.* at p. 19-20. The FCC reaffirmed its definition of unbundled local switching in the *UNE Remand Order* and found that the CLECs would be impaired if the ILEC did not provide the unbundled switch with all the features. *Id.*

71. AT&T went on to state that Qwest has not demonstrated that its AIN features differentiate it from its competitors or is otherwise competitively significant. *Id.* at p. 23. It does not appear that Qwest's service appears in any way unique to warrant a finding that it should be classified as proprietary as defined by the FCC and appears to be no different than any other switch feature that Qwest is required to provide CLECs. *Id.*

72. AT&T also argued that lack of access to AIN features would jeopardize the goal of the 1996 Act to bring rapid competition to the greatest number of customers. *Id.* at p. 23. To recreate AIN features is a lengthy and expensive process, which can take several years to develop and implement. *Id.* at p. 24. AT&T's position is that the FCC's third circumstance has been met -- "lack of access to the proprietary element would jeopardize the goal of the 1996 Act to bring rapid competition to the greatest number of customers." *Id.*

73. Finally, AT&T argued that as a practical, economic and operational matter, CLECs are precluded from providing the service it seeks to offer. *Id.* at p. 24. It is impractical for a CLEC to have to provide its own AIN service software to enter a market because the CLEC would either have to write its own software or purchase it, assuming it is available. *Id.* This is not practical for a new market entrant. *Id.* AT&T

believes when properly analyzed based on the standards established by the FCC, the proper conclusion is that Qwest should be required to make its AIN service software available to CLECs that are using UNEs to provide telecommunications services. Id. at p. 25.

74. Qwest argued that with regard to this issue, the FCC has been clear: "Thus, we agree with Ameritech and BellSouth that AIN service software should not be unbundled." Qwest May 18, 2001 Brief at p. 36. Qwest also relied upon the following passage from the *UNE Remand Order*:

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. (820) Because we are unbundling the incumbent LECs' 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 para. 821. Qwest does not provide access to its own AIN products with UNE-Switching. Id. The FCC has determined that an ILEC's AIN products do not have to be unbundled when ILECs make the AIN platform or database, Service Creation Environment (SCE), SMS, and STPs available for CLECs to develop their own AIN products. Id. As required by the *UNE Remand Order*, Qwest provides CLECs access to the components necessary to develop their own AIN products and features, specifically, the SCE, SMS, STPs, and AIN database. Id. at p. 37. In addition to Qwest's testimony, Qwest's SGAT establishes that Qwest offers each of the four required items to CLECs which allow CLECs to develop their own AIN products: AIN databases/platform (9.14.1.2 and 9.14.2.2); SCE (9.14.1.1); SMS (9.13.1.1); and STPs (9.13.1.1). Id. at p. 36-37. Id. Qwest complies with the necessary requirements and Qwest's AIN products are not required to be unbundled. Id.

75. Qwest stated that it has demonstrated that it is not obligated to unbundle its AIN features in that the FCC has held that AIN features do not have to be unbundled regardless of a determination of whether the AIN features are proprietary. Id. at p. 40. Additionally, Qwest has established that its AIN features are proprietary because they are covered by patents, pending patents, trademarks, copyright, trade secrets, and are otherwise proprietary to Qwest. Id.

**b. Discussion and Staff Recommendation**

76. The FCC has determined that an ILEC's AIN products do not have to be unbundled when ILECs make the AIN platform or database, Service Creation Environment (SCE), SMS, and STPs available for CLECs to develop their own AIN products. As required by the FCC's *UNE Remand Order*, Qwest provides CLECs access to the components necessary to develop their own AIN products and features. AT&T provided no cites to FCC Orders to support its position that the such AIN unbundling is required at this time. Staff believes AT&T provided no cites, because there aren't any at this point in time.

77. At the same time, Staff understands the concerns raised by AT&T. AT&T argues that lack of access to AIN features would jeopardize the goal of the 1996 Act to bring rapid competition to the greatest number of customers. AT&T also argues that to recreate AIN features is a lengthy and expensive process, which can take several years to develop and implement. Nonetheless, the FCC spent considerable time analyzing the same arguments which the Commission is today presented with. The FCC found that it was sufficient for the ILEC to make available the AIN platform or database, SCE, SMS and STPs for the CLECs to develop their own AIN products. Qwest has a legally binding obligation to do what is required under FCC Orders in its SGAT. Therefore, Staff believes that Qwest is meeting its obligations as defined under current FCC Orders.

78. Staff would encourage Qwest to undertake periodic reviews of its AIN products and features and to make a good faith concerted effort to make available as many AIN products as possible. Staff would recommend that Qwest include language in its SGAT to reflect this commitment.

**DISPUTED ISSUE NO. 2: Whether Qwest is obligated to provide unbundled switching in wire centers in density zone 1 if all forms EEL access is not available? (SW-6)**

**a. Summary of Qwest and CLEC Positions**

79. AT&T argued that the FCC has determined that unbundled local switching is a UNE that ILECs must make available. AT&T Brief at p. 25. The FCC did "find, however, that an exception to this rule is required 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 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")." *Id.* at p. 26. Qwest argues that it does not have to provide unbundled switching if it *offers* the EEL in Density Zone 1 wire centers, whether or not an EEL is *available* from Qwest. *Id.* AT&T's position is that if an EEL is ordered by a CLEC and it cannot be provisioned by Qwest, Qwest must make the unbundled switching element available. *Id.* Qwest is not in compliance with Checklist Item 6 if Qwest does not make

unbundled switching available if an EEL is not available. Id. at p. 27. If unbundled switching is not made available to the CLECs when an EEL is not available, the FCC's Order is essentially negated. Id.

80. MCIW argued that Qwest's SGAT Section 9.11.2.5 provides that unbundled switching is not available in certain end offices when the end-user customer to be served has four access lines or more. MCIW May 18, 2001 Brief at p. 5. While the FCC rules provide that unbundled switching is not required to be provided in the situation described by Qwest – that decision was predicated upon a CLEC being able to obtain EEL connections from Qwest and using the EEL to connect end users to switching provided by the CLEC, themselves, or another carrier other than Qwest. Id. at p. 6. The ability of Qwest to deny unbundled switching or UNE-P in these situations should be conditioned upon Qwest's ability to provide the CLEC an EEL connection, upon request, for those certain end offices. Id. Lack of Qwest capacity has been a problem in the past and should not be allowed to result in the situation where competitors cannot serve an end user in these high volume end offices either through UNE-P or using EEL's since such a result would be an unreasonable roadblock to competition for customers in those offices. Id.

81. Qwest argued that the FCC's unbundled switching exemption is not dependent upon capacity availability for other services impacted Qwest wire centers. Qwest May 18, 2001 Brief at p. 41. The FCC, after a detailed analysis, determined that CLECs had adequate alternatives to unbundled switching in wire centers in density zone 1 of the top 50 MSAs and also did not limit its analysis to wire centers without exhaust issues. Id. The FCC did require ILECs to offer EELs in those wire centers, but it did not condition the switching exception on a CLEC specific/wire center specific analysis of facility exhaustion. Id.

**b. Discussion and Staff Recommendation**

82. Staff agrees with MCIW and AT&T. Qwest's argument that it does not have to provide unbundled switching if it *offers* the EEL in Density Zone one wire centers, whether or not an EEL is *available*, is specious at best. If available in the aggregate but not to the specific CLEC at the specific wire center, the availability does an individual CLEC no good.

83. Therefore, Staff agrees with AT&T and MCIW that if an EEL is ordered by a CLEC but it cannot be provisioned by Qwest, Qwest must make the unbundled switching element available in Density Zone one of the top fifty MSAs.

**DISPUTED ISSUE NO. 3: How should lines be calculated for the purpose of the exception to providing unbundled switching at TELRIC rates in Zone 1 of the top 50 MSAs? (SW-9)**

**a. Summary of Qwest and CLEC Positions**

84. AT&T argues that the SGAT is ambiguous regarding how lines should actually be counted, whether on per-wire center or per-location basis. AT&T Brief at p. 28. AT&T's position is that the line count should be done on a location-by-location basis. Id. The FCC noted that 3 lines or less "captures a significant portion of the mass market." Id. This market was identified as residential and small business market but this analysis is not definitive. Id. A location-by-location analysis is easiest for the CLEC to implement since the CLEC can determine how many lines are at a location. Id. A CLEC cannot always determine if an end user customer at a location has multiple locations on the same bill since that information may not be available to the CLEC. Id. at p. 29. This information is in the possession of Qwest; and Qwest has made no process available for the CLEC to obtain the information. Id. The SGAT language as proposed is ambiguous and is far from clear how the CLECs are to implement Qwest's proposal. Id. The more practical way to implement the FCC's "3 lines or less exception" to Qwest's obligation to provide the unbundled local switching network element is on a location basis. Id.

85. Qwest argued that AT&T's suggestion that Section 9.11.2.5 be modified to add language that provides counting a CLECs lines for purposes of applying the UNE-Switching exclusion be limited to single end user locations does not apply to single end user customers within Density Zone 1. Qwest Brief at p. 42. The exclusion is not broken into sub-elements at specific geographic locations or addresses within Density Zone 1. Id. On this point, Qwest relies upon the following passage from the FCC's *UNE Remand Order*:

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 access lines within density zone 1 in the top 50 metropolitan statistical areas (MSAs).

**b. Discussion and Staff Recommendation**

85. There were actually two sub-issues raised in impasse issue 3. The first sub-issue is whether or not a line count is performed on a location-by-location basis as proposed by AT&T or whether Qwest's proposal to do it on a wire center basis is appropriate. The second sub-issue is how you treat a situation when a CLEC's end-user customer with three lines or fewer served by UNE-P or unbundled switching adds lines so that it has four or more lines.

86. On the first sub-issue, AT&T acknowledged that the FCC stated that ILECs do not have to provide Unbundled Local Switching to customers with four or more lines in Density Zone 1 wire centers if the ILEC makes the EEL available. Qwest's SGAT Section 9.11.2.5.2 reflects this obligation, stating "this exclusion will be calculated using the number of DS0-equivalent access lines CLEC intends to serve an end-user customer within a wire center specified above."

87. Staff, therefore, concurs with Qwest's position. The FCC did not disaggregate the exception down to the individual location level. AT&T supports its recommendation only with the argument that it would be easier for CLECs to account for the number of lines of each customer on a location basis rather than a wire center basis. AT&T also argued, however, that a CLEC cannot always determine if an end user customer at a location has multiple locations on the same bill since that information may not be available to the CLEC and is only available to Qwest. To the extent there is a need on the CLEC's part for information from Qwest to determine the appropriateness of the exemption, Qwest should be required to provide this information to the CLEC, and this obligation should be incorporated into its SGAT.

88. With regard to sub-issue 2, the question of pricing after a CLEC customer adds a fourth line in zone one of the top fifty MSAs is addressed under Checklist Item 2 as impasse issue 7 (UNE-P-10).

**DISPUTED ISSUE NO. 4: Whether Qwest is required to provide unbundled access to switch interfaces such as GR-303 or TR-008? (SW-18)**

**a. Summary of Qwest and CLEC Positions**

89. AT&T argued that it has requested that Qwest provide access to unbundled local switching using GR-303/TR-008 interfaces but that Qwest has declined stating it is not obligated to provide such an interface and based on operational concerns. AT&T Brief at p. 29. AT&T clarified its request that the CLEC be permitted to provide its own compatible remote terminal and then lease transport from Qwest or provides its own transport from the remote terminal back to Qwest's switch. *Id.* at p. 30. Qwest proposed SGAT language in another jurisdiction to permit what AT&T was requesting. *Id.* at p. 31. AT&T stated that it accepted Qwest's language and would agree to close this issue if that language is brought into Arizona. *Id.*

90. Covad stated that it concurred with the comments filed by AT&T and that the Commission should require Qwest to amend its SGAT to reflect this unbundling requirement. Covad May 18, 2001 Brief at p. 12.

91. Qwest stated in its comments that it has recently reached agreement with AT&T on this issue and has agreed to close it in Arizona. Qwest May 18, 2001 Brief at p. 42. Qwest believes that the settlement reached between the parties offers AT&T the functionality it sought while addressing the concerns of Qwest regarding concentration levels, network security, and network integrity. *I.* At p. 43. Based on the settlement,

Qwest is not briefing this issue and it is not submitted to the Commission for determination. Id.

**b. Discussion and Staff Recommendation**

92. Based on Qwest's agreement to add language proposed by Qwest in another jurisdiction, and AT&T and Covad's agreement to this, this issue is deemed closed subject to Qwest incorporating such language into its Arizona SGAT. AT&T clearly stated that it has accepted the SGAT wording proposed by Qwest and that this issue should be considered closed upon follow through by Qwest.

93. Therefore, Staff recommends that the language proposed by Qwest be incorporated into Qwest's Arizona SGAT, and that parties have the opportunity to review such language once the SGAT is modified.

**g. Verification of Compliance**

94. The parties resolved all outstanding issues regarding Qwest's compliance with Checklist Item 6, with the exception of the four impasse issues discussed above.

95. Qwest has also agreed to allow all CLECs to opt into the revised SGAT provisions resulting from these Workshops.

96. After considering the record herein and subject to Qwest's modifying its SGAT language consistent with the resolution of the impasse issues discussed above, Staff recommends that Qwest be found to comply with Checklist Item 6 which requires Qwest to provide or offer to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services." See 47 U.S.C. Section 271(c)(2)(B)(vi).

97. After considering the record herein and with resolution of the Impasse Issues as discussed above, Staff believes that Qwest has demonstrated that it complies with Sections 271(c)(2)(B)(ii) and 251(c)(3).

98. After considering the record herein and subject to Qwest's modifying its SGAT language consistent with the resolution of the impasse issues discussed above, Staff believes that Qwest has demonstrated that it also complies with the requirements contained in the FCC's *Second BellSouth Louisiana Order* which are discussed in Findings of Fact 7 through 10 above.

99. Qwest's compliance with Checklist Item 6 is dependent upon its satisfactory performance with regard to any relevant performance measurements in the Third Party OSS Test in Arizona.

## II. CONCLUSIONS OF LAW

1. 47 U.S.C. Section 271 contains the general terms and conditions for BOC entry into the interLATA market.
2. Qwest is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. Sections 40-281 and 40-282 and the Arizona Commission has jurisdiction over Qwest.
3. Qwest is a Bell Operating Company as defined in 47 U.S.C. Section 153 and currently may only provide interLATA services originating in any of its in-region States (as defined in subsection (I)) if the FCC approves the application under 47 U.S.C. Section 271(d)(3).
4. The Arizona Commission is a "State Commission" as that term is defined in 47 U.S.C. Section 153(41).
5. Pursuant to 47 U.S.C. Section 271(d)(2)(B), before making any determination under this subsection, the FCC is required to consult with the State Commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c).
6. In order to obtain Section 271 authorization, Qwest must, inter alia, meet the requirements of Section 271(c)(2)(B), the Competitive Checklist.
7. Section 271(c)(2)(B)(vi) of the Telecommunications Act of 1996 requires a section 271 applicant to provide or offer to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."
8. Section 271(c)(2)(B)(ii) requires a Section 271 applicant to provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)."
9. Section 251(c)(3) establishes an incumbent LECs "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of [section 251] . . . and section 252."
10. In the *Second BellSouth Louisiana Order*, the FCC clarified the obligations of a BOC with regard to the provision of nondiscriminatory access to unbundled local switching.

11. As a result of the proceedings and record herein, and subject to Qwest modifying its SGAT language consistent with the resolution of the impasse issues contained above, Qwest meets the requirements of Section 271(c)(2)(B)(vi) and provides or offers to provide local switching unbundled from transport, local loop transmission, or other services.

12. Qwest's compliance with Checklist Item 6 is contingent on its passing of any relevant performance measurements in the Third-Party OSS test now underway in Arizona.