

the right to assert that Qwest is in noncompliance with section 271 in future proceedings before this Commission, other administrative agencies or the courts.

II. ARGUMENTS

A. Line Splitting Disputed Issue No. 1: Whether Qwest Provides Line Splitting in all Types of Loops.

Qwest has agreed to provide line splitting for UNE-P. The issues are whether 1) Qwest must provide line splitting on UNE loops, resold lines and EELS, and 2) whether these must be offered as standard products or may be offered through the special request process (“SRP”).

According to Staff’s Report, Qwest has agreed to permit UNE loop splitting and has agreed to develop a standard offering.¹ Qwest has also agreed to provide EEL line splitting through the SRP.² Initially, Qwest would not agree to line splitting on resold lines.³ In its discussion, Staff indicates that Qwest will offer to split resold lines through the SRP if demand arises.⁴

Staff essentially adopts Qwest’s approach, and Staff recommends that Qwest include the following language in the SGAT:

Qwest will provide line splitting of EEL Loops, other loop combinations and resold lines on a SRP basis. Qwest will develop a standard offering for line splitting of EEL Loops, other Loop combinations and resold lines when there is sufficient demand to allow Qwest enough experience to develop a standard product offering.

Staff’s approach has a number of problems associated with it.

First, Staff does not address the sufficiency of the SGAT language on UNE loop line

¹ Staff Report, ¶ 91.

² *Id.*, ¶ 93.

³ *Id.*, ¶¶ 91 and 93.

⁴ *Id.*, ¶ 96.

splitting language in its discussion. Staff suggests that “Qwest has agreed to develop a standard offering for loop splitting and has offered SGAT language, Section 9.24, to implement the offering.”⁵ However, a review of section 9.24.1.1 of the SGAT makes it clear there is no requirement to develop a standard offering for new loops at this time. “If as a result of those [ongoing industry] discussions, a process is developed for Loop Splitting over a new Loop, Qwest will amend its SGAT to eliminate the limitation of Loop Splitting to existing Unbundled Loops.”⁶ The issue of existing versus new loops is not addressed by Staff, nor is any justification provided for such a distinction.

Second, Qwest does not have to provide a standard product offering for EEL line splitting and resold line splitting until a “significant demand” develops to provide enough experience to develop a standard offering. Unfortunately, if the CLECs have to use the SRP process, demand will never develop, for a number of reasons.

Most of the DSL providers have already gone out of business. Making access to line splitting available only through the SRP does not bode well for any remaining competitors. Exhibit F to the SGAT contains the Special Request Process. Paragraph 5 of Exhibit F states that Qwest will have 15 days to respond with an analysis, including cost and timeframes, to a special request. There is no certainty when the product would be available or what it will cost. This also assumes the customer is willing to wait for the service.

There is no definition of what a “sufficient demand” is. It is unlikely sufficient demand will materialize using the SRP. Adopting Qwest’s proposal will simply perpetuate a lack of demand, thereby frustrating any productization of the offering.

⁵ *Id.*, ¶ 91.

⁶ SGAT, § 9.24.11. Nor does the SGAT differentiate between existing and new loop.

This dilemma underscores the problems inherent in Qwest's productization approach to providing UNEs. Although Qwest argues the UNE is available, for all practical purposes it is not, because the time to acquire the UNE through the SRP may take longer than the customer is willing to wait. The FCC requires that UNEs be available both as a legal and *practical* matter.⁷

If there is any hope of maintaining competition in the DSL market, resold line splitting and EEL line splitting must be standard products.

B. NID Disputed Issue No. 2: Whether CLECs may Remove Qwest's Wires from the Protector Field of the NID.

The issue is self-explanatory. Staff adopted AT&T's proposed SGAT language but added language to address concerns regarding the qualification of the technician performing the work.

Staff's language inappropriately uses the word "certified" to describe the qualified technician doing the work. Each carrier determines whether its technicians are qualified. It may entail a company certification; however, there is no industry certification process.

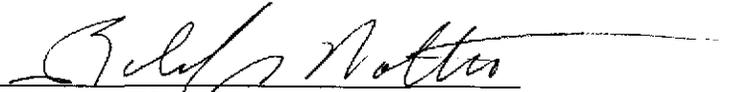
Qwest at one time argued that only its certified technicians should be permitted to do work on its network. It backed off this position when the other carriers argued that their technicians went through company training and were equally qualified to do the work. Staff's certification language is superfluous. Any carrier could simply deem its qualified technicians to be certified. The real issue is whether the technician is qualified.

AT&T suggests amending the second sentence to read: "Only technicians (of the carrier selected by the customer) who are qualified to perform the work..." This adequately addresses the issue.

⁷ *Ameritech Michigan Order*, ¶ 131. Furthermore, the FCC has held that a CLEC does not obtain nondiscriminatory access to UNEs if the BOC "is developing" a service to allow access. *Id.*, ¶ 55.

Respectfully submitted this 6th day of December, 2001.

**AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.
AND TCG PHOENIX**

By: 

Richard S. Wolters

AT&T

1875 Lawrence Street, Suite 1503

Denver, CO 80202

(303) 298-6741

Ken McNeely

Rosalie Johnson

AT&T

795 Folsom St.

San Francisco, CA 94107-1243

CERTIFICATE OF SERVICE

I certify that the original and 10 copies of AT&T's Comments on Staff's Proposed Findings of Fact and Conclusions of Law on Qwest's Compliance with Line Splitting and Network Interface Devices Requirements in Docket No. T-00000A-97-0238 were sent by overnight delivery on December 6, 2001 to:

Arizona Corporation Commission
Docket Control – Utilities Division
1200 West Washington Street
Phoenix, AZ 85007

and a true and correct copy was sent by overnight delivery on December 6, 2001 to:

Maureen Scott
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Mark A. DiNunzio
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Ernest Johnson
Director - Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007

Christopher Kempley
Arizona Corporation Commission
Legal Division
1200 West Washington Street
Phoenix, AZ 85007

Jane Rodda
Administrative Law Judge
Arizona Corporation Commission
400 West Congress
Tucson, AZ 85701-1347

and a true and correct copy was sent by U. S. Mail on December 6, 2001 to:

Thomas F. Dixon
WorldCom, Inc.
707 – 17th Street, #3900
Denver, CO 80202

Terry Tan
WorldCom, Inc.
201 Spear Street, 9th Floor
San Francisco, CA 94015

K. Megan Doberneck
Covad Communications Company
7901 Lowry Blvd.
Denver, CO 80230

Bradley Carroll
Cox Arizona Telcom, L.L.C.
20401 North 29th Avenue
Phoenix, AZ 85027-3148

Michael M. Grant
Gallagher and Kennedy
2575 East Camelback Road
Phoenix, AZ 85016-9225

Gena Doyscher
Global Crossing Local Services, Inc.
1221 Nicollet Mall, Suite 300
Minneapolis MN 55403

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

Michael W. Patten
Roshka Heyman & DeWulf, PLC
400 North Fifth Street, Suite 1000
Phoenix, AZ 85004-3906

Joyce Hundley
United States Dept. of Justice
Antitrust Division
1401 H Street NW, Suite 8000
Washington, DC 20530

Daniel Pozefsky
Residential Utility Consumer Office
2828 North Central Ave., #1200
Phoenix, AZ 85004

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, AZ 85281

Mark P. Trincherro
Davis Wright Tremaine
1300 SW Fifth Ave., Suite 2300
Portland OR 97201-5682

Penny Bewick
New Edge Networks
3000 Columbia House Blvd., Suite 106
Vancouver, WA 98661

Lisa Crowley
Covad Communications Company
7901 Lowry Boulevard
Denver, Colorado 80230

Karen L. Clauson
Eschelon Telecom, Inc.
730 2nd Avenue South, Suite 1200
Minneapolis, MN 55402

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue, 21st Floor
Phoenix, AZ 85067-6379

Eric S. Heath
Sprint Communications Company L.P.
100 Spear Street, Suite 930
San Francisco, CA 94105

Charles Kallenbach
American Communications Services, Inc.
131 National Business Parkway
Annapolis Junction, MD 20701

Jeffrey W. Crockett
Snell & Wilmer, LLP
One Arizona Center
Phoenix, AZ 85004-0001

Todd C. Wiley
Gallagher & Kennedy, P.A.
2575 East Camelback Road
Phoenix, AZ 85016-9225

Michael B. Hazzard
Kelley, Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036

Daniel Waggoner
Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

Timothy Berg
Fennemore Craig, P.C.
3003 North Central Ave., #2600
Phoenix, AZ 85012

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
Two Arizona Center
400 N. Fifth Street, Suite 1000
Phoenix, AZ 85004

Diane Bacon, Legislative Director
Communications Workers of America
Arizona State Council
District 7 AFL-CIO, CLC
5818 N. 7th Street, Suite 206
Phoenix, AZ 85014-5811

Andrea P. Harris
Senior Manager, Regulatory
Allegiance Telecom, Inc.
2101 Webster, Suite 1580
Oakland, CA 94612

Andrew Crain
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Janet Livengood
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Suite 220
Tampa, FL 33602

Charles W. Steese
Qwest Corporation
1801 California Street, Suite 4900
Denver, CO 80202

Bill Haas
Richard Lipman
McLeodUSA Telecommunications
Services, Inc.
6400 C Street SW
Cedar Rapids, IA 54206-3177

Brian Thomas
Vice President – Regulatory
Time Warner Telecom, Inc.
520 S.W. 6th Avenue, Suite 300
Portland, OR 97204

