BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST Communications, Inc.'s Compliance With Section 271 of the Telecommunications Act of 1996	)	Docket No. UT-003022
In the Matter of U S WEST Communications, Inc.'s Statement of Generally Available Terms Pursuant to Section 252(f) of the Telecommunications Act of 1996	)	Docket No. UT-003040

AT&T'S BRIEF ON DISPUTED ISSUES RELATING TO EMERGING SERVICES (WORKSHOP IV)

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit their brief addressing the impasse issues relating to emerging services.

I. INTRODUCTION

As articulated by the FCC's UNE Remand Order,[1] there are expanded standards and framework on ILEC (including Qwest) unbundling obligations pursuant to section 251(c)(3) and 251(d)(2) of the Telecommunications Act of 1996.[2] These obligations

[1] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, "Third Report and Order and Fourth Further Notice of Rulemaking, CC Docket No.. 96-98 (rel. November 5, 1999) ("UNE Remand Order").
[2] *Id.* at ¶4.

encompass, among others, the "emerging services" issues including subloops,[3] dark fiber,[4] packet switching[5] and line sharing.[6]

Specifically, the FCC indicated that "(f)or effective competition to develop as envisioned by Congress, competitors must have access to incumbent LEC facilities in a manner that allows them to provide the services they seek to offer."[7] As established below, AT&T does not have the effective access necessary to provide competitive telecommunications services utilizing the "emerging services."

Qwest's entrance into the in-region interLATA long distance market is directly related to Qwest's compliance with 47 U.S.C. § 271. To be in compliance, Qwest must "support its application with actual evidence demonstrating its present compliance with statutory conditions for entry."[8]

As the FCC looks to the Washington Utilities and Transportation Commission (the "Commission") to ensure that the state's local telecommunication market is open to competition, AT&T requests extensive scrutiny of Qwest's present compliance with emerging service issues. It is only through this scrutiny and Orders that comply with FCC and legal mandate, that AT&T will be able to compete in Washington. To that end, AT&T further articulates its positions on subloop, dark fiber, packet switching and line sharing.

---

[3] *Id.* at ¶202 *et.seq.*
[4] *Id.* at ¶196 *et.seq.*
[5] *Id.* at ¶301 *et.seq.*
[6] The obligations listed above are analogous for line sharing. See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98 (rel. December 9, 1999) at ¶13.
[7] *Id.* at ¶13.
[8] *Application by Bell Atlantic New York for Authorization Under Section 271of the Communications Act to Provide In-Region, InterLATA Service in the State of New York,* CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (rel. Dec. 22, 1999), ¶ 37 ("*BANY Order*").

II. SUBLOOP DISPUTED ISSUES

A. WHETHER THE SGAT'S PROVISIONS FOR ACCESS TO SUBLOOP ELEMENTS AT THE MTE TERMINALS IS CONSISTENT WITH THE FCC'S DEFINITION OF, AND RULES REGARDING ACCESS TO, UNBUNDLED NID (sic.) (INCLUDING ISSUES REGARDING QWEST'S STANDARD MTE ACCESS PROTOCOL AND ACCESS PROVISIONS ARE TOO RESTRICTIVE IN REGARDS TO MTE ACCESS) (WA-SB3)

1. The Issue

Under the Federal Communication Commission's ("FCC's") UNE Remand Order, incumbent LECs such as Qwest are required to provide competitive carriers with access to subloops through any accessible terminal including but not exclusively the Network Interface Device ("NID"). In particular, AT&T has attempted to seek access to the on-premises wiring, essentially a piece of usually copper twisted wire pair that extends in a multi-tenant environment ("MTE") from the NID to the individual units. It is essential that AT&T obtains this access because AT&T provides competitive telephony service to end user customers and has deployed its own loop facilities in Qwest's 14-state region.[9] In most cases, AT&T runs its own network all the way to the customer premises and merely needs access to the on-premises wiring, sometimes owned by Qwest.[10] This wiring is difficult, if not impossible for AT&T to duplicate. In sum, if AT&T does not obtain FCC mandated quick, efficient and cost effective access in order to capture on-premises wiring, AT&T cannot compete to provide local telephone service.

---

[9] Exhibit 1037 at p. 2.

[10] See AT&T Proposal §9.3.3. Such wiring has also been referred to, variously, as "inside wire," "intra-building wire," or "campus wiring." AT&T notes that none of these terms has any settled meaning, although "inside wire" has been discussed by the FCC in numerous orders. *See, e.g.* 47 CFR 51.319(a)(2)(A). Nonetheless, AT&T's reference to on-premises wiring is deliberately broad and encompasses all wire or cabling of Qwest located on or within a customer premises. As will be discussed in more detail below, Qwest does not dispute that AT&T may obtain access to on-premises wiring, regardless of Qwest's terminology, but impermissibly mischaracterizes such wiring.

Since the onset of this docket, when Qwest was actually padlocking the NID essentially halting AT&T's access to its customers, AT&T has made great strides in obtaining access to the internal customer premises wiring only through continued zealous advocacy in this docket as well as through the filing of a Complaint in front of the Washington Utilities and Transportation Commission ("WUTC") in UT-003120. In the UT-003120 docket, the WUTC subsequently ruled that Qwest must allow AT&T access to the internal customer premises wiring forthwith.[11]

Historically, Qwest's other impediments have also included insisting that NID access required collocation, requiring a 90-day provisioning period for access. Regarding the collocation issue, the WUTC ruled "(g)iven the FCC's orders and rules on the issue, Qwest must allow cross-connection at Multi-Tenant Environments…and may not require collocation for such access." *See* Eleventh Supplemental Order; Initial Order Finding Non-Compliance on Collocation Issues, Docket No. UT-003022 and Docket No. UT-003040. Qwest also stealthfully included in its SGAT that CLECs must follow a Qwest drafted "access protocol" which limits CLEC access to the on-premises wiring, especially in an "Option 3" situation where Qwest claims ownership or control of the on-premises wiring. Addressed in separate sections below, in an "Option 3" situation, Qwest is still also requiring an LSR (local service request) for each inside wire that AT&T is capturing, requiring the CLEC to "inventory" every NID that it accesses (Qwest would then charge the CLEC for that inventory). In fact, there are so many nuances relating to how CLECs

[11] In a recent Complaint that AT&T was forced to file in Washington State, Qwest actually padlocked its NIDs and pulled AT&T conduit and wiring ceasing facilities based competition in Washington. The Washington Utilities and Transportation Commission was forced to intervene to allow AT&T access to Qwest own NIDs. *See Second Supplemental Order Granting Motion to Amend Answer, Denying Emergency Relief and Denying (Qwest's) Motion for Summary Determination, AT&T Communications of the Pacific Northwest, Inc. v. Qwest Corporation*, UT-003120 (Rel. April 5, 2001).

are supposed to access and record their access to on-premises wiring, the Qwest proposed SGAT has become virtually unreadable.

Qwest's attempt to put up these access roadblocks should be no surprise; the FCC made a clear determination that incumbent LECs such as Qwest have used the MTE chokepoint as a means to severely inhibit competition. [12] In its MTE Order, the FCC found that "incumbent LECs are using their control over on-premises wiring to frustrate competitive access in multitenant buildings."[13] Further, the FCC found "that incumbent LECs possess market power to the extent their facilities are important to the provision of local telecommunications services in MTEs."[14] Finally, the FCC recognized that "[i]n the absence of effective regulation, (the "ILECs") therefore have the ability and incentive to deny reasonable access to these facilities to competing carriers."[15]

For these reasons, AT&T believes the WUTC's insight, including reinforcement of FCC guidelines and its own orders, will assist AT&T in seeking its required inexpensive, efficient, and expeditious access. AT&T is confident that the Commission will determine that Qwest's SGAT is not consistent with the Act and the rules thereunder.

2. Qwest Ignores the FCC Definition of the NID

AT&T has reason to be concerned that Qwest has ignored important distinctions contained in FCC's rulings regarding access to NIDs and MTEs as described below placing substantial doubt on whether Qwest's SGAT generally complies with the FCC's rules regarding access to NIDs. Qwest has argued that the NID is always the demarcation

[12] *Id*..
[13] Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, FCC 00-366, ¶ 6 (Rel. Oct. 25, 2000) ("MTE Order").
[14] *MTE Order* at ¶ 11.
[15] *Id*.

point, i.e. where Qwest's ownership ends. Thus, under Qwest's logic, if Qwest owns the on-premises wiring, CLECs would not be accessing at the NID but at what Qwest considers to be the MTE terminal.[16] In doing so, Qwest completely ignores both the definition and the relevancy of the access to the NID in its current SGAT language as discussed in the various workshops.[17] As explained below, because the FCC has placed particular importance to CLEC NID access in order to capture on-premises wiring, this Commission should correct Qwest's misrepresentations located throughout the SGAT, the result thereof which limits CLEC access when Qwest asserts ownership of the on-premises wiring.

a. The FCC and AT&T's Definition of the NID

In greater detail, before the UNE Remand Order, the FCC considered the NID to be a "cross-connect device used to connect loop facilities to inside wiring."[18] In the UNE Remand Order, the FCC redefined the NID to "include all features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism."[19] The FCC specifically redefined the NID to include any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose.[20]

The importance is substantial, until the FCC redefined the NID in its UNE Remand Order, the local loop element ended at the NID located at the retail customer's

[16] *See e.g.* Qwest SGAT 9.3.1.1.1.1
[17] Washington Transcript , pp. 4524-4525.
[18] *UNE Remand Order* at ¶ 230.
[19] *Id.* at ¶ 233.
[20] *Id*.

premises.[21] In the UNE Remand Order, the FCC redefined the loop to extend from a distribution frame in the incumbent LEC central office to the demarcation point at the customer's premises. The demarcation point is where control of wiring shifts from the carrier to the subscriber or premises owner. Accordingly, the NID is not necessarily the demarcation point.[22] Instead, it is precisely where AT&T requires unencumbered access, a readily identifiable cross-connection point because it is the first cross-connection point after the incumbent LEC distribution plant crosses the property line of the building owner.

The FCC's UNE Remand Order also specifically contradicts Qwest's determination that the NID is the demarcation point, indicating that the demarcation point, "(d)epending on the specific architecture…**might** be at the pedestal, the NID, the MPOE, or any other accessible terminal."[23] The FCC further indicated that the NID had nothing to do with where the loop ends, as "the loop may terminate at the NID, before the NID or beyond the NID."[24]

b. Why the NID Definition is So Important

In the UNE Remand Order, the FCC created a separate distinct section regarding access to the NID.[25] In doing so, the FCC made clear that unencumbered access to the NID is technically feasible and particularly important because denial of access "would

---

[21] *UNE Remand Order* at ¶ 167.
[22] The FCC defined the demarcation point to mean "the point on the loop where the telephone company's control of the wiring ceases, and the subscriber's control (or in the case of some multi-unit premises, the landlord's control) of wire begins." Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98 (rel. November 5, 1999) (hereafter "UNE Remand Order") at ¶ 230. Thus the demarcation point is defined by control; it is not a fixed location on the network, but rather a point where an incumbent's and property owner's responsibilities meet."
[23] *UNE Remand Order* at ¶ 216, ftnte. 417.
[24] *Id.* at ¶ 433, ftnte. 457.
[25] *Compare Id.* at ¶ 202 *et. seq.* with *Id.* at 230 *et. seq.*

materially diminish a competitor's ability to provide the services it seeks to offer,"[26] and "would materially raise entry costs, delay broad facilities-based entry and materially limit the scope of the competitor's service offerings."[27] Accordingly, the FCC indicated that "an incumbent LEC must permit a requesting carrier to connect its own loop facilities to the inside wire of the premises through the incumbent LEC's NID, or any other technically feasible point, to access the inside wire subloop element."[28]

Qwest serves MTEs primarily through one of two means – Option 1 or Option 3 wiring. In the case of Option 1 wiring, the building owner owns and controls the on-premises wire and, as a result, there is no question that Qwest may not legally deny a competitor access to wiring at the premises. This is true because there are no Qwest-owned or controlled facilities used when the competitor directly connects to the building wire. Because there are no unbundled network elements involved, there is nothing to be negotiated with Qwest.

In the case of Option 3 wiring, Qwest asserts control, if not ownership, of at least a portion of the wiring on the premises that may be used by the connecting carrier. Because Qwest controls a portion of the facilities, the connecting carrier may in turn use some Qwest-controlled assets that there is no dispute must be unbundled as subloop unbundled network elements. However, in light of the FCC definition of NID discussed above, pursuant to the 1996 Telecommunications Act, AT&T's access should not be encumbered just because Qwest owns the on-premises wiring.

[26] *Id.* at ¶ 237.
[27] *Id.*
[28] *Id.*

3. How the Qwest SGAT has Encumbered Access

To paraphrase the FCC, in the absence of effective regulation, Qwest has the ability and incentive to deny reasonable access to various CLEC's attempts to capture the on-premises wiring.[29] By impeding access to Option 3 properties (i.e., when Qwest does own the internal customer premises wiring) through requirements of an LSR, an "inventory," other SGAT limiting provisions and non-technical access limitation language located in a Qwest required "access protocol", Qwest is utilizing its "ownership" of on-premises wiring to impede access to on-premises wiring through rate elements and terms that are not "just, reasonable and non-discriminatory."[30]

AT&T's issues regarding the LSR and Inventory are addressed in issue WA-SB4 and WA-SB5 respectively. The remaining issues are found in 9.3.5.4.5. referring to an access protocol.

Qwest witness Barry Orrell indicated that the purpose of the access protocol was to provide CLEC technicians with some sort of guide to obtaining access to the Qwest MTE terminal.[31] As AT&T indicated in the workshop, AT&T is extremely concerned about the access protocol, and such protocol becomes relevant for 271 purposes because Qwest has, by reference, incorporated the access protocol into the SGAT in Section 9.3.5.4.5.1.[32] Furthermore, Qwest has taken great pains to distinguish its access protocol for "Option 1" situations where the CLEC is trying to access the "NID" vs. "Option 1 situations where the CLEC is trying to access an "MTE Building Terminal."[33] As there is no physical nor technical difference between an Option 1 NID (or under Qwest

[29] *MTE Order* at ¶11.
[30] *See* 47 U.S.C. 251(c)(3).
[31] Washington Transcript at p. 5468, ll. 1-15.
[32] *Id.* at p. 5468, l.25 - 5470, l. 20.
[33] *See* e.g. Washington Transcript at p. 5489, l.6 – 5490, l.24.

nomenclature, "building terminal") and an Option 3 NID, the only difference between the two is if Qwest owns the on-premises wiring, there should be absolutely no distinction on what AT&T needs to do to access that wiring. In fact, according to the FCC, all that CLEC's access needs to be is technically feasible.[34] Of course, AT&T also has no issue with following the National Electronic Code (NEC) and National Safety Code (NESC) requirements to the extent that they are relevant, as suggested in the access protocol. Finally, AT&T has no issue with paying a reasonable per line per month recurring charge for use of the Qwest owned on-premises wiring that AT&T utilizes.

Qwest's artificial distinction between Option 1 and Option 3 wiring is readily apparent in the access protocol.[35] Unless there is a protector field issue,[36] there appears to be no significant limitations as to access in at least the identified terminal Option 1 settings.[37] The same should hold true for Option 3 wiring. Instead, relating to Option 3, the access protocol becomes a great deal more significant.[38] First, there is an unsubstantiated presumption that Option 3 buildings are "hard wired," requiring a splice in the protector field. If a CLEC does have to splice in, a technically feasible method of access, Qwest would then have the option of "retrofitting" the terminal "with a terminal containing a proper cross-connect field and clear demarcation points for test access."[39] AT&T would then have to pay for the retrofitting that it did not ask for through some sort of undefined recurring charge.[40] In sum, there should not be a presumption of relative inaccessibility and CLEC borne "retrofitting" costs just because Qwest owns the internal

[34] UNE Remand Order at ¶ 220.
[35] *See* Exhibit 1167: Qwest's Standard Multi Tenant Environment (MTE) Terminal Access Protocol, 8-1-01 Draft.
[36] AT&T does not believe that it will need access to the protector field except for rare circumstances.
[37] *See* Exhibit 1167 at p.8.
[38] *See Id.* at p.9.
[39] *Id.* (Note that this provision is located exclusively in the access protocol and not the SGAT.)
[40] *See* Washington Transcript at pp. 5528, l.19-5532, l.18. *See* also, SGAT § 9.3.6.1.1.

customer premises wiring. Indeed, it appears Qwest intends to use CLEC requested access as a means to pay for upgrading its antiquated network.[41]

As AT&T mentioned in the Washington workshops,[42] also troubling in the access protocol, is the statement found on p. 4 indicating:

> (t)he volume and variety of OSP terminals complicates the capability for any MTE terminal access protocol to address every scenario encountered in Qwest's network. Therefore, proper access methodology to Qwest MTE terminals not identified in the MTE access protocol will be provided on an individual case basis (ICB). Prior to providing proper access methodology, such accessment shall not prevent CLEC from directly accessing Intra-building Cable Loop utilizing common industry temporizing methods.[43]

As one can see from the access protocol, there are only two types of terminal blocks referenced in that document, "66 Type Terminal Blocks" and "76 Type Terminal Blocks."[44] Furthermore, as Qwest indicates, there are a plethora of additional varieties of terminals. Under the access protocol, all of these additional terminals will be handled on an ICB (individual case basis). This will again require Qwest to dispatch a technician in order to determine if access is performed according to Qwest "specifications," "retrofit" the NID/access terminal or do whatever else Qwest would unilaterally determine would be appropriate.[45] Again, as the UNE Remand Order allows for access to access the inside wire, AT&T has agreed to use technically and electrically appropriate means of access to the internal customer premises wiring, notify Qwest of its capturing the wire **and** pay Qwest for such access, the need for ICB treatment on each and every non-specified terminal type is inappropriate and should be stricken.

---

[41] *See* Washington Transcript at pp. 5493-5494 (July 31, 2001) and at pp. 5529-5530 (August 1, 2001).
[42] *See* Washington Transcript at p. 5471, l. 5-19.
[43] *See* Exhibit 1167 at p. 4. sec. 2.
[44] *Id.* at p. 11-12.
[45] *See* Washington Transcript at p. 5493, l.18-p. 5494, l.8.

Yet another issue in the "access protocol" is that CLEC access to the protector field is only being given in twenty-five pair increments.[46] Qwest indicated in the Washington workshop, that this is to avoid waste.[47] Thus, if AT&T wished to access only two tie down terminals in the protector field, it would not be able to unless it accessed twenty-five. Likewise, if there were only room for two tie down terminals in the protective field, but no room to the required twenty-five, Qwest could deny access. This makes no sense from a technical perspective, and even worse is discriminatory to the CLECs, prohibiting access when there is space available. This Qwest language should be stricken and access should be given when there is space available.

Finally, the access protocol should be limited to technical parameters, avoiding terms and conditions that affect legal rights and obligations which are appropriate exclusively in the SGAT. Such sections include the following:

1) Preconditions to Access located on p.5 of the access protocol.
2) LSR Requirements located on p. 7 of the access protocol.
3) Definition of a NID on p.8 of the access protocol.
4) Definition of an ICB on p. 4, 8, 9 of the access protocol.
5) Qwest's Unilateral Ability to Place a Single Point of Interconnection (SPOI) on p. 14.

The issues with the access protocol help accentuate the broader issues regarding Qwest's attempt to skirt its obligation to provide technically appropriate unencumbered access to the NID in order for CLECs to capture the on-premises wiring. The impasse issues that follow address barriers that Qwest has implemented which will have the effect of denying CLEC access to such on premises wiring.

[46] *See* Exhibit 1167 at p. 8, 9, 10,
[47] *See* Washington Transcript at p. 5475, l.22- p. 5476, l.16.

B. WA-SB4 WHETHER CLECS MUST SUBMIT AN LSR TO CAPTURE ON-PREMISES WIRING[48]

As discussed above, Qwest is required to provide CLECs with nondiscriminatory access to UNEs, including subloops.[49] Qwest's requirement that a CLEC submit a local service request ("LSR") before capturing the on-premises wiring is a discriminatory practice not permitted by the Act because it creates a materially more burdensome means of access than Qwest affords itself.[50] Before Qwest established a product for access to subloops, it is not clear that Qwest even bothered to keep a record of on-premises wiring that it owned, let alone applied stringent recording and access protocols.[51]

Simplicity is appropriate for access to on-premises wiring. As discussed in WA-SB3, the FCC has indicated that the only parameters relating to CLEC access to capture the internal customer premises wiring should be technical feasibility. The FCC further found that access via the NID was technically feasible. In fact, Qwest has been unable to dispute that AT&T's methods of capturing the on-premises wiring have not been technically feasible. The same would hold true with AT&T's proposed methods of notifying Qwest of AT&T's capturing the on-premises wiring.[52] Specifically, AT&T proposes that the CLEC submit to Qwest a monthly statement specifying the cable and

[48] AT&T attorney Steven Weigler contacted Qwest Attorney Chuck Steese to ask if there would be an objection to reframing/limiting this issue. Mr. Steese was not available and Mr. Weigler left a message indicating that Mr. Steese should get back to him if there was a problem. Mr. Steese never responded on this issue.
[49] Qwest SGAT §§ 9.3.5.1, 9.3.5.4.4.
[50] *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, et al*., CC Docket No. 00-65, Memorandum Opinion and Order (rel. June 30, 2000) at ¶ 99.
[51] This is presumably why Qwest needs up to ten days to determine if it owns the on-premises wiring. *See* Qwest SGAT § 9.3.5.4.1.
[52] *See* Exhibit 1038, sec. 9.3.8.10.

pairs employed by the CLEC and the addresses of the MTEs in which AT&T has obtained access.[53]

In the Washington workshop, Qwest indicated that it is necessary for AT&T to issue an LSR for non-ported numbers for cost recovery, maintenance, and record keeping purposes.[54] To clarify, through long established processes, AT&T has been issuing automated LSRs for ported numbers. An LSR for ported numbers makes sense because the customer wishes to port its telephone number to AT&T, and specific coordination is required with Qwest and the third party number porting database provider-NPAC. None of these requirements are present when there is new AT&T service or the former Qwest customer switches to AT&T without porting its number. In fact, AT&T has been accessing on-premises wiring for months, without any Qwest need for an LSR process. Indeed, throughout this period of time, Qwest has yet to formalize any sort of working LSR process that AT&T would utilize in order to order the inside wire subloop UNE.[55]

To demonstrate the appropriateness of Qwest's requirement that an LSR be issued each and every time a CLEC orders the inside wire subloop UNE, it is useful to examine Qwest's previously stated reasons for requiring an LSR. In a Colorado workshop, Qwest indicated that it would need an LSR so that Qwest could have the heads up "so it could make the decision around whether or not (Qwest is) going to observe (AT&T) doing the work."[56] As Qwest has now adopted SGAT language with an access protocol allowing access at the time or even after AT&T notifies Qwest, this reason becomes mere subterfuge.

---

[53] *Id*. at § 9.3.8.10.2.
[54] Washington Transcript at p. 4703, l. 25 – p. 4704, l.5.
[55] *See* Oregon Transcript at p. 166, l. 11- 19 (Attachment A).
[56] *See* Colorado Transcript at p. 173, l. 18-23 (Attachment B).

Qwest next indicated it needed an LSR "to be in a position to update Qwest's systems and be ready to meet (Qwest's) maintenance and repair obligations effectively with (AT&T's) access to the UNE."[57] However, Qwest then conceded that the on-premises wiring was not a high maintenance item.[58] Furthermore, the repair obligation, while it exists if Qwest owns the on-premises wiring, logically would be instigated by the CLEC providing service to the end-user customer, as any service problems should be. The customer would contact the CLEC, who would then contact Qwest, if required. Likewise, nothing would be gained by Qwest's LSR requirement if problems occurred with a non-CLEC Qwest customer. Qwest would have the records for that non-CLEC customer and the LSR would provide no useful information. It is also important to note that pursuant to other SGAT requirements, such as the notification requirement found in SGAT section 9.3.5.4.1, Qwest will have notice that the CLEC has accessed the particular NID/building terminal. Thus, they do not have to be notified of that fact via an LSR.

Qwest further indicated that it needed an LSR "to create a circuit I.D. for Qwest to inventory into its systems."[59] As Qwest is now allowing/mandating for AT&T to create the inventory,[60] there is no need for the LSR to create the inventory. Furthermore, Qwest has explicitly stated in recent Oregon workshops that "inventory does not need to be completed before the CLEC gains access to the subloop element."[61] Thus, the immediate need for Qwest to have an inventory through the LSR process is no longer a concern for Qwest.

---

[57] *Id*.
[58] *Id.* at p.174, l.19-p.175, 8.
[59] *See* Colorado Transcript at p. 150, l.3-14 (Attachment B).
[60] *See* Washington Transcript at p. 5522, l.21-5523, l.6.
[61] *See* Oregon Transcript at p. 171, l.10-13 (Attachment A).

Furthermore, Qwest has always asserted that it needs an LSR to create an automated process. In previous workshops, when asked about a manual system, such as an e-mail or fax notification, Qwest witness Karen Stewart testified "the only way that information is going to be fed into our system is the equivalent of LSR. I mean, what else are we going to do with the E-mail information? I mean, put it in somebody's desk drawer?"[62]

Accordingly, much to AT&T's surprise, when the basic details of a non-ported LSR process was articulated by Qwest in the August 1, 2001 workshop, a **manual process** was contemplated.[63] In fact, Qwest contemplates that for **every** on-premises wire subloop UNE that AT&T wished to order, they would need to manually type in the Remark Section of the LSR, "this is an Intra building cable" and whether the CLEC wants "Qwest to Dispatch a technician to run the jumper or if the CLEC will run the jumper."[64] The only other information required for Qwest's contemplated LSR a vast majority of the time is the Intra building Cable NC/NCI codes the address.[65] Also, contrary to Qwest witness Karen Stewart's issues at the time, Qwest now contemplates that the LSR would be faxed or issued though IMA-GUI.[66]

The ramifications of the Qwest contemplated LSR process as it relates to competition are tremendous. Once Qwest gets around to finalizing what that process would entail, AT&T would have to expend substantial funds to create systems and

---

[62] *See* Colorado Transcript at p. 164, l.7-12 (Attachment B).
[63] *See* Washington Transcript at p. 5567, l.7-8.
[64] *See* WA Q 1021. Note that AT&T does not contemplate that it would ask Qwest to run the jumper except in extremely rare circumstances.
[65] *Id.* At the workshop, Qwest indicated that it would "take back" the issue of whether AT&T there could be a "default" that the CLEC was going to run the jumper. *See* Washington Transcript at p. 5568, l.17-22. Off line Qwest indicated to AT&T that such requirement would not be waived.
[66] *See* WA Q 1021.

provide personnel to inform Qwest on a wire by wire basis that AT&T: 1) ordered the wire at a certain address and 2) AT&T would be running the jumper.

As outlined below for WA-SB13, AT&T proposed that Qwest could provide a web accessible database listing those locations where Qwest owns the inside wire, so that CLECs could check the list in order to populate the LSR with "this is an intrabuilding call." Qwest's reaction to this request was that there would be a "staggering number of entries" required for this.[67] Yet Qwest's LSR proposal would necessitate CLECs to maintain this "staggering" amount of information to order the inside wire subloop element on a going forward basis. For each customer at a MTE in Qwest territory, CLECs would be required to determine whether the MTE is Option 3 before submitting the LSR. The administrative burden of the LSR far outweighs whatever benefit there may be.

Furthermore, AT&T incurs a systems cost for each LSR that AT&T submits. The charges for subloop access at a NID terminal will be very small[68] and will hardly warrant the expense of issuing an LSR.[69] To make matters worse, Qwest then intends to forward that information to its "service delivery center" to be "converted" (i.e. typed in),[70] which makes this hardly an automated, efficient, or even necessary process. To initiate substantial processes for such a simple element is unreasonable and contrary to the requirements of the Act.

AT&T acknowledges that Qwest should be supplied the information necessary to be compensated for a CLEC's access and to effectively monitor, repair and maintain

[67] *See* Washington Transcript at pp. 5546-5547 (August 1, 2001).
[68] *See* Washington Transcript at p. 4700.
[69] *Id.*
[70] *See* Washington Transcript at p. 5574, l.8-20.

Qwest's facilities. However, in accordance with the non-discrimination requirements of the 1996 Telecommunications Act,[71] such access must be provided in the most cost efficient manner possible. The AT&T Proposal allows just that.[72] It would provide Qwest the requested information, (which, as discussed above, Qwest had represented in previous workshops as terminal block, pair and cable but now appears to merely be the address and NC/NCI Code) utilized by the CLEC in a mutually acceptable form on a monthly basis.[73] Qwest would then be able to account for the wire, prepare charges, update its systems, and do whatever it believes is required to update its systems. Note that a monthly accounting is AT&T's suggestion; however, a CLEC accounting in the aggregate on a periodic basis (i.e., once every two weeks, three weeks, two months etc.) is what appears to be appropriate.

In summary, under the Telecommunications Act, there is no reason why access to on-premises wiring should be substantially more arduous and costly to the CLECs than it is for Qwest. It is only through this Commission's intervention that appropriate and non-discriminatory accountings for access to internal wiring can take place.

C. IS IT APPROPRIATE TO CREATE AN INVENTORY OF CLEC FACILITIES, AND IF SO, SHOULD CLEC PAY THE NON-RECURRING CHARGES PROPOSED BY QWEST? (WA-SB5)

Through developments in the Washington workshop, the burden has now shifted from Qwest to AT&T to "build an inventory" of the CLEC terminations.[74] As the Qwest SGAT § 9.3 language is written, there are inconsistencies related to if the CLEC would then gain immediate access to the MTE pursuant to SGAT § 9.3.1.3.2 (allowing for

[71] *See* FCC Texas Order at ¶ 44.
[72] AT&T Proposal § 9.3.8.10.
[73] *Id*.
[74] *See* Exhibit Q 1020 at § 9.3.3.5.

"subloop unbundling…during or after an inventory an inventory of CLEC's terminations have been created, and the CLEC has constructed a cross-connect field at the building terminal") or would have to wait five days for Qwest to input the information in its systems pursuant to SGAT § 9.3.3.5 (which contains very convoluted language indicating that Qwest shall have five calendar days "to input inventory of CLEC's terminations" before "subloop orders are provisioned" but that "if a CLEC submits a subloop order before the input is completed, Qwest shall process the order in accord with Section 9.3.5.4.1." (relating to the requirement that a CLEC must notify Qwest in writing for on-premises wiring determination)).

First, Qwest must clarify its language to conform with Qwest's agreement "that a CLEC can access subloop elements during the creation of the inventory of the CLEC's terminations."[75] This should be in the form of a clarification in SGAT § 9.3.3.5. that there shall be no five-day inventory requirement under any circumstance.

Second, it is prejudicial to have AT&T create an inventory of its cable pairs for Qwest. Qwest has indicated that an inventory is "simply a cable count…for (Qwest) Legacy systems to be able to track so that when (Qwest) does get a repair call, (it) can send the technician to the right location and secondarily so (Qwest) can bill appropriately for that subloop system."[76] Accordingly, AT&T is building an inventory for Qwest to update its systems. AT&T is unsure how many customers it will access at a given time and/or where it would connect those customers before the fact. Thus it appears inappropriate for AT&T to take on that task.

[75] *See* Washington Transcript at p.5455, l.15-17.
[76] *Id.* at p. 4730, l.9 – p.4731, l.7.

Third, AT&T should not have to pay any sort of inventory fee such as the one found in Qwest SGAT § 9.3.6.4.1. (indicating "CLEC will be charged a non-recurring charge for the time and materials required for Qwest to complete the inventory of CLEC's facilities within the MTE such that Subloop orders can be submitted and processed.") Qwest has conceded that issue in other jurisdictions including Arizona after the Arizona Staff Issued a Report on July 9, 2001 suggesting that such a proposal should be stricken.[77] Furthermore, Qwest has indicated that if the charge is not applied in Arizona, it will not apply in Washington.[78] Finally, in a status conference in two other WUTC dockets,[79] Qwest indicated that it would not seek an implementation of the inventorying charge. Thus, it only is an issue in this docket because Qwest has not removed the charge from the relevant SGAT, at Mr. Steese's insistence that the charge was not conceded.[80] Regardless of Qwest's inconsistent positions, Qwest is not even performing the inventory, thus the charge is unsubstantiated and completely inappropriate.

In summary, both the inventory of CLEC terminations and the charges for such inventory are inappropriate and the relevant sections should be stricken.

---

[77] *See* "Qwest Corporations Comments to Staff's Draft Emerging Services Report Issued on July 9, 2001" at p. 7. (July 19, 2001). *See also* Arizona Corporation Commission Staff's Draft Emerging Services Report at ¶ 194 (July 9, 2001). *See also* Arizona Corporation Commission Staff's Final Report on Qwest's Compliance with Section 271 Emerging Services at ¶ 215 (Attachments C, D and E).

[78] *See* Washington Transcript at p. 5463, l.8-9.

[79] WUTC Docket No. UT-003013 (involving costs) and Docket No. UT-003120 (involving Qwest Denying on-premises wire access in MDU setting to AT&T).

[80] *See* Washington Transcript at p. 5466, l. 1-4.

D. AT&T HAS REQUESTED A WEBSITE TO IDENTIFY MTE LOCATIONS WHERE QWEST OWNS INTRABUILDING CABLE WIRING (WA-SB13)

Both in its SGAT language and in the workshops, Qwest has indicated that it needs time intervals of up to ten days to determine if it owns the on-premises wiring at a MTE.[81] This fact in tandem with the fact that there are numerous locations where AT&T will continue to capture on-premises wiring in order to provide competitive telecommunications services, there should be no reason why Qwest cannot post its ownership of various MTE on-premises wiring once it is determined by Qwest.[82]

As articulated in the workshops, such posting will assist CLECs in determining when they have to notify Qwest for payment and repair, when they can access without notifying Qwest, and perform other functions in compliance with the provisions of the SGAT.[83]

The other alternative is to have every CLEC build its own database or rely on Qwest for a continuous building by building inquiry. This is inefficient and unnecessary. Furthermore, it will not be as accurate as Qwest's database, as Qwest is the keeper of this information, and CLECs have no means of communication between databases. Accordingly, Qwest should be required to post data of MTE on-premises wiring that it has determined through the SGAT procedure that it owns.

[81] *See e.g. Id.* at 4762, l.3-4764, l.10; SGAT § 9.3.5.4.1.
[82] Note that Qwest indicated in the Washington Workshop that this is a takeback issue. Qwest never responded to this inquiry requiring this issue to be briefed.
[83] *See* Washington Transcript at p.5550, l.6-p.5551, l.17.

III. DARK FIBER DISPUTED ISSUES

A. Qwest impermissibly applies an EEL standard to Unbundled Dark Fiber. (DF-2)

In Section 9.7.2.9 of its SGAT, Qwest restricts the use of dark fiber by applying a usage test that was issued by the FCC with regard to Enhanced Extended Links ("EELs") Qwest limits a CLEC's use of dark fiber as a replacement of special access services. Not only is that test as applied to dark fiber impermissible under the language of the FCC UNE Remand Order and the FCC's rules, but it is also technically infeasible.[84] Accordingly, AT&T requests that the restriction included by Qwest in SGAT section 9.7.2.9 be eliminated.

Technically, the test set forth in Section 9.7.2.9 cannot apply to unbundled dark fiber. The FCC developed a test for the EEL, that is reflected in this section of Qwest's SGAT, to determine how much of the EEL was to be used for local traffic. The test is designed to apply to a single end user. Dark fiber, however, is typically used for multiple end users.[85] The FCC's test cannot be applied to dark fiber and, by implicating such test, Qwest's language is nonsensical. How will the usage restriction be applied to determine when a purported loop dark fiber combination would run afoul of this restriction? Without this clarification, no CLEC can be assured how this usage restriction will be applied. A CLEC's obvious concern is to make sure that the restriction is not being applied to limit the CLEC's lawful use.

[84] Washington Transcript at pp. 5172-5175.
[85] *Id*.

B. Is Qwest Corporation the only entity that has BOC responsibilities? (DF-5)

Qwest's SGAT violates the Act because it fails to permit CLECs to lease the in-region facilities of Qwest Corp.'s affiliates pursuant to Sections 251 and 252 of the Act. In moving for approval of the merger of Qwest Communications International, Inc. ("QCI") and U S WEST, Inc., ("U S WEST") the parent corporations of Qwest Communications Corporation ("QCC"), LCI International Telecom Corp., USLD Communications, Inc., and U S WEST Communications, Inc., now known as Qwest Corp. ("USWC"), QCI and U S WEST represented to the Commission that the proposed merger would create a stronger competitor and provide significant value for shareholders, employees, and customers because, among other things:

- The combination of QCI and U S WEST would enable them to achieve gross revenue synergies of more than $12 billion and net financial and operational synergies of approximately $10.5 billion to $11 billion. They expected the synergies to be comprised of (1) incremental revenues as the combined company expands its local, data, Internet Protocol and long-distance service; (2) operating cost savings in areas such as network operations and maintenance, sales and marketing, billing and customer and back office support; and (3) capital savings through elimination of duplication in the companies' planned network build outs and in other infrastructure and back-office areas.
- The combination would accelerate strategic development and enable them to grow faster than each could grow alone and would increase revenues and profits faster than each would accomplish alone. In particular, they expected

it to accelerate the delivery of Internet-based broadband communications services provided by QCI to the large customer base of U S WEST and bring together complimentary assets, resources and expertise and the network infra-structure, applications, services and customer distribution channels of their companies and the combination of customer bases, assets, resources and expertise in a timely manner will permit each to compete more effectively in their rapidly consolidating industries.

- They believe worldwide broadband end-to-end infrastructure, expanded range of products and services, access to each other's customers, people and process and combined use of distribution and operating systems will create growth for the combined company and that, as a large company with global scale and scope, multiple capabilities, end-to-end broadband connectivity, and a full suite of data, voice and video products and services, they can successfully compete in the telecommunications industry in the long term.[86]

In this proceeding, Qwest maintains that it has no obligation to unbundle the dark fiber facilities owned by the companies affiliated with Qwest. Qwest's witness denied that QCI ever owned or controlled a local exchange company other than the USWC surviving company.[87] However, Qwest Communications Corporation, formerly Southern Pacific Telecommunications, was registered as a CLEC by this Commission in Docket No. UT-940120, and received its competitive classification in Docket No. UT-950150. Since QCI does have a subsidiary, other than USWC, that is certified as a CLEC in this state, contrary to Qwest's testimony, that affiliate, along with any other affiliate

[86] *Id.,* Verified Joint Application, dated August 19, 1999.
[87] Washington Transcript at p. 5510.

which has assets which are used to provide local interexchange service in the Qwest region must make those facilities available to CLECs, consistent with sections 251 and 252.

Section 251(c)(3) obligates incumbent local exchange carriers ("ILECs") to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. Section 252(d)(1) additionally requires ILEC rates for unbundled network elements to be based on cost, to be nondiscriminatory and to include a reasonable profit.

Section 251(h) defines an incumbent local exchange carrier as,

> [W]ith respect to an area, the local exchange carrier that (A) on February 8, 1996, provided telephone exchange service in such area and (B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b)); or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

Qwest and its affiliates are "successors and assigns" of USWC and are therefore "ILECs" as defined by the Act.[88]

Undoubtedly, Qwest will argue that its parent and its affiliates are not "successors and assigns" as those terms are used in the Act. The Commission must reject this argument.

In the SBC/Merger docket, the FCC determined that under section 251(h), an entity may become an incumbent LEC by being a successor or assign of a LEC that, as of February 8, 1996, was providing local exchange service in a particular area and was a

[88] Although this issue is briefed specifically as an impasse issue with regard to Qwest's SGAT provisions relating to dark fiber, this argument applies to all SGAT provisions that Qwest intends to use to satisfy its ILEC obligations under the Act.

member of NECA, even if that entity was not itself providing local exchange service in the area or a member of NECA as of that date. The FCC held, "this interpretation of 'successor and assign' is not only more consistent with the goals of section 251, but conforms more closely to the traditional notion of 'successor or assign.'"[89] Thus, Qwest cannot legitimately argue that it is not a "successor or assign" because neither Qwest International nor its subsidiaries were providing local service in former USWC exchanges or were members of NECA on the date the Act was enacted.

Moreover, in approving the QCI/U S WEST merger, the FCC determined that QCI and its affiliates were "successors and assigns" as used in section 251(h) of the Act.[90] In that proceeding, McLeodUSA asked the FCC to reject the merger application because, among other things, the merged entity "will have the ability to divert favored, high-volume customers to the affiliated [competitive] LEC, which can become the provider of new, innovative services, while the [incumbent] LEC's traditional local services are degraded and serve only residential users and other [competitive] LECs."[91] McLeodUSA further argued that, after the merger, U S WEST will be able to use Qwest and its affiliates as competitive LECs "to attempt to avoid the [incumbent] LEC obligations under section 251(c)(4) of the Act to offer for resale, at wholesale rates, any services the [incumbent] LEC offers at retail." The FCC rejected McLeod's argument, reasoning,

---

[89] *In Re Applications of Ameritech Corp. and SBC Communications, Inc. for the Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22,24,25, 63, 90, 95 and 101 of the Commission's Rules,* Memorandum Opinion and Order, CC Docket No. 98-141, FCC 99-279 (Released October 8, 1999)(SBC/Ameritech Merger Order) at ¶¶ 446 - 448.

[90] *In the Matter of Qwest Communications International Inc. and U S WEST, Inc. Application for Transfer of Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, Memorandum Opinion and Order, CC Docket No. 99-272, FCC 00-91 (Released March 10, 2000) at ¶ 45.

[91] *Id.* at note 131.

> Such an affiliate of U S WEST would be considered a "successor or assign" of U S WEST for the purposes of the obligations imposed by section 251(c)(4). Therefore, the competitive LEC hypothesized by McLeod would be treated as an incumbent LEC under section 251(c)(4).[92]

This conclusion is supported, too, by the analysis of the United States Court of Appeals for the District of Columbia in a recent case involving an appeal of the SBC/Ameritech merger approval.[93] There, the Court interpreted "successors and assigns" broadly to include affiliates of the ILEC that provide telecommunications services.

In *ASCENT*, the Court reviewed the FCC's decision to permit the merged entity to offer advanced services through a separate affiliate and, by doing so, avoid section 251(c)'s duties. Although as mentioned above, in the U S WEST/QCI merger docket, the FCC matter of factly concluded that QCI and its affiliated CLECs would be successors and assigns of U S WEST for purposes of the Act, in the SBC/Ameritech merger, the FCC painstakingly concluded that although the Act extends an ILEC's market-opening obligations to an ILEC's "successor and assign," the advanced services affiliate was not such a successor and assign so long as it complied with various structural and transactional safeguards.[94] The D.C. Circuit rejected this analysis, finding that allowing an ILEC to "sideslip § 251(c)'s requirements by simply offering telecommunications services through a wholly owned affiliate seems to us a circumvention of the statutory scheme." The Court further found that the FCC's narrow interpretation of "successor and assign" in that context to be paradoxical:

> [T]he Commission is using language designed by Congress as an added limitation on an ILEC's ability to offer telecommunications services as a statutory device to ameliorate §251(c)'s restriction. We do not think that in the absence of the successor and assign limitation an ILEC would be

[92] *Id.* at ¶ 45 (footnotes omitted).
[93] *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).
[94] *Id.* at 665; *SBC/Ameritech Merger Order* at ¶¶ 444 - 476.

> permitted to circumvent §251(c)'s obligations merely by setting up an affiliate to offer telecommunications services. The Commission is thus using the successor and assign limitation as a form of legal jujitsu to justify its relations of §251's restrictions.[95]

Although the *ASCENT* decision involved an advanced services affiliate of an ILEC, the reasoning of the D.C. Circuit in that case applies equally here. Interpreting the statute to *not* require QCI and its affiliates to be subject to the unbundling obligations of the Act would be to encourage the merged entity to "sideslip" §251's requirements by offering telecommunications services and investing in future network infrastructure through its wholly owned affiliates. In its merger application in Colorado, QCI stated that it intended to combine the two corporations' assets, operations and network infrastructure and to plan build outs jointly to achieve synergies that would benefit the public interest and the merged entity's shareholders. This combined operation is a successor and assign of an ILEC, USWC.

For these reasons, the Commission should require Qwest to add language to its SGAT that clarifies that QCI and its affiliates are obligated to unbundled their in-region facilities, including dark fiber. This requirement is consistent with the goals of the Telecommunications Act and is necessary to prevent Qwest, through its affiliates, from usurping its obligations under section 251(c).

C. Must Qwest provide dark fiber access to CLECs in a joint build situation? (DF-5)

Qwest is required under the Act and the FCC Orders to allow CLECs to lease dark fiber that exists in "joint build arrangements" with third parties. "Joint Build Arrangement" means any arrangement between Qwest and another party to jointly or

[95] *Id*. at 667.

separately construct, install and/or maintain conduit, innerduct or fiber across a single route or routes. This arrangement will permit either or both Qwest and the third party to use the other's conduit, innerduct or fiber for transport of telecommunications traffic over such route or routes. This type of arrangement includes, among other things, meet point arrangements with third parties. Qwest has testified that it will make available dark fiber that exists in these arrangements up to Qwest's side of the meet point. However, it refuses to permit CLECs to obtain access to any rights that Qwest has to the use of the facilities of the third party.[96] AT&T disagrees with this position.

Section 251(c) and 47 C.F.R. §§51.307 and 309 require Qwest to provide nondiscriminatory access to unbundled network elements in Qwest's ownership or control. In addition, Qwest is obligated under §§251(b)(4) and 224 to afford CLECs nondiscriminatory access to poles, ducts and rights of way. To the extent these joint build arrangements give Qwest control and/or provide Qwest a right of way on a third party's network, for the provision of Qwest's telecommunications services, Qwest must permit CLECs the same access to those rights of way. Without this access, CLECs are impaired in their ability to compete with Qwest in communities of the state where these joint build arrangements exist. In the rural areas in particular, CLECs may not even be able to reach particular communities that Qwest can reach through its joint build arrangement with a third party.

Checklist item number 3 in section 271 also addresses Qwest's rights of way obligations. Qwest must demonstrate that it is providing nondiscriminatory access to its poles, ducts and rights-of-way at just and reasonable rates, terms and conditions.[97] This

[96] Washington Transcript at p. 5177.
[97] *BANY Order* at ¶ 263.

checklist item is satisfied if Qwest has nondiscriminatory procedures for the evaluation of facilities requests by competitors, granting competitors nondiscriminatory access to information about its facilities; permitting competitors to use non-Qwest workers to complete site preparation; and compliance with applicable rates.[98]

Qwest's SGAT fails to include even the basic right of nondiscriminatory access to its control and/or rights-of-way that exist in joint build arrangements. Qwest has testified that it is not aware of any such arrangements in Washington.[99] In discovery, AT&T requested samples of those such arrangements that exist between Qwest and third parties in the state of Colorado. Qwest objected to responding to this data request. A review of such arrangements would indicate the nature of Qwest's ownership or control over this network element. If such network element is in the nature of a right of way, Section 10.2 of the SGAT should be effective to provide access to CLEC. If such network element is in the nature of a leased facility, such as leased dark fiber, Section 9.7.1 should afford CLECs access to the facility. Alternatively, the agreements would indicate if such facility is some other arrangement—not a right of way or leased facility—over which Qwest has ownership or control. To the extent that those agreements provide Qwest rights to use the third party's facilities, including the dark fiber available on that particular route, Qwest must permit CLECs equal access to those facilities at just and reasonable rates and terms. Otherwise, Qwest fails its Section 271 obligations.

For these reasons, the Commission should require Qwest to include terms in its SGAT that allow CLECs nondiscriminatory access to Qwest's rights to use third party

---

[98] *In the Matter of the BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana,* CC Docket No. 98-121 (October 13, 1998) ("Louisiana II Order") at ¶¶ 174 - 83.

[99] Washington Transcript at pp. 5177-5178.

property consistent with those that Qwest enjoys in any joint build arrangement to which Qwest is a party.

IV. PACKET SWITCHING DISPUTED ISSUES

A. Section 9.20.2.1.3 should be amended to require packet switching to be unbundled when it is economically infeasible for a CLEC to remotely deploy DSLAMs. (PS-1)

Qwest requires that a CLEC's request for collocation of a DSLAM at a remote terminal be denied by Qwest before it is allowed to order packet switching or when collocating a remote DSLAM does not allow the CLEC to provide services at parity with those offered by Qwest.[100] AT&T asks the Commission to modify Qwest's proposal to allow packet switching to be unbundled when it is economically infeasible for a CLEC to remotely deploy DSLAMs. There is little prospect that remote collocation could provide a practical competitive alternative for CLECs.

The economic reality is that remote deployment of transmission equipment and DSLAM functionality by service providers seeking to access copper subloops is unlikely to occur in most areas. First, collocation of remote DSLAMs would entail significant costs and lead times (*e.g.*, rights of way acquisition, construction of facilities). Second, deployment is only economically viable if the appropriate economies of scale can be realized. In most cases, it will be extremely difficult for CLECs to realize the necessary economies of scale because each remote terminal or FDI only serves a small number of customers, of which the CLEC will only capture a small percentage.[101] Remote terminals, and to an even greater extent FDIs, serve a limited number of customers**.** In

[100] Washington SGAT Lite, Section 9, 07/24/01.
[101] To obtain the necessary economies of scale, the CLEC would need to be willing and able to undertake replication of a substantial portion of the ILEC's outside plant.

general terms, a central office is progressively broken down into smaller and smaller geographical areas for the purposes of local outside plant design. A "Distribution Area" is generally the smallest component, comprised of about 100 to 400 living units with two distribution pairs typically assigned to each unit. A copper cable of appropriate size connects these living units to the FDI where cross connections are made to a larger branch feeder cable. The branch feeder cable is either a sub-cable within the main feeder cable that connects each distribution pair directly to the central office or it is the connecting facility to a remote terminal.[102]

At the remote terminal, the copper distribution facilities from multiple FDIs are connected to a shared feeder facility that connects to the central office. Transmission equipment (generally referred to as Digital Loop Carrier or DLC) housed within the remote terminal multiplexes the traffic and, in some instances, performs electrical to optical (and vice versa) signal conversion, which permits an even greater degree of multiplexing and/or a higher transmission rate. In some instances the DLC, particularly newly deployed DLC, will provide enhanced transmission capabilities such as line splitting and DSLAM functionality. The DLC provides efficiencies because it allows one feeder facility to the central office to be shared among multiple subscribers while it also permits the facility between the customer premises and the central office to meet pre-established minimum electrical parameters.[103]

The remote terminals may be pole mounted, placed on concrete slabs in the form of cabinets or huts, or placed in underground vaults. The actual size of the physical enclosure will depend on the amount and size of the equipment deployed by the ILEC.

[102] Exhibit 1036 at p. 16.
[103] Exhibit 1036 at p. 17.

For example, a pole mounted remote terminal will generally house a small DLC with capacities of 24 or 96 lines. A cabinet or vault deployed DLC will typically be larger, with capacity to serve a few thousand customers lines when fully equipped. Deployment of DLC involves a relatively high fixed cost for site preparation and common equipment, with additional costs associated with plug-in circuit packs for individual lines or groups of lines. Thus, for a DLC to be practical and economic, it must be nearly fully utilized by the carrier who has deployed it. The ILEC can realize these necessary economies of scale because it has designed its remote terminals to efficiently serve most of or the entire base of customers assigned to the remote terminal.[104]

In contrast, an individual CLEC will never capture 100% of those customers for its advanced services. Accordingly, even taking into account the lost efficiency for the ILEC caused by competition from CLECs, the CLEC's ability to be cost-competitive is highly unlikely given the high fixed costs associated with deploying the necessary electronics and the small size of the addressable customer base serviced by a remote terminal.[105]

Thus, to the extent that collocation at a remote terminal or other interconnection point is not possible because such deployment is cost-prohibitive (both in terms of time and money), competition for customers who are served by remote terminals (or their equivalents) simply will not develop (except in specific market niches). The only way to ensure that competition develops is for CLECs to have access to unbundled packet switching capabilities.

[104] Exhibit 1036 at p. 17.
[105] Exhibit 1036 at p. 18.

In the report of the Arbitration Award of the Public Utilities Commission of Texas ("Texas Arbitration Award")[106], the arbitrators considered arguments that are very similar, if not identical to the those presented here. In Texas, the arbitrators were not persuaded by the evidence that there are spare copper loops capable of supporting xDSL services the CLECs seek to offer. In some places the arbitrators recognized that spare copper will be available. In others, the rollout of the ILEC's facilities might free up additional copper plant. However, the arbitrators believed that the evidence in the record supports the finding that without access to packet switching, CLECs will be impaired.[107] Critical to the Texas arbitrator's decision was the fact that where spare copper is in fact available, the quality of service generally between the different distribution methods is somewhat disparate, especially in distance sensitive applications such as line sharing.[108] This disparity does not meet the condition that spare copper loops should be able to "offer the same level of quality for advanced services."

CLECs posited the same arguments here, and requested that the Commission consider this new and persuasive authority. [109]

To address this concern, AT&T proposes the following language to be added to Qwest's proposal for Section 9.20.2.1.3:

> Qwest has placed a DSLAM for its own use in a remote Qwest Premises but: *(i) Qwest* has not permitted CLEC to collocate its own DSLAM at the same remote Qwest Premises, *or (ii) from CLEC's perspective it would be uneconomical for CLEC to collocate its own DSLAM at the same Qwest*

---

[106] *Petition of IP Communications Corporation to Establish Expedited Public Utility Commission Of Texas Oversight Concerning Line Sharing Issues*, Arbitration Award, Docket 22168, *Petition Of Covad Communications Company And Rhythms Links, Inc. Against Southwestern Bell Telephone Company For Post-Interconnection Dispute Resolution And Arbitration Under The Telecommunications Act Of 1996 Regarding Rates, Terms, Conditions And Related Arrangements For Line Sharing***,** Arbitration Award Docket 22469, Public Utilities Commission of Texas (Rel. June 13, 2001) (the "Texas Arbitration Award").
[107] *Id* at 71.
[108] *Id* at pp. 71-71.
[109] Washington Transcript at pp. 5438 – 5443.

> *Premises*, or *(iii)* collocating a CLEC's DSLAM at the same Qwest Premises will not be capable of supporting xDSL service at parity with the service that can be offered through Qwest's Unbundled Packet Switching.

AT&T asks the Commission to adopt its language proposal and reject that of Qwest. AT&T's language enables a CLEC to compete with Qwest for customers when it is uneconomical for the CLEC to collocate a DSLAM in a remote terminal. Adopting AT&T's proposed language is consistent with the goal of the Act to encourage the development of competition – Qwest's is not.

Qwest maintains that it complies with its packet switching unbundling obligation by using this language because it is consistent with the language of 47 C.F.R. §51.319(c)(5). The Commission should not allow the language to stand based on this argument. As stated above, this limitation on the availability of packet switching impairs CLECs' abilities to compete with Qwest in the provision of advanced services, particularly in the residential and small business DSL markets, where competition has been slow to develop. Qwest currently boasts of its dominance in these markets.[110] Moreover, the FCC is reexamining its current limitations on unbundled packet switching in its Advanced Services proceeding in light of the unreasonable advantage that ILECs currently possess.[111]

AT&T's proposed language is consistent with the goals of the Act and is not prohibited by any FCC rule or order. It enables competition. Even if the Commission agrees with Qwest's argument, that the proposed language expands the definition of unbundled packet switching provided by the *UNE Remand Order*, the Commission is not prohibited from adopting AT&T's proposed language. Both the Act and the *UNE*

[110] Multistate WS2-ATT-KLW-1, Attachment KW-5 (Attachment F).
[111] *Line Sharing Reconsideration Order* at ¶ 64.

Remand Order allow state commissions to expand FCC unbundling obligations definitions, "as long as they meet the requirements of section 251 and the national policy framework instituted in this Order."[112]

Requiring Qwest to unbundle packet switching when it makes no economic sense for a CLEC to remotely collocate a DSLAM meets the requirements of section 251 and the national policy framework established in the *UNE Remand Order*. Without this ability, the CLEC will be effectively prohibited from providing service to the customers in that particular geographic area. Qwest, on the other hand, is able to provide them with service. Qwest presented no technical reason to deny unbundled packet switching in this circumstance, it only argued that as a policy matter, it decided to limit its unbundling to those circumstances outlined in the FCC Rule. Qwest is not harmed by this Commission requiring it to unbundle packet switching when it is uneconomical for a CLEC to collocate a remote DSLAM. Qwest is only faced with competition for customers it would not otherwise face. Isn't that what the Act is all about?

B. Section 9.20.2.1.2 should be amended to require packet switching to be unbundled when Qwest's spare copper loops are insufficient to enable a CLEC to provide the DSL service that it intends to offer. (PS-2)

In the *UNE Remand Order*, the FCC concluded that one of the four prerequisites to the unbundling of packet switching capability is the lack of spare copper facilities that are "capable of supporting the xDSL services the requesting carrier seeks to offer," and that permit the CLEC to offer "the same level of quality of advanced services" as that offered by the ILEC (or its data affiliate).[113]

[112] *UNE Remand Order* at ¶¶ 153 - 161; 47 U.S.C. §251(d)(3).
[113] *Id*.

When a CLEC seeks to offer DSL service in competition with an ILEC (or its data affiliate) that has deployed its DSLAM functionality at the remote terminal,[114] the CLEC will invariably be unable to provide a DSL service that operates with "the same level of quality" (*e.g.*, data rates) as that provided by the ILEC or its data affiliate if the data CLEC must rely on "home run" copper. In such cases, the CLEC's copper loop will extend all the way from the serving office to the customer's premises while the ILEC or its data affiliate can provide service using remotely deployed electronics and shorter copper subloops that reach only from the customer's premises to the remote terminal. The law of physics dictates that maximum attainable data rates *decrease* as the length of the copper facility that is used *increases*. For example, ADSL can reasonably provide network-to-subscriber data transfer rates as a function of the length of the copper facility employed (assuming 24 AWG, no load coils and without bridge taps) as follows:

Data Rate	**Distance**
1.544 Mbps	18,000 ft.
2.048 Mbps	16,000 ft.
6.312 Mbps	12,000 ft.
8.448 Mbps	9,000 ft.

Source: www.adsl.com (*General Tutorial: General Introduction to Copper Access Technologies).*

As the above chart aptly shows, a 9,000 ft. copper loop allows for the transmission of data at a rate more than *five times faster* than an 18,000 ft. copper loop. Indeed, very high data rate Digital Subscriber Line (VDSL) technology has the potential to offer upstream data rates in excess of 1.5 Mbps and downstream data rates of 12.96 Mbps when the copper segment is shorter than 4,500 feet. Accordingly, a shorter copper

[114] Such deployment could either be a stand-alone DSLAM or the deployment of Next Generation DLC (NGDLC) that accept plug-in electronics capable of delivering equivalent functionality.

loop will allow the incumbent (or its affiliate) to offer its DSL customers not only a significantly faster data rate, but also emerging services that require very high transmission rates, such as video. Although VDSL has not yet been deployed in the seven states participating in this process, Qwest is committed to this deployment and the parties must consider this proposal. Needless to say, any CLEC that must use home run copper to compete with an ILEC or ILEC data affiliate that has access to shorter copper subloops at a remote terminal will be at a significant competitive disadvantage. Thus, absent the ability to collocate DSLAM functionality at the remote terminal, or to access the ILEC's unbundled packet switching capability in the form of an equipped loop, the CLEC cannot offer a service of the same level of quality as the ILEC's.[115]

The arbitrators in the Texas Arbitration Award found that the existence of spare copper was not dispositive of whether to unbundled packet switching both out of concern for lack of sufficient capacity and service quality concerns. The arbitrators found that "CLECs have no guarantee that the spare copper will remain," and that "while 'home-run' copper alternatives may be present in some situations, the Arbitrators are not convinced that these provide the same level of service."[116]

Condition 2 of Qwest's proposed language limits the situations for the unbundling of packet switching to those where "no" spare copper loop is available. To account for the times where there is not enough existing spare copper loops to satisfy potential demand and where existing copper loops may not adequately provide for the capabilities that CLECs desire, AT&T suggests two simple changes to this requirement. AT&T asks

[115] Exhibit 1036 at p. 14.
[116] *Texas Arbitration Award* at p. 72.

that the word "no" be replaced with "insufficient" and the word "adequately" be inserted between "capable of" and "supporting."[117] Thus, AT&T's proposed language reads:

> 9.20.2.1.2 There are *insufficient* copper loops available capable of *adequately* supporting the xDSL services the requesting carrier seeks to offer.

AT&T's proposed language minimizes the impairment that CLECs experience by limitations on the availability of packet switching. This cures the problem that results when insufficient spare copper exists in a neighborhood so as to preclude a CLEC from making a general business offering of DSL service to that neighborhood. And, it does so in a way that only slightly changes Qwest's proposed language. For all of these reasons, the Commission should adopt AT&T's proposed language and reject Qwest's.

V. LINE SHARING DISPUTED ISSUES

A. Qwest should be required to provide access to outboard splitters on a line-at-a-time, or shelf-at-a-time basis (Line Sharing – 2).

During the workshops, the parties agreed that this issue is the same issue as Line Splitting –1. The factual and legal arguments on this issue for Line Sharing are the same as those for Line Splitting. Therefore, please refer to the briefing on Line Splitting-1 in AT&T's Post Workshop Brief on Loops, Line Splitting and NID for resolution of this issue.

B. Qwest Improperly Limits Line Sharing To Copper Loops. (Line Sharing -3).

The FCC made clear in the *Line Sharing Reconsideration Order* that "the requirement to provide line sharing applies to the entire loop, even where the incumbent

[117] Washington Transcript at pp. 4655-4661.

has deployed fiber in the loop (e.g., where the loop is served by a remote terminal)."[118] Thus, despite its use of the word "copper" in the *Line Sharing Order*, the FCC made clear that "use of the word 'copper' in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services."[119] As the FCC explained, this clarification was necessary in order to prevent incumbent LECs from closing off competition by migrating its service to fiber:

> In the absence of this clarification, a competitive LEC might undertake to collocate a DSLAM in an incumbent's central office to provide line-shared xDSL services to customers, only to be told by the incumbent that it was migrating those customers to fiber-fed facilities and the competitor would now have to collocate another DSLAM at a remote terminal in order to continue providing line-shared services to those same customers. If our conclusion in the Line Sharing Order that incumbents must provide access to the high frequency portion of the loop at the remote terminals as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location.[120]

True to the FCC's concern, Qwest expressly limits line sharing to the "copper portion of the loop." SGAT § 9.4.1.1. Qwest claims that its "copper only" definition of line sharing is consistent with the *Line Sharing Reconsideration Order*, arguing that paragraph 12 "qualifies" the unambiguous language of the earlier paragraphs, and thus permits the limitation to line sharing over the copper loop. Qwest's argument is without merit and should be rejected.

Moreover, nowhere has Qwest provided any evidence that line sharing over a fiber fed loop is not technically feasible. To the contrary, line sharing over a fiber fed

---

[118] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, CC Docket No. 98-147, FCC 99-355, ¶ 10 (released December 9, 1999) ("*Line Sharing Order*").
[119] *Id.*
[120] *Id.*, ¶ 11.

loop – such as via a "plug and play" card – is presumptively feasible and thus should be ordered by this Commission.[121]

This Commission has the authority, under the Act[122] and FCC rules[123], to expand Qwest's unbundling obligations beyond those required by the FCC and "to impose additional, pro-competitive requirements consistent with the national framework established in this order."[124] Therefore, it is clear that the FCC welcomes this Commission's efforts to enact additional regulations that it finds warranted to promote competition and the deployment of advanced services.

VI. CONCLUSION

Qwest is not providing nondiscriminatory access to subloops, dark fiber, packet switching and line sharing in the manner required by the Act and FCC Orders.

Respectfully submitted on the 6th day of September 2001.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

Mary B. Tribby
Rebecca B. DeCook
Steven H. Weigler
1875 Lawrence Street.
Suite 1500
Denver, Colorado 80202
(303) 298-6957

[121] Qwest will undoubtedly argue that such an approach is not proper because it is more of a packet switching issue than a line sharing issue. Acceptance of such an argument elevates form over substance. To the extent that a particular type of packet switching technology provides a technically feasible and cost-efficient method of line sharing over fiber, that technology should be included in – or at least not specifically excluded by -- the SGAT.

[122] 47 U.S.C § 251(d)(3).

[123] 47 C.F.R § 51.317(d).

[124] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, 14 FCC Rcd. 20912, at ¶ 159 (1999) ("*Line Sharing Order*").