QWEST EXHIBIT 2
09/07/01 Impasse Brief re
Packet Switching, etc.

IN THE MATTER OF QWEST CORPORATION'S SECTION 271 APPLICATION

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

FINAL REPORT ON QWEST'S COMPLIANCE

With

SECTION 271 EMERGING SERVICES

AUGUST 1, 2001

I. FINDINGS OF FACT

A. PROCEDURAL HISTORY

1. On September 6-8, 2000, the first Workshop on Advanced Services (Line Sharing, SubLoop, Dark Fiber and Packet Switching) took place. Parties appearing at the Workshops included Qwest Corporation[1], AT&T, MCI WorldCom, Covad, Sprint, Electric Lightwave, Inc., Rhythms Links, Inc. and the Residential Utility Consumer Office ("RUCO"). Qwest relied upon its Supplemental Testimony submitted in July, 2000. Comments were filed by AT&T, WorldCom, Rhythms, Covad and Cox. Qwest filed Rebuttal Comments on *August 10, 2000*. On January 29, 2001, an additional Workshop was conducted.

2. While many issues were successfully resolved between the parties, Emerging Services was deemed "disputed" due to the parties' inability to come to agreement on a number of issues which eventually went to impasse. Staff filed Proposed Findings of Fact and Conclusions of Law on July 6, 2001 which contained Staff's recommendation as to each of the disputed issues. Cox, WorldCom, AT&T and Qwest filed Comments on Staff's Proposed Findings of Fact and Conclusions of Law on July 20, 2001, July 23, 2001, July 19, 2001 and July 20, 2001 respectively. After considering the comments submitted, Staff hereby files its Final Report on Emerging Services.

B. DISCUSSION

1. Emerging Services

a. FCC Requirements

3. Access to advanced service requirements were the result of the FCC's *Third Interconnection Order and Fourth Notice of Proposed Rulemaking*[2] *and the Line Sharing Order.*[3] The *Line Sharing Order* added a requirement for line sharing and the *Third Interconnection Order* added requirements for subloop unbundling, access to dark fiber and access to unbundled packet switching.

---

[1] 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 WEST have been changed to Qwest.

[2] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98 (Rel. November 5, 1999)("*UNE Remand Order*").

[3] *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of theTelecommunications Act of 1996*, FCC 99-355, CC Docket Nos. 98-147 and 96-98 (Rel. December 9, 1999)("*Line Sharing Order*").

1. Line Sharing

4. Incumbent LECs must provide CLECs access to the high frequency spectrum of the local loop. *Line Sharing Order* at para. 16. The amended FCC rules state:

> (1) The high frequency portion of the loop network element is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions.
>
> (2) An incumbent LEC shall provide nondiscriminatory access in accordance with section 51.311 of these rules and section 251(c)(3) of the Act to the high frequency portion of the loop to any requesting telecommunications carrier for the provision of a telecommunications service conforming with section 51.230 of these rules.
>
> (3) An incumbent LEC shall only provide a requesting carrier with access to the high frequency portion of the loop if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the particular loop for which the requesting carrier seeks access.

47 C.F.R. 51.319(h).

2. Subloops

5. The FCC, in its *UNE Remand Order* concluded that incumbent LECs must provide access to subloops where technically feasible. Id. at para. 205. The requirement for ILECs to provide access to subloops was effective 120 days after the *UNE Remand Order* was published in the Federal Register (May 18, 2000).

3. Dark Fiber

6. The FCC's *UNE Remand Order* identified dark fiber as a new UNE and required the unbundling of dark fiber in both the loop plant and interoffice facilities. The Order states:

> 174. Dark Fiber. We also modify the loop definition to specify that the loop facility includes dark fiber.....[We] conclude that both copper and fiber alike represent unused loop capacity. We find, therefore, that dark

> fiber and extra copper both fall within the loop network element's "facilities, functions, and capabilities."
>
> 325. Dark Fiber. In addition, we modify the definition of dedicated transport to include dark fiber. Dark Fiber is deployed, unlit fiber optic cable that connects two points within the incumbent LEC's network. As discussed above, dark or "unlit" fiber, unlike "lit" fiber, does not have electronics on either end of the dark fiber segment to energize it to transmit a telecommunications service...

UNE Remand Order at paras. 174 and 325.

7. The requirement for ILECs to provide unbundled access to dark fiber was effective 120 days after the *UNE Remand Order* was published in the Federal Register (May 18, 2000).

4. Packet Switching

8. The FCC does not require ILECs to unbundle packet switching, except in extremely limited circumstances. Section 51.319 of the FCC's rules state:

> (B) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied:
>
> > (i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vaults);
> >
> > (ii) There are no spare copper loops capable of supporting the xDSL services of the requesting carrier seeks to offer;
> >
> > (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement art these subloop interconnection points as defined by § 51.319(b); and
> >
> > (iv) The incumbent LEC has deployed packet switching capability for its own use.

47 C.F.R. Section 52.319.

b. Background

1. Line Sharing

9. The unbundling of the high frequency portion of the loop enables a CLEC to offer advanced services over that portion of the loop at the same time the ILEC is using the voice frequency portion of the loop to provide analog, circuit-switched voice services. Qwest 3-2 at p. 9. This joint use of copper loops by both CLECs and ILECs is commonly referred to as line sharing. Id.

10. In a line-sharing arrangement, one copper loop can carry both voice and data traffic simultaneously. Qwest 3-2 at p. 14. Through the separation of the voice frequency from the data frequency, Qwest provides voice service to the end-user using the voice band frequencies, while the CLEC provides an approved data service on the frequency range above the voice band. Id.

11. The FCC recognized the potential for data services to degrade existing analog voice services, and, therefore, required that ILECs only provide line sharing to the extent that the xDSL technologies deployed by the CLEC are presumed to be compatible with analog voice service. Qwest 3-2 at p. 14. Such presumed services currently are limited to ADSL, RADSL and Multiple Virtual Line transmission systems. Id.

12. The Arizona OSS Test Technical Advisory Group ("TAG") has identified performance measures for line sharing. Qwest's Shared Loop LSRs are subject to the general Performance Indicator Definitions ("PIDs") on an aggregated basis. Additionally, in the Capacity Test, the parties to the Arizona Third Party OSS Test and Workshops and Qwest have agreed to an incremental percentage increase to the test volumes to account for increased order activity due to the advent of Shared Loop arrangements.

2. SubLoop

13. A subloop is defined as any portion of the loop that it is technically feasible to access at one of Qwest's terminals in its outside plant network. When a CLEC is provided access to a portion of the loop, this process is referred to as subloop unbundling. An accessible terminal is any point on the unbundled loop where technicians can access the wire or fiber within the cable without removing a splice case and/or digging up or trenching underground to reach the wire. Examples of where it is technically feasible to access Qwest's outside plant include an accessible terminal, pole, pedestal, Feeder Distribution Interface ("FDI") or MPOE, including inside wire (if owned by Qwest).

14. The typical loop consists of two segments or portions, the feeder segment and distribution segment. Qwest 3-2 at p. 25. The feeder extends from the central office network interface (typically a MDF or COSMIC frame) to a FDI. Id. The distribution segment of the loop extends from the FDI to the end-user location. Id.

15. The Arizona OSS Test through the TAG is working to identify additional performance measures for subloops, as a result of problems identified by Cox and AT&T. While work is still underway on specific subloop performance measures by Cox and AT&T, Subloop LSRs are also included in the general PIDs on an aggregated basis. Additionally, in the Capacity Test, the parties to the Arizona Third Party OSS Test and Workshops and Qwest have agreed to an incremental percentage increase to the test volumes for LSRs to account for increased order activity due to the advent of subloop arrangements.

3. Dark Fiber

16. Unbundled Dark Fiber is a deployed unlit pair of fiber optic cable or strands that connects two points within the Qwest network. Qwest 3-2 at p. 36.

17. As acknowledged by the FCC in the *UNE Remand Order*, dark fiber does not contain the electronics necessary to transmit a telecommunications service (i.e. the fiber is "dark" and not "lit" with the electronic equipment that is required to use the fiber strands to transmit voice or data traffic). Qwest 3-2 at p. 36-37. Each CLEC is responsible for obtaining and connecting electronic equipment, whether light generating or light terminating equipment, to the unbundled dark fiber. Id.

4. Packet Switching

18. The FCC defines packet switching as: "The function of routing individual data units, or "packets", based on address or other routing information contained in the packets. *UNE Remand Order* at para. 304.

c. Position of Qwest

19. On July 21, 2000, Qwest witness Karen A. Stewart provided through a Supplemental Affidavit and testimony on Qwest's provision of Emerging Services in Arizona.

1. Line Sharing

a. Availability of Line Sharing and Qwest's Legal Obligation to Provide

20. Qwest has a concrete and specific legal obligation to provide line sharing in Arizona. Qwest 3-2 at p. 10. The legal obligation comes in two forms: 1) an interim business agreement negotiated with interested CLECs and 2) Qwest's Arizona SGAT. Id.

21. To promptly satisfy the requirements of the *Line Sharing Order*, Qwest and interested CLECs negotiated an interim business agreement (signed on April 24, 2000) to govern the deployment of line sharing in 13 of Qwest's states, including Arizona. Qwest 3-2 at p. 11. The interim business agreement includes provisioning and maintenance processes and interim rates associated with the line sharing elements. Id.

22. In Arizona, the interim business agreement commits Qwest to have line sharing equipment installed in 56 central offices. Qwest 3-2 at p. 11. As of June 30, 2000, Qwest had already equipped 50% of the prioritized central offices in Arizona. Id. Qwest is on track to equip the remaining prioritized central offices in Arizona by the July 31, 2000 date set forth in the agreement. Id at p. 12.

23. Qwest stands ready to accept applications from any CLEC with line sharing in their interconnection agreement to equip central offices not on the initial prioritization list. Qwest 3-2 at p. 12.

24. In those central offices in Arizona already equipped for line sharing, Qwest is now accepting orders. Qwest's line sharing offering is entitled "Shared Loop". Qwest 3-2 at p. 12.

25. Qwest is also in the process of negotiating state-specific, CLEC-specific interconnection agreement amendments based on the terms and conditions contained in the interim business agreement. Qwest at 3-2 at p. 13. Any CLEC that is a party to the interim business agreement can continue to obtain line sharing from Qwest under that agreement until the interconnection agreement amendments have been executed. Id.

26. Qwest's Arizona SGAT at Section 9.4 contains explicit line sharing language and thereby creates a binding legal obligation for Qwest to provide line sharing in Arizona. Qwest 3-2 at p. 13. Qwest has modified its SGAT language to more closely align it with the interim business agreement and proposed this updated SGAT language in 9.4.1 filed on July 21, 2000. Id.

27. Qwest further defines the specifications, interfaces and parameters associated with the Shared Loop product in Technical Publications No. 77390 through 77389. Qwest 3-2 at p. 14. In addition, the Interconnect & Resale Resource Guide (IRRG), located at http://www.uswest.com/wholesale/, provides CLECs with product information, rates and availability. Id. 33. Qwest has documented method, procedures and standards for CLECs to access Shared Loops. Qwest 3-2 at p. 18. Extensive Shared Loop provisioning information is made available to CLECs online in Qwest's Wholesale Web site. Qwest 3-2 at p. 18.

b. Implementation of Line Sharing

28. Implementing a line sharing arrangement requires the installation of new equipment in the central office, including a "POTS splitter" that splits the voice and data traffic, sending the voice traffic to Qwest and the data traffic to the CLEC. Qwest 3-2 at p. 15. Additionally, new cross-connect systems, cabling, and terminal blocks are required in the central office to route the voice and data traffic separately. Id.

29. A POTS splitter is a passive device, meaning it does not require external power to perform its function. Qwest 3-2 at p. 15. In the event of a power loss, the voice calls passing through the POTS splitter will remain functional, relying on central office back-up power systems, thus ensuring critical services (such as 911 and operator services) are still available. Id. at pps 15-16.

30. There are two alternatives of where to place the POTS splitter: 1) placement of the POTS splitter in a common area, such as a relay rack near the Intermediate Distribution Frame ("IDF"), or 2) placement in the CLEC's collocation space. Qwest 3-2 at p. 16. Qwest allows CLECs to choose either alternative providing them the flexibility to meet specific business needs. Id.

31. Where a POTS splitter is placed in a common area, the CLEC purchases the POTS splitter, or Qwest will purchase the POTS splitter for CLEC subject to reimbursement by the CLEC, and Qwest is responsible for installing the POTS splitter in the common area. Qwest 3-2 at p. 16. Qwest also has the responsibility for the maintenance and repair of the POTS splitter. Id.

32. In this arrangement, two Interconnection Tie Pairs ("ITPs") and four TIE Cables are needed to connect the POTS splitters to the Qwest network. Qwest 3-2 at p. 17. One ITP carries both voice and data traffic from the COSMIC/MDF loop termination, to an appropriate IDF. Id. From this frame, one TIE Cable carries both voice and data traffic to the POTS splitter. Id The voice and data traffic are then separated at the POTS splitter, and the separated voice and data traffic are transported to the IDF via separate TIE Cables (i.e., the second and third TIE Cables). Id. At the IDF, the data traffic is routed to the CLEC's collocation area via a fourth TIE Cable, and the voice traffic is transported to the switch port termination via a second ITP. Id.

33. Under the second alternative, that being placement of the POTS splitter in the CLECs collocation space, once the POTS splitter has been installed by the CLEC, two ITPs and two Tie Cables are needed to connect it to the Qwest network. Qwest 3-2 at p. 17. One ITP carries both voice and data traffic from the COSMIC/MDF loop termination, to an appropriate IDF. Id. From this frame, one TIE Cable carries both voice and data traffic to the POTS splitter located in the CLECs collocation space. Id. The voice and data traffic is separated at the POTS splitter. Id. The data traffic is connected to the CLEC's network within its collocation area. Id. The voice traffic is then carried to the switch port termination, via the IDF, using a second TIE Cable and a second ITP. Id.

34. Qwest stated two practical reasons for placing the POTS splitter in the CLEC's collocation space: 1) the CLEC has complete control over acquisition and installation of the POTS splitters, and has responsibility for the maintenance and repair of the splitters; and 2) this placement is less complicated than placing the POTS splitter in a common area of the central office, because it often requires placing two fewer TIE Cables in the central office. Qwest 3-2 at p. 18.

35. Per Qwest SGAT Section 9.4.2.3.2.1, once a POTS splitter has been installed in a central office, Qwest will provision the Shared Loop arrangement within the same standard interval for the unbundled loop. Qwest 3-2 at p. 19. Basic Installation "lift and lay" procedures will be used for all Shared Loop orders. Qwest 3-2 at p. 19. Under this approach, a Qwest technician "lifts" the loop from its current termination in a Qwest Wire Center and "lays" it on a new termination connecting it to the CLEC's collocated equipment in the same central office. Id.

c. Qwest's Ordering and Provisioning Processes

36. To support line sharing, Qwest's standard unbundled loop ordering and provisioning processes have been modified to reflect the fact that both Qwest and a CLEC are now serving one end-user. Qwest 3-2 at p. 19. The presence of two carriers for one end-user has a substantial impact on the OSS ordering and provisioning processes to the extent that Qwest must modify the systems that support these processes to allow the CLEC to pass additional pieces of data that will be used to designate:

- the CLEC's identity;
- the request is for line sharing;
- the specific loop that will be shared;
- meet points for the Shared Loop (the POTS splitter and port location); and
- the power density mask that the CLEC pre-specifies on the LSR

37. The ordering and provisioning systems must recognize the line sharing information and, based on that information, direct data and actions of other downstream systems. Qwest 3-2 at p. 20

d. Repair and Trouble Reports

38. Qwest will be responsible for repairing both the voice services provided over the Shared Loop and the physical line between the Network Interface Device ("NID") at the end user premise and the point of demarcation in the Qwest central office. Qwest 3-2 at p. 21. Qwest will also be responsible for inside wiring at the end user premises in accordance with the terms and conditions of inside wire maintenance agreements, if any, between Qwest and its end-users. Id.

39. Qwest will allow the CLEC to access Shared Loops at the point where the combined voice and data loop is cross-connected to the POTS splitter. Qwest 3-2 at p. 21. The CLEC will be responsible for repairing data services provided on Shared Loops and Qwest and the CLEC each will be responsible for maintaining its own equipment. Id. The entity that controls the POTS splitter will be responsible for its repair and maintenance. Id.

40. Qwest and the CLEC will have the responsibility for resolution of any service trouble report(s) initiated by their respective end-users. Qwest 3-2 at p. 21. Qwest will not disconnect the data service provided to an end-user over a Shared Loop without the written permission of the CLEC unless the end-user's voice service is so degraded that the end user cannot originate or receive voice telephone calls. Id.

41. As of July 1, 2000, Qwest had not processed any Shared Loop orders in Arizona. Qwest 3-2 at p. 22.

2. Subloop

a. Availability of Subloops and Qwest's Obligation to Provide

42. On April 7, 2000, Qwest updated its Arizona SGAT to provide access to portions of unbundled loops, (i.e. subloops). Qwest 3-2 at p. 23. Section 9.3.1.1of the SGAT states:

> Subloop is defined as any portion of the loop that it is technically feasible to access in Qwest's terminals in outside plant, i.e. an accessible terminal, pole, pedestal, Feeder Distribution Interface (FDI) or Minimum Point of Entry (MPOE) including inside wire (owned by Qwest). An accessible terminal is any point on the Loop where technicians can access the wire or fiber within the cable without removing a splice case and/or digging up or trenching underground to reach the wire within.

b. Provisioning of Subloops

43. As of July 1, 2000, Qwest has not provisioned subloops in Arizona. Qwest 3-2 at p. 24. Qwest is in the process of installing a Field Connection Point (FCP) which is used to provision subloops and anticipated the first orders for subloops to be submitted in the August time frame. Id.

44. A CLEC can order access to specific unbundled subloops once a CLEC request has been installed at the FDI or any other technically feasible access point. Qwest 3-2 at p. 26.

45. When a CLEC places an order that requires turning up service, Qwest will make the appropriate cross-connect on its side of the FDI or other appropriate cross-

connect location. Qwest 3-2 at p. 28. It then provides the CLEC with a technically designated cross-connect, and the CLEC can make its cross-connect on its side of the FDI or other appropriate cross-connect location. Id.

46. To the extent a CLEC wants access to unbundled subloops other than the two-wire Unbundled Distribution Subloop or the DS1 Capable Unbundled Feeder Subloop, such access must be made through the bona fide request ("BFR") process identified in the SGAT. Qwest 3-2 at p. 29. In addition, the BFR process is also available if a CLEC desires to access subloops in some other manner than the use of an FCP. Id.

47. After the FCP is in place, the CLEC may submit orders for subloops. Qwest 3-2 at p. 29. The CLEC will first submit a Field Connection Point Request Form to their Qwest account representative. Id. Upon receipt of the Field Connection Point Request Form, Qwest will initiate a Feasibility study and a FCP quote within 30 days of receipt of the Field Connection Point Request Form. Id. This feasibility study and FCP quote will be valid for thirty (30) calendar days from feasibility and quote notification. Id.

48. Qwest will recover the cost of FCPs through individual case basis non-recurring charges. Qwest 3-2 at p. 29. The non-recurring charges will cover the cost of augmenting the FDI location or other technically feasible access point so that three CLECs can interconnect at that point. Id.

49. If the CLEC accepts the feasibility study and quote, Qwest will construct the FCP within 120 calendar days of receipt of payment from the initial CLEC requesting the FCP. Qwest 3-2 at p. 30. After construction is complete, the CLEC will be notified of its termination locations that can be used for ordering subloops. Qwest 3-2 at p. 30. Qwest will provision Two-Wire Unbundled Feeder SubLoops in the same standard interval as DS1 Capable loops. Qwest 3-2 at p. 30. The installation interval is five days in high density wire centers and eight days in low density wire centers. Id. Qwest will also provision Two-Wire Unbundled Distribution SubLoops in the same standard interval as 2-wire analog unbundled loops. Qwest 3-2 At p. 30. That installation interval is five days in high density wire centers and eight days in low density wire centers. Id. Qwest is testing its provisioning process, including FCP placement, on an end to end basis with its first FCP installation and subloop orders submitted in Arizona. Qwest 3-2 at p. 31.

50. Qwest will maintain all the FCPs and unbundled subloop facilities, and the CLEC is responsible for maintaining all of its cable, connections, equipment and network elements connected to the Qwest network. Qwest 3-2 at p. 32. Qwest will use outside field technicians to test and repair problems in the Two-Wire Unbundled Distribution Loop. Qwest 3-2 at p. 32. In the case of the DS1 Capable Unbundled Feeder Loop, Qwest central office technicians will determine the problem with the feeder subloop and make any necessary repairs. Id.

51. As of July, 2000, Qwest had not processed any subloop orders in Arizona. Qwest 3-2 at p. 33.

3. Dark Fiber

a. Availability and Qwest's Legal Obligation to Provide

52. Prior to the FCC's *UNE Remand Order*, Qwest had a binding obligation to provide access to dark fiber in numerous interconnection agreements. Qwest 3-2 at p. 34. However, there has been no demand in Arizona and a very limited demand for dark fiber across the Qwest region. Id.

53. Qwest has modified its Arizona SGAT to include a legally-binding obligation to provide access to unbundled dark fiber. Qwest 3-2 at p. 34. Section 9.7.1of the SGAT states:

> Unbundled Dark Fiber (UDF) is a deployed, unlit pair of fiber optic cable or strands that connects two points within Qwest's network. UDF is a single transmission path between two Qwest Wire Centers or between a Qwest Wire center and an end user customer premise in the same LATA and state. UDF exists in two distinct forms: (a) UDF Interoffice Facility (UDF-IOF), which constitutes an existing route between two Qwest Wire Centers; and (b) UDF-Loop, which constitutes an existing loop between a Qwest Wire Center and either a fiber distribution panel located at an appropriate outside plant structure or an end-user customer premises.

b. Provisioning

54. Qwest further defines the specifications, interfaces and parameters associated with unbundled dark fiber in Technical Publications No. 77383. Qwest 3-2 at p. 35. In addition, the IRRG, located at http://www.uswest.com/wholesale/, provides CLECs with product information, rates and availability. Id.

55. Qwest provides unbundled dark fiber of substantially the same quality as the fiber facilities that Qwest uses to provide service to its own end user customers and within a reasonable time frame. Qwest 3-2 at p. 36. Unbundled dark fiber is available in two distinct configurations:

(a) Unbundled Dark Fiber-Interoffice Facility ("UDF-IOF") - consists of an existing route between two Qwest wire centers.

(b) Unbundled Dark Fiber-Loop ("UDF-Loop") - consists of an existing loop between a Qwest Wire Center and a either a fiber distribution panel located at an appropriate outside plant structure or an end-user customer premises. Id.

56. Should a CLEC require access to fiber optic cable or strands that have the necessary electronics to transmit voice and data, the CLEC would not order unbundled dark fiber. Qwest 3-2 at p. 37. Instead, the CLEC would order the appropriate high capacity OC level options that are available in the Unbundled Dedicated Interoffice Transport ("UDIT") section of the SGAT. Id.

57. Qwest will provide the CLEC with access to existing dark fiber in its network (used in connection with its activities as an ILEC) in either single-mode or multi-mode. Qwest 3-2 at p. 37. A single-mode fiber will carry only a single wave length. Id. With access to multi-mode fiber, the CLEC is able to transmit multiple signals at the same time. Id.

58. As of July 1, 2000, Qwest has not provisioned dark fiber loops or transport in Arizona. Qwest 3-2 at p. 35.

4. Packet Switching

59. Qwest believes that the four conditions listed in the FCC's *UNE Remand Order* will not be met in Arizona for the foreseeable future. Qwest 3-2 at p. 45. However, in the event that copper loops are not available, CLECs can utilize the BFR process to request an alternative arrangement that would meet their specific loop needs in that location. Id.

d. Competitors' Position

60. AT&T and TCG Phoenix (collectively, "AT&T") filed initial comments on Advanced Services, Line Sharing, SubLoop and Dark Fiber issues on August 21, 2000. MCIW also filed its comments on August 21, 2000. Rhythms filed its comments on August 22, 2000. Covad filed initial comments on emerging services on January 25, 2001.

1. Line Sharing

61. AT&T is concerned with Qwest's alleged compliance with the FCC's requirements pertaining to ILECs making available to CLECs, including the so-called

"data local exchange carriers" ("DLECS") access to the high frequency spectrum of the local loop. AT&T 3-1 at p. 16. According to AT&T, these obligations take several forms:

- Qwest must allow CLECs and DLECs to place splitters on loops where Qwest provides voice telephone service so that the CLECs and DLECs can offer Digital Subscriber Line ("DSL") services.

- Qwest must allow collocation of DSLAM equipment where loops are being provided using Digital Loop Carrier ("DLC").

- Qwest must allow CLECs to provide voice and high-speed data service over unbundled loops.

- Qwest must allow CLECs to add splitters to customers' loops where service is being provided to the end-user by AT&T using UNE-P service.

- Qwest must offer a UNE-P arrangement with splitter where the loop being requested already has the splitter installed.

- Qwest should be required to place splitters which Qwest would own on loops and allow AT&T to order those loops as UNE-P, line by line.

62. Qwest is imposing serious impediments on CLECs with respect to the first item, line sharing. AT&T 3-1 at p. 17. Further, Qwest is failing to offer, or is refusing to offer, the other six items. Id.

63. AT&T's analysis of Qwest's Line Sharing proposals are that the Arizona SGAT does not allow direct connection for access to the COSMIC/MDF. AT&T 3-1 at p. 19. It requires the use of the Interconnection Distribution Frame ("ICDF") (formerly known as the SPOT frame). Id. However, the Colorado SGAT fixes this problem by adding a section on direct connection. Id. The July 21, 2000 version of the Arizona SGAT requires hat the CLECs use the ICDF when establishing connectivity between the Qwest COSMIC or MDF and CLEC provided splitters. AT&T 3-1 at p. 19. No direct connection option for this connectivity is provided. Id. Qwest must add direct connection as an option for CLEC connectivity from the COSMIC/MDF to collocated splitters. Id. Qwest must provide more detail on connectivity and indicate in that detail if direct connection is allowed. Id.

64. Section 9.4.1 of the SGAT states "The POTS service must be provided to the end user by Qwest." AT&T takes issue with this restriction as it is not clear whether Qwest considers these arrangements line sharing or not. AT&T 3-1 at p. 20.

65. AT&T does not agree with all of the rate elements that Qwest is proposing or with the prices that Qwest has suggested. AT&T 3-1 at p. 21. AT&T believes that the

rates Qwest is proposing should be reviewed in the permanent cost docket. Id. AT&T also does not agree that the OSS charge in paragraph 9.4.3.1.2 should be included as a rate element nor that a charge for "Tie Cable Reclassification" is warranted. Id.

66. AT&T pointed out that Qwest has only addressed line sharing in its SGAT. AT&T 3-1 at p. 22. Qwest has made no provision to allow CLECs providing voice service using unbundled elements, specifically UNE-P, to also offer high speed data service on the same loop. Id. Qwest's refusal to provide technically feasible access to splitters, combined with its inaction with respect to allowing UNE-P voice CLEC to access the HFS of their loops has the direct effect of denying residential and small business customers who wish to obtain DSL services, the ability to select anyone other than Qwest as their local voice carrier. AT&T 3-1 at p. 23. Qwest should be required to support access to the HFS by inserting a splitter on UNE-loops employed in the UNE-P combination. Id.

67. MCIW requested clarification in their Comments filed August 21, 2000, on the use of Qwest technical publications, and asks Qwest to commit to proactively and consistently applying the use of technical publications to provision all industry standard services including new standards stated in final regulatory decisions. MCIW 3-1 at p. 3.

68. MCIW also had specific concerns with the language of Qwest's SGAT regarding advanced services. Specifically, Qwest's SGAT requires that Qwest provide only ADSL capable loops. MCIW 3-1 at p. 4. This limits the ability of the CLEC to use any other technology than ADSL. Id. All references to ADSL or other limitations on the loop's capability to deliver advanced services are non-compliant with the FCC's order and standard industry practice and must therefore be corrected. Id. The sections of Qwest's SGAT that would need to be modified consistent with MCIW's concerns are 9.2.1, 9.2.2.3, 9.2.2.4, 9.2.2.7, 9.2.2.8, 9.2.2.9.3, 9.2.3.2 and 9.2.4.6. MCIW 3-1 at p. 5-7.

69. According to MCIW, SGAT Section 9.4.2.1.3 should be modified to be consistent with paragraph 71 Decision FCC 99-235 which requires ILECs to provide unbundled access to the high frequency portion of the loop to any carrier that seeks to deploy any version of xDSL that is presumed to be acceptable for shared-line deployment. MCIW 3-1 at p. 11.

70. SGAT Section 9.4.2.1.7 should be modified as it places an undue administrative burden upon the CLEC and may require the CLEC to disclose confidential information to the detriment of the CLEC. MCIW 3-1 at p. 11.

71. Rhythms stated in their comments filed August 22, 2000, that Qwest proposes no improvement in the provisioning interval for line-shared loops. Rhythms 3-1 at p. 3. Qwest maintains the same 5-day interval for line-shared loops as for regular unbundled loops, despite the fact that there is clearly a shorter amount of time to provision the line-shared loop because it does not require an equivalent work effort. Id. Rhythms maintain that a 5-day provisioning interval is clearly discriminatory. Id.

Rhythms states that already with the limited number of line-shared loop orders it has placed, it is already experiencing troubling results. Rhythms 3-1 at 4. The ability to properly provision the loop at the central office is where the problem has been occurring. Id. The loop has either been tied down to the wrong termination or was labeled incorrectly at the main distribution frame which has resulted in Qwest and Rhythms meeting at the central office to correct the situation. Id. Rhythms states that it becomes even more imperative for Qwest to commit to a shorter interval for line-shared loops and to disaggregate line-sharing performance data rather than lumping it together with all unbundled loop data as it proposes to do. Id.

72. Rhythms also expressed some concerns over Qwest's conditioning of line-shared loops. Qwest has stated that conditioning is not currently available for line-shared loops. Rhythms 3-1 at p. 4. Rhythms states that there is clearly no technical reasons for not allowing conditioning. Id. While Qwest appears to allow deconditioning of line-shared loops at some time in the future, until it provides the legal commitment to do so, it is an empty promise. Rhythms 3-1 at p. 4.

73. Rhythms states that if and when Qwest agrees to provide deconditioning of line-shared loops, one technical parameter needs to be addressed. Rhythms 3-1 at p. 5. Load coils are deployed on some longer loops because without them, voice service begins to degrade. Id. Rhythms proposes that any deconditioning requirement be limited to the removal of load coils on loops of a length below 18 kilofeet. Id. Qwest should not charge a deconditioning fee for removal of load coils on loops below 18 kilofeet, since load coils should not have been placed on the loop in the first place. Id.

74. Rhythms also states that Qwest does not allow line-sharing over loops fed by digital loop carrier ("DLC") facilities. Rhythms 3-1 at p. 5. This significantly impairs the ability of CLECs from providing xDSL services to customers in Arizona and is discriminatory. Id. By allowing the CLEC to access and place line cards in the equipment Qwest deploys at the remote terminal, new entrants will be able to access unbundled loops and line-share on the same terms and conditions as Qwest. Rhythms 3-1 at p. 6.

75. Covad states that it has experienced obstacles to closing line sharing orders throughout the Qwest footprint. Covad 3-1 at p. 2. In particular, its issues have been 1) incorrectly wired splitters, 2) missing or incorrect cross-connects, and 3) lack of training, both for technicians and repair and maintenance personnel. Covad 3-1 at p. 2. All of these problems are resulting in Covad sending its own technicians to the central office to trouble shoot trouble that Qwest technicians should have found and resolved on its own. Id. Covad has requested that Qwest perform a data continuity test, as it does for its own retail service, on each line-shared loop and has even offered to provide the routers for conducting such a test. Covad 3-1 at p. 3. Covad is requesting no more than what Qwest currently does for itself in the line sharing context in confirming its voice customers' service after installation. Id.

76. Covad also expressed concern over Qwest's proposal of the same provisioning interval of five days for both stand-alone and line-shared loops. Covad 3-1 at p. 4. Such an elongated interval for line-shared lops places CLECs at a competitive disadvantage. Id The SGAT should include a graduated provisioning interval for line-shared loops, which would culminate in a one day interval. Id. Covad suggested that the graduation commence immediately and that Qwest begin provisioning in one day by April 1, 2001. Id.

77. Covad is also concerned that Qwest could change a name (eg., IDF to ICDF) and DLECs rights to mount its splitters are augmented or reduced solely at Qwest's discretion. Covad 3-1 at p. 4. Covad suggests that Qwest provide this option on a non-discriminatory basis to all CLECs by modifying its SGAT Section 9.4.2.3.1. Id. Covad suggests that CLECs be able to mount their splitters on any available distribution frame regardless of its current Qwest designation or the size of the central office. Id.

2. Subloop

78. AT&T had numerous concerns relating to Qwest's ability to provide subloop elements required by the Act and the FCC. Although Qwest must address all of the elements and access points discussed below, the SGAT only addresses 2-Wire Distribution and DS1 Feeder. AT&T 3-1 at p. 11. Qwest fails to address the remaining elements and access points, including:

1) Distribution facilities
2) Feeder facilities
3) Feeder/Distribution Interface (FDI)
4) Minimum Point of Entry (MPOE)
5) Network Interface Device (NID)
6) Riser Cable in multistory buildings
7) Inside Wire
8) Peripheral Distribution Facilities
9) Wire Closets
10) Digital Loop Carrier cabinets
11) Single Point of Interface
12) Central Office Terminal, COSMIC or MDF
13) Pole or Pedestal
14) And any other technically feasible element or point of interface

AT&T 3-1 at p. 4.

79. Qwest must further demonstrate that access is available at all technically feasible speeds, with technically feasible media including:

1) 2 wire copper
2) 2 wire non-loaded copper
3) 4 wire copper

4) DS-1 carrier
5) DS-3 carrier
6) OC-3 through OC-xx SONET over fiber

AT&T 3-1 at p. 4.

80. AT&T states that the following serious problems also exist with the manner in which Qwest is providing access to the two subloop elements addressed in the SGAT:

a. Requiring an Intermediate Connection Point – Qwest introduces the concept of the Field Connection Point ("FCP") as the method of access by the CLEC to the two subloop elements that Qwest is offering. AT&T 3-1 at p. 12. The FCP appears to be an intermediate connecting panel, analogous to an intermediate frame. Id. An additional connection panel, such as the FCP appears to be, should be offered as an option, not a requirement, since it is not consistent with the FCC requirements. Id. The requirement adds time and cost to the CLECs' subloop needs.

b. Lengthy Provisioning Delays – Qwest is proposing a very lengthy provisioning interval for access to subloop elements. AT&T 3-1 at p. 12.

c. Limiting Spectrum on Distribution Facilities – Qwest is restricting the spectrum of the two wire Distribution Loop to the frequency range of 300 to 3000 Hz. AT&T 3-1 at p. 13. This is unacceptable, as it would limit the CLECs' ability to provide DSL services over the Distribution Loop. Id.

d. Lack of Rates for SubLoop Element – Without knowledge of Qwest's proposed rates, both recurring and non-recurring, AT&T can not determine if Qwest is offering subloop elements at non-discriminatory prices, as required by Sections 252 and 271 of the Act. AT&T 3-1 at p. 13.

81. Other problems with Qwest's SGAT regarding subloops is that AT&T states that there is no mention of waiver of costs when another CLEC has previously requested access to a particular FDI and Qwest has already done a feasibility study and "make ready" work. AT&T 3-1 at p. 13. There should be some reimbursement mechanism for the first CLEC to access an FDI. Id. Additionally, time frames should also change for subsequent CLECs. Id.

82. In Qwest's testimony, it made references to its Technical Publication No. 77405. This document was not provided for review. AT&T states that Qwest should be

required to provide that publication in order to determine if it is consistent with the provisions of the SGAT. AT&T 3-1 at p. 14.

83. AT&T also stated that Qwest Witness Ms. Karen Stewart's testimony which described a method to share costs between the CLECs for the establishment of the FCP should be included in the SGAT. AT&T 3-1 at p. 14. All carriers, including Qwest, should share in the cost of any network reconfiguration required to create a single point of interconnection. Id. However, the cost sharing provision should be included in the SGAT as the current SGAT does not contain this provision. Id.

84. Regarding Qwest's provisioning of subloop unbundling, Section 9.3.1.1 should be modified so as not to impose the additional restrictions concerning digging and trenching that Qwest has included in its SGAT terms. MCIW 3-1 at p. 8.

85. SGAT Sections 9.3.1.2, 9.3.2, 9.3.2.1 and 9.3.8.1(a) should be modified to allow 4 wire loops to be available to CLECs on a subloop basis. MCIW 3-1 at p. 8-9. MCIW states that this is another attempt by Qwest to limit the types of DSL technologies that can be implemented by CLEC and to create an unfair competitive advantage for their own, more flexible DSL services, resulting in restricting competition for advanced services. Id.

86. SGAT Section 9.3.9.4 inappropriately allocates the entire cost of construction of a FDI Field Connection Point to accommodate up to three CLEC's to the first CLEC, and only allows the first CLEC to recover a portion of that cost if/when additional CLECs subsequently interconnect at that FDI-FCP. MCIW 3-1 at p. 9. In accordance with forward-looking costs rules and the FCC's Advanced Services Order, the CLEC must only be required to pay for the forward-looking costs of a facility that the CLEC actually uses. Id. In the absence of an established forward looking cost, the CLEC should not be expected to pay any more than its pro-rata share of the construction charge as an interim solution. Id. Therefore, Section 9.3.9.4 should be modified.

87. MCIW also expressed concern over SGAT Sections 9.3.11.1, 9.3.11.2, 9.3.11.3 and 9.3.11.4 over the length of time to implement FDI. MCIW 3-1 at p. 10. MCIW subject matters experts have stated that it is their experience that Qwest should take 30-60 calendar days to do this type of construction internally. Id. A CLEC should have the 30 calendar day feasibility plus the 30 calendar day payment window plus another 60 calendar days minimum for completion of MCIW's right-of-way steps plus construction. MCIW 3-1 at p. 10. Qwest should modify its SGAT to reflect MCIW's concerns.

88. Covad stated that Qwest is attempting to evade its unbundling obligations by requiring that CLECs install an intermediate facility called a "Field Connection Point" or "FCP". Covad 3-1 at p. 4-5. Sections 9.3.1.3 and 9.3.4.1 of the SGAT must be modified to reflect Qwest's legal obligations since the FCP appears to be an unnecessary addition to the network, which adds cost, complexity, time and a potential point of failure. Id.

89. Covad also stated that since accessing subloops is simply a form of remote collocation, intervals for providing access to subloops should never exceed the ninety day collocation interval recently mandated by the FCC. Covad 3-1 at p. 5.

90. Covad offered additional comments and suggestions regarding subloop issues:

a. Section 9.3.9.4 inappropriately requires the first CLEC to request the mandated construction of a FCP pay for the entire cost of the construction. Covad 3-1 at p. 5. Qwest's proposed cost allocation for the FCP must be revised. Id.

b. Adding additional cabinets or pedestals to an existing location will likely result in zoning and right-of-way problems which will in turn result in many requests being denied for "feasibility" reasons. Covad 3-1 at p. 5.

c. Qwest should provide individual CLEC cross-connect blocks in the existing cabinet rather than adding additional needless network devices, such as the FCP, which will also require two cross-connects to be made for each subloop ordered. Covad 3-1 at p. 5.

d. The FCP should only be used when there is no space at the existing Qwest "accessible terminal". Covad 3-1 at p. 6. If Qwest alleges a "no space" condition, the same SGAT provisions addressing no collocation space in central office should apply to the terminal, including the opportunity for the denied CLEC to make a visual inspection of the terminal. Id.

e. Qwest must provide access to "accessible terminals" even if the terminal ownership has been transferred to an affiliate. Covad 3-1 at p. 6.

f. There should be a process for testing after provisioning and after prior to acceptance should be developed. Covad 3-1 at p. 6.

g. CLECs should be called prior to Qwest closing trouble tickets. Covad 3-1 at p. 6.

91. Cox stated in their comments filed August 21, 2000, that they are particularly concerned with the lengthy process contemplated by the SGAT for access to a couple of subloop elements (at least six months) and with the need to invoke the even lengthier BFR process for most subloop access requests. Cox 3-1 at p. 2.

92. Cox's problems with Qwest have occurred at multi-dwelling unit facilities ("MDUs"), such as apartment complexes, where the demarcation point between Qwest's network and the MDUs' inside wiring is located in the interior of the MDU property – or at several locations throughout the MDU property – not at the edge of the property. Cox 3-1 at p. 2. In those instances, Qwest has access to a right-of-way easement on the MDU property between the property line and the demarcation point through which it runs its facilities and any CLEC seeking to serve the MDU needs similar access. Id.

93. Cox has attempted to negotiate a rate for access to the Qwest network distribution cables in MDU ROW easements. Cox 3-1 at p. 2. Although Cox only needs to use Qwest's wiring only from a point near the MDU property line to the property owners' customer convenience block ("CCB") (typically only a few hundred feet of the loop), Qwest has insisted on a cost of $15.33 per month per access line, which is approximately 70% of the $21.98 unbundled loop rate. Id. Cox states that the $15.33 is the rate for the entire loop distribution segment which is far more than Cox needs for access and it appears that the proposed SGAT incorporates the same rate. Id.

94. Cox stated that problems with MDU access through Qwest subloops have been exacerbated by Qwest's recently amended Construction Charge tariff that allows Qwest to waive construction charges in connecting MDUs to Qwest's networks. Cox 3-1 at p. 4. That tariff encourages more situations where Qwest will control facilities to demarcation points otherwise inaccessible to CLECs. Id.

3. Dark Fiber

95. AT&T suggests that Qwest revise Section 9.7.1 of its SGAT regarding the definition of Unbundled Dark Fiber ("UDF") to make clear that UDF is available between a Qwest wire center and a CLEC wire center. AT&T 3-1 at p. 43. Conforming changes would also need to be made to Section 9.7.2.12, 9.7.5.2.1 and 9.7.5.2.2. Id.

96. AT&T also suggests that Qwest delete Section 9.7.2.2 of the SGAT that purports to impose on a CLEC a reciprocal requirement to make UDF available to Qwest. AT&T 3-1 at p. 43. AT&T claims that the imposition of this reciprocity requirement is without foundation in law. Id.

97. SGAT Section 9.7.2.3 should be modified as this sets forth Qwest's obligation to provide "existing Dark Fiber" facilities. AT&T 3-1 at p. 43. This language impermissibly restricts Qwest's UDF offering to existing facilities and creates the presumption that UDF facilities that become available subsequent to the date of the SGAT will not be made available. Id. The reference to "existing" facilities should be modified or eliminated. Id.

98. AT&T expressed concerns over sections 9.7.2.4, 9.7.2.5 and 9.7.2.10 of the SGAT due to the limitations on Qwest's obligations to unbundle dark fiber based on internal requirements to reserve maintenance capacity and to reclaim capacity already in use. AT&T 3-1 at p. 43. Any such restriction on dark fiber must be reasonable and relate

to a likely and foreseeable threat to Qwest's ability to provide service as a carrier of last resort. Id. AT&T proposes that Qwest make more explicit when and how dark fiber is "designated for use in an approved, or pending job on behalf of Qwest or another CLEC." AT&T 3-1 at p. 44.

99. AT&T also noted that SGAT Section 9.7.2.11 should be changed to allow for Qwest to combine Dark Fiber with another UNE or with CLEC facilities. AT&T 3-1 at p. 44. AT&T also stated that SGAT Section 9.7.2.15 is objectionable insofar as it can be implied to require CLECs to obtain third party permission, license or authority to access rights of way. AT&T 3-1 at p. 44

100. AT&T disagrees with Section 9.7.2.16 which states that a CLEC should be required to pay to return UDF to "its original condition" without concern for reasonable "wear and tear". AT&T 3-1 at p. 44.

101. SGAT Section 9.7.3.2 should be changed to provide notification of the available fiber and the potential routes to be used. AT&T 3-1 at p. 45.

102. AT&T also proposes that CLECs be given the opportunity to provide good faith, non-binding forecasts of transport needs to Qwest and that Qwest have the opportunity to consider this information in good faith when determining its network design and expansion. AT&T 3-1 at p. 45.

103. Finally, AT&T recommends that Qwest be required to specify time frames and provide quicker turnaround for access to UDF. AT&T 3-1 at p. 45. These provisions are found in Section 9.1.2.1, 9.7.2.10, 9.7.3.2 and 9.7.3.3. Id.

104. MCIW states that Section 9.7.2.1 is overly vague and does not establish equitable service level guidelines. MCIW 3-1 at p. 12. This section should be modified to establish that unbundled dark fiber be provided to CLECs at parity. Id.

105. MCIW also expressed concern over SGAT section 9.7.2.1 in that it inappropriately establishes a reciprocal obligation on the part of the CLEC to provide dark fiber to the ILEC. MCIW 3-1 at p. 12. This section should be stricken. Id. Additionally, Sections 9.7.2.4, 9.2.7.5 and 9.7.2.12 go beyond the FCC's requirements for reasonableness in limiting dark fiber available to CLECs. MCIW 3-1 at p. 13. Therefore, changes should be made to sections 9.7.2.4, 9.7.2.5 and 9.7.2.10 of the SGAT. Id.

106. Section 9.7.3.1 requires a CLEC to establish an ICDF at its Collocation in order to obtain unbundled dark fiber. MCIW 3-1 at p. 14. ICDF creates all of the same disadvantages and problems for CLEC that a SPOT frame creates. Id. This section of the SGAT requiring an ICDF to obtain unbundled dark fiber should be revised accordingly. Id.

107. Covad's concerns were too extensive to address exhaustively with their filed comments but stated the following comments:

108. Any restriction on CLEC use of dark fiber must be reasonable and must further relate to a likely and foreseeable threat to Qwest's ability to provide services as a carrier of last resort. Covad 3-1 at p. 7.

109. Qwest should offer individual fibers, rather than requiring "dark fiber" to be ordered in pairs. Covad 3-1 at p. 7. SGAT Section 9.7.2.4 should be modified to allow ordering of a single strand. Id.

110. Covad suggests that the parties develop testing and notification processes relating to dark fiber, which are currently absent from the SGAT. Covad 3-1 at p. 7.

4. Packet Switching

111. According to AT&T, the position Qwest takes on packet switching plainly violates the FCC's directives. AT&T 3-1 at p. 32. AT&T also states that Qwest has unilaterally decided that the specific conditions stated by the FCC that packet switching must be offered as a UNE will never exist and is refusing to offer packet switching as a UNE. AT&T 3-1 at p. 32. The FCC has stated that packet switching must be offered as a UNE under the following circumstances:

1) Loops are provided via DLC or related technology
2) CLECs are unable to obtain spare copper loops
3) CLECs are unable to install DSLAM equipment at the remote terminal
4) The ILEC has deployed packet switching equipment for its own use

112. MCIW stated that paragraph 313 of Decision FCC 99-238 requires ILECs to provide CLECs with access to unbundled packet switching where the ILEC has placed its DSLAM in a remote terminal, and does not allow the CLEC to collocate its DSLAM in that remote terminal under the same terms and conditions that apply to ILEC's own DSLAM. MCIW 3-1 at p. 14. Qwest's SGAT fails to provide for unbundled packet switching under these, or any, circumstances. Id.

113. Covad stated that based upon the proposed SGAT language, it does not appear that Qwest intends to comply with all of the FCC rules and regulations on packet switching. Covad 3-1 at p. 7.

114. Covad offered that the following issues must be addressed:

a. Unless CLECs are provided access to packet switching at remote terminals, emerging services competition may never evolve in

areas of the network served by any Qwest NGDLC. Covad 3-1 at p. 8.

b. If CLECs are required to collocate digital subscriber line multiplexers ("DSLAMs") in remote terminals, the economics will never justify the expense, and competition will likely never occur. Covad 3-1 at p. 8. Similarly, if Qwest chooses to place individual DSLAM equipment at the FDI, competition may be eliminated entirely, as the economics become even less viable. Covad 3-1 at p. 8.

c. Any NGDLC deployed by Qwest, or a data affiliate, should be required to be unbundled immediately, in order to promote competition for data services in the more distant areas of the network. Covad 3-1 at p. 8.

d. CLECs must be able to place their own DSL cards in these Qwest NGDLC systems that allow CLECs to choose what services they wish to provide to their customers. Covad 3-1 at p. 8.

e. Qwest Response

115. In its August 30, 2000 written response, Qwest replied to the testimony of AT&T, MCIW, Rhythms, Covad and Cox.

1. Line Sharing

116. As an initial matter in Arizona, dedicated unbundled loop issues will be discussed as part of Checklist Item 4. Qwest 3-3 at p. 3. With respect to MCIW's concerns regarding the types of xDSL loops available to CLECs, Qwest clearly offers generic xDSL loops as requested by MCIW per Qwest's revised SGAT. Qwest 3-3 at p. 4. Qwest offers "unloaded loops" to support CLECs xDSL service. Id. CLECs can assess the loop characteristics using Qwest's Loop Qualification Tool and determine whether the loop will support its form of DSL. Id. Qwest also offers ADSL capable loops. Id.

117. With respect to AT&T's comments on line sharing and line splitting, Qwest will allow line splitting, i.e., CLECs can provide voice and data over a single loop, and combine that loop with Qwest provided unbundled local switching and shared transport. Qwest 3-3 at p. 5. As AT&T correctly identified, this is not line sharing. However, Qwest proposes that line splitting and its related combination issues be addressed with Checklist items 2, 5, and 6 and UNE-Combinations. Id.

118. Qwest stated that it strongly disagrees with AT&T's request that Qwest be required to purchase, own and deploy line splitters, and thus allow AT&T to order those loops as UNE-P, on a line-by-line basis, which was rejected by the FCC in the Texas 271

order. Qwest 3-3 at p. 5. Qwest would recommend that this Commission defer discussions on line-by-line access to line splitting (even assuming new requirements were to occur) until such time as a clear requirement has been ordered by the FCC. Id.

119. With respect to MCIW's concerns regarding CLECs being allowed to order new services based on their introduction in technical publications, Qwest cannot accept this recommendation. Qwest 3-3 at p. 8. Qwest does not introduce or offer new retail or wholesale products and services solely based on their inclusion in technical publications. Id. If a CLEC's interconnection agreement does not contain a UNE or Advanced Service available from Qwest, Qwest will amend its agreement, on an expedited basis, to include the UNE without the need for the BFR process or lengthy negotiations. Id.

120. With respect to MCIW's concerns on the forecasting requirements of Section 9.4.2.1.7, Qwest recommends that this section retain the obligation of CLECs to provide periodic forecasts for line sharing. Qwest 3-3 at p. 9-10. Qwest would agree to add the following statement into section 9.4.2.1.7 of the SGAT ensuring that forecasts are treated as confidential:

> Qwest will keep CLEC forecasts confidential and will not share forecasts with any person involved in Qwest retail operations, product planning or marketing. Id.

121. MCIW requested removal of the requirement in Section 9.4.2.1.3 that CLEC provided data service must be compatible with Qwest's POTS service, and that Multiple Virtual Lines ("MVL") transmission systems be added to the presumed compatible list. Qwest 3-3 at p. 10-11. Qwest believes that the CLEC has an obligation to insure its data service does not interfere with voiceband transmissions. Qwest 3-3 at p. 11. Qwest proposes to modify Section 9.4.2.1.3 to more closely align with the wording of the FCC on these two issues. Id.

122. With respect to AT&T's request that CLECs be permitted to collocate DSLAM equipment on Qwest premises, Qwest states that so long as space is available, Qwest will allow CLECs to collocate DSLAMs on Qwest's premises. Qwest 3-3 at p. 11. Qwest recommends that the collocation of DSLAMs be reviewed in the continuation of the Collocation workshop. Qwest 3-3 at p. 12.

123. Qwest agreed, in response to AT&T and MCIW requests, to modify the Arizona SGAT Line Sharing language to be consistent with the Colorado SGAT Line Sharing language that allow for direct connections between the COSMIC/MDF and CLEC provided splitters. Qwest 3-3 at p. 12.

124. Regarding AT&T's request for more detail on the connectivity involved to support line sharing, Qwest states that CLECs can obtain access to the Line Sharing Technical Publication No. 77406 located at the following URL www.uswest.com/wholesale/notification/techPub.html. Qwest 3-3 at p. 13.

125. In reference to AT&T's request of a review of the rates and rate elements for line sharing in a permanent cost docket, Qwest believes that permanent rates for line sharing will be reviewed in Phase II of the Whole Pricing Case, Docket No. T00000A-00-0194, but clarifies that the interim rates established in the Arizona SGAT, and its Interim Line Sharing Agreements, are clearly sufficient to meet its requirement to have a legally binding obligation to provide line sharing. Qwest 3-3 at p 13-14.

126. With regard to Rhythms request that Qwest not be allowed to recover the cost of loop conditioning on loops below 18 kilofeet, Qwest does not agree that it be precluded from recovering its costs for loop conditioning for loops below 18 kilofeet. Qwest 3-3 at p. 14. Qwest states that the U.S. Court of Appeals for the Eight Circuit has already determined that ILECs have the right to recover the real cost of providing the specifically requested network element. Id. The FCC has specifically held that ILECs can recover their costs for conditioning loops less than 18,000 feet. Id.

127. AT&T requested clarification on the "Tie Cable Reclassification" requirement. Qwest 3-3 at p. 14. Qwest stated that Line Sharing Tie Cable Reclassification is only relevant when a CLEC requests that existing tie cables between its collocation and the Intermediate Distribution Frame be designated for use with its commonly located line sharing splitter. Id.

128. Rhythms requested a shorter standard interval for line sharing than the 5 business days identified in the SGAT. Qwest 3-3 at p. 15. Qwest cannot accept Rhythms request. Id. Qwest musty perform numerous other order entry, assignment and provisioning functions in provisioning a line-shared line. Id. Qwest believes the 5-business day installation interval is non-discriminatory and compares favorably with the 10-business day installation time frame for Qwest's retail Megabit service. Id.

129. Rhythms requested that Qwest provide loop conditioning for shared loops. Qwest 3-3 at p. 16. Qwest now offers conditioning on shared loops. Id. Both the Interim Line Sharing Agreement and the Arizona SGAT made loop conditioning on shared loops available as of July 31, 2000 under the same guidelines as conditioning for all other unbundled loops. Id. Since the July 31, 200 date has passed, Qwest would agree to amend section 9.4.2.1.5 to remove references to this date. Id.

130. Rhythms also requested line sharing over fiber-fed loops. Qwest 3-3 at p. 17. Qwest requests Rhythms provide additional information that would allow Qwest to appropriately evaluate the technical feasibility on line sharing over fiber distribution loops. Id.

3. SubLoop

131. AT&T, Cox and MCIW all requested that Qwest expand its points of interface to access subloop elements in its SGAT. Qwest 3-3 at p. 17. Qwest already agrees to allow CLECs to access subloops at all technically feasible terminals in Qwest's

outside plant. Id. Qwest states it has had very limited demand for subloop unbundling. Id. Qwest recommends that the collocation process and procedures be used to establish network demarcation points. Id. This approach is consistent with the FCC's recent collocation Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 released on August 10, 2000. Qwest 3-3 at p. 18.

132. Regarding AT&T's request that Qwest provide access to subloop elements for all loop types, Qwest agrees with AT&T's request but would recommend that rates and clarification of the cost nature of DS3 subloops be deferred to the Phase II of the Arizona Wholesale Pricing Docket. Qwest 3-3 at p. 19.

133. Both AT&T and Cox requested that access to the distribution portion of the loops to serve MDUs be identified as a unique distribution subloop element. Qwest 3-3 at p. 19. Qwest states that currently all distribution configurations are averaged to create the unbundled two-wire distribution loop. Id. If Qwest were to create a "de-averaged" subloop element for MDUs, it could result in a rate increase for other types of distribution subloops. Id. AT&T and Cox are merely attempting to further deaverage the loop elements and this is the wrong docket to raise this argument. Id.

134. Regarding AT&T's concern over the belief that the FCP provides equivalent access to subloop elements and review of the FCP policy, Qwest recommends that the FCP process and Field Collocation process be combined. Qwest 3-3 at p. 20. Additionally, while AT&T states that rates are not available for subloop elements, Qwest has rates in the Arizona SGAT for subloop elements. Qwest 3-3 at p. 21.

135. Finally, to address AT&T's concern regarding access to the high frequency portion of the distribution subloop to provide DSL service, Qwest will allow collocation of DSLAMs and splitters in the field, space permitting. Qwest 3-3 at p. 21.

4. Dark Fiber Issues

136. MCIW had requested the removal of the modifier "substantially" the same quality in the description of dark fiber in SGAT section 9.7.2.1. Qwest 3-3 at p. 22. Qwest recommends retaining the word "substantially" in light of the FCC's identification that equal access to UNEs may not be identical access to UNEs. Id.

137. AT&T and MCIW both had concerns over the defined installation intervals for dark fiber in that the same interval as 2-wire and 4-wire unbundled loops should be used. Qwest 3-3 at p. 22. Qwest states it has defined installation intervals for dark fiber interoffice and loop facilities (10 days for an initial records inquiry and 20-business day installation interval once Qwest receives the order for any identified dark fiber that terminates at a Qwest wire center or end-user premise). Id. However, given the extremely limited demand and various access points that might be requested, Qwest has established an Individual Case Basis ("ICB") installation period. Id. Qwest cannot accept MCIW's request that it install dark fiber in the same 5-day installation interval as unbundled two wire loops. Qwest 3-3 at p. 23.

138. AT&T and MCIW had suggestions to clarify on what basis Qwest may deny a request to unbundled dark fiber or reclaim dark fiber to meet its legal obligation. Qwest 3-3 at p. 23. Qwest agrees that the circumstances were it to reclaim dark fiber are when it is in danger on not meeting its legal obligations to provide service. Id. Qwest also agrees to the burden of demonstrating to the Commission that it needs to reclaim the dark fiber to meet its legal obligations to serve. Id. However, Qwest does not agree to remove all limitations from the SGAT about the volume of dark fiber an individual CLEC can "tie-up" in a single route. Qwest 3-3 at p. 24.

139. MCIW states that the CLECs are not provided with an opportunity to reserve dark fiber for maintenance/maintenance spares. Qwest 3-3 at p. 25. Qwest disagrees and states that they do allow CLECs to determine their needs for dark fiber to include maintenance spares and to request access to the required number of dark fiber strands. Id.

140. MCIW also requested the removal of the requirement for an ICDF when a CLEC request access to dark fiber which Qwest has agreed to and will modify Section 9.7.3.1 to reflect that modification. Qwest 3-3 at p. 25-26.

141. To address AT&T's request that unbundled dark fiber be available between a Qwest wire center and a CLEC's wire center, Qwest agrees to unbundle dark fiber meet AT&T's request. Qwest 3-3 at p. 26.

142. Regarding AT&T's request for clarification on "existing Dark Fiber" in Section 9.7.2.3, Qwest clarifies its intent in using the word "existing" to identify dark fibers that are existing and available in the Qwest network at the time the dark fiber Initial records Inquiry is received by Qwest. Qwest 3-3 at p. 26.

143. With regard to AT&T's recommended changes to Section 9.7.2.11 allowing for combinations of dark fiber with another UNE or CLEC facilities, Qwest accepts this recommendation. Qwest 3-3 at p. 27.

144. AT&T's objects to Section 9.7.2.15 because it can be implied to require CLECs to obtain third party permission, license or authority to access rights away. Qwest 3-3 at p. 28. Qwest does not agree to modify this section at this time. Id.

145. Qwest agreed with AT&T's suggestion to modify Section 9.7.2.16 to reflect that when a CLEC returns dark fiber it may not be in its "original condition" due to reasonable "wear and tear". Qwest 3-3 at p. 28.

146. Qwest rejected the suggestion of AT&T that Qwest provide notification of the available fiber and all the potential routes that can be used. Qwest 3-3 at p. 28.

147. Finally, Qwest did not agree to the addition of an SGAT obligation regarding AT&T's issue that Qwest accept good faith, non-binding forecasts of transport

needs from CLECs for Qwest's use in determining its network design and expansion requirements. Qwest 3-3 at p. 29.

3. Packet Switching Issues

148. Both AT&T and MCIW filed comments regarding Qwest's obligation to provide unbundled packet switching, referencing paragraph 313 of the *UNE Remand* Order. Qwest 3-3 at p. 30. Qwest's obligation to unbundle packet switching is directly related to whether or not Qwest has placed DSLAMs in a remote terminal. Id. The FCC rules for packet switching, specifically paragraph 313 of the UNE Remand, Section 51.319 of the FCC's rules, state the four conditions that must be met for requiring an ILEC to provide nondiscriminatory access to unbundled packet switching capability. Id. Qwest currently has such a limited number of remotely deployed DSLAMs, serving such a limited number of customers, that it believes the four conditions identified by the FCC would rarely exist in Qwest's current network configuration. Qwest 3-3 at p. 31. However, Qwest will contractually commit to unbundled packet switching should a CLEC be unable to obtain clean copper loops or remotely collocate its DSLAM in a remote terminal where Qwest has an existing DSLAM. Id. Qwest stands ready to provide unbundled packet switching on an Individual Case Basis ("ICB") in Arizona in the unlikely situation that that the four conditions outlined by the FCC were to exist. Qwest 3-3 at p. 32.

149. Finally, Qwest did not accept AT&T's proposal that it have an obligation to provide unbundled packet switching, even if spare copper loops were available to a CLEC, if those loops were longer than the copper loops Qwest or another CLEC may be utilizing. Qwest 3-3 at p. 32. Qwest states that the FCC has not put any obligation on ILECs to insure that copper loops of a similar length are available to CLECs. Id.

f. Disputed Issues

150. At the September 6, 2000 and January 30, 2001 workshops, Advanced Services issues were discussed at length among the parties. The parties were able to resolve many of their disputed issues at the workshops. However, at the conclusion of the workshops, while some of the issues were deferred to other workshops, many issues remained that went to impasse.

1. Line Sharing Impasse Issues

DISPUTED ISSUE NO. 1: Whether Qwest is Required to Provide Line Sharing Over Fiber?

a. Qwest and CLEC Positions

151. Covad and Rhythms argue that Qwest expressly limits line sharing to the "copper portion of the loop" as stated in SGAT section 9.4.1.1. Covad and Rhythms Br. at p. 19. Covad and Rhythms argue that 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 has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Covad and Rhythms Br. at p. 18. Despite the use of the word "copper" in section 51.319(h)(1), this 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. Id. Covad and Rhythms go on to state that Qwest has not provided any evidence that line sharing over a fiber fed loop is not technically feasible and that line sharing over a fiber fed loop – via a "plug and play" card – is presumptively feasible and thus should be ordered by the Commission. Covad and Rhythms Br. at p. 19.

152. AT&T and MCIW both concur with the position taken by Covad and Rhythms.

153. Qwest argues that it is complying with its current obligations and that the CLECs are seeking to impose new obligations on Qwest in addition to those the FCC currently imposes to provide line sharing over fiber. Qwest Br. at p. 13. The FCC has acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent capabilities of the equipment ILECs have deployed. Qwest Br. at p. 14. Accordingly, the FCC initiated two further notices of proposed rulemaking to request comments to explore the feasibility of additional methods of providing line sharing over fiber fed loops. Id.

154. Nonetheless, Qwest offered to add language as a new section 9.4.1.1 to its SGAT as follows:

> To the extent additional line sharing technologies and transport mechanisms are identified, and Qwest has deployed such technology for its own use, and Qwest is obligated by law to provide access to such technology, Qwest will allow CLECs to line share in the same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access.

155. The CLECs do not agree and argue that Qwest must do more. Qwest Br. at p. 15.

156. Qwest goes on to state that this is not the appropriate forum for imposing additional obligations on Qwest and that there is no basis in law or fact for expanding Qwest's line sharing obligations in this proceeding. Qwest Br. at p. 16.

b. Discussion and Staff Recommendation

157. In its Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest that it is complying with its current obligations. Staff believed that the additional language proposed by Qwest in SGAT section 9.4.1.1 adequately addressed

line sharing over a fiber loop. The FCC is currently evaluating other methods and technologies of providing line sharing over fiber fed loops. Staff believed that the language proposed by Qwest in SGAT section 9.4.1.1 was expansive enough to address new methods and technological options of providing line sharing over fiber fed loops that ultimately are determined to be technically feasible by the FCC or this Commission.

158. In their comments filed on July 19, 2001, in response to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argued that Qwest's provision amounts to no more than a mere "paper promise" to afford access and that the record reflects that obtaining actual access from Qwest to any element entails an extensive resource and time-intensive productization process which in itself is a significant impediment to access and competition. Comments at p. 15. AT&T also argued that Qwest's SGAT Section 9.4.1.1 does not include any reference to "technical feasibility", and that merely technologies are identified. Comments at p. 15. AT&T argued that the section should be clear that the burden of demonstrating that a technology is not technically feasible should rest on Qwest. Comments at p. 16. AT&T also argues that the current SGAT language sets a higher standard than mere technical feasibility. Qwest's language requires that Qwest first deploy the technology in its own network. This requirement, AT&T argues, would consign CLECs to merely keeping pace with Qwest. Id.

159. AT&T proposed the following language as an alternative to that proposed by Qwest:

> To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share in that manner, provided, however, that (i) the rates, terms and conditions for line sharing may need to be amended and (ii) if Qwest demonstrates that such line sharing method is not technically feasible, Qwest need not afford the access identified.

160. Upon reconsideration, Staff agrees with AT&T that the language proposed by Qwest is overly restrictive. However, Staff believes that the language proposed by AT&T goes too far and would impose additional requirements on Qwest which far surpassed those contained in the 1996 Act. Therefore, Staff recommends that Section 9.4.1.1 be revised to state:

> To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share to the extent that Qwest is obligated by law to provide access to such technology. The burden shall be upon Qwest to demonstrate that such line sharing method is not technically feasible. For each additional line sharing technology and transport mechanism identified, Qwest will amend the rates, terms and conditions for line sharing as appropriate.

161. Staff believes that this language strikes an appropriate balance between that proposed by Qwest and AT&T.

DISPUTED ISSUE NO. 2: Whether Qwest is Obligated to Provide xDSL When no Longer Providing Voice.

a. Qwest and CLEC Positions

162. AT&T states that Qwest has made a policy decision to disconnect its Megabit service from a customer that decides to change to a CLEC for local voice service. AT&T Br. at p. 22. Qwest has decided to walk away from a lucrative business on a loop that has already been conditioned for DSL and a customer that has already been provisioned and put into service. Id. AT&T states that the only reason Qwest makes this policy decision is to discourage its current monopoly-based customers from switching their local service to a competing local exchange carrier. Id. This Qwest policy is a clear barrier to entry and is anticompetitive. AT&T Br. at p. 22. Customers with Megabit service will be reluctant to switch local providers knowing that their Megabit service will be terminated. Id. Customers should have the option to maintain Megabit or to switch to an alternative DSL provider. Id.

163. Qwest argued that the FCC recently confirmed that it has no obligations to provide xDSL service when it is no longer the voice provider. Qwest Br. at p. 17. The claim by AT&T that this may be a barrier to switching carrier makes no sense because the customer could obtain DSL service from another carrier in a line splitting arrangement with the CLEC voice provider. Id. Thus, DSL service poses no barrier to CLEC entry; a CLEC can provide DSL service to its voice customer, or that customer can obtain DSL service from another provider. Id.

b. Discussion and Staff Recommendation

164. In its Proposed Findings of Fact and Conclusions of Law, Staff agreed with AT&T that Qwest's policy decision was a barrier to entry and anticompetitive. Staff questioned and had concerns over Qwest's decision to withdraw Megabit service from customers where a CLEC uses line sharing to provide voice services across a loop's low frequency portion.

165. In particular, there were no technical feasibility issues identified in the record which would justify Qwest's anti-competitive position. In addition, there were no other compelling reasons offered by Qwest in the record to support its position other than that it is a matter of Qwest's policy on the issue and that Qwest does not believe it

is required to provide DSL service when it is no longer the voice provider under current FCC rules and regulations.

166. Staff believes Qwest's policies, which it has failed to justify, would have an adverse impact upon competition in Arizona, by discouraging Megabit customers from changing voice providers in a line sharing arrangement, since they would no longer be able to sign up with Qwest for DSL service if they did so. This policy of bundling the two services together would undoubtedly inhibit voice competition in the Arizona marketplace.

167. A State Commission, such as Arizona, has independent authority to ensure that the terms and conditions of Qwest's service offerings are not anti-competitive. Qwest must abide by such State conditions, as well as Federal conditions, in order to obtain Section 271 authority. Qwest should not be found in compliance with Section 271 requirements as long as it maintains its current policy of restricting its own Megabit or xDSL customers from taking service from another voice provider through line sharing. Therefore, Staff recommended in its Proposed Findings of Fact and Conclusions of Law that Qwest be required to revise its SGAT to permit its Megabit or DSL customers to change to a CLEC for local voice service through a line sharing arrangement.

168. AT&T and Qwest submitted comments on Staff's proposed resolution of this issue. Qwest stated that while it believes that it has no legal obligation to provide Megabit service in such circumstances, in the spirit of cooperation, Qwest has decided that it will not challenge the Staff''s recommendation. Comments at p. 4. Qwest committed to enabling CLECs to provide their customers with Qwest's DSL service when a customer changes voice carriers to an UNE-P provider. Id. Qwest went to state that while the concern raised by the CLECs involved instances when Qwest was already the data provider, Qwest would also enable CLECs to provide Qwest's DSL service to new customers being served by a UNE-P provider. Id.

169. Qwest, however, sought clarification on one point, whether Qwest must provide DSL service irrespective of how the CLEC provides the voice service. Id. at p. 4. Qwest states that "Staff could not have meant to extend this obligation to customers served over stand-alone unbundled loops because that would cause Qwest substantial process and billing problems. Id. Qwest states that it cannot provide DSL for a CLEC end user customer when the CLEC service is provided by an unbundled loop arrangement because Qwest cannot identify or bill for the service when the telephone number does not reside in the Qwest systems. Id. Qwest seeks clarification that Staff only intended to apply this decision to situations where CLECs provide voice service to customers through UNE-P. Id.

170. Qwest states that there are some limitations in how it may offer the service. Id. Qwest must allow the CLEC to be the primary contact point for the end-user customer. Id. Qwest states that in order to do this, Qwest will provide its DSL service via resale, at the full retail rate. Qwest proposed the following to comply with the Staff's recommendation:

- Qwest will enable a CLEC to provide Qwest's DSL to an end-user customer via resale at 100% of the retail rate when service is provided by the CLEC to that end user over UNE-P.

- Qwest will enable this arrangement for both existing and new customers (e.g., a customer who had not previously subscribed to Qwest's DSL).

- In both instances identified above, Qwest will not have a direct relationship with the end user customer. Qwest will bill the CLEC and the CLEC will bill its end user customer for the DSL customer.

Qwest Comments at p. 5.

171. Staff believes that the clarification sought by Qwest at this time is reasonable and should be made. Thus, Qwest would not be required to provide DSL service over stand-alone unbundled loops at this time. The Staff encourages Qwest to address the process and billing problems it raises, so that this option is available to CLECs in the future. Qwest should be required to modify its SGAT to reflect this significant change in service obligations and provision.

172. AT&T commented that Qwest will necessarily modify its policy regarding the provisioning of xDSL services and develop a new "product offering" in order to satisfy the concerns expressed in the Staff Report. AT&T also stated that upon development of such product, Qwest should propose new contract language and afford the parties an opportunity to not only review it to confirm compliance with the Report's standards, but also to confirm that it is workable. AT&T Comments at p. 14.

173. Staff agrees that CLECs should have the opportunities cited by AT&T for review of the contract language. Staff also believes that Qwest's SGAT changes should be submitted for CLEC review.

DISPUTED ISSUE NO. 3: Whether Qwest Must Provide Additional Testing for CLECs.

a. Qwest and CLEC Positions

174. Covad argued that Qwest perform a data continuity test for its line share orders, a test that Qwest currently performs for its own Megabit DSL orders. Covad and Rhythms Br. at p. 15. Covad also offered to provide Qwest with the equipment necessary to perform the data continuity test. Id. Qwest refused to perform the data continuity test and stated as their sole basis the fact that SBC did not perform a data continuity test and still had its §271 application for Kansas and Oklahoma approved. Id. Covad also

pointed out that SBC is an aberration; both Bell South and Verizon perform a similar test that accomplishes the same objective as a data continuity test.

175. Qwest argued that the FCC has clearly delineated its obligation regarding testing. Qwest Br. at p. 18. Qwest's sole obligation is to provide CLECs access to the loop facility so that they can test for themselves. Id. The CLECs have not alleged that Qwest has failed to fully implement this obligation. Id. Instead, Covad demands that Qwest conduct testing that has no basis in law. Id. Because different CLECs deploy varying DSLAM equipment, this demand would force Qwest to incur the substantial burden and expense of obtaining a range of types of test gear that are compatible with the various CLECs' xDSL services, and making that gear available at various places in the network. Id. Qwest states that this clearly is outside the scope of the FCC's current requirements. Id.

b. Discussion and Staff Recommendation

176. In its Proposed Findings of Fact and Conclusions of Law, Staff agreed with Qwest that it was complying with the FCC obligations regarding testing. Qwest is currently offering CLECs access to the loop facility so that they can do further testing themselves. 47 CFR §51.319(h)(7)(I); *Line Sharing Order* ¶118; *Line Sharing Reconsideration Order* ¶27. Qwest's position was reasonable and Staff adopted it.

177. Despite the fact that Qwest won this issue, and despite the fact that no commission has ordered Qwest to provide such data continuity testing, Qwest has decided that it will provide such testing to CLECs. In Washington on July 13, 2001, Qwest stated that it and Covad negotiated the following consensus SGAT language on this issue:

> 9.4.5.1.3.1 Qwest will test for electrical faults (e.g., opens, and/or foreign voltage) on Shared Loops as part of basic installation. Testing will be done in such a way as to ensure circuit integrity from the central office Demarcation Point to the MDF.
>
> 9.4.6.3.3 Qwest will test for electrical faults (e.g. opens, and/or foreign voltage) on Shared Loops in response to trouble tickets initiated by CLEC. Testing will be done in such a way as to ensure circuit integrity from the central office Demarcation Point to the MDF. When trouble tickets are initiated by CLEC, and such trouble is not an electrical fault (e.g. opens, shorts, and/or foreign voltage in Qwest's network, Qwest will assess CLEC the TIC Charge.

178. Qwest stated that it can begin offering such testing capability on September 15, 2001. Qwest Comments at p. 7. Qwest stated that this clearly goes beyond its legal obligations and shows that Qwest remains prepared to discuss issues irrespective of how they are resolved in workshops. Id. It also demonstrates that Qwest

is committed to providing quality service to the CLECs. Id. Staff commends Qwest for going beyond what it was required to do and working with the CLECs to resolve their concerns. Staff recommends that Qwest's consensus language be adopted.

DISPUTED ISSUE NO. 4: Whether the 10,000 Line Limit is Lawful and Appropriate.

a. Qwest and CLEC Positions

179. Covad argues that Qwest has permitted other CLECs to mount their splitters on the MDF in offices with more than 10,000 lines but has unfairly refused to accord Covad the same option. Covad and Rhythms Br. at p. 17-18. Qwest's proposed SGAT language in section 9.4.2.3.1 allows Qwest the power to unilaterally, and without warning, alter Covad's rights to mounting a splitter on their MDF simply by redesignating an MDF as an ICDF. Id.

180. Qwest, on the other hand, argued that the incident in which Qwest allowed a CLEC to avoid the 10,000 line limit (which Covad acknowledged) occurred because the frame at issue was an IDF that became an ICDF, which does not face the 10,000 line restriction. Qwest Brief at p. 19. This isolated incident in Colorado does not support Covad's request in that Covad offered no evidence of any similar situation in Arizona. Id.

181. Qwest also stated that there is no obligation for Qwest to allow Cosmic/MDF splitter collocation in all circumstances. Qwest Brief at p. 19. Qwest stated that Covad's proposal would preclude Qwest from recovering its legitimate costs that it incurred based on the Interim Line Sharing Agreement. Id. Qwest argues that it is entitled to recover its just and reasonable costs of providing CLECs access to its facilities and equipment. Id.

182. Qwest states that its position is reasonable. Qwest indicated that it would remove the restriction for situations in which the current line splitter bays and racks have been fully utilized. Qwest Brief at p. 20. Thus, Qwest states that the 10,000 line limit is not only lawful and reasonable, but it is also necessary to ensure Qwest recovers its legitimate costs related to line sharing. Id.

b. Discussion and Staff Recommendation

183. Staff agrees with Qwest that there is no obligation for Qwest to allow the same collocation arrangement for a CLEC every time. Covad fails to submit any evidence on the record that this situation has or is occurring in Arizona. Therefore, Qwest's position is reasonable and is adopted by Staff.

184. No party filed comments on Staff's proposed resolution of disputed issue no. 4. Nonetheless, Staff believes that Qwest's offer to remove the restriction for situations in which the current line splitter bays and racks have been fully utilized should be accepted and that language should be added to the SGAT reflective of this.

DISPUTED ISSUE NO. 5: Whether Qwest's Five Day Interval is Lawful.

a. Qwest and CLEC Positions

185. Covad argued that the work necessary to provision a line shared loop is minimal and that Qwest insists on the same five (5) business day interval for both stand alone and line shared loops. Covad and Rhythms Brief at p. 16. Covad goes on to state that Qwest has had the opportunity to resolve and potentially automate, the line sharing provisioning process. Covad and Rhythms Brief at p. 17. This stands in stark contrast to the intervals set by other ILECs, including SBC, Verizon, and Bell South, which all have three day intervals for line share orders. Id.

186. Covad proposes that Qwest adhere to a graduated line sharing interval, beginning with a three day interval and then dropping down to a one day interval after six months. Covad and Rhythms Brief at p. 17.

187. Qwest argues that Covad's reasoning for demanding a shorter interval is one of having a "competitive edge" over Qwest in the provisioning of retail services using DSL technology. Qwest Brief at p. 20. Qwest states that the FCC has clearly established the appropriate standard as nondiscriminatory access, measured by parity with Qwest's retail processes. Id.

188. Qwest went on to state that its retail DSL provisioning interval is ten days, yet its line sharing interval is five days. Qwest Brief at p. 22. Qwest claims that it is already providing CLECs with a faster interval than required to comply with the parity standard. Id. Qwest's installation intervals are reported in Performance Indicator Definition OP-4 – Installation Interval, which is comprised of subparts A through E. Id. Subparts A through C report products provisioned through Qwest's non-design flow and subparts D and E report products provisioned through the design flow. Id. Qwest's current report indicates that its actual provisioning interval for these line sharing orders is approximately five and one-half days. Id. Qwest claims that its current report indicates that its actual provisioning interval for Qwest retail DSL service is approximately ten and one-half days. Id. Qwest argues that the performance results establish that the line sharing interval Qwest provides to CLECs is approximately half the interval Qwest provides to its retail customers. Qwest Brief at p. 23.

189. On June 5, 2001, Qwest docketed a letter whereby Qwest agreed to reduce the interval to provision line sharing from 5 business days to 3 business days beginning

July 1, 2001.[4] While this concession did not resolve the issue, Qwest is willing to provide this refined position as a voluntary offering in Arizona. Id.

b. Discussion and Staff Recommendation

190. The issue to be concerned with here is a standard that promotes parity with Qwest's retail performance recognizing that CLECs need an extra day or two to begin service to end users. Qwest's five-day interval does not appear to be outside the range of intervals to establish parity with Qwest's retail operations. Nonetheless, Qwest has offered to reduce the interval to provision line sharing from 5 business days to 3 business days beginning July 1, 2001. Staff accepts Qwest's proposal of a three-day provisioning interval but recommends Qwest target a two-day interval in the future. Since provisioning Line Sharing requires a Central Office dispatch, a one day interval may be too short; however 2 days should not be an unreasonable objective. Therefore, while Staff does not agree to Covad's request for a one-day interval, it is hopeful Qwest will strive to achieve a two-day interval in the provisioning of line-sharing. Staff further recommends that the acceptance of Qwest's three-day interval should be with the understanding that it should be revisited with Qwest in the very near future, particularly if retail performance shows improvement.

191. AT&T filed comments suggesting that Staff's encouragement to work toward abbreviated intervals be converted into an express provision in the SGAT. AT&T offered the following proposed language:

> On or before January 1, 2002, Qwest shall file with the Commission either an amendment to this SGAT abbreviating this interval to no greater than two days or a statement setting forth its reasons for not filing such an amendment.

192. Staff believes the additional language requested by AT&T is reasonable and should not impose any burden on Qwest, and in fact, may act to incent Qwest to improve its current provisioning interval. Staff recommends that Qwest be required to incorporate this language into its SGAT.

2. SUBLOOP IMPASSE ISSUES

DISPUTED ISSUE NO. 1: Whether the SGAT's Provisions for Access for Subloop Elements at MTE Terminals is Consistent With the FCC's Definition of, and Rules Regarding Access to, the Unbundled NID?

a. Qwest and CLEC Positions

[4] June 5, 2001 Letter from Chuck Steese, Qwest, to Maureen Scott, ACC Counsel.

193. AT&T argued that Qwest has ignored important distinctions contained in the FCC's rulings regarding access to NIDs and MTEs. AT&T Brief at p. 13. Specifically, Qwest completely ignores both the definition and the relevancy of the access to the NID in its current SGAT language and in the workshop and requests that Qwest make all conforming changes necessary to comply with relevant FCC rulings and to allow simple and unencumbered access to the on-premises wiring. Id.

194. Before the *UNE Remand Order*, the FCC considered the NID to be a "cross-connect device used to connect loop facilities to inside wiring." AT&T May 21, 2001 Brief at p. 13. *UNE Remand Order* ¶ 230. 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." Id. at p. 14. *UNE Remand Order* ¶ 233. 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 premises. Id. 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. Id. The demarcation point is where control of wiring shifts from the carrier to the subscriber or premises owner and so accordingly, the NID is not necessarily the demarcation point. Id. 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. Id. While the FCC's definitional change is largely non-impacting for single unit residential locations, it is significant for MTEs and was made because the prior loop definition "may not provide the competitor with actual access to the subscriber." Id. at p. 15. The FCC modified its definition of the unbundled loop, clearly stating the "revised definition [of the loop element] retains the definition from the *Local Competition First Report and Order*, but replaces the phrase 'network interface device' with 'demarcation point' and makes explicit that dark fiber and loop conditioning are among the 'features, functions and capabilities' of the loop." Id. at p. 16.

195. AT&T argues that in the *UNE Remand Order*, the FCC created a separate distinct section regarding access to the NID. AT&T Brief at p. 16. In doing so, the FCC made clear that unencumbered access to the NID is technically feasible and particularly important because denial of access "would materially diminish a competitor's ability to provide the services it seeks to offer," and "would materially raise entry costs, delay broad facilities-based entry and materially limit the scope of the competitor's service offerings." Id. 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." Id.

196. AT&T went on to state that Qwest serves MTE's primarily through one of two means – Option 1 or Option 3 wiring. AT&T Brief at p. 16. 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. Id. 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. Id. However, in light of the FCC's definition of NID discussed above, AT&T's access should not be encumbered just because Qwest owns the on-premises wiring. Id. at p. 17.

197. Cox argued that Qwest's Cable, Wire and Service Termination Policy must be modified. Cox discusses "Option 3" wiring under Qwest's tariff and states that 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. Cox at p. 6. To avoid the continued proliferation of "Option 3" MTEs and the related problems that effectively prohibit CLECs from non-discriminatory access to subloops, Qwest should modify its tariff to eliminate any option that would allow an MTE – either a new MTE or an existing MTE undergoing a significant reconfiguration/upgrade of entrance facilities – to have a demarcation point anywhere other than at the MPOE. Id. at p. 7. Qwest's tariff should also require that the MPOE be placed at the edge of the MTE property to allow easy and non-disruptive access by CLECs wanting to serve the MTE tenants. Id. The Commission should make clear that, upon request of the MTE owner, Qwest must create a single demarcation point at the MPOE and relinquish ownership of the wire on the customer side of the demarcation point. Id. While ongoing adequate access to subloop elements such as campus wire cannot be assured through some SGAT language, Qwest must take actions that will create a situation where CLEC access to MTE facilities is guaranteed on a going-forward basis. Id at p.8.

198. Qwest, however, argued that this issue is simply a terminology issue in that the issue stems from what do we call these terminals when they are demarcation points and what do we call these terminals when they are not. Qwest Brief at p. 4. Rule 319 (a)(2)(D) provides that "[a]ccess to the subloop is subject to the Commission's collocation rules." Id. In order to avoid the application of the collocation rules, AT&T claims that the accessible terminals it seeks to access in conjunction with subloop elements constitute unbundled NIDs, and therefore are not subject to the collocation rules. Id. This contention has no merit as a matter of law. Id.

199. Qwest argues that in defining the UNE NID, the FCC expressly "declined to adopt parties' proposals to include the NID in the definition of the loop." Id. at p. 5. The FCC created a distinction between the unbundled NID, which is defined as the demarcation point, and the functionality of the NID, which is included in the subloop elements CLECs purchase. Id.

200. Qwest goes on to state that AT&T is claiming that any accessible terminal that includes the cross-connect and electrical overvoltage protections that a NID performs constitutes a NID to which Qwest must provide unbundled access pursuant to Rule 319(b). Id at p. 6. This contention ignores the FCC's plain distinction between the functionality of the NID, which the FCC expressly held is included as part of a subloop, and the unbundled network element NID, which the FCC clearly defined as the

demarcation point between "end-user customer premises wiring [and] the incumbent LEC's distribution plant." Id. The FCC specifically determined that the functionality of the NID is part of the subloop element, but that functionality does not satisfy the definition of the unbundled NID. Id.

b. Discussion and Staff Recommendation

201. Staff in its Proposed Findings of Fact and Conclusions of Law agreed with the Multi-State resolution of this issue and believes that the language proposed in the Emerging Services Multi-State final report strikes a reasonable balance between the positions of the parties. The resolution of this issue (outside the context of in – or on-building MTE terminals) should not try to define the problem away generally by recourse to broad FCC NID and collocation definitions and requirements. There should rather be recognition in the SGAT of the need to address access to "accessible" terminals for subloop elements. The following proposed SGAT language was recommended in the Multi-State final report and Staff finds that it would also be appropriate in Arizona and therefore recommends that Qwest revise its SGAT accordingly:

> (a) For any configuration not specifically addressed in this SGAT, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any collocation or other provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards and practices to be applied at Qwest facilities where they are also used by CLECs for subloop element access, and (6) any other requirements, standards, or practices necessary to assure the safe and reliable operation of all carriers' facilities.
>
> (b) Any party may request, under any procedure provided for by this SGAT for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such a process.
>
> (c) Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in item (1) above only those requirements or intervals that are reasonably necessary.

202. AT&T in its Comments to Staff's Proposed Findings of Fact and Conclusions of Law opposed adoption of the language from the Seven State process stating that it ignored FCC language which gave certain access rights to CLECs. AT&T Comments at p. 3. AT&T goes on to argue that if the Commission takes into consideration that the Qwest defined building terminal is what AT&T and the FCC define as a NID, there is an irrefutable presumption that access to it is technically feasible. Id. AT&T argues that denial of efficient, unencumbered access "would materially diminish a competitor's ability to provide the services it seeks to offer" and "would materially raise entry costs, delay broad facilities-based entry and materially limit the scope of the competitor's service offerings." AT&T Comments at p. 4. AT&T went on to argue that under the recommended SGAT language, every time the CLEC came across a new configuration, Qwest would be afforded the opportunity to create standard terms and conditions for CLEC access. Id. AT&T states that Qwest should not be allowed to create access parameters to that access, except for the obvious unwritten need to utilize technically feasible and appropriate methods for wire capture. Id.

203. AT&T also states that the Staff recommendation creates more practical problems than it solves. Viewing the language in a practical perspective, when an AT&T technician came across a new type of terminal, he or she would first have to contact AT&T attorneys to determine if access to that particular type of terminal was contemplated in the SGAT. If not, the CLEC would have to wait, possibly ad infinitum, for Qwest to put forward the access protocol while AT&T and its customers have to wait. Id. If the CLEC disagreed with the access protocol, it would have to engage in a lengthy dispute resolution process. AT&T Comments at pps. 4 and 5.

204. Staff first notes that Qwest's SGAT should, and does, provide for access as required by the FCC rules. The recommended language only addressed unique situations not contemplated by the FCC rules and regulations and Qwest's current SGAT. Given this, Staff believes that the recommended language is appropriate. Nonetheless, Staff also is very troubled by the concerns raised by AT&T. Specifically, Staff believes that the current language alone could engender significant delay for the CLECs, which could greatly impair their ability to compete with Qwest. To address this, Staff would propose the following language for subpart (c) above in lieu of the language set forth above.

> (c) Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in item (1) above only those requirements as are reasonably necessary and shall make its determinations within 10 business days and shall apprise the CLEC of the conditions for access. If there is a dispute regarding the conditions for access, Qwest shall attempt to accommodate access pending resolution of the specific issues in dispute.

In addition Staff recommends that the 45 day timeline contained in Section 9.3.3.7.1 of the SGAT be shortened to 30 days which Staff believes should permit Qwest sufficient

time to rearrange its MTE Terminal to make space for the CLEC. These two changes should act to alleviate many of the CLECs' concerns regarding delay.

DISPUTED ISSUE NO. 2: Whether CLECs Must Submit LSRs to Order Subloops?

a. Qwest and CLEC Positions

205. AT&T argued that Qwest's requirement that a CLEC submit a local service request ("LSR") before obtaining access to a subloop element is a discriminatory practice not permitted by the Act. AT&T Brief at p. 18. Qwest's LSR requirements violate Qwest's nondiscrimination obligations because it creates a much more burdensome means of access than Qwest affords itself. Id. Qwest's proposal to require an LSR is an expensive and a relatively complex automated system that they do not currently possess. Id. at p. 19. AT&T proposes that the CLEC submit to Qwest a statement specifying the cable and pair employed by the CLEC and the address of the MTEs in which AT&T has obtained access. Id. AT&T proposes that such information may be aggregated for all subloops accessed by AT&T at an MTE terminal and that such information will be provided by CLECs to Qwest *monthly*. Id.

206. Qwest stated that submission of an LSR is the industry standard for wholesale orders and that the process the Ordering and Billing Forum ("OBF") has defined for ordering subloops is based on submission of an LSR for all subloop elements, including feeder, distribution, and specifically including intrabuilding cable. Qwest Brief at p. 7. The LSR contains information regarding the interconnection point between the CLEC network and the Qwest network while also containing information Qwest requires for billing, tracking inventory, and identifying the circuit for maintenance and repair purposes. Id at p. 8. Both CLEC and Qwest customers will be adversely affected by the lack of a timely LSR due to the resultant inaccuracies in Qwest's systems, which will impede Qwest's repair efforts. Id. AT&T's demand is unreasonable because the absence of an LSR would dramatically increase Qwest's costs and impede Qwest's ability to service its own retail customers. Id. at p.9-10. Therefore, AT&T should be required to comply with the industry standard. Id. at p. 12

b. Discussion and Staff Recommendation

207. Staff agrees with Qwest that a CLEC should be required to submit an LSR to order subloops. As Qwest points out, submission of an LSR is the industry standard for wholesale orders. However, it does not follow that completion of the LSR process by Qwest is necessary before a CLEC may obtain MTE access to on-premises wiring.

Therefore, Staff proposes that Qwest change its SGAT to allow CLEC access immediately after the LSR has been submitted. Qwest should not prevent delay CLEC access while it while it gathers the information necessary to complete the LSR process. Staff believes the language adopted in the Multi-State process should be added to the Arizona SGAT:

> For access to Qwest's on-premises MTE wire as a subloop element, a CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the subloop element as of the time of LSR submission by CLEC.

208. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argued that the Multi-State resolution did not alleviate its concerns. AT&T states that it merely intends to capture the internal wiring through the NID. AT&T Comments at pps. 5-6. AT&T stated that this access should be simple and unencumbered. AT&T Comments at p. 6. The LSR process, according to AT&T, is costly, currently technically infeasible and burdensome and discriminatory to the CLEC when more simple methods produce the same result. Id.

209. AT&T goes on to argue that neither AT&T or any CLEC has developed or incorporated systems to provide LSRs for capturing internal customers. Id. AT&T states that if a new type of LSR is required, it would seriously inhibit competition because AT&T has neither the systems or the personnel to contemplate such a transfer of information under that format. Id. Furthermore, it states that Qwest has not put forward any type of technical LSR protocol. AT&T instead states that it will provide relevant information that Qwest asserts it needs, in a statement format, on a monthly basis.

210. Staff still believes that the appropriate method for AT&T and other CLECs to order a subloop element is to follow the established process of submitting an LSR. In adopting the language of the Multi-State Report, Staff is not contemplating that Qwest will have to go through a lengthy process to develop a new type of LSR but will utilize its existing LSR, and capture any other unique information needed to process the LSR through other means. To the extent a new abbreviated LSR process is ultimately required for subloops, than Qwest should be required to use its existing LSR until such time as a new LSR and process have been developed and CLECs have been given sufficient time to migrate to it. Staff has already recommended that the CLEC be given access to the MTE terminal once the LSR is submitted and before the LSR process is completed. Indeed, this language is contained in the proposed language from the Multi-State Report which Staff recommends that this Commission adopt.

211. Staff also believes that AT&T's proposal to provide Qwest with the information it needs on a monthly basis is not satisfactory and would most likely lead to considerable delay and dispute over access and ownership issues resulting in an entirely unworkable process.

DISPUTED ISSUE NO. 3: Whether an Inventory of CLEC Facilities Must be Created Before CLECs May Obtain Access to Subloop Elements in an "MTE Terminal"?

a. Qwest and CLEC Positions

212. AT&T argued that its concerns were premised upon its belief that Qwest would require a CLEC to await an inventory of Qwest's subloop terminations at a connector block.. AT&T Brief at p. 24. AT&T maintains that there is no practical purpose served by requiring a CLEC to await Qwest's inventory of subloop terminations. Id. Also, AT&T believes that any termination information, even of AT&T's cable and pair is of limited use to Qwest and is unconvinced that supplying termination information will provide any significant improvement in Qwest's response to such low rates of failure. Id. at p. 25. Finally, AT&T had concerns that Qwest's inventorying proposal would require the CLEC to pay an unspecified sum for Qwest to develop or augment an inventory system which AT&T believes that this charge is unjustified and discriminatory. Id. at p. 26.

213. AT&T stated that Qwest should be required to clarify the precise nature of the inventory and the work involved. Qwest Brief at p. 26. The SGAT should be modified to make clear that either no information is required of the CLEC for Qwest to establish such inventory or that any information that may need to be provided by CLEC may be easily provided when CLEC contacts Qwest for a determination of ownership of on-premises wiring. Id. Finally, AT&T believes that any cost passed on to the CLECs so that Qwest can inventory its own facilities is discriminatory and that SGAT section 9.3.6.4.1 should be deleted.

214. Qwest stated that the function of the inventory is to create a record in Qwest's systems of the CLEC's termination points for the purpose of submitting the LSR for the subloop element. Qwest Brief at p. 12. Qwest also stated that AT&T's argument is one of timing. Id. Qwest has agreed to provide this inventory in five days as this inventory only applies to the first subloop order in a MTE. Id. at 12-13.

b. Discussion and Staff Recommendation

215. Qwest shall, as it has agreed, provide the inventory in five days since the inventory only applies to the first subloop order in a MTE. However the inventory can be done and should be done during the LSR completion process by Qwest and should not result in any delay in access to the CLEC. Staff also agrees with AT&T that Qwest has not justified its proposed inventory charge, and accordingly SGAT section 9.3.6.4.1 should be deleted.

216. AT&T filed Comments to Staff's Proposed Findings of Fact and Conclusions of Law agreeing with the Final Report's finding on this issue if the commission requires an LSR. If the Commission finds that no LSR is required, AT&T agrees that any inventorying that Qwest decides to engage in should not inhibit any CLEC's entry into an MTE.

217. Staff recommends adoption of its original findings and conclusions on this issue.

DISPUTED ISSUE NO. 4: Whether Qwest Must Determine Whether it Owns the Intrabuildng Cable (or Inside Wire) Before a CLEC May Access Subloop Elements? If so, Whether Qwest's Processes for Determining Such Ownership Are Appropriate.

a. Qwest and CLEC Positions

218. AT&T's concern here is with the delay associated with Qwest's ability to confirm ownership of on-premises wiring before a CLEC may access subloop elements. AT&T Brief at p. 29. In the FCC's *MTE Order*, it required the incumbent LEC to move minimum point of entry at an MTE, which would determine the extent of the parties' ownership of on-premises wiring, at the MTE owners request. AT&T Brief at p. 27. The incumbent must engage the MTE owner in good faith negotiations for relocating the MPOE that must conclude within 45 days. Id. An MTE owner may presume that the demarcation point between an incumbent LEC's facilities and the owner's facilities is at the MPOE if the incumbent fails to provide information on such demarcation point within 10 days of an owner's request. Id. The SGAT allows Qwest to make a determination of whether it owns the on-premises wiring at an MTE within 10 days after CLEC's notification of its intent to provide service at such MTE. Id. at p. 28.

219. AT&T proposed to allow CLECs to ask the MTE owner whether it owns the on-premises wiring or not. Id. Where an MTE owner asserts ownership, a CLEC will access the on-premises wiring at the NID or elsewhere as negotiated with the MTE owner since Qwest's involvement in this type of arrangement is appropriately limited. Id. If an MTE owner disclaims ownership or fails to respond to a CLEC's request, or if CLEC decides in the first instance to contact Qwest, the CLEC will ask Qwest whether it is the owner of on-premises wiring. Id. AT&T anticipates that in some instances the MTE owner and Qwest may dispute ownership, or that ownership may be otherwise unclear and AT&T's proposal allows the CLEC to obtain access notwithstanding the dispute. Id. Also, AT&T's proposal makes clear that Qwest will not charge a CLEC for

its investigation of whether it owns the on-premises wiring. Id. at 29. Therefore, AT&T proposes Sections 9.3.8.2 and 9.3.8.4 be included in Qwest's SGAT in lieu of Qwest's SGAT Section 9.3.5.4.1. Id. at p. 30.

220. Qwest argued that its subloop proposal specifically provides Qwest with ten (10) days from a request from a CLEC to determine whether Qwest or the landlord owns the facilities on the customer side of the MTE Terminal. Qwest Brief at p. 13. This process is necessary because it determines where Qwest's network - and its maintenance and repair obligations - ends and the customer premises facilities begin. Id.

b. Discussion and Staff Recommendation

221. AT&T makes a valid argument that determining ownership should only take a nominal time period after the issue has already been raised by another CLEC at the same MTE. In addition, where as AT&T proposes, a CLEC obtains reliable information from the MTE owner that it owns the on-premises wiring, and the CLEC provides such information to Qwest, the full 10 day period should not be required by Qwest. Staff recommends that the CLEC be given access in three days in such cases. In addition, if there is a dispute as to ownership, Staff agrees with AT&T, that the CLEC should have access pending expiration of the 10 day period and resolution of the dispute. Finally, Staff agrees with AT&T that the charge proposed by Qwest for maintenance of its own records pertaining to MTE on-premises wiring ownership is not justified and should be eliminated. Qwest should modify its SGAT consistent with the Staff recommendation.

222. AT&T filed Comments to Staff's Proposed Findings of Fact and Conclusions of Law stating that it agreed with Staff's proposed resolution of this issue.

223. Qwest filed Comments to Staff's Proposed Findings of Fact and Conclusions of Law stating that in the *MTE Order*[5], the FCC held that the ILEC has up to 10 business days to determine ownership of the intrabuilding cable. Qwest Comments at p. 8. Qwest requests that Staff adopt the time intervals adopted in the Seven State process which would be 2 days when there has been a previous determination of on-premises wiring ownership at the same MTE and 5 days when the CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the customer side of the terminal. Qwest Comments at p. 9. Qwest desires some uniformity here so that it will have a uniform process that it can apply and

[5] First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, In the Matter of Promotion of Competitive Networks in Local Telecommunications markets, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception of Transmission Antennas Designed to Provide Fixed Wireless Services, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, CC Docket No. 96-98 and 88-57, FCC 00-366 (Rel. October 25, 2000)("*MTE Order*").

implement region wide. Id. Qwest states that this will help it train its people, to implement the policy and to provide better more consistent service to CLECs. Id.

224. Qwest recommended inclusion the following SGAT language at the end of SGAT Section 9.3.5.4.1:

> In the event that there has been a previous determination of on-premises wiring ownership at the same MTE, Qwest shall provide such notification within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the customer side of the terminal, the preceding ten (10) day period shall be reduced to five (5) calendar days from Qwest's receipt of such claim.

225. Staff believes that Qwest's request is reasonable and since it is not much different than what Staff proposed, Staff recommends that the language proposed by Qwest be adopted.

DISPUTED ISSUE NO. 5: Assuming Qwest's Processes (Including Qwest's Determination of Ownership, Inventory of Terminations, FCP and Collocation Processes) Are Appropriate, Whether the Intervals Provided by Qwest for Such Processes Are Appropriate?

a. Qwest and CLEC Positions

226. AT&T argues that extensive intervals put CLECs at a competitive disadvantage. AT&T Brief at p. 31. AT&T's modified proposals for both determining ownership and conducting an inventory now contemplate intervals similar to the ones Qwest has advocated. Id. at p. 30. To the extent the Commission decides not to adopt AT&T's proposal, partially rejects them, or recommends another alternative, AT&T requests that they consider the effect of the intervals as part of the totality of such processes. Id. at p. 30-31. AT&T would propose that Qwest's existing intervals be clarified in that it is AT&T's understanding that the longest interval for determination of ownership and inventorying by Qwest should not be any longer than 15 days. Id. at p. 31.

227. Qwest, on the other hand, has proposed standard intervals to address the amount of time Qwest has to perform the up front work required to gather the appropriate information and enter it into Qwest's systems, to install a field connection point ("FCP") and provide cross-connect collocation. Qwest Brief at p. 14. Qwest's ten- calendar day interval for determining ownership of MTE wiring is reasonable as a matter of law. Id. In the *MTE Order*, the FCC held that the ILEC has up to ten business days to determine ownership of the intrabuilding cable. Id. Qwest has committed to ten calendar days which is less than the amount of time entitled by law. Id.

228. Once ownership is determined, the interval for inventorying the CLEC's terminal begins. Qwest Brief at p. 15. Qwest reduced its proposal for the inventory interval from ten to five calendar days, running from the end of the interval for determining ownership. Id. It is also important to note that the ownership inquiry and the inventory are required only once since after the first subloop order in a MTE, these intervals do not apply. Id. For those subsequent orders, the interval is either zero days (for intrabuilding cable) or five days (for distribution subloop). Id.

229. Qwest also stated in reference to AT&T's previous objection to Qwest's intervals for installing an FCP and for cross-connect collocation, where required, that it only requires an FCP for CLECs to access a detached terminal. Qwest Brief at p. 16. Qwest offered to eliminate the SGAT provision requiring an FCP for closed terminals in order to simplify access to those terminals. Id. The interval for FCP and cross-connect installation is 90 days. Id. While AT&T did not focus specific criticism on this interval, Qwest did provide in a general way the basis for this interval. Id. First, the FCC's rule on subloop expressly indicates that collocation applies to subloop access, and (2) the FCC adopted a standard 90 day collocation interval for all forms of collocation. Id. at p. 16-17. Since the 90 day interval was adopted during the workshops without objection, there is no reason to utilize any different interval and AT&T has not attempted to put forth evidence explaining why a shorter interval is appropriate. Id.

b. Discussion and Staff Recommendation

230. This impasse issue is closely related to a number already decided. Qwest has made a number of important concessions including the elimination of FCP requirements for on-premises wiring access in a number of MTE situations. These concessions, together with resolution of impasse issues 2, 3 and 4 above, ameliorate the need for further relief at the present time.

DISPUTED ISSUE NO. 6: Whether CLEC is Entitled to the Option of Having Qwest or CLEC Run the Jumpers Necessary to Access Subloops in MTE Terminals Regardless of the Type of Subloop Ordered or is Section 9.3.5.4.5 the Proper Approach (for Intrabuilding Cable, CLEC Runs the Jumpers and , for Other Subloops, Qwest Runs the Jumpers)?

a. Summary of Qwest and CLEC Positions

231. AT&T argued that the impasse here is part of a larger category of issues regarding physical access to MTE terminals. AT&T Brief at p. 31. Qwest's proposals regarding this issue lack credibility. Id. at p. 34. Qwest's policies and treatment of different terminals seem arbitrarily rooted in its Standard MTE Terminal Access Protocol and its Cable Wire Termination Policy (in Option 1, one kind of access, in Option 3 another), and Qwest maintains a dubious distinction between NID and certain MTE terminals. Id. Qwest's proposal for actual physical access has several components including the establishment of an MTE-POI in all cases in which a CLEC accesses on-premises wiring, prohibiting "temporary wiring or cutover devices" and that more

specific guidance be memorialized in a document entitled "MTE Terminal Access Protocol". Id. at p. 34-35.

232. AT&T stated that its proposal is much simpler in that it affords a CLEC direct access. AT&T Brief at p. 35. AT&T proposes that existing connector blocks at the MTE terminal may be used by a CLEC, CLECs may install their own connector blocks, and in the rare instance in which it might be necessary, CLECs may access subloop elements through a field splice. Id. Since AT&T's proposal does not require an MTE-POI, the parties need not resolve the issue of jumpering to the MTE-POI since it allows the CLEC to perform all necessary jumpering. Id.

233. Qwest argues that AT&T's arguments fails as a matter of law. Qwest May 21, 2001 Brief at p. 17. By having CLECs run the jumpers in MTE Terminals when CLECs order intrabuilding cable, Qwest has gone well beyond its legal requirements as well as the subloop unbundling policies of other ILECs such as Bell Atlantic and SBC. Id. The FCC took the position that a LEC is allowed to take reasonable steps to protect its own equipment, up to and including segregating its equipment from CLEC equipment in a collocation space. Id. at p. 18. Such segregation would allow the LEC to preclude a CLEC from being able to access LEC services and equipment. Id. The only way Qwest can reasonably protect its equipment and prevent CLECs from accessing the cable pairs though which Qwest provides local exchange service, is to limit access for the purpose of running the jumpers to Qwest technicians. Id. Qwest stated that both SBC and Verizon have obtained 271 approval with a policy of running jumpers in all circumstances. Id.

234. Qwest's SGAT has CLECs performing jumper work in MTE Terminals. *Id*. at p. 18. CLECs run their own jumpers in MTE Terminals for access to intrabuilding cable subloops, which is where most of the demand for MTE subloops is. Id. However, Qwest's systems do not allow for CLECs to run the jumpers in MTE Terminals for distribution subloops.

b. Discussion and Staff Recommendation

235. This impasse issue is closely related to the first impasse issue – *Access to Subloop Elements at MTE Terminals*. The process set forth in impasse issue 1 should be utilized in this instance as well and the CLEC request allowed where it can be supported by the considerations set out.

DISPUTED ISSUE NO. 7: Whether Qwest Must Provide Access to Copper Feeder and Fiber Subloops?

a. Qwest and CLEC Positions

236. Qwest recently agreed with AT&T's proposed compromise that copper feeder and fiber subloops would be deemed "nonstandard" subloop elements and would be available only through Qwest's "Special Request Process." AT&T Brief at p. 39. AT&T anticipates, however, a thorough discussion of Qwest's Special Request Process

in the General Terms and Conditions Workshop in that its compromised position is premised on the belief that Qwest's Special Request process will be meaningful, efficient and a expedient mechanism for obtaining access to copper feeder and fiber subloops. Id. at p. 40.

237. Qwest has agreed to provide CLECs access to the subloop feeder facilities that run from the MDF or COSMIC in the central office to the FDI. Qwest Brief at p. 19. Qwest has also offered CLECs access to dark fiber at accessible terminals in Section 9.7 of the SGAT, which addresses unbundled dark fiber loops. Id. at p. 21. Qwest offered to modify SGAT Sections 9.3.1.7 to include a specific reference to copper feeder as an example of the additional subloop elements that CLECs can request through the special request process. Id. It also offered up language in SGAT Section 9.2.2.3.1 to offer access to high capacity loops at accessible terminals. Id. at p. 21. The language as proposed is as follows:

> 9.3.1.7. Qwest shall provide access to additional Subloop elements, e.g. copper feeder, to CLEC where facilities are available pursuant to the Special Request Process in Exhibit F.
>
> 9.2.2.3.1 Qwest shall allow CLECs to access high capacity loops at accessible terminals, including DSX FDPs or equivalent in the central office, customer premises or at Qwest owned outside plant structure, (e.g. CEV, RT or hut).

238. On the basis of this compromise, this impasse issue was closed in Colorado and Qwest offers to bring this language into the Arizona SGAT.

b. Discussion and Staff Recommendation

239. On June 5, 2001, Qwest docketed a letter whereby it stated it would offer copper feeder and fiber subloops on an ICB basis if requested.[6] On the basis that AT&T and Qwest have reached a compromise regarding this issue, and to the extent that Qwest has provided modified and new SGAT language, Staff considers this issue closed.

240. AT&T filed Comments on Staff's Proposed Findings of Fact and Conclusions of Law stating that it agreed with the Staff Report's rendition of this issue. AT&T also indicated that it desired to review Qwest's proposed SGAT language on this point. Staff agrees that AT&T should have the opportunity to review Qwest's proposed SGAT language.

DISPUTED ISSUE NO. 8: Whether the Rate for Loop facilities on a Campus, Including Cabling Between Buildings Should be the Same as Distribution Subloop or Priced as a Separate Subloop Element?

[6] See June 5, 2001 Letter from Chuck Steese, Attorney for Qwest, to Maureen Scott, ACC Counsel.

a. Qwest and CLEC Positions

241. AT&T argues that this issue may deceptively appear as purely a pricing issue. AT&T Brief at p. 40. However, it is probably more accurate to address the deeper issue implicated here in that whether Qwest's universe of subloop elements makes sense. *Id*. Qwest establishes two broad categories of subloops: feeder and distribution. Id. AT&T claims that in Qwest's view, feeder may originate in a central office and terminate at the FDI or, in some instances, at an MPOE or elsewhere on a customer premises. Id. Distribution may originate at the FDI and terminate on a customer premises. Id. At the customer premises, however, Qwest establishes a third, very specific category of subloop elements that Qwest describes as "intrabuilding cable." Id. Qwest specifically excludes from this description of "intrabuilding cable" cable that may exist on a customer's premises that may extend from or between buildings in a campus setting. Id. at p. 40-41.

242. AT&T states that Qwest's hierarchy of subloop elements is intended by Qwest to rationalize a pricing structure. Id. That pricing structure will demand that a CLEC who acquires "distribution" from a terminal at an MPOE, for example, between two buildings in an office park, to pay the same amount as a CLEC who acquires distribution from the FDI to a customer's home. Id. That structure will also allow a CLEC who accesses "intrabuilding cable" to pay a different, presumably cheaper price for a piece of wire that may extend farther than intracampus wiring. Id. Qwest has not demonstrated that its proposal distinguish "intrabuilding cable" from campus wiring is anything but arbitrary and has never asserted that it is technically infeasible to access campus wiring without access other portions of Qwest's distribution plant. Id. at p. 41-42. Ultimately, if AT&T is required to pay Qwest's "distribution" rate elements for campus wiring, it will pay twice: once for Qwest's distribution plant and once for building its own distribution plant. Id.

243. AT&T's proposal eliminates the arbitrary approach adopted by Qwest and describes a single category that applies to all wiring owned or controlled by Qwest on a customer premises: "On-premises wiring." AT&T Brief at p. 43. On-premises wiring includes Qwest's intra-building cable and also cable between buildings on a customer premises. Id. AT&T's proposal more closely tracks the FCC's language and also provides a clearer, more definite approach to access to wiring on a customer premises. Id.

244. Cox argued that its concerns were with the issue of whether the rate for subloop facilities on a campus, including cabling between buildings, should be the same as distribution subloop or priced as a separate element. Cox Brief at p. 8-9. Cox disagrees with Qwest's past demands – and apparent position here – that Cox must pay for the entire distribution portion of the loop even if it only uses a small portion of those distribution facilities. Id. Cox stated that it is nonsensical for Cox or any other CLEC to pay the full distribution loop price for a small portion of that distribution loop. Id. However, until Qwest changes its position on subloop pricing in the UNE Pricing Docket, Cox does not believe Qwest meets its Section 271 obligations for subloop access.

245. Qwest stated that its current cost studies have averaged the distribution facilities that serve typical residences with the shorter distribution that can occur in an MTE. Qwest Brief at p. 22. If the distribution element were to be deaveraged into two elements – residential distribution and MTE distribution -- the result will be that the rate for the distribution portion of the loop going to typical residences will increase while the rate for the distribution subloop on MTEs would drop which would raise serious policy issues. Id. Qwest recommends that this issue be deferred to the Arizona Cost Dockets where appropriate costing data will be available to the Commission to make a reasoned judgment about whether to create these artificial pricing distinctions and what, if anything, to do about retail rates at the same time. Id.

b. Discussion and Staff Recommendation

246. Staff agrees with Qwest in that the issue of pricing should be addressed in the Arizona Cost Docket where appropriate costing data will be made available for analysis. Therefore, Staff considers this issue closed and referred to the Cost Docket. To the extent it has not already done so, Qwest should be required to submit its proposed pricing for review in the second part of Phase II of the Wholesale Pricing Docket.

247. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T argued that while Qwest acquiesced to direct MTE access, it included various charges including a subloop recurring charge, subloop non-recurring charge for inventorying, and a subloop jumpering charge. AT&T Comments at p. 9. AT&T believes that the mere presence of many of these charges is discriminatory. Id. In the alternative, AT&T believes that if the Commission decides to address these issues in the Wholesale Pricing Docket, it should not issue an opinion on Qwest's compliance until the completion of the relevant pricing analysis in those dockets.

248. Staff recommends rejection of AT&T's arguments. Staff believes that the parties agreed to defer virtually all costing issues arising from the 271 workshop process to the Wholesale Pricing Docket. However, to the extent that Qwest has not addressed these issues in that Docket, it should be required to provide cost support and justification for the charges in the second Phase of that Docket which will examine issues relating to switching.

249. On July 20, 2001, Cox filed Comments on Staff's Proposed Findings of Fact and Conclusions of Law. Cox states that the Commission should decide whether a single subloop price (regardless of what that price is) is appropriate for any portion of the subloop. Cox contends that the entire distribution subloop price should not apply only to a portion of the distribution subloop, such as campus wiring. Cox Comments at p. 2. Cox claims that once the appropriate breakdown of subloop pricing is determined, then referral to the UNE docket for actual pricing of subloop elements is appropriate. Id.

250. The issues to which Cox refers are being addressed in the Wholesale Pricing Docket. Staff believes that the Wholesale Pricing Docket is the appropriate docket to address these issues.

DISPUTED ISSUE NO. 9: Whether it is Necessary or Appropriate for Qwest to Require a Separate Process (Special Request Process (SRP) –See Exhibit F of the SGAT) for Requesting Additional Subloop Elements? (i.e., Must Qwest Develop a Standard Subloop Offering for Every Conceivable Subloop Type Even if Demand for the Product is Virtually Nonexistent?)

a. Qwest and CLEC Positions

251. Qwest states that AT&T objects to Qwest's SRP for requesting additional subloop offerings. Qwest May 21, 2001 Brief at p. 23. Qwest is required to meet "reasonably foreseeable demand" for access to checklist items and thus, when there is little or no demand, Qwest has no obligation to provide a streamlined and standardized product. Id. However, in such cases, Qwest's SRP process allows any CLEC to request that Qwest provide access to subloop offerings that have not been made into actual products. Id. at p. 23-24. Thus, Qwest has a process in place to ensure that it will meet demand for any additional subloop offerings, if such demand should arise. Id.

b. Discussion and Staff Recommendation

252. While AT&T objected to Qwest's SRP for requesting additional subloop offerings, AT&T agreed to a compromise which removed this issue and the issue surrounding Qwest providing access to copper feeder and fiber feeder subloops. AT&T agreed that copper feeder and fiber subloops would be deemed "non-standard" subloop elements and would be available only through Qwest's SRP. Therefore, Staff would support that the resolution described from Disputed Issue No. 7 apply here.

253. AT&T filed Comments to Staff's Proposed Findings of Fact and Conclusions of Law stating that it agreed with Staff's rendition of this issue.

3. Dark Fiber Impasse Issues

DISPUTED ISSUE NO. 1: Whether the Unbundling Requirements Extend Beyond the RBOC (Qwest Corporation)?

a. Qwest and CLEC Positions

254. AT&T argues that the Qwest SGAT violates the Act because it fails to permit CLECs to lease the in-region facilities of Qwest Corp.'s affiliates. AT&T Brief at p. 5. Qwest affiliates that have facilities in the Qwest region must make those facilities available on a resale basis to CLECs, consistent with sections 251 and 252. Id at 7. AT&T, in support of its assertion, notes the definition of ILEC in Section 251(h) of the Act, and state that Qwest and its affiliates or "successors and assigns" of U. S. West Communications, Inc. (USWC) and are therefore "ILECs" as defined by the Act. Id. AT&T further stated that 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 member of NECA, even if that entity was not providing local exchange service in the area or a member of NECA as of that date. Id. AT&T continues that 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. Id at 8.

255. AT&T also stated that in approving the Qwest International, Inc. (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. AT&T Brief at p. 8. In that proceeding, McLeod USA 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. Id. AT&T quoted the FCC:

> 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).

Id. AT&T also states that this conclusion is supported by the analysis of the United States Court of Appeals for the District of Columbia in an appeal of the SBC/Ameritech merger approval. AT&T Brief at p. 9. There, the Court interpreted, "successors and assigns" broadly to include affiliates of the ILEC that provide telecommunications services. Id.

256. AT&T requests that Qwest add language to its SGAT that clarifies QCI and its affiliates are obligated to unbundle their in-region facilities, including dark fiber. Id at 10.

257. In its March 8, 2001 Brief, Qwest argued that the unbundling obligations of section 251(c)(3) apply only to CLECs. Qwest Brief at p. 1. Qwest Corporation is the only ILEC in the Qwest family of corporations. Id. As part of the Qwest/U.S.West merger, U. S. West Communications, Inc. became Qwest Corporation. Id. Prior to the merger, Qwest had no ILEC operations, and U. S. West Communications, Inc. was the only ILEC within the U. S. West family of entities. Id. Thus, Qwest Corporation is the

only ILEC within the Qwest family and consequently, the unbundling requirements of section 251(c)(3) apply only to Qwest Corporation. Id.

258. On March 21, 2001, Qwest filed a Motion to Supplement Briefing Regarding Dark Fiber Impasse Issue DF-1 to supplement the record in response to AT&T's arguments concerning successors and assigns. In that Motion, Qwest states that AT&T's suggestion that every corporate affiliate to an ILEC automatically becomes a successor or assigned of that ILEC is based on a misreading of precedent. Qwest's Motion at p. 3. Qwest states that AT&T's argument fails because no Qwest affiliate acquired substantial assets, or continued any business of the pre-merger USWC, thus there was not "substantial continuity" between them. Id. at 3, 4. It also states that because none of Qwest's affiliates are "local exchange carriers" in Arizona, that none of them can be an "incumbent" local exchange carrier. Id. at 3, 7.

b. Discussion and Staff Recommendation

259. No need has been identified in the record in this case to put such a broad based requirement in place as requested by the CLECs, without regard to the underlying agreements and intended/agreed upon use of the facilities in question. No party has raised any allegation that Qwest is using or attempting to use its affiliates to avoid its Section 251 obligations. Therefore, Staff does not believe that it is necessary to add additional language in the SGAT to address an issue the basis of which is a concern that has not been proven to exist at this time. We also believe that should activities of this nature come to light, that action can be taken at that time to address them. Nonetheless, where the affiliate has given Qwest rights of access to certain facilities to which its Section 251 obligation inure, Qwest must of course make those same rights of access available to other competitive carriers which request same.

260. Qwest should be required to provide access not only to what it owns directly, but to all dark fiber to which it has a right to access for local telecommunications use under agreements with any party, affiliated or not. Moreover, the test should not focus solely upon the type or form of the underlying agreement between Qwest and the third party, but rather the nature and degree of the access that it provides to Qwest. Staff recommends that Qwest revise Section 9.7.1 of its SGAT accordingly.

261. AT&T made several points in its Comments to Staff's Proposed Findings of Fact and Conclusions of Law which Staff believes have merit. First, AT&T argued that there is no logical reason that the language the Staff urges Qwest to be developed could not or should not be extended to apply to all unbundled network elements provided to Qwest by Qwest's affiliates, such as other forms of transport. AT&T Comments at p. 10. AT&T states that the provision should apply to all deployed unbundled network element facilities. Id. Staff agrees on this point and recommends that Qwest include the new SGAT language at the end of SGAT Section 9.1 which deals generally with all UNEs, not Section 9.7.1 which deals specifically with dark fiber.

262. Second, AT&T argues that any provision by Qwest should include language that permits the proposal to be more easily policed. AT&T argues that as a means to satisfy a CLEC as to the restrictions Qwest purports to apply to its own access, Qwest be required to disclose to the CLEC the agreement under which Qwest has obtained access to such facilities. If no agreement exists, Qwest should be required to describe the actual practice and custom which applies or to certify that no agreement, custom or practice exists to permit access to CLECs. AT&T Comments at p. 11. Staff agrees with AT&T on this point and recommends that such a requirement be inserted into the SGAT. Given the obligation on Qwest under the Federal Act to provide nondiscriminatory access to network elements, such a requirement is reasonable to ensure that Qwest is meeting its obligations.

DISPUTED ISSUE NO. 2: Whether Qwest Must Unbundle Dark Fiber it Does Not Own in Meet Point Arrangements?

a. Qwest and CLEC Positions

263. AT&T disagrees with Qwest's position that it will make available dark fiber that exists in joint build arrangements up to Qwest's side of the meet point but refuses to permit CLECs to obtain access to any rights that Qwest has to the use of the facilities of the third party. AT&T Brief at p. 11. AT&T claims that to the extent 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. Id. Without this access, CLECs are impaired in their ability to compete with Qwest in communities of the state where these joint build arrangements exist. Id.

264. AT&T goes on to say that 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. AT&T's Brief at p. 12. AT&T states that it has requested in discovery, samples of joint build arrangements that exist between Qwest and third parties in Arizona, however, Qwest objected to responding to the request. Id. AT&T maintains that, without Qwest's willingness to complete the record on this issue, the determination cannot be made that Qwest is complying with its obligations. Id. AT&T requests that the Commission require Qwest to include terms in its SGAT that allow CLECs nondiscriminatory access to Qwest's rights to use third party property consistent with those that Qwest "enjoys" in any joint build arrangement to which Qwest is a party.

265. Qwest states that it will unbundle dark fiber that it owns as part of a meet-point arrangement. Qwest's Brief at p. 2; Tr. at 1528:7-15. Additionally, Qwest has added the following language as Section 9.7.2.20 to its SGAT:

> 9.7.2.20 Qwest shall allow CLEC to access Dark Fiber that is part of a meet point arrangement between Qwest and another local exchange carrier if CLEC has an interconnection agreement containing access to Dark Fiber

with the connecting local exchange carrier. Qwest rates, terms and conditions shall apply to the percentage of the route owned by Qwest.

Id. at 3. However, Qwest states that it cannot and will not unbundle dark fiber belonging to other entities. Id. at 3; Tr. at 1411:12-14, 1412:8-1413:9.

b. Discussion and Staff Recommendation

266. The issue once again comes down to whether under the agreement with the other carrier, as part of a meet point arrangement, Qwest has sufficient access rights that it could unbundle dark fiber and give access to that fiber to a competing carrier. The proposed language in the preceding issue seems expansive enough to encompass the issues raised here as it pertains to a CLEC's rights to the same access as Qwest enjoys.

DISPUTED ISSUE NO. 3: Whether Qwest Must Unbundle Dim Fiber Lit with Dense Wave Division Multiplexing (DWDM) Equipment?

a. Qwest and CLEC Positions

267. AT&T argues that Qwest should be required to provide nondiscriminatory access to "dim fiber". AT&T's March 9, 2001 Brief at p. 13. AT&T states that "[t]he parties have agreed to incorporate the FCC's decision on this issue into the SGAT." Accordingly, if the FCC decides the issue prior to recommendation by the Commission, the SGAT should be modified accordingly. Id.

268. Qwest argues that it believes that it has no obligation to unbundle fiber lit with DWDM equipment. Qwest Brief at p. 3. That assumption is based on the following: Qwest contends that dim fiber is lit and it thus fails the FCC's definition of dark fiber. Id. at 3; Tr. at 1455:17-1456:4. Qwest states that its belief is supported by the fact that the FCC is currently considering whether to impose such an unbundling requirement in a rulemaking. Id. Qwest also states that, in Colorado and the Multistate proceeding, AT&T has conceded that no such obligation exists. Id. at 4; 2/23/01 7 State Workshop Tr. at 236:4-237:1.

269. Qwest further argued that the lack of any such unbundling requirement has been confirmed by the fact that the FCC currently is considering whether to impose such a requirement in a rulemaking and that AT&T appears to have conceded this issue at the state level, given that in Colorado and the Multi-State proceeding, it has conceded that no such obligation exists.[7]

b. Discussion and Staff Recommendation

270. Staff accepts Qwest's position on this issue. AT&T has appeared to concede this issue in Colorado and the Multi-state proceedings, and thus Staff considers this issue to be closed for Arizona as well. However, since the FCC is currently

[7] June 5, 2001 Letter from Chuck Steese, Qwest, to Maureen Scott, ACC Counsel.

reviewing whether to impose any such requirement in a rulemaking, should the FCC decide the issue prior to a recommendation by the Commission, the SGAT should be revised accordingly.

DISPUTED ISSUE NO. 4: Whether Qwest May Impose a Requirement of a Significant Amount of Local Exchange Traffic on Dark Fiber Combinations?

a. Qwest and CLEC Positions

271. AT&T argues that the application of the FCC's Enhanced Extended Links ("EELs") restriction to special access services and dark fiber is inappropriate. AT&T Brief at p. 13. AT&T states that not only is Qwest's usage test impermissible under the FCC's *UNE Remand Order* language and the FCC's rules when applied to dark fiber, but it is also technically infeasible. Id. AT&T further states that it concurs with MCIW's demonstration of how the FCC's Orders do not support Qwest's position and recommends that the Commission delete Section 9.7.2.9 Qwest's SGAT. Id. at 14. Finally, AT&T states that the Commission should delete this section of the SGAT since technically, the test set forth in Section 9.7.2.9 is not possible to apply to unbundled dark fiber. Id at 14.

272. MCIW also argues that Qwest's application of the EEL standard to dark fiber is inappropriate. MCIW noted that the standard applied in Section 9.7.2.9 of Qwest's SGAT is relevant to restrictions placed on the use of an EEL, which the FCC defines as a combination of an unbundled loop, multiplexing/concentrating equipment and dedicated transport. MCIW Brief at p. 2. MCIW argues that section 9.7.2.9 does not address EELs or the combination of an unbundled loop, multiplexing/concentrating equipment and dedicated transport. Id at p. 4. Rather, that section addresses unbundled dark fiber, which the FCC has defined as a network element. Id at p. 4. An EEL is not a network element, but a combination of network elements. Id. at 4. Paragraph 8 of the FCC's *Supplemental Order Clarification* provides "… IXCs may not substitute an incumbent LEC's unbundled loop-transport combinations for special access services …." Id. at 4 (*emphasis added*.) MCIW's position is that the FCC clearly meant for that standard to be applied to EELs, as unbundled loop-transport combinations, but not dark fiber or any other network element. Id at p. 5. Section 9.7.2.9 of Qwest's SGAT therefore imposes improper limitations and restrictions on this network element by precluding the use of unbundled dark fiber ("UDF") as a substitute for special or switched access services except to the extent a competitive local exchange carrier ("CLEC") provides " a significant amount of local exchange traffic" to its end users over the UDF. Accordingly, Section 9.7.2.9 of Qwest's SGAT should be deleted. Id. at 5.

273. Qwest argues, based on AT&T's challenge of Section 9.7.2.9 as being unlawful, that the restriction pertains to combinations of loop and transport. Qwest's Comments at p. 4. Because EELs are combinations of loop and transport and dark fiber is not a UNE unto itself, but rather "a flavor of transport and loop", the local exchange traffic restriction pertains to combinations of loop and transport. Id. at p. 5. Additionally, Qwest states that the FCC's rationale for the local exchange restriction pertains to dark

fiber combinations of loop and transport just as it does to EELs and that without the local service restriction, dark fiber loop and transport unbundling could present a threat to access revenues and universal service. Id at p. 5. Qwest asserted that SGAT Section 9.7.2.9 is proper under the FCC's Supplemental Order Clarification and should be maintained. Id.

b. Discussion and Staff Recommendation

274. Staff agrees with the conclusions reached in the Multi-State process on this issue. The FCC's *UNE Remand Order* Paragraph 174 states that the loop element can consist of dark fiber. Paragraph 325 states that the transport element can consist of dark fiber. Paragraph 480 states that EELs are not a separate UNE, but consist of "an unbundled loop" that "is connected to unbundled dedicated transport." Thus, when a CLEC secures access to dark fiber that provides the functionality of a loop that is connected to dedicated transport, it secures an EEL, which is a combined loop and transport element. Just because the fiber that was leased by the CLEC was unlit to begin with does not give it a different identity as a UNE, once it is combined into a loop-transport combination or EEL.

275. As referenced in the above discussion, the FCC has said that:

> IXCs may not substitute an incumbent LEC's unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

276. A loop-transport combination that includes what was once unlit fiber is still a loop-transport combination. The FCC's universal service concerns would not go away simply because of the nature of a portion of the facilities (dark fiber) from which the loop-transport combination derived. The same concerns would still be present. Therefore, Staff accepts Qwest's position on this issue and that language contained in SGAT Section 9.7.2.9.

277. AT&T filed Comments to Staff's Proposed Findings of Fact and Conclusions of Law arguing that it is inappropriate to apply to dark fiber the local exchange use restriction explicitly set forth by the FCC in the *UNE Remand Order* with respect to EELS. AT&T Comments at pps. 12-13. AT&T also sought clarification as to how Qwest will determine whether a CLEC is in violation of this usage restriction. AT&T Comments at p. 13. AT&T claims that it is not possible to apply the test set forth in Section 9.7.2.9 to unbundled dark fiber. Id. The FCC developed a test for the EEL, that is reflected in that section of Qwest's SGAT, to determine how much of the EEL was to be used for local traffic. Id. AT&T claims that the test is designed to apply to a single end user and that dark fiber is typically used for multiple end users. Id. AT&T claims that the test cannot be applied to dark fiber. Id.

278. Staff clarifies its position on this issue. It is true as AT&T claims that the FCC's local exchange use restriction does not apply per se to "dark fiber". The Multi-State discussion focuses on loop/transport combinations or EELS. To the extent the local use restriction is contained in the EELS section of the SGAT, Staff believes that that is sufficient. If a CLEC utilizes dark fiber in a loop/transport combination which qualifies as an EEL the local usage restriction should apply.

DISPUTED ISSUE NO. 5: Whether Qwest's Efforts to Revise its Technical Publication 77383 Regarding Dark Fiber to be Consistent With the SGAT Relate to 271 Compliance and If So, Whether Qwest's Efforts Satisfy 271?

a. Qwest and CLEC Positions

279. AT&T stated that when it reviewed Qwest's technical publications, it determined that its terms were inconsistent with the commitments Qwest had made in its SGAT language relating to dark fiber. AT&T Brief at p. 15. AT&T went on to state that Qwest testified that it would update its technical publications to ensure consistency with the SGAT. Id. Qwest was also to introduce language to be added to its SGAT that provides that the SGAT supercedes any other inconsistent document, including Qwest's technical publications. Id. AT&T also stated that Qwest committed to provide a draft of modifications to Technical Publication 77383 to make it consistent with the SGAT within 30 days of the workshop. Id. AT&T requests that, to the extent that Qwest has failed to submit conforming language, or to the extent it is not consistent with the commitments Qwest made in its SGAT, the Commission not find Qwest in compliance with its Section 271 obligations with regard to dark fiber. Id. AT&T goes further to state that if Qwest's internal documentation that directs its employees in their interaction with CLECs is inconsistent with the Act and the FCC Orders, Qwest cannot satisfy its checklist obligations, regardless of the language in its SGAT. Id.

280. MCIW expressed concern over the relationship of Qwest publications or documents that are incorporated by reference into the SGAT. MCIW Brief at p. 5. Specifically, MCIW takes issue with Qwest's ability to change internal documents referenced in the SGAT unilaterally, thereby effectively modifying the SGAT. Id. MCIW stated that its concerns were satisfied by the addition of Section 2.3 to Qwest's SGAT, which states that, where there is a conflict between the SGAT and any internal Qwest document referenced in the SGAT, such as technical publications or the IRRG, that the SGAT would control and prevail over those internal Qwest publications. Id. at 6. Additionally, MCIW also supports Qwest's commitment that any revision to any technical publication, the IRRG, methods and procedures, and similar internal documents

or standards would be subject to a change management process known as Co-Provider Industry Change Management Process ("CICMP") through which CLECs would have the opportunity to participate in any modifications to such documents. Id.

b. Discussion and Staff Recommendation

281. The issue here is one of Qwest timing in offering to provide consistent, correct language in Technical Publication 77383 and the SGAT which appear to satisfy MCIW and AT&T's concerns. Staff believes the CLECs' concerns are well-founded since Qwest's initial prouncements on the interrelationship between its SGAT and other internally generated Qwest documents was inconsistent and at odds with its current position. Additionally, the CLEC field personnel rely heavily upon the Qwest technical publications and may not be privy or knowledgeable of Qwest's SGAT provisions. Consequently, if there is a discrepancy, with the SGAT conveying more rights than the Qwest internal documentation represents, the CLEC and its customers will be adversely impacted.

282. It is Qwest's current position that the SGAT supercedes any inconsistent document. Further, Qwest has stipulated to updating all referenced documents and websites in 45 days and will subject them to the CICMP process. Staff would view a failure to promptly update any such documents and websites as not complying with its 271 obligations. Staff does not find Qwest's representation that if in 30 days the documents are not consistent, the SGAT will be deemed to supercede any inconsistent document. Therefore, Staff proposes additional SGAT language:

> When there is a conflict between Qwest's technical publications, IRRG or any other document with SGAT language, the SGAT supercedes any such document.

283. As a further incentive to Qwest, to the extent the field documentation is inaccurate and CLECs have not been given adequate notice of any changes ahead of time, Qwest should bear full responsibility to the CLEC if the CLEC would have exercised any rights available to it under the SGAT which were not contained in the internal Qwest operating publications upon which the field representatives rely.

4. Packet Switching Impasse Issues

DISPUTED ISSUE NO. 1: Whether Qwest Has Fully Implemented the FCC's Rule Regarding Spare Copper Loops?

a. Qwest and CLEC Positions

284. AT&T states that the FCC's UNE Remand Order 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). AT&T Brief at p. 8-9. If a

CLEC seeks to offer DSL service in competition with an ILEC that has deployed its DSLAM functionality at the remote terminal, 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 if the data CLEC must rely on "home run" copper. Id. at p.9. The result of any CLEC that must use home run copper loop to compete with an ILEC that has access to shorter copper subloops at a remote terminal will be at a significant disadvantage. Id. at p. 10.

285. AT&T went on to argue that Qwest's proposed language limits the situations for the unbundling of packet switching to those where "no" spare copper loop is available. AT&T Brief at p. 10. AT&T proposes the following language for SGAT Section 9.20.2.1.2 to resolve this requirement:

> There are ~~no~~ *insufficient* copper loops available capable of *adequately* supporting the xDSL services the requesting carrier seeks to offer.

Id at p. 10. AT&T states that this change 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. Id. at p. 11.

286. Covad and Rhythms argue that the use of spare "home run" copper loops to provision xDSL service is far from being a feasible alternative. Covad and Rhythms Brief at p. 8. Due to the fact that the length of the cooper loop limits the xDSL bandwidth available to the end user, CLECs would be at a competitive disadvantage to Qwest's deployment if CLECs were required to provide service on spare loops. Id. at p. 9. Qwest's requirement that CLECs go to "spare copper loops" first would give it an inherent and sustainable competitive advantage for its own DSL services. Id.

287. Covad and Rhythms went on to argue that fiber fed NGDLC systems with a plug-in card based DSLAM functionality at the remote terminal could potentially cause cross talk interference problems with DSL provided over spare copper loops to DSLAMs collocated in the central office. Covad and Rhythms Brief at p. 9. This degradation could materially diminish a competitor's ability to effectively provide service. Id. The Commission should clarify that if a CLEC seeks to offer VDSL or high-rate ADSL service to a customer, and existing spare copper does not support that xDSL service, or that DSL provided over NGDLC by Qwest would potentially degrade CLEC services over spare copper loops, the "spare copper" exclusion to the packet switching element of SGAT Section 9.20.2.1.3 does not apply. Id. at p. 10.

288. Qwest stated that in the *UNE Remand Order*, the FCC modified Rule 319 to require unbundling in very limited circumstances. Qwest Brief at p. 2. Qwest meets those requirements by offering unbundled packet switching when the allowed 4 conditions are met: (1) the ILEC has deployed a digital loop carrier system ('DLC"), (2) there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer, (3) it has not permitted the requesting CLEC to collocate its DSLAM at the remote terminal, and (4) the ILEC has deployed packet switching capability for its

own use. Id. The impasse issue relates to the second of these requirements. Qwest copied these requirements from the FCC into the SGAT at Section 9.20.2.1.2. Id at p. 2.

289. Qwest argued that the CLECs' arguments fail as a matter of law and fact. Qwest Brief at p. 2. The CLECs are again seeking to add to the existing legal obligations under the Rule and FCC orders. Id. This exact dispute arose in SWBT's Kansas/Oklahoma proceeding in which the FCC found SWBT had met their legal obligations as their SGATs "incorporate verbatim the criteria adopted in our *UNE Remand Order* to establish when packet switching will be made available." Kansas/Oklahoma Order). Id at p. 3. Additionally, the CLECs arguments fail on the facts in that by modifying the SGAT as AT&T proposes would do nothing but add a layer of uncertainty by requiring a factual inquiry regarding the "adequacy" of loop capabilities. Id. at p. 3.

b. Discussion and Staff Recommendation

290. Staff believes that Qwest has demonstrated that it has met the requirements of the FCC's *UNE Remand Order* and FCC Rule 319. Qwest's SGAT incorporates the language from the FCC rule verbatim on this criteria, therefore, there is little room for dispute. The FCC clearly stated that where copper loops are available and sufficient, Qwest's making them available complies with the FCC requirements. AT&T's proposed language changes would introduce too much uncertainly and opportunity for dispute. Covad appears to be arguing for more than the FCC rules actually require at this point in time. Qwest already has an obligation, as reflected in the SGAT, to provide copper loops that support services that are at parity with that Qwest is able to provide if requested by a CLEC. If parity is not established with the use of spare loops, than Qwest does not meet its obligations. In addition, the record in this workshop is not developed enough to support imposition of requirements beyond that which the FCC has already imposed, even though this Commission has independent authority under State law to require same. Therefore, Qwest's SGAT as it now stands on these points would appear to be sufficient.

291. AT&T filed Comments to Staff's Proposed Findings of Fact and Conclusions of Law which asked the Staff to review the report of the Arbitration Award of the Public Utilities Commission of Texas. AT&T claimed that 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. AT&T Comments at p. 18. AT&T stated that critical to the Texas arbitrator's decision that without access to packet switching, CLECs will be impaired, 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. Id. AT&T thus asks for reconsideration of this issue.

292. Staff does not believe that a sufficient record has been established in Arizona regarding the quality of service where spare copper is available. Staff is not willing to simply adopt the findings of the Texas Commission without the development

of a record in Arizona on these issues. If experience proves that spare copper loops are not capable of supporting xDSL services on parity with that which Qwest provides, such evidence can be brought to the Commission and the Commission will revisit the issue at that time.

DISPUTED ISSUE NO. 2: Whether Qwest Has Fully Implemented the FCC's Requirements on DSLAM Collocation?

a. Qwest and CLEC Positions

293. AT&T argues that Qwest should allow packet switching to be unbundled when it is economically infeasible for a CLEC to remotely deploy DSLAMs. AT&T at p. 11. The economic reality is that remote deployment of transmission equipment and DSLAM functionality by service providers seeking access to copper subloops is unlikely to occur in most areas. Id. 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 simply will not develop. Id at p. 13. AT&T states that the only way to ensure that competition develops is for CLECs to have access to unbundled packet switching capabilities. Id. AT&T proposes the following language for SGAT Section 9.20.2.1.3 to address its concern:

> 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 collate its own DSLAM at the same Qwest 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. *(Changes in Italics.)*

Id . at p. 14. This language will enable a CLEC to compete with Qwest for customers when it is uneconomical for the CLEC to collocate a DSLAM in a remote terminal. Id.

294. Covad and Rhythms argue that collocating DSLAMs in Qwest's remote terminal is not an alternative that should be given any weight. Covad and Rhythms Brief at p. 10. No CLEC is in the financial position to replicate the Qwest network and collocate DSLAMs at a sufficient number of remote terminals to offer a viable competitive service. Id. Second, the findings of the FCC illustrate that collocation of DSLAMs in Qwest's remote terminals is far more costly than accessing NGDLC loops from the central office. Id at p. 11. Third, collocating DSLAMs in Qwest's remote terminals would materially delay a requesting carrier's timely entry into the local market or alternatively delay expansion of an existing carrier's line sharing service offerings. Id.

Finally, Covad and Rhythms state that other factors provided for by Rule 51.317(c) support unbundled access.

295. Qwest argued that its language in SGAT Section 9.20.2.1.3 properly implements the FCC's third condition in Rule 319(c)(3)(B)(iii). Qwest Brief at p. 5. Qwest went on to state that the claims by AT&T and Covad/Rhythms are clearly beyond the scope of the FCC's rule and that Section 271 proceedings are not the proper forums for adding new legal obligations. Id. Qwest added that AT&T had admitted in the Multi-state proceeding that it is actually arguing for a new legal obligation to unbundle packet switching in all circumstances and that it was not arguing that the SGAT did not comply with the current law. Id. at p. 6. Section 9.20.2.1.3 fully implements the law regarding the third condition for unbundled packet switching and the CLECs arguments should be rejected. Id.

b. Discussion and Staff Recommendation

296. Qwest's SGAT Section 9.20.2.1.3 meets the FCC's third condition in Rule 319(c)(3)(B)(iii). AT&T, Covad and Rhythms apparently recognize that they are actually arguing for a new legal obligation which would incorporate an "economic infeasibility" test or standard. Covad cites to decisions in Illinois, Pennsylvania, Maryland, Texas, New York and Kansas for the proposition that they have either ordered or are considering requiring unbundled access to NGDLC and DSLAM functionalities, however Covad provided no specific supporting information. Unfortunately, without the supporting information, the record developed in the course of this workshop does not support the ACC, on its own independent authority, imposing an economic infeasibility test at this time. Supplementation of the record to better establish economic impairment would be required.

DISPUTED ISSUE NO. 3: Whether All Four Conditions for Unbundled Packet Switching Must be Met?

a. Qwest and CLEC Positions

297. AT&T argues that Qwest's SGAT Section 9.20.4.1 places CLECs at a distinct competitive disadvantage with Qwest since the CLEC will have to experience a lengthy collocation process that Qwest does not experience when providing packet switching to itself or its affiliates. AT&T Brief at p. 19. Section 9.20.4.1 requires that *prior* to placing an order for packet switching, a CLEC must have provided Qwest with a collocation application, collocation space availability report or a collocation forecast to place a DSLAM in a Qwest remote premise, and to have been denied such access. Id. Since the collocation process may take up to 90 days from the time the CLEC submits an application for collocating a DSLAM until the time the request is denied, Qwest may have captured all or most of the DSL customers in that particular area. Id. at p. 20. AT&T proposes that Qwest permit simultaneously processing of packet switching order and a DSLAM collocation request as well as a requirement that Qwest only have a short

timeframe (5 to 10 days) to reject a CLEC request to collocate its DSLAM in the remote Qwest premises. Id.

298. Qwest argued that the CLECs objections fail on the basis of law and fact. Qwest Brief at p. 7. The FCC has clearly identified the only circumstance under which Qwest is required to unbundle packet switching and that is through all four conditions in Rule 319 must be met. Id. Currently, Qwest has no obligation to unbundle packet switching for any reason unless the four conditions are met. Id. Moreover, the FCC has specifically held that "incorporat[ing] verbatim the criteria adopted in our *UNE Remand Order* to establish when packet switching will be made available," as Qwest has done in its SGAT, satisfactorily establishes a sufficient legal obligation. Id. Thus as a matter of law, Qwest has fully complied with the FCC's packet switching requirements. Id. at p. 8.

299. Qwest also stated that the CLECs complaint is based on a faulty premise – in that there is no requirement for CLECs to wait for Qwest to deploy a remote DSLAM in order to apply for collocation or deploy their own DSLAMs. Id at p. 8. Qwest has committed to disclose to CLECs the locations where Qwest has deployed remote DSLAMs and to provide a space availability report that indicates when there is no space at a location. Id. Further, Qwest agreed to revise its SGAT with additional language regarding Qwest's plans to remotely deploy DSLAMs.

b. Discussion and Staff Recommendation

300. Qwest has agreed to streamline the process involved in unbundling packet switching. Specifically, Qwest will (1) disclose to CLECs the locations where Qwest has deployed remote DSLAMs, (2) provide a space availability report that indicating when there is not space at such locations, and (3) provide, at CLEC request, a list of locations where Qwest has made the decision to remotely deploy future DSLAMs. In addition, Qwest has agreed to revise its SGAT with additional language regarding Qwest's plans to remotely deploy DSLAMS. Further, Qwest acknowledged that the CLECs do not have to wait for Qwest to deploy a remote DSLAM in order to apply for collocation. Staff appreciates this acknowledgement but believes it will have more force and effect if it is made an express provision of the SGAT itself. Staff therefore recommends that Qwest revise its SGAT to provide for simultaneous processing of a packet switching order and a DSLAM collocation request. In other words, CLECs should not have to wait until the end of the 90 day collocation process to order unbundled packet switching. With these additional clarifications, Staff believes the concerns of the CLECs should be sufficiently ameliorated.

DISPUTED ISSUE NO. 4: Whether Qwest is Required to Allow CLECs to Place Line Cards into Remote DSLAMs?

a. Summary of Qwest and CLEC Positions

301. Covad and Rhythms argued for the ability to virtually collocate DSL line cards at Qwest remote terminals. Covad and Rhythms Brief at p. 12. The line card is

necessary to access the NGDLC loop UNE and to enable the CLEC to provide its desired services over the loop. Id. The installation of other technically feasible line cards would support the other advanced services that CLECs need to provide to differentiate their products in a competitive market. Id at p. 13. Covad and Rhythms request the Commission require Qwest to (1) provide unbundled access to all NGDLCs in its network; (2) provide unbundled access to all remote DSLAMs in its network; and (3) permit the collocation of DSL line cards at Qwest remote terminals. Id.

302. Qwest argued that it had no obligation to allow CLECs to place line cards in Qwest's remote DSLAMs. Qwest Brief at p. 9. The FCC recently requested comments regarding whether this kind of line card collocation is posssible which confirms that fact that there is no current requirement for Qwest to allow CLECs to install line cards in its remote DSLAMs. Id. Finally, there is no evidence in the record to suggest that "plug and play" is technically feasible without imposing additional obligations on Qwest. Id at p. 10.

b. Discussion and Staff Recommendation

303. The FCC is currently addressing the technical feasibility of the "plug and play" option, which Qwest claims is essentially unbundled packet switching. There is insufficient evidence on the record to support the conclusion that technical feasibility has been established. However, it appears that a sufficient record is being developed at the federal level for reconsideration of this issue. Accordingly, Staff would recommend this issue be revisited once the FCC has ruled.

DISPUTED ISSUE NO. 5: Whether Qwest's Interim ICB Pricing Prevents 271 Approval?

a. Qwest and CLEC Positions

304. AT&T argued that Qwest did not identify prices for packet switching in its SGAT. AT&T Brief at p. 16. Although Qwest indicated that prices were to be determined on an Individual Case Basis ("ICB") and stated its willingness to agree to subject the ICB rates to true-up once permanent rates are established, this is not sufficient for Qwest to satisfy its section 271 obligations, argues AT&T. Id. Since Qwest only offers packet switching on an ICB, no evidence exists in the record to show that packet switching is available at just, reasonable and nondiscriminatory rates, consistent with the requirements of Section 252(d). Id. at p. 17.

305. MCIW argued that by allowing Qwest to establish rates on an ICB gives Qwest unilateral control over ICB pricing. MCIW Brief at p. 3. If a CLEC does not agree to the ICB price proposed by Qwest, its two options are (1) pay the price and file a complaint at the Commission where it may have the burden of proving the ICB price to be unreasonable, or (2) not pursue unbundled packet switching from Qwest in order to serve a potential or existing CLEC customer. Id. Neither option benefits consumers and both options interpose uncertainty and delay for CLECs trying to serve customers. Id.

MCIW states that the Commission must require Qwest to establish standard offerings for packet switching and not allow Qwest to unilaterally set prices on an ICB. Id at p. 4.

306. Qwest argued that it believed this impasse issue will be moot as they are currently developing rates for packet switching and will have established these rates prior to the time it files its section 271 application with the FCC . Qwest Brief at p. 12. However, even if the issue were not moot, the CLECs argument fails as a matter of law. Id. The FCC has expressly held that a section 271 application will not be rejected solely because permanent rates are not yet established. Id. Rather, the mere existence of interim rates "will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set." Id. *SBC Texas Order* ¶88. Qwest's interim ICB rates satisfy these requirements. Id.

b. Discussion and Staff Recommendation

307. Qwest has essentially agreed to establish rates for packet switching. Arizona currently has a wholesale costing docket underway, with several phases yet to take place. Staff expects that Qwest will, to the extent it has not already, propose rates for packet switching so that they can be examined within the context of the current Wholesale Pricing docket.

308. In its Comments to Staff's Proposed Findings of Fact and Conclusions of Law, AT&T requested that the Report clarify the position taken with respect to ICB pricing generally, and specifically with regard to Packet Switching. AT&T Comments at p. 19. AT&T states that development of specific prices for the packet switching UNE is essential for satisfaction of its 271 Checklist items. Id.

309. Staff notes that Qwest has agreed in the Wholesale Pricing Docket to address Packet Switching in Phase 2 of that proceeding along with other switching issues. With this assurance, Staff believes that this issue has been resolved.

g. Verification of Compliance

310. Upon Staff's recommendation's as to the resolution of all impasse issues as described above, all other outstanding issues raised in the Workshops in Arizona were resolved and Emerging Services in Arizona is no longer in dispute. It should be recognized that several issues, including line splitting, were deferred to other Workshops for resolution.

311. Subject to Qwest revising its SGAT to be consistent with the impasse resolutions discussed above, Staff believes that Qwest has met the requirements of Section 271 as they pertain to its wholesale emerging service offerings.

312. Qwest has agreed to allow CLECs to opt into any revised SGAT language resulting from the Workshops and this proceeding.

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. As a result of the proceedings and record herein, Qwest's provision of Emerging Serrvices is undisputed absent resolution of the impasse issues as described above.

8. Qwest complies with the requirements of Emerging Services, subject to it updating its SGAT with language agreed to in other region Workshops and subject to resolution by the Hearing Division/Commission of the issue of how to treat issues arising in other State Workshops which the parties would like to bring back to Arizona after the record has closed.

9. Qwest's compliance with Emerging Services is also contingent on its passing of any relevant performance measurements in the third-party OSS test now underway in Arizona.