BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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

QWEST'S LEGAL BRIEF ON THE IMPASSE ISSUES RELATING TO CHECKLIST ITEM 4 (UNBUNDLED LOOPS) IN WORKSHOP 4

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INTRODUCTION

Qwest Corporation ("Qwest") submits this brief to the Commission in support of its compliance with checklist item 4 (unbundled loops) of the competitive checklist in Section 271(c)(2)(B) of the Telecommunications Act of 1996 (the "Act").[1] Qwest is filing separate briefs that address the impasse issues for the remaining issues under consideration in Workshop 4.

As demonstrated in Workshop 4, Qwest meets the requirements of checklist items 4. Qwest has demonstrated that it is legally obligated to provide, and is providing, unbundled loops to competitive local exchange carriers ("CLECs") in Washington. In addition, Qwest presented audited performance data demonstrating that it provides unbundled loops at an acceptable level of quality and in a manner that affords an efficient CLEC a meaningful opportunity to compete.[2]

In Washington and in workshops in other states, Qwest has worked diligently to address CLEC concerns regarding checklist item 4, modify its SGAT, and improve its processes. Qwest made significant efforts to resolve disputes with participating CLECs regarding this checklist item and has modified its SGAT and processes to accommodate many of its competitors' requests. In several instances, Qwest agreed to modifications that were unnecessary for compliance purposes, but which avoided disputes or promoted the competitive goals of CLECs. For example, Qwest has committed to: (1) share certain facility build plans with CLECs under Section 9.1.2.1.4 of the SGAT; (2) provide CLECs with emailed versions of test results; (3) perform hairpinning on more than three loops on an interim basis when integrated digital loop carrier ("IDLC") is present and other methods of providing unbundled loops fail, and (4) simply the processes for trouble isolation for unbundled loops.

Although disputes remain, the Commission should note that many of these issues relate to CLEC requests that exceed the requirements of the Act and FCC orders as opposed to the nature of Qwest's compliance with Section 271 of the Act. Because Section 271 proceedings are not the proper

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1 47 U.S.C. § 271(c)(2)(B)(ii) and (iv).

2 Most of the loop performance measures are now audited. Qwest's performance data is updated monthly and is presented on both a state and regional level. This performance data is available to the Commission at the following web address: www.qwest.com/wholesale/results/index.html.

forum to create new requirements under the Act, the Commission should approve Qwest's SGAT and positions if they comport with the Act, FCC regulations, and Commission rules, even if the CLECs demand more.[3]

Qwest believes that it has drawn the lines properly. Qwest's competitors, however, view Qwest's obligations as limitless, especially regarding access to loop make up information, construction of loop facilities, and redesignation of interoffice transport facilities. In passing the Act, Congress intended to "open[] up local markets to competition, and permit[] interconnection on just, reasonable, and nondiscriminatory terms."[4] The FCC has recognized that incumbent LECs and CLECs alike will benefit from competition resulting from operating efficiencies: "We believe the [economies of scale] should be shared in a way that permits the incumbent LECs to maintain operating efficiency to further fair competition, and to enable the entrants to share the economic benefits of that efficiency in the form of cost-based prices."[5] In the *Collocation Remand Order*, the FCC confirmed that Congress did not intend to create a vehicle by which new entrants would gain an unfair advantage by misusing the Act's requirements.

> [W]e have previously recognized that, in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology over another. Rather, Congress set up a framework from which competition could develop, one that attempted to place incumbents and competitors on generally equal footing, so that each could share the efficiencies of an already ubiquitously-deployed local infrastructure while retaining independent incentives to deploy new, innovative technologies and alternative infrastructure.[6]

Despite the parties' attempts to reach consensus on most issues, several issues have arisen that have eluded resolution. These issues are discussed below. As this brief demonstrates, none of these disputed issues refutes Qwest's showing that it complies with the requirements of checklist item 4.

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3 *See* Memorandum Opinion and Order, *Application of SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 at ¶¶ 22-26 (June 30, 2000) ("*SBC Texas Order*").

4 First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 at ¶ 167 (Aug. 8, 1996) ("*Local Competition Order*").

5 *Id.* at ¶ 11.

6 Fourth Report and Order, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 01-204 ¶ 7 (Aug. 8, 2001) ("*Collocation Remand Order*").

DISCUSSION

A. Impasse Issues

Checklist item 4, Section 271(c)(2)(B)(iv) of the Act, requires Qwest to provide "[l]ocal loop transmission from the central office to the customer's premises, unbundled from local switching or other services."[7] A BOC has the obligation to provide different types of loops, including two-wire and four-wire analog loops, and two-wire and four-wire loops conditioned to transmit digital signals and support advanced services such as ISDN and xDSL services.[8]

Qwest submitted the direct and rebuttal testimony of Jean M. Liston, testimony at the workshop on July 10-13, and July 31-August 1, 2001, SGAT language, and numerous exhibits demonstrating Qwest's compliance with the requirements of checklist item 4. The following issues with respect to checklist item 4 remain in dispute:[9]

> **WA Loop 1(c)**: Must Qwest construct high capacity facilities on demand for CLECs where there are no facilities available? This issue is similar to WA Loop 8(b).
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> **WA Loop 2(a)**: Is Qwest permitted to recover the costs of conditioning loops less than 18,000 feet?
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> **WA Loop 2(b)**: Must Qwest incorporate AT&T's proposed language for a "refund" of conditioning costs?
>
> **WA Loop 3(a)**: Must Qwest accede to AT&T's demand for direct access to the LFACS database when Qwest retail sales representatives do not have such access and the LFACS database does not have the functionality AT&T seeks?
>
> **WA Loop 3(b)**: Must Qwest create the functionality for CLECs to perform a mechanized loop test (MLT) on a pre-order basis when Qwest retail sales representatives cannot perform such a test?
>
> **WA Loop 8(a)**: Is Qwest's process for handling "held orders" in its Build Policy and SGAT appropriate?

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7 47 U.S.C. § 271(c)(2)(B)(iv).

8 Memorandum Opinion and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130 ¶ 121 (rel. Apr. 16, 2001) ("*Verizon Massachusetts Order*").

9 WA Loop Issue 1(b) addresses the individual case basis ("ICB") interval for OCn loops. This issue was closed for purposes of WA Loop Issue 1(b), but declared impasse for purposes of WA Loop 11. Accordingly, Qwest addresses this issue under that Loop Issue.

WA Loop 8(b): Despite its commitment to construct to meet its POLR obligations and its commitment to share outside engineering plant job information with CLECs, must Qwest still build facilities on demand for CLECs where none are available?

WA Loop 9: Has Qwest taken sufficient action to prevent and address alleged incidents of anti-competitive behavior by its technicians?

WA Loop 10: This issue has three subparts: (1) Must CLECs disclose NC/NCI codes to Qwest? (2) Must Qwest implement draft procedures relating to remote deployment of DSL? (3) Is Qwest properly managing T1 facilities?

WA Loop 11: Are the challenged loop installation intervals in Exhibit C reasonable?

WA Loop 12: Should inter-office facilities be re-designated as available for assignment as an unbundled loop when CLEC makes a request of an unavailable loop?

As set forth fully below, on each of these disputed issues, the Commission should accept Qwest's position as consistent with its obligations under the Act.

B. WA Loop 1(b): Neither The Act Nor FCC Rules Require Qwest to Construct Loops or High Capacity Facilities On Demand For CLECs.

Qwest recognizes that the ALJ in workshops on checklist items 2, 5, and 6 has issued an initial order that requires Qwest to construct UNEs on demand for CLECs in the Qwest service territory. As Qwest demonstrated in its comments on that initial order, the ALJ's initial decision on this issue is inconsistent with the Act and FCC regulations, in conflict with other state commission determinations, and ill advised as a matter of public policy. Qwest respectfully requests that in addressing WA-Loop Issues 1(b) and 8(b), the ALJ decline to follow that ruling with regard to unbundled loops. Indeed, with respect to loops, the accommodations Qwest has made are so significant and the CLEC demands for construction of their ideal network so outlandish, the ALJ should draw the line at requiring Qwest to construct loop facilities.

1. The Act Does Not Require Qwest To Construct Loops For CLECs.

In SGAT § 9.1.2, Qwest commits that it will construct facilities if it would be letally required to do so to meet its carrier of last resort ("COLR") or provider of last resort ("POLR") obligations. Qwest has further agreed that where facilities are not available, it will consider a CLEC's request that Qwest

construct UNEs using the same criteria it uses to assess whether it constructs facilities for itself. Additionally, as discussed more fully below, Qwest has agreed to share with CLECs its plans for construction of loop facilities. Nevertheless, the CLECs demand that Qwest go beyond these commitments and construct new loop facilities, even high capacity loops and copper loop facilities in areas served with IDLC. The CLECs make these demands without any legal or factual basis.

The Act does not require that an incumbent LEC build new facilities to provide an unbundled loop for CLECs if no facilities currently exist. Section 251(c)(3) requires incumbent LECs to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms of the [parties' interconnection] agreement and the requirements of this section and section 252 . . . ."[10] Of course, nothing in Sections 251, 252 or 271 of Act states that an incumbent LEC must build a network for CLECs. Instead,

> Section 251 of the Act requires incumbent LECs to allow new entrants to interconnect with *existing* local networks, to lease elements of *existing* local networks at reasonable rates, and to purchase the incumbents' services at wholesale rates and resell those services to retail customers.[11]

The United States Court of Appeals for the Eighth Circuit, the court charged with interpreting the Act and the FCC's local competition regulations, agrees that Qwest is not required to construct UNEs, including loops, for CLECs. Interpreting the Act, the Eighth Circuit held that "subsection 251(c)(3) implicitly requires unbundled access only to an incumbent LEC's *existing* network—*not to a yet unbuilt superior one*."[12] Clearly, when no facilities exist, a demand that Qwest construct those facilities constitutes not only a demand for "superior" service, but imposes an unlawful requirement that Qwest unbundle something other than its "existing" network.

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10 47 U.S.C. § 251(c)(3).

11 *MCI Telecommunications Corp. v. Public Serv. Comm'n of Wisc.*, 22 F.3d 323, 328 (7th Cir. 2000) (emphasis added).

12 *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *aff'd in part, rev'd on other grounds, sub nom, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("*Iowa Utils. Bd. I*") (emphasis added).

The Eighth Circuit reaffirmed its decision to vacate the FCC's "superior quality" rules as inconsistent with the plain language of the Act in *Iowa Utils. Bd. v. FCC,* 219 F.3d 744, 757-58 (8th Cir. 2000), *cert. granted*, 121 S. Ct. 877 (2001) ("*Iowa Utils Bd. III*"). Discussing both its rejection of the FCC's Total Element Long Run Incremental Cost ("TELRIC") methodology and its rejection of the FCC's superior quality requirements, the Eighth Circuit again made clear that Congress did not require incumbent LECs to build the CLECs' networks for them. For example, discussing the plain meaning and intent of the Act in the context of its TELRIC ruling, the Eighth Circuit stated:

> The reality is that Congress knew it was requiring the existing ILECs *to share their existing facilities and equipment with new competitors as one of its chosen methods to bring competition to local telephone service*, and it expressly said that the ILECs' costs of providing those facilities and that equipment were to be recoverable by just and reasonable rates. *Congress did not expect a new competitor to pay rates for a 'reconstructed local network,' . . . but for the existing local network it would be using in an attempt to compete.*
>
> It is the cost to the ILEC of providing its *existing* facilities and equipment either through interconnection or by providing specifically requested unbundled network elements that the competitor will in fact be obtaining for use that must be the basis for the charges. *The new entrant competitor, in effect, piggybacks on the ILEC's existing facilities and equipment*. It is the cost to the ILEC of providing that ride on those facilities that the statute permits the ILEC to recoup.[13]

Accordingly, the Eighth Circuit has been clear (twice) that an incumbent LEC is only required to unbundle and provide access to its existing and deployed network only.

2. FCC Rules Are Unambiguous That Incumbent LECs Are Not Required To Construct UNEs for CLECs.

All of the relevant FCC pronouncements are consistent with Qwest's interpretation of its unbundling obligations. For example, when the FCC issued its *Local Competition Order* it made clear that an incumbent's obligation to unbundle facilities applies only to the incumbent's *existing* and deployed network:

> [W]e conclude that an incumbent LEC must provide unbundled access to interoffice facilities between its end offices, and between any of its

13 *Iowa Utils. Bd. III,* 219 F.3d at 750-51 (citation omitted; emphasis added).

> switching offices and a new entrant's switching office, *where such interoffice facilities exist*.
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> * * * *
>
> The Rural Telephone Coalition contends that incumbent LECs should not be required to construct new facilities to accommodate new entrants. We have considered the economic impact of our rules in this section on small incumbent LECs. In this section, for example, *we expressly limit the provision of unbundled interoffice facilities to existing incumbent LEC facilities*.[14]

In the *UNE Remand Order*, the FCC made this point again, even more emphatically:

> Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, *the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use*. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, *we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use*.[15]

The FCC has never mandated that an incumbent LEC build new facilities to provide an unbundled loop to a CLEC if the incumbent has no facilities in place. This is because, where Qwest has no facilities, Qwest is not "denying access" to existing facilities. Where copper or high capacity loop facilities do not exist in Qwest's network, all carriers, including Qwest, are equally disadvantaged and Qwest enjoys no competitive advantage. *Any* carrier can build the requisite loop or UNE facilities.

AT&T has claimed that the FCC's statements in these orders created an "exception" to the supposed rule that incumbent LECs must construct UNEs on demand for CLECs. The FCC, however, did not describe this ruling as an "exception." Moreover, neither AT&T nor any other CLEC has cited the supposed "rule" that requires construction in the first instance.[16] The simple reason for their failure is

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14 *Local Competition Order* ¶ 443, 451.

15 Third Report and Order and Fourth Further Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 15 FCC Rcd 3696, ¶ 324 (Nov. 5, 1999) (emphasis added) ("*UNE Remand Order*").

16 In its briefs on checklist item 2, AT&T cited 47 C.F.R. § 51.309(c) as supposedly encompassing this obligation. Rule 309, however, is patently inapplicable. This rule simply states that when an incumbent leases a particular UNE

that the Act does not impose any such obligation on incumbents. Where facilities are not already in place, CLECs are in just as good a position as Qwest to construct the new facilities.

The FCC's statements in the *Local Competition* and *UNE Remand Orders* are consistent with other FCC orders. For example, in the *BellSouth Louisiana II Order*, the FCC held that BellSouth was not required to provide vertical features that were not loaded into the switch software because to do so would require BellSouth to build a superior network for CLECs.[17] The FCC reasoned that for those switches loaded into the software, but not activated, BellSouth is required to provide access because those features are part of BellSouth's existing network that it has chosen not to use. However, it drew the line at requiring BellSouth to install new vertical features: "we agree with BellSouth's claim that it is not obligated to provide vertical features that are not loaded into the switch software, because this would require BellSouth to build a network of superior quality."[18]

Likewise, with regard to loop qualification information that must be provided as a part of OSS access, the FCC has held, consistent with its other rulings on the scope of incumbent LEC unbundling, that incumbent LECs are not required to construct a loop qualification database for CLECs if they have not created a loop qualification database for themselves.

> We disagree . . .with Covad's unqualified request that the Commission require incumbent LECs to catalogue, inventory, and make available to competitors loop qualification information through automated OSS even when it has no such information available to itself. *If an incumbent LEC has not compiled such information for itself, we do not require the incumbent to conduct a plant inventory and construct a database on behalf of requesting carriers*.[19]

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to a CLEC, the incumbent still has the duty to maintain, repair, or replace that specific network element that it leased to the CLEC. The FCC made this clear in paragraph 268 of the *Local Competition Order*: "The ability of other carriers to obtain access to a network element for some period of time does not relieve the incumbent LEC of the duty to maintain, repair, or replace the unbundled network element." (Footnotes omitted). In adopting the repair/replacement requirement for existing UNEs, the FCC never suggested that incumbents must build the UNE or loop facility in the first instance.

Likewise, the generic statements in 47 C.F.R. § 51.313(b) simply state that "where applicable," the terms and conditions under which the incumbent LEC provide access to network elements must be no less favorable than terms and conditions under which the incumbent LEC provides access to the UNE to itself. By including as an example the time within which the incumbent LEC provides access, the rule plainly addresses the terms and conditions for accessing to *existing* network elements.

17 Memorandum Opinion and Order, *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Louisiana*, CC Docket No. 98-121, 13 FCC Rcd 20599 ¶ 218 (1998) ("*BellSouth Louisiana II Order*").

18 *Id.*

19 *UNE Remand Order* ¶ 429 (footnotes omitted; emphasis added).

Although this holding is in a different context, it is further evidence that where an incumbent LEC has not provided a network element for itself, it is not required to create or construct that element for a CLEC.

As demonstrated herein, the FCC has been consistent with its rulings on an incumbent's unbundling obligations under the Act: Section 251(c)(3) requires only unbundling of Qwest's existing network, not a network that has yet to be built.

3. Other State Commissions Agree That Neither The Act Nor FCC Orders Support The CLECs' Construction Demands.

a. Multi-State UNE Report

The multi-state Facilitator issued his report on checklist items 2, 4, 5, and 6 on August 20, 2001.[20] Among other loop issues, the Multi-State UNE Report addresses whether Qwest must construct unbundled network elements, including loops, for CLECs. Qwest and the CLECs in the multi-state workshop, Colorado, and Washington presented the same arguments on the obligation to build issue. The Facilitator determined that the answer is clear: "Qwest should not generally be required to construct new facilities to provide CLECs with UNEs."[21]

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

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

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20 Qwest refers to this report in its brief as the "Multi-State UNE Report." Qwest has filed Decision No. R01-846 and the Multi-State UNE Report with this brief for the convenience of the ALJ and Commission.

21 Multi-State UNE Report at 25.

> compensated in cases where CLECs abandon UNEs before new investment is recovered.[22]

The multi-state Facilitator reasoned that requiring Qwest to construct UNEs for CLECs is "tantamount to requiring Qwest to take investment risk in new facilities. Nothing in the Act or in the rulings of the FCC suggests that promoting competition requires altering the risks of new investments."[23]

The multi-state Facilitator also underscored the importance of facilities based competition and the distinction between existing and new facilities:

> A key premise of the Act and of the FCC's implementing actions with respect to it is the development of facilities-based competition. For existing facilities, it is correct to place the burden on Qwest to show why access to them is not appropriate. For new facilities, the burden should be on Qwest's competitors to show why access to them is appropriate.
>
> There is no evidence of record to support any claim that Qwest has a monopoly position with respect to new facilities. In fact, circumstances would suggest that all carriers competent enough to have a future in the business have the capability either to construct new facilities themselves, or to contract with third party construction experts (much as incumbents do themselves on occasion) who do.[24]

Just as in the multi-state proceedings, CLECs have presented no evidence to support any claim that Qwest has any advantage over CLECs with respect to construction of new facilities. In conclusion on the general obligation to build question, the multi-state Facilitator ordered that:

> Thus there is not a clear basis for concluding that the failure to require Qwest to undertake the obligation to construct new facilities will significantly hinder fulfillment of the Act's general objectives, let alone its specific requirements. Even were there some demonstrated basis to so conclude, one would have to consider the goal of promoting facilities-based competition. Requiring Qwest to serve indefinitely and ubiquitously as both a financing arm (by taking investment risk under month-to-month UNE leases to CLECs) and as a construction contractor (by being forced to perform the installations required) is not appropriate. Not only will it not promote the goal, it may well hinder it. If CLECs can transfer the economic risks of new construction to Qwest, there is little reason to expect that they will have an incentive to take facilities risks or develop efficient installation capabilities.[25]

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22 *Id*. at 24.
23 *Id*.
24 *Id.* at 25.
25 *Id*.

b. Colorado Hearing Commissioner

On August 16, 2001, the Colorado Hearing Commissioner issued his decision on checklist items 2, 5 and 6 and, adopting many of Qwest's arguments, held that Qwest has no obligation to build UNEs on demand for CLECs.[26] For example, addressing the CLECs' claims that *Iowa Utils Bd. I* has no bearing on whether Qwest must construct UNEs for CLECs, the Hearing Commissioner agreed with Qwest regarding the meaning and significance of the Eighth Circuit's decision:

> AT&T and WorldCom correctly point out that [the] *Iowa Utilities Board* decision invalidated FCC rules that would have required ILECs to provide superior network elements when requested. However, the Eighth Circuit's rationale was based upon the premise that section 251(c)(3) requires unbundled access *only* to an incumbent LEC's *existing* network.[27]

Furthermore, the Hearing Commissioner rejected out of hand AT&T's claim that FCC rules requiring incumbent LECs to repair or replace UNEs leased to CLECs are "essentially the same thing" as requiring incumbent LECs to construct UNEs on demand. He reasoned (as Qwest does) that "[t]here is a fundamental difference between repairing or replacing that which you are legally obligated to provide in the first place and building that which you are not legally obligated to provide at all.'[28] The Hearing Commissioner also rejected AT&T's reading of paragraph 324 of the *UNE Remand Order* as "disingenuous:"

> AT&T's argument that the *UNE Remand Order* requires ILECs to construct facilities by negative implication is disingenuous. The FCC has never expressly imposed construction requirements in all circumstances on ILECs. One would surmise that the Commission would have directly imposed this potentially burdensome responsibility on ILECs in unequivocal terms.[29]

The Colorado Hearing Commissioner concluded as follows:

> The Eighth Circuit emphasized that nondiscriminatory access to unbundled elements does not lead to the conclusion that 'incumbent LECs cater to every desire of every requesting carrier.' *Qwest, simply*

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

27 *Id*. at 9 (emphasis in original).

28 *Id*.

29 *Id*. at 10 (footnote omitted).

> *put, is not a UNE construction company for CLECs. Qwest should not be required in all instances to expend the resources in time and manpower, at an opportunity cost to itself, to build new facilities for competitors who have the option of constructing those facilities at comparable costs.*[30]

In Colorado, the Hearing Commissioner determined that to ensure that Qwest provides UNEs to CLECs in a nondiscriminatory manner, Qwest should amend Section 9.19 of the SGAT to include the sentence: "Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself." Qwest agrees with the Colorado Hearing Commissioner that this language fully addresses reasonable CLEC concerns.[31] Qwest is prepared to implement this language by ensuring it constructs facilities pursuant to the special construction provisions of the SGAT (§ 9.19) using the same assessment criterion.

The Initial Workshop 3 Order stands alone in its construction demands. The Colorado Hearing Commissioner and multi-state Facilitator agree that Qwest should not be required to construct UNEs for CLECs.[32] Requiring Qwest to construct loops for CLECs is contrary to the terms of the Act, FCC orders, and to the public policy goals of the Act and the state of Washington.

4. The Commission Should Not Discourage Facilities-Based Competition.

The CLECs claim, ineffectually, that requiring them to construct their own facilities is somehow "discriminatory." However, Qwest does not construct facilities such as high capacity loops or copper loops to support advanced services on demand for its retail customers. For example, Qwest's Washington tariff limits its obligation to provide high capacity facilities to those instances in which facilities are already in place, and provides Qwest with discretion to determine whether it will make additional investments.[33] Thus, for CLECs as for Qwest retail, when facilities do not exist, a special construction request is required. Qwest has committed to consider CLEC special construction requests under SGAT § 9.19 using the same assessment criteria it uses for itself.

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30 *Id*. at 9 (emphasis added).
31 *Id*. at 10.
32 Notably, Staff for Idaho and New Mexico filed comments on the Multi-State UNE Report endorsing the Facilitator's resolution of this issue.
33 *See, e.g*, Washington Private Line Tariff, WN U-41, § 4.1.6.

Requiring Qwest to construct UNEs for CLECs is not only unlawful under the Act, it is contrary to the public policy goals of the Act. The FCC has increasingly emphasized the importance of facilities-based competition by CLECs as an important means of bringing competition to the local telecommunications market. In its August 8, 2001 *Collocation Remand Order*, the FCC stated that "[t]hrough its experience over the last five years in implementing the 1996 Act, the [FCC] has learned that only by encouraging competitive LECs to build their own facilities or migrate toward facilities-based entry will real and long-lasting competition take root in the local market."[34] According to the FCC, "the greatest long-term benefits to consumers will arise out of competition by entities *using their own facilities*."[35] In addition, the FCC states that "[b]ecause facilities-based competitors are less dependent than other new entrants on the incumbents' networks, they have the greatest ability and incentive to offer innovative technologies and service options to the consumers."[36] Thus, whereas the Act and the FCC *encourage* CLECs to construct their own networks, an order requiring Qwest to construct loops would *discourage* facilities-based competition by eliminating any incentive that CLECs construct their own competing networks.[37]

The Commission should avoid rendering a decision that will discourage CLECs from investing in their own competing networks.

C. WA Loop 2(a): The Act Mandates That Qwest Recover Its Costs of Providing Loops To CLECs, Including Costs for Conditioning Loops Less than 18,000 Feet.

Loop conditioning is a one-time activity that Qwest undertakes at the request of the CLEC. A fundamental premise of the Act is that incumbent LECs will be compensated for providing

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34 *Collocation Remand Order* ¶ 4.

35 First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, WT Docket No. 99-217, CC Docket Nos. 96-98, 88-57, FCC 00-366, ¶ 4 (rel. Oct. 25, 2000) ("*MTE Order*").

36 *Id*.

37 Public policy goals in Washington will also be furthered with a decision that encourages CLECs to invest in and construct certain network facilities. RCW 80.36.300 contains a policy statement with regard to telecommunications services in Washington and states that it is the policy of the state "to promote diversity in the supply of telecommunications services." Clearly, promoting diversity of supply is not accomplished though the imposition of a ubiquitous obligation to build on one carrier, thereby concentrating the source of supply in a single entity.

interconnection and UNEs to CLECs.[38] With respect to loop conditioning, the FCC has been crystal clear that incumbent LECs are entitled to recover these costs, regardless of the length of the loop. The FCC first addressed this issue in the *Local Competition Order*, where it held:

> Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals. Thus, we reject BellSouth's position that requesting carriers "take the LEC networks as they find them" with respect to unbundled network elements. *As discussed above, some modification of incumbent LEC facilities, such as loop conditioning, is encompassed within the duty imposed by section 251(c)(3). The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning*.[39]

In the *UNE Remand Order*, the FCC specifically addressed the issue of recovery of costs for conditioning loops less than 18,000 feet and held that incumbent LECs are entitled to recover these conditioning costs. Significantly, it ordered this cost recovery over the arguments of CLECs that loops in a so-called "forward-looking network" would not have had load coils and bridge taps:

> We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. *Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops*.[40]

Thus, the FCC has already rejected the arguments of AT&T and WorldCom that Qwest should not be permitted to recover these costs because bridge taps or load coils should not have been placed in the network in the first place. While AT&T and WorldCom may disagree with the FCC's reasoning, in this Section 271 proceeding, the only relevant inquiry is whether Qwest's position is consistent with FCC pronouncements. It unquestionably is.

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38 47 U.S.C. § 252(d)(1); *Iowa Utils. Bd. I*, 120 F.3d at 810.

39 *Local Competition Order* ¶ 382 (emphasis added).

40 *UNE Remand Order* ¶ 193 (emphasis added).

To Qwest's knowledge, only one federal court has addressed whether incumbent LECs are entitled to recover their costs of conditioning loops less than 18,000 feet, and that court held that the *UNE Remand Order* "mandates" cost recovery.[41] Finally, the FCC's Section 271 Orders also recognize that incumbents are entitled to recover their costs of loop conditioning on behalf of CLECs.[42] Given this overwhelming weight of authority, the ALJ should recommend and the Commission find that Qwest is entitled to recover the costs of conditioning loops less than 18,000 feet.

WorldCom suggests that under industry standards, load coils and bridge taps would not be placed on loops under 18,000 feet, arguing that Qwest, therefore, should not be permitted to recover its conditioning costs.[43] Qwest, however, did not purposefully design its network with bridge taps and load coils on these shorter loops. Rather, as originally placed, many of these loops extended far from the central office into more rural areas. To provide voice grade service as intended, bridge taps or load coils were required. As population grew and became more dense in Qwest territory, Qwest necessarily reconfigured its network in response. As a result, a loop that was previously quite long and required bridge taps or load coils was diverted to another area and became shorter. So long as the equipment on the loop did not degrade voice service, which it did not, there was no reason for Qwest to remove this equipment at rate payers' expense.[44] Thus, Qwest's network does not violate industry standards, and the FCC's statement that these costs are recoverable, even if equipment optimally is not placed on these shorter loops, recognizes this reality.[45]

Finally, as discussed in Ms. Liston's prefiled testimony and at the workshop, Qwest has voluntarily undertaken a bulk deloading project to deload loops less than 18,000 feet in those wire centers in which DLECs are concentrating their activities. Ms. Liston testified that a significant

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41 *U S WEST Communications, Inc. v. Hix*, Civil Action No. 97-D-152, Order at 9-10 (D. Colo. June 23, 2000) ("The FCC's [*UNE Remand Order*] is dispositive on USWC's claim and mandates that the CPUC permit USWC cost recovery").

42 *E.g., SBC Texas Order* ¶ 248 ("In order to provide the requested loop functionality, such as the ability to deliver ISDN or xDSL services, the BOC may be required to take affirmative steps to condition existing loop facilities to enable competing carriers to provide services not currently provided over the facilities, *with the competing carrier bearing the cost of such conditioning*") (emphasis added).

43 July 11, 2001 Workshop 4 Tr. at 4286.

44 Ex. 885-T, Direct Testimony of Jean M. Liston ("Liston Direct") at 26-27.

45 July 11, 2001 Workshop 4 Tr. at 4286-87.

percentage of the wire centers in Washington where CLECs are ordering unbundled loops have been deloaded as part of this project.[46] It has undertaken this task without seeking cost recovery from CLECs.[47] Thus, Qwest is already absorbing the lion's share of the costs for deloading shorter loops. Where the CLEC requests that Qwest go beyond this voluntary deloading, the Act and FCC orders permit it to recover its costs.[48]

D. WA Loop 2(b): AT&T's Proposed Language For A "Refund" Of Conditioning Costs Is Unworkable.

Because conditioning is an activity Qwest undertakes in response to a CLEC request, Qwest believes that it is entitled to recover its costs of conditioning loops, regardless of whether the end user ultimately receives DSL service from the CLEC who requests conditioning.

AT&T, however, seeks to avoid the costs of competition and require Qwest to provide a refund of conditioning costs under various scenarios. Over the course of many workshops, AT&T has made several passes at trying to draft language for the SGAT that gives it a refund for these one-time loop conditioning costs undertaken on their behalf. In the first workshop on loops in Arizona, AT&T proposed language the required only Qwest to refund conditioning costs if a CLEC lost its customer within one year, regardless of why the customer left and regardless of whether another CLEC wooed the end user away from the CLEC who requested conditioning.

Realizing the one-sidedness of this language, AT&T attempted in the loop workshop in Colorado to require Qwest and *all CLECs* to refund conditioning costs to the carrier that paid for it when the CLEC or Qwest entices an end user away from AT&T. This proposal met with even more disfavor, as several CLECs (such as New Edge and Covad) vigorously opposed it.[49] These carriers, and Qwest, reasoned that if AT&T is concerned about its customers leaving AT&T after it has paid for

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46 July 11, 2001 Workshop 4 Tr. at 4287-4288; Ex. 891C; Ex. 885-T, Liston Direct, at 24.

47 Ex. 885-T, Liston Direct, at 24.

48 Qwest notes that the Commission has established rates for conditioning and loop conditioning charges are included in Qwest's approved tariff WNU-42 § 3.1.G. Thus, it appears to have already addressed and rejected the CLECs' "double recovery" theory.

49 These carriers argued that the competition requires competitors to make an investment in their customers. To dissuade customers from leaving the CLEC before the CLEC recovers its investment, Covad and New Edge use Termination Liability Assessment clauses in their contracts.

conditioning, the proper mechanism is a Termination Liability Assessment ("TLA") between the carrier and the end user, not a refund that inhibits competition.

In the multi-state loop workshop, AT&T reverted back to a variation of its original proposal, again imposing the obligation to refund conditioning costs *only* on Qwest if the end user left the CLEC within four months. While AT&T's language may have satisfied *some* of its CLEC opponents,[50] it was patently unfair and unreasonable to Qwest. AT&T's proposed language would have given the CLEC a refund of conditioning costs that Qwest undertook solely because the CLEC asked for it if the end user simply decided to go to another CLEC or not pursue DSL service at all, through no fault of Qwest. AT&T candidly admitted that its language "presumed" that if the customer left the CLEC it was Qwest's fault. AT&T presented no evidence whatsoever to support this "presumption." Furthermore, as with its original proposal, AT&T's proposal in the multi-state workshop was patently unfair, as it required Qwest alone to provide a refund of conditioning costs even if another CLEC took the customer from the paying carrier.

In Washington, AT&T has presented its most recent proposal on this issue, which, though more reasonable than its previous proposals, suffers from incorrect assumptions and implementation issues. At the outset, it is notable that AT&T has run this circle several times for an issue that is, at best, speculative for it: AT&T has no idea if it has ever even ordered loop conditioning from Qwest.[51] Thus, in determining whether AT&T's language is reasonable, the Commission should consider that its only proponent has never experienced any of the alleged "problems" its language is supposedly intended to prevent.

AT&T incorrectly assumes that Qwest obtains the "benefit of the asset" if a CLEC pays for loop conditioning and does not ultimately receive the customer. This assumption is obviously flawed because the customer could just as easily choose to obtain DSL service from another CLEC as from Qwest. Where another CLEC gains the customer, Qwest obtains no benefit from the asset.

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50 New Edge, in particular, expressed concern with AT&T's proposal.

51 July 11, 2001 Workshop 4 Tr. at 4311.

AT&T's language also cannot be implemented. AT&T proposed language states that Qwest will refund loop conditioning costs if the customer never receives xDSL service from the CLEC, experiences "unreasonable delay" in provisioning or experiences "poor quality of service" due to Qwest fault. The basic problem with AT&T's proposal is the drafting and implementation. AT&T seeks to have a stand-alone, self-executing refund, but the circumstances under which a refund could be due are variable and subject to interpretation. For example, as Ms. Liston explained, certain DSL services are susceptible to voltage or the equipment the CLEC puts on its side of the network.[52] Furthermore, it is not uncommon for CLECs to push the technological envelope when providing xDSL service. Determining "fault," or the reason for the end user's "poor quality of service," with these variables requires some sort of process, which AT&T's proposal lacks entirely. Furthermore, the type of performance problems that may trigger a request for a refund may not occur immediately after the conditioning is performed, making an "automatic" refund even more difficult to administer.[53] In addition, terms such as "poor quality," and "unreasonable delay" are subject to myriad interpretations that do not lend themselves to the self-executing refund AT&T seeks. In other words, there is no way to make a determination of "fault" to trigger a refund without some sort of process for addressing the factual disputes.

Qwest is not opposed to inserting language in the billing provisions of the SGAT that would entitle a CLEC to a credit of conditioning costs if Qwest failed to perform the conditioning in a workmanlike manner or significantly missed its due date for conditioning due to Qwest fault. Qwest asserts that to the extent a carrier believes it is entitled to a credit because of Qwest's poor performance, that issue necessarily needs to be addressed in the context of a billing dispute to permit a determination of fault. AT&T's newest proposed language simply cannot be implemented without a

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52 July 11, 2001 Workshop 4 Tr. at 4299, 4306-07 (references to "xDSL" on page 4306 should be "SDSL.")

53 *Id*. at 4298-99, 4301 Thus, this situation is starkly different than Qwest's agreement to waive coordinated installation charges if Qwest does not perform the coordinated installation within 30 minutes or its going-forward agreement to waive the installation charge up front if it does not perform cooperative testing. These situations are bright-line, and the determination of why the coordinated installation or testing did not occur is made immediately.

process for determining the reason the end user did not receive xDSL service or the reason for the "unreasonable delay" or "poor quality" service.

In the multi-state proceeding, the Facilitator recently addressed this issue. In an attempt to "roughly" balance the competing interests of the CLECs and Qwest in situations where a customer decides not to take the CLEC's service where Qwest has missed a due date due to Qwest fault, where Qwest has failed to condition a loop in accord with the applicable standards, or where the CLEC can demonstrate that that conditioned loop is incapable of substantially performing normal functions, the Facilitator recommended a scheme of credits to the CLEC ranging from partial to full credit for conditioning charges.[54] Although Qwest does not agree with the recommendation and believes that this matter should be addressed in the context of a billing dispute, Qwest would agree to implement this language, which is included in the SGAT Lite filed with Qwest's Workshop 4 briefs, if the ALJ and the Commission believe it would resolve this issue.

E. WA Loop 3(a): AT&T's Demand For Direct Access To LFACS Exceeds Parity And Should Be Rejected.

1. FCC Requirements And Raw Loop Data Tool.

The FCC first addressed an incumbent's obligation to provide loop makeup information in the *UNE Remand Order*. There, the FCC held that "an incumbent LEC must provide the requesting carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install."[55] The incumbent is not to "digest" loop information or pre-qualify the loop for the CLEC, but instead, must provide the underlying information on the makeup of the loop.[56] The key issue that the ALJ and Commission must focus on is that the FCC requires the incumbent to provide information regarding the loop in question, not all possible information regarding the network. At a minimum, the incumbent LEC

54 Multi-State UNE Report at 62.
55 *UNE Remand Order* ¶ 427.
56 *Id.* ¶ 428.

must provide requesting carriers "the same underlying information that the incumbent LEC has in any of its own databases or other internal records."[57] Examples of the information incumbent LECs must provide are:

- the composition of the loop material including, but not limited to, fiber or copper;
- the existence, location and type of any electronic or other equipment on the loop, such as digital loop carrier or other remote concentration devices, feeder/distribution interfaces, bridge taps, load coils, and pair-gain devices;
- loop length, including the length and location of each type of transmission media;
- wire gauge(s); and
- electrical parameters of the loop, which may determine the suitability of the loop for various technologies.

Qwest provides all of this information in its Raw Loop Data ("RLD") tool. The information contained in the RLD tool is the same raw loop information that is utilized to qualify Qwest's retail DSL service. As Ms. Liston demonstrated, the RLD tool provides the following loop information: telephone number, address, common language location identification (CLLI), metallic loop test (MLT) distance, terminal ID, cable name, pair gain type, pair number, load type, number of load coils, bridge tap offset by segment, cable gauge by segment.[58] In addition to the raw loop data ("RLD") tool accessed through IMA-GUI and IMA-EDI, Qwest provides access to its ADSL qualification, its POTS Conversion to Unbundled Loop Tool, its Qwest DSL Qualification Tool, and its wire center RLD tool, each of which is described in SGAT § 9.2.2.8. The wire center tool is robust and provides CLECs with the following loop makeup information: wire center CLLI code, cable name, pair name, terminal address, MLT distance, segment (F1, F2), sub-segment (e.g., 1 of F1), segment length, segment gauge, bridge tap length by segment, bridge tap offset distance, load coil type, and pair gain type.[59]

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57 *Id.* ¶ 427.

58 Ex. 885-T, Liston Direct, at 40-41; *see also id*. at 39-40 (describing the ADSL tool available to CLECs); Ex. 896 (summary of all loop qualification tools available to CLECs).

59 SGAT § 9.2.2.8.2; Ex. 885-T, Liston Direct, at 42; Ex. 898.

Covad, an active DLEC, told the FCC in an *ex parte* submission, that the Qwest RLD tool met the FCC's loop makeup requirements.[60] Based on the quality of the information in the RLD, New Edge has requested Qwest to meet with another BOC to improve the loop information that BOC provides.[61] Although incumbents are required to provide loop makeup information, they are not required to create an automated OSS database if one does not exist.[62] Furthermore, loop qualification information must be provided to CLECs only in substantially the same time and manner that it is provided to the incumbent LEC's retail operations.[63]

2. LFACS Is Not A Searchable Tool.

Despite the wealth of loop makeup information Qwest provides, AT&T also demands that Qwest provide direct access to its Loop Facilities Assignment and Control System ("LFACS") database. AT&T's demand exceeds the requirement of the Act, and exceeds retail parity. It is critical to note that the FCC requires incumbent LECs to provide CLECs with access to the loop make up information in substantially the same time and manner as that information is available to the incumbent.[64] Contrary to the arguments of AT&T, no FCC order requires the incumbent LECs to provide direct access to their back office databases, particularly where the incumbent makes loop makeup information in its back office systems available to the CLEC as Qwest does with the RLD tools. The raw loop data resides in LFAC and the information necessary to determine if a loop qualifies for DSL is downloaded into the loop qualification database. This database is used for both the wholesale RLD tool and the Qwest retail DSL qualification tool. Again, it is important to remember that the FCC requirement focuses on providing CLECs with information necessary to qualify a loop for the provisioning of DSL service. In addition, although Qwest is required to provide information to CLECs that is available in Qwest's back office systems, it must only do so in substantially the same time and manner as it makes

60 Ex. 897.
61 Ex. 926-T, Rebuttal Testimony of Jean M. Liston ("Liston Rebuttal"), at 16.
62 *UNE Remand Order* ¶ 429.
63 *Id*. ¶ 430.
64 *See, e.g., UNE Remand Order* ¶ 431; *id*. ¶ 428 ("[T]he incumbent LEC must provide access to the underlying loop qualification *information* contained in its engineering records, plant records, and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carrier seeks to offer").

that information available to itself.[65] With respect to LFACS, Qwest retail representatives only have access to that database in the provisioning process. They do not have access to LFACS on a pre-order basis. The retail and wholesale orders follow the identical provisioning processes, including the assignment process that occurs in LFACS.[66]

Furthermore, unlike some BOCs that did not have electronic loop make up information available at the time they filed their 271 applications, Qwest's RLD is already populated with information that is taken directly from the loop qualification database.[67] The loop qualification database is used for both wholesale and retail qualification tools and receives data directly from LFACS.[68] Qwest retail sales representatives do not have access to LFACS on a pre-order basis.[69] For Qwest retail and for wholesale customers, LFACS is a provisioning tool for the assignment of facilities to support customer requests and is accessed once Qwest or the CLEC actually places an order.[70] Notably, Qwest uses LFACS in an identical manner for CLECs: once the CLEC places an order, Qwest uses the same provisioning process for CLECs as for Qwest retail.[71] During this provisioning process, LFACS determines if facilities are available to fulfill the order. LFACS enables Qwest employees to assign a cable and pair to an individual wholesale or retail request. The LFACS database is programmed to find cable and pairs that meet the technical parameters of the individual service requested. Once it finds the matching facilities, it does not "look" for alternatives.[72] Qwest uses the same mechanized and manual provisioning process for Qwest retail and CLECs alike.[73]

Moreover, LFACS in Qwest's network does not have "searchable" functionality. LFACS is strictly an assignment tool.[74] It looks for facilities on a "one-at-a-time" basis to fulfill the specifications

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65 *UNE Remand Order* ¶¶ 430-31.
66 July 11, 2001 Workshop 4 Tr. at 4317-18.
67 *Id*. at 4316-17.
68 *Id*.
69 *Id*. at 4318.
70 Id. at 4316-18.
71 July 11, 2001 Workshop 4 Tr. at 4317-18.
72 Ex. 926-T, Liston Rebuttal, at 22; July 11, 2001 Workshop 4 Tr. at 4320-21.
73 July 11, 2001 Workshop 4 Tr. at 4317-18.
74 *Id.* at 4320; Ex. 926-T, Liston Rebuttal, at 22.

indicated in a specific order.[75] LFACS does not search for other possible facilities to fill the order. Thus, there is no way to query LFACS for spare facilities, as AT&T claims it wants to do. To create the functionality AT&T demands would require a significant overhaul of LFACS.[76] Yet, neither AT&T nor any other CLEC has stated on the record that they would compensate Qwest to create this functionality for them.

AT&T's demand for direct access to LFACS is also problematic because LFACS contains loop information on every Qwest facility and, of course, for every other CLEC obtaining unbundled loops from Qwest. Thus, were AT&T to prevail, it would have access to highly confidential information of its competitors.[77] Indeed, based on this understanding, New Edge in Colorado had second thoughts regarding the propriety of allowing all CLECs to have direct access to this database. AT&T has claimed that Qwest had this proprietary information itself so CLECs should have it as well. This argument is meritless because it is beyond dispute that Qwest must have information regarding the use of its own network, and, the LFACS database does not provide Qwest with access to any information regarding CLECs' own facilities or facilities the CLEC may obtain from others. AT&T, notably, has proposed *no* plan for protecting this proprietary information from disclosure.

If ordered to provide direct access to LFACS, Qwest would have to substantially modify the LFACS database to make it perform functions it cannot perform now, at apparently Qwest's own expense. As noted above, however, the FCC has expressly held that incumbent LECs are not required to create mechanized loop qualification tools for CLECs.[78] The FCC also has found that Qwest must provide CLECs with access to OSSs in substantially the same time and manner as they are provided to the Qwest retail arm. As discussed below, the ROC OSS test will specifically evaluate whether Qwest provides CLECs with access to the same loop makeup information from the same databases available to Qwest and whether it updates that information in the same manner.[79]

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75 July 11, 2001 Workshop 4 Tr. at 4317-18.
76 July 11, 2001 Workshop 4 Tr. at 4319.
77 Ex. 926-T, Liston Rebuttal, at 22.
78 *UNE Remand Order* ¶ 429.
79 *See* Ex. 939 (showing that the third party OSS test will answer the following question: "Does the loop qualification information come from the same database (directly or indirectly) with the same frequency of update").

3. Direct Access Is Unnecessary

AT&T failed to present substantive evidence that direct LFACS will provide it with any additional loop makeup information that is not already available through the RLD tool. For example, AT&T claimed it needs direct access to determine if there are spare facilities available. Qwest demonstrated, however, that to determine if facilities are available on a pre-order, pre-provisioning basis, both Qwest retail and CLECs have access to "Facility Check," a searchable tool that permits CLECs to determine what facilities are available.[80] This is the same tool Qwest uses to determine if there are spare facilities.[81] Qwest's ADSL tool also displays spare facility information.[82] As Ms. Liston testified, Qwest is also in the process of enhancing the spare facility information available through IMA-GUI and IMA-EDI RLD tool to display spare facilities on an individual basis in addition to on a wire center level.[83] Significantly, Qwest recently learned that this spare facility information has already been included in the August 2001 release of IMA 8.0; therefore, this information will be available far sooner than December 2001 as Qwest previously thought. Accordingly the only information AT&T specifically requested, spare facility information,[84] has already been added to the RLD.

AT&T argued that it needs direct access to LFACS to determine if it can serve customers where IDLC is prevalent. This argument is meritless. At the outset, AT&T has admitted in other proceedings that it has *never* ordered an unbundled loop on IDLC.[85] In addition, Ms. Liston testified that only 6.3% of access lines in Washington are served with IDLC, and only 4% of those lines are located in areas where more than 75% of the facilities are served by IDLC technology.[86] Therefore, AT&T has failed to establish any need for the information it seeks. Beyond that failure, Qwest already provides CLECs with a wire center RLD tool that shows every instance of integrated pair gain in the

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80 Ex. 926-T, Liston Rebuttal, at 21-22; July 11, 2001 Workshop 4 Tr. at 4318.
81 July 11, 2001 Workshop 4 Tr. at 4318.
82 Ex. 896 (describing how to find spare facilities in the ADSL tool).
83 Ex. 926-T at 22; July 11, 2001 Workshop 4 Tr. at 4318.
84 July 11, 2001 Workshop 4 Tr. at 4315.
85 Multi-State April 30, 2001 Tr. at 144; Multi-State May 3, 2001 Tr. at 11-12. Moreover, AT&T's market entry plans do not include any potential for using an unbundled loop served over IDLC. AT&T's market entry plans are (1) its own cable facilities; (2) DSL (which cannot be provisioned over IDLC) and (3) UNE-P, which does not require Qwest to unbundle the IDLC. Therefore, this assertion by AT&T is a red herring.
86 Ex. 885-T, Liston Direct, at 33.

entire wire center. Qwest introduced the mechanized bulk wire center loop make-up tool in August 2000. The batch files Qwest provides contain a list of all active telephone numbers within a particular wire center as well as detailed raw loop information for each telephone number listed. CLECs can access these wire center level loop files through a CLEC-accessible, Qwest web site http://econ.uswest.com.[87] The batch files provide information regarding integrated pair gain and other information that permits CLECs to determine if the area they intend to serve supports DSL service.[88] The batch files are refreshed on a rolling basis monthly.[89] Ex. 898 shows a sample of the information as it appears in the wire center tool, and informs CLECs that the information can be downloaded onto an Excel spreadsheet. In workshops in Colorado and Arizona, Qwest presented an Excel sample of information from the wire center tool which prominently identified instances of IPG. The pair gain information is also available at the individual telephone number or address basis via the IMA-GUI and IMA-EDI RLD tool. Thus, Qwest provides information that permits CLECs to identify communities in which IDLC is present.

AT&T further claimed that it needed more ability to see spare facilities to determine how to configure a loop served by IDLC. Qwest demonstrated, however, that whether Qwest or CLEC places the order, the 11-step assignment process, using LFACS, will look for facilities to meet those needs.[90] As noted above, Qwest has enhanced the RLD to include spare facility information. In any event, providing information to CLECs on F1 or F2 segments would not tell the CLEC whether Qwest will be able to provide a complete unbundled loop to a customer served by IDLC.[91]

AT&T has been candid at hearings in other states in admitting that it is not seeking parity, but something far more extensive than Qwest has access to itself.[92] However, the FCC orders on access to loop makeup information are unambiguous that Qwest need not provide CLECs with information above and beyond what is available to itself. Furthermore, AT&T's demand for direct access to

87 Ex. 926-T, Liston Rebuttal, at 21-22; July 11, 2001 Workshop 4 Tr. at 4317; Ex. 898.
88 Ex. 898.
89 *Id*.
90 Ex. 885-T at 34; Ex. 894.
91 *See* July 11, 2001 Workshop 4 Tr. at 4321.
92 Multi-State May 1, 2001 Tr. at 81 (Ex. 941).

LFACS is not tied to a need for loop make up information; rather, AT&T appears to request the unfettered ability to run reports and search Qwest's network for information, ostensibly to look for available facilities. This far-ranging access to network information is not what the FCC ordered. Instead, the *UNE Remand Order* unambiguously states that incumbent LECs are required to provide make up information for a specific loop: "[l]oop qualification information identifies *the physical attributes of the loop plant (such as loop length, the presence of analog load coils and bridge taps, and the presence and type of Digital Loop Carrier)* that enable carriers to determine whether *the loop* is capable of supporting xDSL and other advanced technologies."[93] The order does not impose a broad obligation to disclose every aspect of an incumbent's underlying network, which is what AT&T is seeking in its demand for direct LFACS access. Because AT&T only specifically requested spare facility information, and Qwest has updated RLD to provide that information, there is no basis for AT&T's continuing demand for direct access to LFACS.

AT&T has suggested that Verizon provides such direct access. The *Verizon Massachusetts Order* demonstrates that Verizon provides *mediated* access to loop makeup *information* from LFACS, not direct access to LFACS itself.[94] That it takes Verizon 24 hours to return the loop makeup information demonstrates that it provides LFACS information, but not direct access. SBC also provides mediated access to LFACS for loop make up information,[95] which is precisely the access Qwest provides.

4. AT&T's Demand Has Been Rejected In Other Workshops.

In the multi-state collaborative, the Facilitator rejected AT&T's demand for direct LFACS access and ordered, instead, that Qwest should meet the only arguably reasonable component of AT&T's claim by providing information on spare facilities. The multi-state Facilitator reasoned that AT&T should be given access to spare facility information from whatever source, but that direct,

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93 *UNE Remand Order* ¶ 426 (emphasis added).

94 *Verizon Massachusetts Order* ¶ 57.

95 Memorandum Opinion and Order, *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, FCC 01-29 at ¶ 122 (rel. Jan. 22, 2001) ("*SBC Kansas-Oklahoma Order*").

unfettered access to LFACS would both be difficult and unnecessary to meet that need.[96] Accordingly, the Facilitator recommended that Qwest modify the SGAT to include the following commitment:

> In areas where Qwest has deployed amounts of IDLC that are sufficient to cause reasonable concern about a CLEC's ability to provide service through available copper facilities on a broad scale, the CLEC shall have the ability to gain access to Qwest information sufficient to provide CLEC with a reasonably complete identification of such available copper facilities. Qwest shall be entitled to mediate access in a manner reasonably related to the need to protect confidential or proprietary information. CLEC shall be responsible for Qwest's incremental costs to provide such information or access mediation.[97]

Qwest agreed to implement this solution and modified Section 9.2.2.2 of the SGAT to include this commitment. Because AT&T's only stated concerns in Washington and the multi-state workshops was access to spare facility information, Qwest agrees to modify its Washington SGAT to include this commitment. With this modification, the ALJ and Commission should consider this issue resolved.

5. The ROC Will Confirm That Qwest Provides Access At Parity.

In the followup workshop in Washington, AT&T, for the first time in any workshop, lodged the demand that Qwest submit to an audit of its back office systems. This demand is entirely inappropriate. First, no FCC order requires a BOC to submit to an audit of its databases as a requirement of providing loop make up information or Section 271 relief. Thus, there is no requirement that Qwest accede to AT&T's demand. More important, the ROC is already performing the auditing function. Qwest introduced a portion of the ROC Master Test Plan that addresses assessment of Qwest's loop qualification tools.[98] As Ex. 939 demonstrates, KPMG Consulting will "examine the wholesale and retail *end-to-end processes*, the results of the same queries made to the two processes, *and all additional avenues of follow-up or recourse available either to wholesale or retail operations or both.*"[99] Furthermore, the ROC evaluation is intended to answer the very same questions AT&T's "audit" demand would:

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96 Multi-State UNE Report at 65-66.
97 *Id*. at 66.
98 Ex. 939.
99 *Id*. (emphasis added).

- Does a wholesale loop qualification transaction result in the same information as a retail transaction for the loop?
- *Does the loop qualification information come from the same database (directly or indirectly) with the same frequency of update*?
- Are the wholesale responses returned in accordance with the benchmark set?
- *Are any differences in the sub-processes or remedial options available in the retail loop qualification process versus the wholesale process*?[100]

Qwest's SGAT also obligates Qwest to provide "the same loop qualification information available to Qwest."[101] With these assurances of equivalent access, the ALJ and Commission should find that Qwest has met its obligation to provide CLECs with loop makeup information. The ALJ and the Commission should further find that Qwest is not required to provide direct access to LFACS or accede to AT&T's untimely demand for an audit.

Finally, the Commission should not order direct access to LFACS based on any CLEC claims regarding the accuracy of the information in RLD. It is critical for the ALJ and the Commission to recognize that the information in RLD and the Qwest DSL tool come from the same place: LFACS. LFACS information is loaded into the loop qualification database that feeds both the wholesale tools and retail DSL tool.[102] Thus, any error in the RLD is based upon an error in LFACS. Covad also has raised issues regarding the accuracy of the RLD in other jurisdictions. As part of the Colorado xDSL trial, Qwest evaluated the RLD information for orders submitted during the trial. As explained in Ms. Liston's rebuttal, approximately 35% of the orders returned a response of "No Working TN." Qwest has already put in motion software fixes to correct the "No Working TN" responses that were discovered.[103] Thus, Qwest proactively initiated this database correction. As for the remainder of Covad's alleged inaccuracies, Qwest disputes that Covad accurately presented the qualities of the

100 *Id*. (emphasis added).
101 SGAT § 9.2.2.8.
102 *See* Ex. 986.
103 Ex. 926-T, Liston Rebuttal, at 17.

tool.[104] Indeed, Qwest's investigation showed that Covad incorrectly read the tool's results and did not use the tool properly. Regardless, the FCC has repeatedly held that so long as the retail and wholesale information is provided at parity, that there may be errors or inaccuracies in the loop make up information neither proves "discrimination" nor prevents a BOC from meeting its obligations under Section 271.[105] Because the ROC will confirm that Qwest provides access to loop make up information at parity, or recommend any necessary process changes, any alleged errors in the RLD tool do not impact Qwest's compliance with checklist item 4.

F. WA Loop 3(b): There Is No Requirement That Qwest Create The Functionality For AT&T And Covad To Perform A Mechanized Loop Test On A Pre-Order Basis.

Loop Issue 3(b) centers on the demands of AT&T and Covad that Qwest create the functionality to allow CLECs to perform a mechanized loop test ("MLT") on a pre-order basis. As more fully discussed below, Qwest opposes this demand for the following reasons: (i) Qwest retail representatives cannot perform an MLT on a pre-order basis; (ii) MLTs are performed as a part of repair; (iii) a MLT is an invasive test that takes the customer's service down for a period of time; (iv) a MLT is a switch-based test that requires the loop to be connected to Qwest's switch; (v) no other BOC provides CLECs with a pre-order MLT; and (vi) Qwest has already given CLECs non-discriminatory access to MLT distance through the RLD tool.[106]

The CLECs' demand that Qwest create the functionality to perform a pre-order MLT exceeds all requirements in the Act. First, a MLT is a switch-based test, which means the specified loop must be connected to the Qwest switch to perform the MLT.[107] If this condition exists in a *pre-order* situation, then the CLEC does not "own" the end user, as the CLEC does not "own" the end user until

104 *Id.*
105 *Verizon Massachusetts Order* ¶ 66; *SBC Kansas Oklahoma Order* ¶ 126.
106 Ex. 926-T, Liston Rebuttal, at 8-14.
107 Ex. 926-T, Liston Rebuttal, at 8-9; July 11, 2001 Workshop 4 Tr. at 4334, 4335. Tellingly, because the line must have a telephone number assigned, Covad acknowledged that the ability to perform a pre-order MLT "won't help us at all with respect to UNE loops." July 11, 2001 Workshop 4 Tr. at 4334.

an actual order is placed and processed.[108] In an unbundled loop situation, once the CLEC order is processed, the end user is no longer connected to Qwest's switch. It is connected to the CLEC switch.

Furthermore, Qwest is aware of no other BOC that is providing CLECs with the ability to perform a MLT on a pre-order basis.[109] In a previous workshop on this issue, one CLEC claimed that a BOC was permitting it to run MLTs. Upon investigation, however, Qwest determined that the BOC referenced only provided CLECs the ability to perform MLTs as a *repair* function, the same functionality Qwest provides; it did not permit them to perform MLTs on a *pre-order* basis.[110] This clarification makes sense, since an MLT is a switch-based test that requires the loop to be connected all the way to the Qwest switch.[111] Covad also acknowledged that an MLT is principally a repair and maintenance tool, not a pre-order tool.[112] Accordingly, the CLECs are demanding that Qwest create functionality that the FCC has not ordered and that no other BOC provides.

In addition, a MLT is an invasive test. If performed when an end user is on the line, the test will cause the end user to be disconnected.[113] Although Covad claims this is only a very momentary disruption, on a pre-order basis, neither Qwest nor the CLEC serving the end user would have any idea why the end user was experiencing the disconnect. Thus, permitting CLECs to perform random pre-order MLTs could lead to unnecessary customer disruptions and needless repair calls. Moreover, nothing would prevent a CLEC from performing multiple MLTs on Qwest lines intentionally to disrupt service.

Moreover, Qwest does not perform MLT tests for itself on a pre-order basis; the test is used in repair situations to test the loop.[114] Thus, Qwest retail sales employees do not have the ability to perform pre-order MLTs and do not even have access to MLT information. In fact, they have less

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108 Ex. 926-T, Liston Rebuttal, at 8-9; July 11, 2001 Workshop 4 Tr. at 4335.
109 Ex. 926-T, Liston Rebuttal, at 11-12.
110 *Id*.
111 *Id*. at 8-9; July 11, 2001 Workshop 4 Tr. at 4335.
112 July 11, 2001 Workshop 4 Tr. at 4334.
113 Ex. 926-T, Liston Rebuttal, at 12-13; July 11, 2001 Workshop 4 Tr. at 4335.
114 Ex. 926-T, Liston Rebuttal, at 9; July 11, 2001 Workshop 4 Tr. at 4338.

access than CLECs to loop makeup information because Qwest retail sales representatives do not have access to raw loop data or the MLT distance.[115]

The MLT is not the panacea that AT&T and Covad claim it is. For example, CLECs have argued that they need MLT information because of alleged concerns about Qwest's efforts to improve the quality or reliability of the information in the databases. The MLT length, however, is not the most accurate loop length available in the RLD tool. An MLT provides an estimated loop length based upon the resistance on the line.[116] To the extent the customer has multiple telephones off the loop, the MLT will show the loop length to be longer than it actually is. In fact, a MLT may overestimate loop length by as much as 20 percent.[117] Accordingly, the MLT does not provide more accurate or reliable information regarding loop length; the information derived may actually be misleading. The loop length information in the ADSL tool and the information on loop segments in the RLD tool provide a more accurate picture of the actual loop length. Additionally, MLTs can *only* be performed on copper loops, not fiber or pair-gain or loops with segments that are on pair gain.[118] Furthermore, if the CLEC is provisioning services such as SDSL, which is particularly susceptible to voltage, the MLT will not capture voltage.

Furthermore, Qwest has already populated the RLD tool with MLT information on many of the copper loops in Qwest's 14-state territory.[119] This one time sweep was intended to provide basic loop information for the Raw Loop Data tool, while minimizing customer inconvenience. Qwest's prior MLT run to populate the RLD tool distinguishes Qwest from other BOCs, such as Verizon, that must perform such tests on a manual basis with a three-day turn around.[120] In the RLD tool, CLECs have access to this information on a real-time basis. Thus, the information Qwest provides not only meets the CLECs'

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115 Ex. 926-T, Liston Rebuttal, at 10-11.
116 July 11, 2001 Workshop 4 Tr. at 4337.
117 Ex. 926-T, Liston Rebuttal, at 12; July 11, 2001 Workshop 4 Tr. at 4337
118 July 11, 2001 Workshop 4 Tr. at 4335, 4339. Because MLTs can only be performed on loops that are copper, the RLD does not include MLT distance information for loops with segments on pair gain. July 11, 2001 Workshop 4 Tr. at 4339. Although Covad may attempt to cast the omission of this information as an "inaccuracy" in the RLD tool, it is not. Qwest *cannot* include the information because an MLT cannot be performed on those loops. *Id.*
119 July 11, 2001 Workshop 4 Tr. at 4337.
120 *Verizon Massachusetts Order* ¶ 58.

demands, but it exceeds what is available from other BOCs and even what Qwest's own retail sales operations receive.

AT&T has cited the fact that Qwest performed this single sweep of MLTs throughout its 14-state region to populate its loop database used for both Qwest DSL and RLD tool as a reason to require Qwest to create the functionality for CLECs to perform a pre-order MLT. However, that Qwest performed the test once under controlled circumstances to populate the databases that support both CLECs and Qwest in no way supports the multiple, continuous running of MLTs by CLECs.[121] Rather, it demonstrates that CLECs already have MLT information available to them. In addition, there is no requirement that individual CLECs provide one another (or Qwest for that matter) with loop data. Thus, if CLECs perform pre-order MLTs on Qwest loops without restriction, multiple CLEC may perform the same MLT to derive the same information with no accrued benefit to other carriers or long-term benefit to the RLD that all CLECs share. Furthermore, it could lead to massive customer disruptions for Qwest and reseller CLECs if CLECs were to blanket an area with MLTs as part of a marketing campaign.[122] Additionally, there are a limited number of MLT access points per switch; therefore, if CLECs were performing pre-order MLTs, it might prevent Qwest or a CLEC from testing for a repair problem. Qwest's current database provides stability for the customer and parity for all carriers. Qwest has provided at least parity with respect to MLT distance: the only MLT information available on a pre-order basis to any carrier (including Qwest) is what is in the loop qualification tool that feeds the RLD tool and the Qwest DSL tool.[123] Qwest enjoys no competitive advantage over CLECs.

AT&T and Covad overlook an important fairness issue: an MLT cannot be performed on unbundled loops that Qwest has provided to CLECs.[124] Once the loop is unbundled from the Qwest switch and transferred to the CLEC switch, Qwest no longer has the ability to perform a MLT on that loop. An MLT from the Qwest switch also cannot be performed on loops that are part of a facility-

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121 July 11, 2001 Workshop 4 Tr. at 4343-44.
122 *Id*.
123 Ex. 926-T, Liston Rebuttal, at 9-13.
124 July 11, 2001 Workshop 4 Tr. at 4344.

based CLEC's own network. Accordingly, if the Commission were to order Qwest to provide the ability to perform a pre-order MLT, CLECs would be performing those tests only on *Qwest* switch-based loops, UNE-P CLECs, and reseller CLECs; none of these carriers, however, could perform an MLT on facilities-based CLEC loops or unbundled loops provided to a CLEC. This provides an unfairly one-sided advantage.

AT&T has claimed that providing it with the ability to perform pre-order MLTs is essentially a "parity" issue. The *UNE Remand Order* requires BOCs to provide the same *information* available to their retail operations to CLECs in a non-discriminatory manner.[125] The *UNE Remand Order* does not require the BOCs to create functionalities that do not currently exist. MLT is a repair function. Creating the functionality to perform an MLT on a pre-order basis would require significant resources,[126] and AT&T and Covad have not committed on the record to pay the costs of creating that functionality. Qwest does not perform an MLT as a pre-order function to provide Qwest DSL. CLECs and Qwest retail use the same underlying information, including MLT distance, to provide qualify a loop. To the extent the database is updated, it is updated for both Qwest and CLECs alike in the same manner and timeframe. If anything, CLECs enjoy superior access because they can view the MLT distance directly in the RLD tool, but Qwest retail sales representatives cannot.[127] Thus, there is no "parity" concern here.

In considering both Loop Issue 3(a) and 3(b), it is important to note that the CLECs' ordering process is not restricted. Regardless of the information RLD returns, the presence of IDLC, or the MLT distance reported (or not reported) in the RLD, the CLEC still can place an order with Qwest, Qwest will accept the order, and it will use the 11-step assignment process to determine if facilities are available to fill the order.[128]

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125 *UNE Remand Order* ¶ 427.
126 Ex. 926-T, Liston Rebuttal, at 11-12; July 11, 2001 Workshop 4 Tr. at 4345.
127 Ex. 926-T, Liston Rebuttal, at 11.
128 *Id*. at 10; July 11, 2001 Workshop 4 Tr. at 4346-47.

Finally, other state commissions have rejected the demand that Qwest create the ability for CLECs to perform a pre-order MLT. In the multi-state collaborative, the Facilitator concluded as follows:

> There is sufficient evidence of record from which to conclude that Qwest does not generate pre-order information through mechanized loop testing in serving its own end users. However, it does clearly have the capability to do so. AT&T has not presented any evidence to rebut the Qwest testimony that it provides CLECs with the same information, from the same sources, and in the same manner as is available to its own personnel in the pre-order context. That Qwest has done the test on a comprehensive basis in the past does not demonstrate discrimination; Qwest makes the results of that test at least equally available to CLECs for pre-order use. The results of that prior testing thus do Qwest no better in terms of assessing loop capabilities than what CLECs can get from having access to it.
>
> That other ILECs may allow the conduct of such testing for CLECs is not determinative. The record does not address the issue of whether they conduct such testing for themselves on a pre-order basis. If they do, then the issue differs from the one in question here, because a question of discrimination arises there. Moreover, under the facts made clear here, CLECs already have access to the results of a one-time system wide program that Qwest conducted to provide a tool that would set forth the information involved. Given its availability to CLECs, given the potential disruption to the service of end users of other carriers (whether Qwest's or another CLEC's) and given a sound basis for concluding that Qwest satisfies applicable non-discrimination requirements, Qwest should not be required to make mechanized line testing available for CLECs for so long as Qwest continues not to perform it for itself or its affiliates.[129]

As in the multi-state, AT&T and Covad presented no evidence demonstrating that Qwest performs MLTs on a pre-order basis for itself, or that any other carrier provides this functionality. Qwest, on the other hand, presented compelling evidence that the CLECs' request has no basis in fact or law. Accordingly, the Commission should find that Qwest need not create the functionality for AT&T to perform MLTs on a pre-order basis.

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129 Multi-State UNE Report at 64.

G. WA Loop 8(a) and (b): Qwest's Process For Handling "Held Orders" In Its Build Policy And SGAT Properly Reflect Its Legal Obligations. Qwest Is Not Required To Build Facilities On Demand For CLECs.

The disputed issues for Loop 8 fall into two categories. Loop 8(a) concerns Qwest's held-order policy -- specifically (1) Qwest's one-time effort to clear its backlog of held orders that it could not fill and (2) Qwest's going-forward policy to reject orders where it has no available facilities (i.e., the LSR rejection policy). Loop 8(b) concerns whether Qwest must build loop facilities where none is available. Because Qwest's policy on treatment of orders where no facilities are available is integrally tied to the absence of an obligation to build facilities for CLECs on demand, Qwest addresses them together below.

1. Held Orders

Earlier this year Qwest had a large backlog of orders that it had "held" for lack of facilities or customer reasons. Qwest realized that to permit CLECs to manage customer expectations and properly address, up front, instances in which facilities are unavailable to fulfill an order, it should establish a uniform policy for held orders and order rejections. As Jean Liston explained, these orders had been held typically for one of three reasons:

1. All facilities were exhausted.

2. Facilities were available but were not compatible with the facilities requested. For example, a CLEC may have ordered a 2-wire, non-loaded loop, which requires a copper facility, but the community that it was serving was completely served by pair gain and Qwest had no copper running to the community.

3. The order was held for customer (CLEC) reasons, such as the CLEC's failure to respond to an inquiry from Qwest.[130]

On March 22, 2001, Qwest distributed to the CLECs through the CICMP process its position statement on held orders and build requirements for unbundled loops.[131] This document explained Qwest's policy concerning the construction of facilities for wholesale customers as well as Qwest's policy for addressing held orders and orders for which facilities are not available. Qwest notified the

130 July 11, 2001 Workshop 4 Tr. at 4230-31.
131 Ex. 922.

CLECs that upon expiration of the 30-day CICMP notice period, Qwest would begin reviewing pending held orders. If the CLEC did not respond with instructions on how to treat its pending held orders, Qwest would start canceling the orders after 30 days. The position statement said:

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

Qwest incorporated this held-order policy in SGAT Section 9.1.2.1.3.2.

At the workshop, the CLECs objected to this policy. Interestingly, Qwest initiated the policy in response, among other things, to CLEC requests that Qwest provide them with more accurate information up front on Qwest's ability to fill their orders.[132] Indeed, Covad's witness Ms. Cutcher stated that the previous policy of holding orders was damaging to CLECs and that she "*applaud[s] Qwest's new build policy and sort of the honesty up front in terms of the ability to provision . . . .*"[133] Also, none of the representatives of any of the CLECs present at the hearing was aware of any objection by their company to Qwest's build policy posted through the CICMP process.[134] Upon investigation, Qwest learned that only one CLEC (Eschelon) registered any opposition to this policy in the CICMP process. Moreover, Eschelon's sole concern related to requests for information regarding Qwest's future build plans.[135] Qwest addressed that concern by adding SGAT § 9.1.2.1.4 (discussed in the following section of this brief) that provides CLECs with information about Qwest's future build plans.

AT&T contends that Qwest's 30-day review process somehow provided Qwest the opportunity to make unilateral decisions, without corroboration of the compatibility or availability of facilities associated with any given CLEC order. This is an argument in search of evidence. Neither AT&T nor any other CLEC submitted any evidence that Qwest improperly cancelled their orders. As

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132 July 11, 2001 Workshop 4 Tr. at 4231.
133 July 11, 2001 Workshop 4 Tr. at 4251 (emphasis added).
134 *See* July 11, 2001 Workshop 4 Tr. at 4232-33; Colorado Workshop 5 Transcript, May 25, 2001, at 174-76.
135 *Id*.

Ms. Liston discussed, the CLECs were encouraged to tell Qwest how to handle their orders.[136] Of course, if any CLEC believed that the cancellation was inappropriate, it could resubmit the order.

The alternative to Qwest's current policy, presumably, would be for Qwest to keep CLEC orders on hold indefinitely, even though the requested service is incompatible with the existing network, *i.e.*, a request for a copper loop in a neighborhood served by pair gain technology. It is difficult to imagine why CLECs would prefer this alternative. For its own customers, Qwest at least can manage the expectations of customers whose orders are held by advising them that their order may stay pending indefinitely or never be filled. For CLEC customers, however, Qwest has no such direct channel of communications. In fact, this had been the policy of the past, and CLECs complained incessantly.

Qwest's held order/LSR rejection policy is also consistent with the obligations each carrier has to determine whether it can provide service under the Act. As Ms. Liston explained, many orders were "held" for facilities reasons because the CLEC was seeking to provide DSL service, which requires a copper loop, and there were no copper facilities in the community and no plans to provide copper in that community.[137] Thus, in this situation, the order is held not for reasons of exhaust, but incompatibility. Qwest has developed the loop qualification tools, described in detail in SGAT § 9.2.2.8, which permit CLECs to know up front whether they will encounter this incompatibility problem. Thus, CLECs are not in a position of having to place orders to determine if they can provide service; the ability to make that determination is provided at the front end. Having created these tools for CLEC use, it defies logic to suggest that the CLECs and incumbent LECs should ignore their results by placing and holding orders that will never be filled. Qwest does not restrict the CLEC from placing the order if the tool indicates that compatible facilities do not exist. The order will be accepted and processed. However, if after Qwest thoroughly reviews all possibilities for provisioning the service and still no compatible facilities are found, then Qwest will reject the order.

Qwest's held-order policy is clear and does not discriminate against CLEC customers. As Qwest explains in the following section, this held-order policy is integrally related to its network build

136 July 11, 2001 Workshop 4 Tr. at 4233.
137 *Id*. at 4231, 4232.

policy. Because there is no requirement under any law that Qwest construct facilities on demand for CLECs, and certainly no obligation to construct copper loops in areas where the existing network has pair gain,[138] when facilities are not available, it is entirely appropriate to reject the CLEC's order. This permits the CLEC to manage up front its own and its customer's expectations.

CLECs suggested at the workshop that Qwest developed this policy solely to improve its performance results.[139] As Ms. Liston explained, however, Qwest will still have held orders for analog orders that meet POLR/COLR requirements, where construction jobs are in progress, and for loops served over IDLC.[140] Also, in the recent *Verizon Connecticut Order*, the FCC did not even consider the "held order" measure other than as "diagnostic."[141] The FCC noted Covad had provided no "persuasive reason" to suggest departure from the FCC primary reliance on percent missed appointments and average installation interval measures instead.[142] Indeed, the FCC noted that Verizon had argued that the FCC had never relied on the held order measure and that the measure is flawed and unreliable because it includes "order that could not be provisioned due to a lack of facilities."[143] The FCC apparently found this explanation both reasonable and unexceptional since it relied upon it in discounting the held order measure.

CLECs also suggested that Qwest was cutting its construction budget. Although the exhibit Covad introduced showed modest budget cuts, it still reported that Qwest was expending roughly $9 billion on outside plant construction, hardly a stoppage.[144] Furthermore, although Covad suggested that past orders were held due to a lack of facilities, Covad could not state how many of those orders could

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138 Mr. Orrel clarified that Qwest continues to install copper facilities, just not necessarily in neighborhoods adequately and more economically served by pair gain systems. July 11, 2001 Workshop 4 Tr. at 4255-56.

139 The CLECs' suggestion that the ROC may not be aware of this policy is strained at best: the commissions participating in the ROC are also considering the workshop issues, and any CLEC or state commission participant could inform the ROC of the policy if it were not already aware of it.

140 July 11, 2001 Workshop 4 Tr. at 4229-30.

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

142 *Id.*

143 *Id.* n. 44.

144 Ex. 972; July 11, 2001 Workshop 4 Tr. at 4246.

have been provisioned with line sharing or how many were held due to incompatibility, as opposed to exhaust.[145] Thus, the information it presented is speculative.

2. Build Policy

Qwest has already addressed the general issue whether it must construct loops for CLECs and incorporates those arguments here. Importantly, however, Qwest is not saying that it will never construct loop facilities for CLECs. Qwest's network build position is reflected in its proposed SGAT language for Section 9.1.2.1. There, Qwest commits to build facilities to an end user customer if Qwest would be obligated to do so to meet its POLR obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier obligation to provide primary basic Local Exchange Service. Qwest also commits to follow the same assignment process it would for an analogous retail service to determine if facilities are available. If available facilities are not readily identified through the normal assignment process, but can be made ready by the requested due date, Qwest will take the order. Qwest also commits in Section 9.1.2.1.2 to perform incremental facility work to make facilities available.

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

If none of these conditions are met, then Qwest will reject the LSR. At the workshop, CLECs questioned whether Qwest will construct facilities for CLECs under the same terms it constructs facilities for its retail customers. In its comments on the Workshop 3 Initial Order, Qwest committed to consider CLEC requests for special construction under Section 9.19 in the same manner it considers construction of facilities for itself. Thus, Qwest has addressed this concern.

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145 *See* July 11, 2001 Workshop 4 Tr. at 4250, 4252.

Contrary to the arguments of AT&T and Covad, the "fill factor" that is used to calculate Qwest's loop rates does not require Qwest to build new facilities for CLECs when Qwest's facilities are exhausted. AT&T suggests that the costs Qwest incurs to build new facilities for CLECs may already be included in the prices for UNEs. This suggestion is wrong and is based on a basic misunderstanding of the investment that is included in UNE cost studies and the role of fill factors in those studies.[146]

First, the UNE prices that are produced by cost studies are directly dependent upon the amount of investment that the studies include. The cost studies that both Qwest and the CLECs presented in the cost docket estimated the costs of building a network to replace the existing network using least-cost, forward-looking technology. Because the studies build a replacement of the current network, they do not include investment for new facilities that CLECs may request.[147] If the cost studies had been designed to estimate the costs of a new network that includes new CLEC facilities, the investment in the studies would have been substantially higher and the UNE prices that the studies produced would have been higher. As it is, because the UNE cost studies did not include investment for new CLEC facilities, the UNE prices that the Commission established do not compensate Qwest for the costs it incurs to build those facilities.

Second, contrary to AT&T's suggestion, Qwest's cost studies and those of the CLECs routinely use fill factors of less than 100 percent to reflect network reality. From an engineering design perspective, equipment often is considered to have reached its capacity before 100 percent utilization occurs. Fill factors of less than 100 percent reflect this practical reality of operating a network; they do not reflect the inclusion in a cost study of investment for new facilities that Qwest builds for CLECs.

AT&T also claimed that Qwest would not accept CLEC forecasts for unbundled loops for planning purposes.[148] This is revisionist history. CLECs in workshops across Qwest's region vigorously opposed providing any type of forecast information to Qwest. Eventually, Qwest bowed to

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146 Interestingly, AT&T witness Wilson had no idea what fill factors AT&T uses. July 11, 2001 Workshop 4 Tr. at 4196. Thus, while CLECs claimed that Commission-approved fill factors include cost-recovery for building facilities for CLECs, they presented no evidence of a fill factor sufficiently high that it would not include the alleged obligation.

147 July 11, 2001 Workshop 4 Tr. at 4197; Ex. 926-T, Liston Rebuttal at 32.

148 July 11, 2001 Workshop 4 Tr. at 4221.

those objections and eliminated most forecasting requirements from the SGAT. No CLEC has complained. Furthermore, for loop facilities, AT&T grossly overstates the value of such forecasts. As Ms. Liston explained, CLECs generally provided forecasts at the wire center level. However, for unbundled loops, a wire center level forecast does not provide sufficient information for Qwest to know where the CLEC needs specific end-to-end loop facilities.[149] To provide meaningful information, the forecast would, at a minimum, need to be provided at the distribution area level.[150]

In Workshop 4, Covad stated that it is "willing to work with Qwest around this limited facility issue" so long as Qwest shared build information with Covad.[151] Ms. Cutcher claimed that this information would permit it to craft its sales and marketing plans and manage customer expectations.[152] In direct response to CLEC concerns regarding its held order/build policy, Qwest made a significant accommodation to CLECs that provides them with precisely the information Covad requested. Qwest's commitment, which it negotiated with Covad, is set forth in SGAT § 9.1.2.1.4:

> 9.1.2.1.4 Qwest will provide CLEC notification of major loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds $100,000 in total cost, the estimated ready for service date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for service dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

Covad claimed that this commitment still did not go far enough because it excluded information on deployment of digital loop carrier.[153] Qwest clarified, however, that it provides information regarding where it has deployed or plans to deploy its DSLAMs and remote terminals.[154] This information is available to CLECs today upon request. Qwest also has committed to post on the ICONN database the CLLI codes associated with remote terminals where digital loop carriers exist

149 Ex. 926-T, Liston Rebuttal, at 34.
150 July 11, 2001 Workshop 4 Tr. at 4226.
151 July 11, 2001 Workshop 4 Tr. at 4215.
152 July 11, 2001 Workshop 4 Tr. at 4214.
153 July 11, 2001 Workshop 4 Tr. at 4218.
154 July 11, 2001 Workshop 4 Tr. at 4216-20.

along with the distribution areas. In other words, CLECs will know that there is a digital loop carrier at a specific CLLI code and will know if and where Qwest is deploying remote DSLAMs.[155] With this information, CLECs will know where Qwest has constructed and plans to construct loop facilities and can adjust their marketing plans accordingly. No provision of the Act requires Qwest to provide this information, but it agreed to do so to accommodate CLEC requests. Indeed, the moderator for the workshops ongoing in Arizona and Colorado appropriately deemed this a "very generous offer."

Thus, Qwest has not only agreed to build facilities where required to meet its POLR obligations, it has also agreed to perform incremental facility work, to hold an order if there is a pending job that would satisfy the CLEC request, to apply the same assessment criteria to CLEC construction requests as for retail construction requests, and it has offered to share certain build information with CLECs. Given these important concessions, the CLECs' claim that Qwest must go even farther and build other loop facilities on demand is unreasonable and unwarranted.

Even under the misguided Initial Order in Workshop 3, the CLECs' claim that Qwest must construct new *copper loops* in areas served by digital loop carrier is outrageous. Qwest vigorously opposes that Initial Order and asserts that it was wrongly decided, but even under that order, Qwest's obligation to build extends to situations in which facilities are at *exhaust*. The ALJ did not require Qwest to build out a copper network to replace or overlay its existing network simply to meet a CLECs' request. It is difficult to imagine a better example of a demand that Qwest provide a "superior" network or "cater to the whims" of CLECs in violation of the Act and Eighth Circuit decision.[156]

H. WA Loop 9: Qwest Demonstrated That It Has Appropriate Policies And Procedures To Prevent Anti-Competitive Behavior And Respond To Allegations Of Anti-Competitive Conduct.

Covad alleges that Qwest technicians engage in anti-competitive behavior when they are performing services on behalf of Covad. In response to these allegations, Qwest requested that Covad produce documentation or information in support of those allegations. In response, Covad provided

155 *Id.*
156 *Iowa Utils. Bd. I*, 120 F.3d at 813.

information about a handful of alleged incidents of behavior it deemed anti-competitive. Qwest does not agree that the instances of behavior identified amount to "anti-competitive" behavior. In addition, the information Covad provided on these allegations was at least a year old, and it was not complete enough to permit Qwest to perform an investigation of the specific alleged incidents.[157]

Nevertheless, Qwest takes Covad's allegations extremely seriously. As Ms. Liston explained, Qwest has a Code of Conduct, also referred to as the Asset Protection Policy, that prohibits employees from engaging in conduct that is disparaging of CLECs or otherwise anti-competitive.[158] Employees are required to sign this Code of Conduct as a condition of employment and violation of the Code is punishable by discipline up to and including termination.[159] If the employee refuses to sign the Code, the employee is still required to sign a statement that it attended the session on the Code, and the employee is still held to the terms of the Code.[160] In addition, managers are responsible for their employees attesting to this Code of Conduct.[161] Qwest introduced documentation from the highest levels of the company emphasizing the importance of compliance with this policy.

Covad has suggested that Qwest has not made sufficient efforts to enforce and reinforce this policy. Qwest respectfully disagrees. For example, Qwest introduced a January 2, 2001 letter from Joseph Nacchio requiring all Qwest employees to review the Code of Conduct and acknowledge reading it. If the employee does not acknowledge review of the Code, neither the employee nor his or her supervisor would be eligible for second quarter bonus.[162] Qwest also introduced its instructions to supervisor for distributing and emphasizing the Code of Conduct with occupational employees.[163] Qwest further presented evidence on its video training of technicians, which included reminders on the Code of Conduct.[164] Covad suggested that Qwest Account Managers were unfamiliar with the

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157 Thus, Qwest would dispute any claim that it "failed" to investigate these claims. It was unable to do so because of lack of information.
158 Ex. 932
159 Ex. 926-T, Liston Rebuttal, at 77.
160 July 11, 2001 Workshop 4 Tr. at 4390-91.
161 Ex. 926-T, Liston Rebuttal, at 77.
162 Ex. 933.
163 Ex. 934.
164 Ex. 926-T, Liston Rebuttal, at 77.

process for investigating or instituting an investigation of an allegation of anti-competitive behavior. Qwest disagreed and described its processes. Nevertheless, Qwest also responded immediately by issuing a memorandum describing the process for investigating allegations of anti-competitive behavior to its Emerging Services Sales Executives, Major Markets Sales Executives, and Wholesale Service management.[165]

Despite the fact that Qwest has full processes in place to address Covad's concerns, Qwest did not stop with these efforts. Covad claimed that Qwest employees may not understand references to "asset protection policies" or "antitrust laws." To demonstrate its commitment to ensuring that its policies prohibiting anti-competitive conduct are understood, Qwest issued a two-page memorandum to all of its network employees that described in detail (and plain English) Qwest's policy for compliance with its obligations under the Act and its intolerance of anti-competitive behavior. To ensure that these employees were aware of specific conduct that was prohibited, Qwest listed examples of prohibited conduct in the email:

> Many of our Interconnect customers tell us that our employees do not give them the same respect or fair treatment our retail clients receive. Specific cited claims include:
>
> *Making negative and/or disparaging comments about CLECs and/or their products and services to the CLEC's end-user customers
>
> *knowingly disconnecting CLEC circuits resulting in service outages for their end-user customers
>
> *Proactively discussing the virtues of Qwest's products and services with CLEC's customers
>
> *Attempting to persuade the CLEC's customers to convert to Qwest.
>
> Please note that each of the above examples is a clear violation of Qwest's Code of Business Ethics and Conduct polices, and are subject to appropriate discipline practices, up to and including dismissal.[166]

165 Ex. 935.
166 Ex. 936.

This reminder was clear and forceful. When presented with this memorandum in Colorado workshops, Covad counsel indicated that this memorandum went a long way to resolving concerns regarding this issue.

During the workshop, Covad raised an alleged incident of theft of equipment from two central offices in Colorado.[167] Although Covad claims that the recent unfortunate incident is further evidence of "anti-competitive" conduct, Qwest also disagrees with this characterization. The incident Covad described was, plain and simple, an apparent theft. As Ms. Liston testified, Qwest, too, has been a victim of equipment theft. That this unfortunate event occurred does not diminish or undermine the clear and explicit policies Qwest has established to govern its employees' behavior. It is a sad fact of life that despite the rules and expectations society establishes, there are individuals who violate those rules and expectations. Were there no violations of the rules, punishment and disciplinary measures would be unnecessary. Thus, what is important for this proceeding, is the action Qwest has taken in response to Covad's allegations.

For example, Covad asserted at the initial workshop that what it wanted from the Commission in this proceeding was a process for investigating allegations of "anti-competitive conduct" and assurance that disciplinary action is taken in response to proven instances of misconduct.[168] In addition, Covad stated that it wanted Qwest to communicate regarding its investigations.[169] The evidence Qwest presented at the workshop demonstrates that Qwest has met all of these concerns.

Specifically, Ms. Liston testified that Qwest's union contracts set forth a process for investigating allegations of misconduct.[170] Network training for managers also includes training on allegations of misconduct, and Qwest has investigation processes through its security department.[171] In addition, during the follow up loop workshop on August 1, 2001, Qwest and Covad discussed this

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167 July 11, 2001 Workshop 4 Tr. at 4381.
168 *Id*. at 4385-86.
169 *Id*. at 4396.
170 *Id*. at 4387-88; *see also id*. at 4393.
171 *Id*.

incident as well as Qwest's response to it. Ms. Liston testified that upon learning of the Colorado incident from Covad, Qwest took the following action:

- Qwest investigated the incident internally.
- Ken Beck, Executive Director Wholesale Customer Service Operations, kept Covad apprised of the investigation throughout its course via emails and telephone messages to Ms. Cutcher.
- Qwest met with Covad in mid July 2001 to discuss the investigation and Qwest's findings.
- On July 17, 2001, Mr. Beck sent Ms. Cutcher a letter (Exhibit 973) that informed Covad of the disciplinary action Qwest had taken in response to the incident. As Mr. Beck stated, Qwest has suspended the alleged suspect pending completion of the investigation by law enforcement authorities.
- In his letter, Mr. Beck informed Ms. Cutcher of the steps Qwest will take to prevent future occurrences and requested that Covad provide its suggestions for improving security in Qwest central offices.[172]

As this evidence demonstrates, Qwest (1) has policies that prohibit misconduct, including alleged "anti-competitive" conduct by its employees; (2) has processes in place to investigate CLEC allegations and inform the CLEC of the results of the investigation; (3) takes appropriate corrective action in response to allegations of misconduct; and (4) institutes corrective action to prevent future incidents. In other words, in the course of investigating this incident, Qwest demonstrated that it met all of Covad's requirements mentioned in Washington for assuring that Qwest does not condone "anti-competitive" or other misconduct. Contrary to the testimony of Ms. Cutcher at the initial workshop that Qwest had been unresponsive,[173] at the conclusion of this discussion at the follow up loop workshop, counsel for Covad acknowledged that Qwest had properly kept Covad apprised of Qwest's investigation and the disciplinary action Qwest took.[174]

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172 August 1, 2001 Workshop 4 Tr. at 5612-14; Ex. 973.

173 July 11, 2001 Workshop 4 Tr. at 4382-83.

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

Accordingly, Qwest has demonstrated that it has policies in place that prohibit "anti-competitive" and other alleged misconduct by its employees, that Qwest takes allegations of misconduct seriously, that it investigates them, and that informs the complainant of its investigations. Most important, Qwest demonstrated that its Code of Conduct has the "teeth" Covad sought by taking disciplinary and corrective action in response to the incident. The Commission should find that this issue is closed.

I. WA Loop 10: Qwest's Spectrum Management Proposal Complies With The Act And Is Nondiscriminatory.

Spectrum management concerns loop plant administration and deployment practices that are designed to result in spectrum compatibility or to prevent interference between services and technologies that use pairs in the same cable. In the past, issues of spectrum were not of significant import. The advent of advanced services, such as DSL, however, has brought this issue to the fore as signals in the same binder group could interfere with each other. The FCC outlined its national policy for spectrum management in the *Line Sharing Order*[175] and *Line Sharing Reconsideration Order*.[176] In these orders, it established general rules regarding spectrum management and turned to the Network Reliability and Interoperability Council ("NRIC"), with advice from industry bodies such as T1E1.4, to make recommendations regarding spectrum management and spectrum policy.

In Washington, as in other states, the parties agreed to incorporate the record from the multi-state proceeding on this issue. Although the multi-state workshop discussion was rather technical on spectrum issues, the issues that remain in dispute between the parties are fairly straightforward. On each, Qwest has proposed SGAT language that meets both the letter and spirit of the FCC's guidelines. Moreover, Qwest commits to follow the final recommendations of the standards-setting bodies that are

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175 Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("*Line Sharing Order*").

176 Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 98-147, 96-98, FCC 01-26 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

currently advising the FCC. The ALJ and Commission should approve this language. Moreover, they should not accept the CLECs' invitation to supplant the industry standards-setting bodies or to dictate technological solutions as the CLECs have advocated in this and the multi-state proceeding. Spectrum management is far too important an issue that is in its early developmental stages to make ad hoc judgments before designated industry experts on the subject have had an opportunity to act. The net effect of the CLECs' proposal is dramatic because it could result in many customers out of service for a period of time. It is precisely because the ramifications are so large and the issues so complex that the FCC referred spectrum issues to industry experts in the first instance. This proceeding is limited in its scope and industry groups continue to work through these important issues.

Qwest is committed to handling spectrum in a competitively neutral manner. It complies with the preliminary mandates of the FCC and will follow its guidelines as industry bodies provide further recommendations to the FCC. It is imperative that the Commission follow national guidelines to help identify spectrum issues. To have this Commission break from national and industry guidelines does not help further the reliance upon a national structure which provides uniformity for CLECs and incumbent LECs alike.[177] Accordingly, the Commission should not reach out to address novel issues that are not necessary to determine Qwest's compliance with current and existing FCC rules.

Since the Washington workshop, the Facilitator in the multi-state proceeding has entered his recommendation on checklist item 4, including his recommendation on spectrum issues. Qwest endorses the Facilitator's recommendations, and urges the Commission to follow his recommendations as discussed herein.

1. The FCC has rejected the CLECs' claim that they need not provide Qwest with NC/NCI codes.

T1E1.4 recently issued its first set of recommendations, T1.417, in which, among other things, it recommended the use of nine spectrum classes to identify types of advanced services. T1E1 then charged the Common Language Group with establishing NCI codes to match the nine spectrum

177 Ex. 926-T, Liston Rebuttal at 60.

classes.[178] Network Channel/Network Channel Interface ("NC/NCI") codes are standard industry codes that indicate the type of service deployed on a loop.[179] NC/NCI codes have been a standard field on Local Service Requests ("LSRs"), and CLECs use them today.[180] The only difference now is that Qwest is in the process of implementing the NC/NCI codes established by the Common Language Group for spectrum management purposes.[181]

In the workshop, however, CLECs opposed the use of NC/NCI codes to order advanced services. Under the Rhythms' proposal that AT&T has adopted, Rhythms claimed it was unnecessary to provide Qwest with this standard information so long as every carrier operated within spectrum guidelines. To implement this position, Rhythms and AT&T present SGAT language providing that "all carriers" -- presumably even those who are not parties to, aware of, or bound by the SGAT -- would simply agree to "deploy services that in compliance with T1.417 and other applicable FCC requirements."[182] According to Rhythms and AT&T, if all carriers agree to be good spectrum citizens, Qwest has no need to be informed of the technology CLECs intend to deploy. Contrary to the unsupported optimism that all carriers will adhere to the CLECs' defined spectrum policy, the FCC has already anticipated that some carriers may not agree to comply with industry spectrum guidelines. In addition, new types of DSL service may be deployed that are especially susceptible to disturbance or that create disturbances. To respond to both possibilities, the FCC determined that incumbent LECs need information regarding the advanced services deployed on their networks. In fact, it has rejected the very position WorldCom and AT&T advance in this workshop and required CLECs to disclose to incumbent LECs information on CLEC deployment of DSL technology so that incumbents can maintain accurate records to provide CLECs with the information CLECs need to resolve interference issues:

> Some incumbent LECs argue that they require certain information on a requested deployment in order to be able to assess properly the prospects of the deployment significantly degrading the performance of other services.

178 Ex. 941, May 1, 2001 Multi-State Tr. at 228-29.
179 Ex. 941, May 1, 2001 Multi-State Tr. at 230.
180 Ex. 941, May 1, 2001 Multi-State Tr. at 302-03.
181 Ex. 941, May 1, 2001 Multi-State Tr. at 230-31; *id*. at 241-42.
182 Ex. 941, Multi-State Exhibit WS6-RHY-VLK-2.

* * *

> Consistent with the information disclosure requirements that we applied to incumbent LECs in the Advanced Services First Report and Order, we agree that competitive LECs must provide to incumbent LECs information on the type of technology that they seek to deploy, including Spectrum Class information where a competitive LEC asserts that the technology it seeks to deploy fits within a generic PSD mask. We further agree that competitive LECs must provide this information in notifying the incumbent LEC of any proposed change in advanced services technology that the carrier uses on the loop, so that the incumbent LEC can correct its records and anticipate the effect that the change may have on other services in the same or adjacent binder groups.[183]

AT&T has suggested elsewhere these FCC pronouncements are "interim" and that the FCC did not *really* intend them to have the force and effect of "rules." Fatal to AT&T's claim is the FCC's codification of these requirements in 47 C.F.R. § 51.231(b) and (c). Rule 51.231(b) states: "A requesting carrier that seeks access to a loop or a high frequency portion of a loop to provide advanced services *must provide to the incumbent LEC information on the type of technology that the requesting carrier seeks to deploy*."[184] Rule 51.231(c) states: "The requesting carrier also *must provide the information required under paragraph (b) of this section when notifying the incumbent LEC of any proposed change in advanced services technology* that the carrier uses on the loop."[185] Thus, unless and until the FCC revises these rules, the CLECs' claim must be rejected.

In the follow up workshop, Rhythms suggested that the NRIC Focus 3 group had abandoned use of NC/NCI codes. This is incorrect. Rhythms and WorldCom have resigned from NRIC and, therefore, no longer participate in NRIC discussions. Qwest's representative to NRIC confirmed that one very nascent proposal is replacement of NC/NCI codes for providing information. Another proposal is to retain the NC/NCI codes.[186] At this time, however, NRIC has reached no final decision, and the FCC disclosure requirements remain in effect.[187] If NRIC recommends modifications to the FCC requirements, and the FCC adopts those, Qwest has committed to following any subsequent FCC

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183 *Line Sharing Order* ¶ 204 (footnotes omitted) (emphasis added).
184 47 C.F.R. § 51.231(b) (emphasis added).
185 47 C.F.R. § 51.231(c) (emphasis added).
186 July 12, 2001 Workshop 4 Tr. at 4450.
187 *Id*.

requirements.[188] Accordingly, contrary to the assertions of CLECs at the workshop, these rules remain in effect and have been neither overturned nor superseded by NRIC, T1E1.4 or any other industry body. Thus, the requirement that CLECs inform Qwest of their deployment of advanced services technology is not optional. It is a requirement of the FCC's national spectrum policy.

WorldCom maintains that by requiring use of NC/NCI codes, Qwest will automatically reject orders for spectrum compatibility reasons.[189] However, Qwest does not seek this information so that it can micromanage spectrum use, nor does it use this information to "manage" spectrum up front when the CLEC places its order. Qwest has repeatedly assured WorldCom that although WorldCom may have experienced spectrum problems with other incumbent LECs, Qwest does *not* reject orders based on potential incompatibility issues today and will not do so in the future.[190] Similarly, Qwest does not "choose" or "pre-approve" the DSL service the CLEC seeks to provide; the CLEC can order a 2-wire non-loaded loop and provide whichever flavor of DSL it chooses.[191] Instead, as the FCC recognized, Qwest requires this information in the event of an allegation of disturbance and to help in the determination of a disturbing technology within the binder group.[192] As Qwest explained, providing this information will help all carriers understand what is happening within a particular binder group.[193] Without information on the types of advanced technology deployed on its network, Qwest will be unable to provide carriers information in the event of a spectrum dispute. In deciding this disputed issue in Qwest's favor, the Facilitator in the multi-state proceeding agreed:

> The information has value when there is a dispute or uncertainty about the source of interference. As Rhythms argued, and properly so, if such disputes drag out, CLECs risk customer loss. Qwest, therefore, must be expected to provide promptly and to all concerned, specific

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188 *Id*. at 4451.
189 Aug. 1, 2001 Workshop 4 Tr. at 5620-22.
190 *Id*.
191 *Id*.
192 Ex. 941, May 1, 2001 Multi-State Tr. at 247-48.
193 Ex. 941, May 1, 2001 Multi-State Tr. at 250-251 ("Mr. Steese: . . . will the NCNCI codes information allow us to proactively help the CLECs cure and understand exactly what's on the binder group? Mr. Boudhaouia: It helps everyone. It helps Qwest and whoever wants to play in that DSL field, understand the loop, how it is, what's running on the loop, and what's on the binder group itself. So in terms of there is no T1s, no disturbers on that binder group, the NCI -- the NCNCI code will help us determine six months from now or a year from now, if there is a problem, who is the disturber, how to identify it, and send the information to the CLECs as far as this is what we have in the binder group and here's the disturber").

> information about what facilities are involved and who may be using them.[194]

Qwest can only do so with information provided in advance of the dispute.

WorldCom's principal objection to disclosure of NC/NCI codes is that this information is proprietary. The FCC rejected this argument as well:

> We emphasize that incumbent LECs must protect the proprietary rights of deploying carriers, and may use this information for network purposes only, without disclosing who is deploying what advanced services technologies on particular binders. We believe that the benefits of applying such information disclosure requirements to competitive LECs outweigh any burdens, particularly because we believe that the provision of such information is integral to a claimed presumption of acceptability anyway. Moreover, we anticipate and expect that the provision of such information by carriers will minimize conflicts over whether the proposed deployment falls within the presumption of acceptability.[195]

Furthermore, consistent with the multi-state Facilitator's UNE Report, Qwest agrees to revise Section 9.2.6.2 of the SGAT, as reflected in the SGAT Lite filed with Qwest's brief on Workshop 4, to include the commitment that Qwest will maintain the confidentiality of NC/NCI information CLECs provide. Disclosure of NC/NCI codes is as important in preventing disturbance as in resolving disturbance disputes. With respect to T1 facilities, Qwest testified that its technology is (and has been for some years) HDSL. However, if it were to deploy T1 facilities, and had no information regarding other services in the binder group, it may inadvertently disrupt service.[196] More important, putting T1 facilities aside, as new types of DSL services are deployed, new disturbers will inevitably be identified. Thus, any claim that disclosure of NC/NCI codes can be avoided if Qwest agrees not to deploy technology that is a "known disturber," is not valid because neither Qwest nor the CLECs can have any assurance that the next CLEC (or new variety of DSL service) to come along will comply with their proposed spectrum requirements. Accordingly, as FCC rules require, the ALJ and Commission should recommend that Qwest's proposed SGAT language requiring CLECs to inform Qwest of the NC/NCI

194 Multi-State UNE Report at 60.
195 *Line Sharing Order* ¶ 204 (footnotes omitted).
196 Ex. 941, May 1, 2001 Multi-State Tr. at 291, 301-02 (discussing the need to know what CLECs have deployed to avoid disrupting their service).

codes for the advanced services they offer is appropriate. Qwest commits to maintain the confidentiality of this proprietary information in accordance with FCC rules and provisions of the SGAT addressing protection of proprietary information.

2. It is unreasonable to impose the CLECs' process to manage spectrum from remote terminals in advance of T1E1 recommendations.

In order to encourage deployment of innovative technologies and allow competitors to deploy advanced services in a multi-provider, multi-service environment, the FCC established general ground rules concerning what technologies can be deployed and who has the final say on various deployment issues. The FCC specifically turned to the industry, through its standards-setting bodies, to develop spectrum compatibility standards and spectrum management practices on an ongoing basis. In the *Line Sharing Order*, the FCC "reiterate[d] [its] general belief that industry standards bodies can, and should, create acceptable standards for deployment of xDSL-based and other advanced services."[197] The FCC concluded that "the standards setting process must include the involvement of a third party to advise the [FCC] on spectrum compatibility standards and spectrum management practices."[198] The FCC then designated the NRIC to fulfill that advisory function.[199] Moreover, because the FCC recognized the continuous nature of spectrum compatibility standards and spectrum management practices development, it instructed NRIC to submit reports to the FCC on standards and practices development issues as NRIC or the FCC deemed necessary but, in any event, promptly after NRIC has received appropriate input from industry standards bodies, such as the T1E1.4. The FCC stated that "[t]his expectation reflects [its] continued confidence, shared by an overwhelming majority of commenters in this proceeding, that T1E1.4 is well equipped to develop future PSD masks and other spectrum compatibility standards."[200] NRIC's final report to the FCC is due in January of 2002.[201] With respect to remote deployment of DSL, the parties widely acknowledge that T1E1 continues to

197 *Line Sharing Order* ¶ 183.
198 *Line Sharing Order* ¶ 184.
199 *Line Sharing Order* ¶ 184.
200 *Line Sharing Order* ¶ 186.
201 Ex. 941, May 1, 2001 Multi-State Tr. at 228.

discuss this issue, and NRIC has not yet made a final recommendation to the FCC.[202] Ironically, Rhythms and WorldCom, two of the more vocal CLECs in workshops on this issue, have resigned from the NRIC Focus Group 3 addressing this issue.

AT&T and WorldCom claim that the Commission should short-circuit this deliberative, industry standards-setting process and order Qwest to implement draft recommendations on remote deployment of DSL. However, there is no reason for the Commission to rush to judgment on this issue or to require Qwest to implement proactively draft proposals that remain under discussion in industry forums.

Qwest asserts that it is premature and an enormous waste of resources to require it to develop processes for a draft proposal that remains under discussion, and therefore subject to change, in industry forums. If NRIC were to adopt a different recommendation than the drafts currently under discussion, Qwest will have expended significant resources to develop obsolete processes with no benefit to CLECs or itself. To avoid this wasteful exercise, Qwest believes it is entirely proper to wait until NRIC makes a final recommendation on remote deployment issues.

Rhythms argues that Qwest should implement the proposal still under consideration at T1E1.4 because standards-setting bodies take a long time to issue recommendations. The fact that industry bodies will necessarily take time to deliberate on these complicated issues is no reason to flash-cut to Rhythms' proposed solution. The FCC expressly recognized that "the standards development process is by nature lengthy . . . ."[203] In this regard, the FCC explicitly declined to intervene in the standards-setting function absent a clear abuse by T1E1.4:

> We are reluctant to intervene in spectrum compatibility and management matters except in cases . . . where industry standards bodies have failed to encourage expeditious and competitively neutral deployment of innovative technologies. Not only will NRIC enhance the Commission's role through the advice, recommendations and reports that it provides to the Commission, but it also will be able to identify issues for consideration by industry standards bodies, based on issues that the Commission believes need to be addressed. Through the recommendations and reports that we receive from NRIC, we will evaluate whether T1E1.4 and other industry standards bodies are acting in a manner consistent with the policies that we have determined should

202 Ex. 941, May 1, 2001 Multi-State Tr. at 237-38.
203 *Line Sharing Order* ¶ 190.

> underlie spectrum compatibility standards-setting and formation of spectrum management rules and practices.[204]

Given the FCC's unmistakable reliance on NRIC to make recommendations regarding spectrum management issues, it would be particularly inappropriate for the Commission to short circuit that process further by ordering Qwest to implement draft recommendations that have not even been fully addressed by the industry groups whose task it is to advise the FCC.

Exercising caution will harm no carrier. Rhythms' concern centered on the alleged remote deployment of DSL problems that may have been caused by other incumbent LECs. However, neither AT&T nor Rhythms has alleged or proved any incidents of disruption by Qwest as a result of remote deployment of DSL.[205] Given the speculative nature of Rhythms' concerns, there is no reason to require Qwest to implement draft proposals before the standards-setting bodies reach a final determination. The multi-state Facilitator agreed:

> Rhythms and AT&T have not shown good reason to act in advance of the NRIC report that the FCC expects. The FCC has essentially said that it wants to be informed by that report before it acts. There is certainly no basis for concluding that, on the record before us, we should step in where that angel fears to tread. There is also no basis for deciding at this point that concerns about the bias or the pace of the NRIC should give us less confidence than the FCC has shown in its ability to make a constructive contribution on matters of great technical complexity. Therefore, it would not be appropriate to move to incorporate into the SGAT the T1.417 technical standards proposed by Rhythms and AT&T.[206]

When Qwest deploys remote DSL, it locates the remote DSL further out in its network than central office-based ADSL will work. Therefore, Qwest's deployment of remote DSL will not cause an interference problem for central office-based ADSL. Qwest will place its remote DSL further out in the network until NRIC has developed spectrum management guidelines for remote deployment of DSL services. The multi-state Facilitator found that it would be bad public policy to require Qwest to adopt the CLECs' proposal on remote deployment of DSL, and that Qwest's network configuration arguments are imminently reasonable:

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204 *Line Sharing Order* ¶ 191 (footnotes omitted).
205 Ex. 941, May 1, 2001 Multi-State Tr. at 236.
206 Multi-State UNE Report at 58.

> There is no evidence on this record to show that repeaters, or any particular Qwest method of remotely deploying DSL, inherently constitute bad design or operating practice in these seven states, or anywhere for that matter. Therefore, it would be against public policy to adopt blanket requirements that may have the effect of forcing Qwest to adopt more expensive means of designing and operating its network to optimize it for a certain segment of customers, rather than for all customers. As important as the goal of promoting advanced services is, there is no evident reason to conclude that serving it should come at significant expense to other sectors of the local exchange market. This conclusion is underscored by two facts that are clear from the record: (a) there are no demonstrated CLEC commitments to bring such services to the seven states and (b) there is no offer by the providers of advanced services to bear any portion of the incremental costs that Qwest might have to spend to change its approaches to deployment of facilities to serve all customer types and needs, so that competitors have the theoretical ability to make advanced services available to a segment of those customers.[207]

Importantly, Qwest is not saying that it will not follow industry consensus on remote deployment of DSL. It will once those recommendations are final. Thus, once NRIC makes a final recommendation on remote deployment of DSL, Qwest has committed in SGAT § 9.2.6.1 to implement that recommendation.

Furthermore, Qwest has agreed to implement the multi-state Facilitator's resolution of this issue. In the Multi-State UNE Report, the Facilitator recommended an interim solution pending NRIC's recommendation to the FCC. The multi-state Facilitator found that Qwest should respond to actual CLEC deployments that could be disrupted by Qwest's facilities, such as the use of repeaters. The Facilitator recognized, however, that "to respond, Qwest must know where CLEC facilities of the types affected are being installed, which AT&T and Rhythms are reluctant to provide. Pending further consideration of the spectrum issues at the national level, it is reasonable to give CLECs the choice of refusing dialogue with Qwest about their facilities or having the right to accommodation of those facilities in Qwest's network – but not both."[208] The Facilitator concluded that Qwest should be obligated to take reasonable action when CLECs provide specific information that Qwest's own repeater use or remote DSL deployment could disrupt central office based CLEC DSL services.[209] The Facilitator

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207 Multi-State UNE Report at 59.
208 Multi-State UNE Report at 59-60.
209 Multi-State UNE Report at 60.

emphasized that "the use of repeaters and the remote deployment of DSL (beyond the distance limits of central office based DSL) by Qwest remain, at least for the present, legitimate and proper uses. The evidence does not now show otherwise; even if such uses might cause conflict with CLEC facilities as discussed above, denying Qwest the right to make network decisions considering all customers and what costs various configurations will cause, is not justified."[210]

The Facilitator recommended the following SGAT language for Section 9.2.6, and Qwest agrees to implement that language in Washington as well as in the seven states in the multi-state proceeding.

> Where a CLEC demonstrates to Qwest that it has deployed central-office based DSL services serving a reasonably defined area, it shall be entitled to require Qwest to take appropriate measures to mitigate the demonstrable adverse effects on such service that arise from Qwest's use of repeaters or remotely deployed DSL service in that area. It shall be presumed that the costs of such mitigation will not be chargeable to any CLEC or to any other customer; however, Qwest shall have the right to rebut this presumption, which it may do by demonstrating to the Commission by a preponderance of the evidence that the incremental costs of mitigation would be sufficient to cause a substantial effect upon other customers (including but not limited to CLECs securing UNEs) if charged to them. Upon such a showing, the Commission may determine how to apportion responsibility for those costs, including, but not limited to CLECs taking services under this SGAT.

Rhythms has admitted that there is no current FCC requirements on repeatered services or remote deployment of DSL services.[211] Because this Section 271 proceeding looks only to whether Qwest satisfies the requirements of Section 251, 271, and existing FCC rules, the ALJ and the Commission should not reach out to decide an issue that remains under discussion by the industry experts designated by the FCC to address it and that is now only a potential problem for CLECs.[212] For these reasons, the ALJ and the Commission should approve Qwest's spectrum management language for Section 9.2.6, as amended above, and reject AT&T and WorldCom's request that Qwest implement now draft guidelines for spectrum management associated with remote deployment of DSL.

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210 *Id*.
211 Ex. 941, May 1, 2001 Multi-State Tr. at 239.
212 *See SBC Texas Order* ¶¶ 22-26.

3. Qwest properly manages T1 facilities and its proposed SGAT language appropriately addresses any potential interference.

In the *Line Sharing Order*, the FCC identified analog T1 as a "known disturber" that can and should be segregated from other advanced services.[213] The FCC also authorized state commissions to determine the disposition of known disturbers.[214] In describing the different permissible approaches to disposition of known disturbers, the FCC held that states "could allow for segregation of the disturber by the incumbent LEC.'[215] Qwest already complies with this FCC policy and, accordingly, there is no basis to require further dislocation of T1 facilities.[216] As Qwest explained in the multi-state workshop, its practice is to place repeatered T1 services in binder groups by themselves. Qwest's method for deployment of T1 facilities is to place the T1s in a separate binder group from other DSL systems.[217] Qwest places the transmit and receive sides of the T1 service in separate binder groups on separate sides of the cable.[218] In Qwest's feeder network, large cables are made up of 100 pair binder cables. In an 1800 pair cable, there will be 18 binder groups. Qwest places T1s in the outside binder groups and separates transmit and receive to opposite sides of the cable to decrease potential interference. Thus, Qwest's policy for treatment of T1 facilities is consistent with FCC guidance to the states.

Rhythms claimed at the multi-state workshop that Qwest installs T1s that knock Rhythms out of service. Qwest disagrees with this assertion. As Mr. Hubbard explained at the multi-state workshop, Qwest has engineering guidelines that provide that its first choice is to deploy HDSL, a service specifically considered by TIE1.[219] If Qwest does place a T1 that somehow disturbs the service of another carrier, then Qwest commits in SGAT § 9.2.6.5 to change that to an HDSL facility wherever possible. As Mr. Hubbard testified "Where technically possible, . . . we're willing to move that out to a HDSL.'[220] The CLECs, however, seek even more. The CLECs claim that despite Qwest's

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213 *Line Sharing Order* ¶¶ 213-214.
214 *Line Sharing Order* ¶ 218.
215 *Id.*
216 Ex. 926-T, Liston Rebuttal at 52-53.
217 Ex. 941, May 1, 2001 Multi-State Tr. at 288.
218 *Generally* May 1, 2001 Multi-State Tr. at 249. A T1 requires a transmit and a receive cable pair each to operate the T1.
219 Ex. 941, May 1, 2001 Multi-State Tr. at 282; *see also* Ex. 926-T, Liston Rebuttal at 52-53.
220 Ex. 941, May 1, 2001 Multi-State Tr. at 298-99; *see also* Ex. 926-T, Liston Rebuttal at 52.

commitment to segregate T1 facilities and deploy HDSL whenever possible, Qwest must commit to their imposed deployment of HSDL-4 technology.[221] First, the SGAT language Rhythms proposes dictates the technology of Qwest's network, a right no FCC order grants it. Qwest is not required to deploy the CLECs' preferred technology so long as the technology Qwest does deploy is properly managed, and Qwest commits to move to a less interfering technology whenever possible.[222]

Moreover, as noted above, the technology CLECs seek to dictate, HDSL-4, is not even available for deployment and will not be mass produced until at least first quarter 2002.[223] The CLECs' attempts to dictate a technological solution that is unavailable today is patently unreasonable. The requirements for Section 271 approval must be kept separate from what AT&T may otherwise prefer for competitive reasons. Software that is not yet completed or available cannot be a prerequisite for a recommendation under Section 271. Furthermore, just as CLECs would oppose Qwest attempts to dictate the type of DSL service CLECs provide (which Qwest, obviously, does not do), it is inconsistent with fostering innovative and diverse networks to permit CLECs to dictate technological network solutions to Qwest.

To demonstrate the supposed evils of existing T1 facilities deployed in an incumbent LEC network, Rhythms introduced at the multi-state workshop and in its Washington testimony a diagram of what it claimed was a "not untypical" configuration of T1 facilities in a binder group.[224] The placement of T1 facilities in this diagram, however, was designed to maximize their potential disturbance. Moreover, the diagram has nothing whatsoever to do with Qwest's deployment of T1 facilities.[225] Rather, Pac Bell presented it to Rhythms in 1998 allegedly to support Pac Bell's position at the time that Rhythms could not receive loops longer than 12,000 feet.[226] Qwest testified that it affirmatively did not deploy T1 facilities in the configuration depicted in the diagram. Instead of using the inside of the binder group for T1 facilities, as Rhythms' exhibit shows, Qwest uses the outside of the sheath and deploys a

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221 Ex. 941, May 1, 2001 Multi-State Tr. at 299.
222 Ex. 926-T, Liston Rebuttal at 52-54.
223 Aug. 1, 2001 Workshop 4 Tr. at 5623.
224 Ex. 941, Multi-State Exhibit WS6-RHY-VLK-4.
225 Ex. 926-T, Liston Rebuttal, at 53.
226 Ex. 941, May 1, 2001 Multi-State Tr. at 286.

second binder group, if necessary, to avoid creating unwarranted interference.[227] Most important, however, Qwest segregates its T1 facilities onto separate binder groups, unlike the rather dated Pac Bell diagram.[228] As set forth above, this is precisely what the FCC instructed states to require for managing known disturbers.

Rhythms countered that its real concern is not with the large binder groups depicted in the diagram, but in distribution facilities far from the central office. However, as Qwest demonstrated, this is a non-issue because if facilities extend far from the central office, Rhythms will not be able to provision DSL service anyway.[229] Moreover, in the remote chance that this situation arises, there is a dispute resolution mechanism in the SGAT that will allow the parties to obtain a prompt resolution of the issue.

Qwest believes that its commitment and practice to segregate T1 facilities on separate binder groups and to move T1 facilities to other technology wherever possible is reasonable and consistent with FCC guidelines. The Facilitator in the multi-state proceeding agreed. He recommended modest amendments to the SGAT to clarify Qwest's commitments. He found that Qwest had agreed: "(a) to place T1s in binder groups that minimize interference possibilities and (b) to replace T1s that are causing disturbances with another technology, wherever possible.'[230] He further found that these two commitments were "reasonable and practical means of addressing interference from T1s.'[231] He recommended that Qwest modify SGAT § 9.6.2.4 as set forth below, and Qwest agrees to carry that language forward to Washington:

> Qwest recognizes that the analog T1 service traditionally used within its network is a "known disturber" as designated by the FCC. Qwest will place such T1s, by whomever employed, within binder groups in a manner that minimizes interference. Where such placement is insufficient to eliminate interference that disrupts other services being provided, Qwest shall, whenever it is technically feasible, replace its T1s with a technology that will eliminate undue interference problems. Qwest also

227 Ex. 941, May 1, 2001 Multi-State Tr. at 287-89; Ex. 926-T, Liston Rebuttal, at 53.
228 Ex. 941, May 1, 2001 Multi-State Tr. at 289; Ex. 926-T, Liston Rebuttal, at 53.
229 Ex. 941, May 1, 2001 Multi-State Tr. at 298-99.
230 Multi-State UNE Report at 57.
231 *Id*.

agrees that any future "known disturber" defined by the FCC or the Commission will be managed as required by FCC rules.

Qwest's commitments are reasonable. The ALJ and Commission should adopt them.

J. WA Loop 11: The Loop Installation Intervals In Exhibit C Are Reasonable, The Product Of Industry Consensus, And Provide CLECs A Meaningful Opportunity To Compete.

1. Intervals at issue

Loop Issue 11 relates to the intervals for provision of various loop types in Exhibit C of the SGAT. AT&T opposes those intervals set forth in the following table:

Loop Type **(1-8 lines unless otherwise noted)**	**Exhibit C Interval**	**AT&T Demand**
2-wire/4-wire analog loops	Five business days	AT&T appears to seek three-day Quick Loop with number portability for 9-25 lines. Qwest has agreed to offer Quick Loop with number portability in three days for one to eight lines.
2-wire/4-wire non-loaded, ISDN BRI and ADSL-compatible loops that do not require conditioning	Five business days	Three, four, and five business days for conversions of existing loops
DS-1 capable loops	Nine business days (1-24 lines)	Five days for 1 to 8 loops
Loop Conditioning	15 business days	5 business days
Repair of out of service conditions	24 hours	18 hours
OCn Loops	ICB	WorldCom demands set interval instead of ICB.

As set forth fully below, the Exhibit C intervals are the product of industry consensus, are reasonable, and provide CLECs a meaningful opportunity to compete.

2. The Exhibit C intervals form an integral part of the PID benchmarks and provide CLECs a meaningful opportunity to compete.

On June 5, 2001, Denise Anderson of Maxum Telecommunications Group Consulting ("MTG"), the ROC Project Manager for the third party OSS test, testified at the multi-state Workshop regarding the review of Qwest's standard intervals during the ROC process. For the benefit of Washington, Qwest has presented that discussion here.

In the early stages of the ROC process, one of the principles established was that CLECs would have a role in developing the performance measures that would apply to determining whether Qwest provides checklist items at an acceptable level of quality.[232] As a result, from the beginning of the development of performance measures, CLECs provided comments, participated in the Technical Advisory Group ("TAG") and were involved in developing the Performance Indicator Definitions ("PIDs").[233] The proceeding was informal, and any participant could request that an issue be raised in the TAG.

With respect to OP-4, the intervals in the Standard Installation Guide ("SIG"), the same intervals that appear in Exhibit C, were the foundation for the PID.[234] The initial goal in establishing the PID was to achieve retail parity.[235] There was extended discussion regarding appropriate retail analogues and, through the collaborative process, some loops were compared to retail analogues with a standard of retail parity but for others, the parties agreed upon a six-day benchmark for "high density" areas and a seven-day benchmark for "low density" areas. Qwest eventually agreed to eliminate the distinction between density zones and, as a result, for the loops with benchmarks, a uniform six-day benchmark applies.[236] Exhibit 919 shows the evolution of the PIDs and demonstrates that for several unbundled loops, the performance benchmark changed from "retail parity," at the insistence of CLECs,

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232 June 5, 2001 Multi-State Tr. at 152 attached hereto. Qwest would ask that this be included as a part of the record in Washington

233 June 5, 2001 Multi-State Tr. at 153-54.

234 June 5, 2001 Multi-State Tr. at 159 ("Now, OP-4 actually measures the actual interval. And so, you know, the way the intervals are established, to my understanding of OP-4, is the Standard Interval Guide is utilized, or if there are interconnection contracts or terms in a contract that supersede those, those are used for specific CLECs, if that applies. And so the original due date is established using those either contract terms or the Standard Interval Guide.")

235 *Id.*

236 June 5, 2001 Multi-State Tr. at 158-61.

to specific benchmarks that were based on Qwest's service intervals. Thus, for those unbundled loops with specific benchmarks (the 2-wire analog, 2-wire non-loaded, and ADSL-compatible loops), the parties used and approved the intervals in establishing the OP-4 measure.[237] In other words, for those loops in OP-4 with benchmarks, the benchmark is the interval.[238] Given the open nature of the proceedings, no issue was off the table for the CLECs. Thus, in establishing the benchmark for different loop types, CLECs could, and did, challenge certain of Qwest's standard intervals.[239] For example, to reach consensus on the benchmarks for 2-wire non-loaded loops, Qwest agreed to reduce the installation interval for 2-wire non-loaded loops from an average of seven days to an average of six days.[240] Thus, the standard intervals in the SIG were adjusted as a direct result of the discussions in the ROC process.[241]

Similarly, for OP-3, which measures the percent of due dates met, the Exhibit C intervals are a critical factor in the evaluating performance results. In submitting an LSR, CLECs are permitted to select the minimum due date, which is the standard installation interval, or a longer one. Qwest cannot "change" that due date.[242] And, if Qwest misses the due date selected by the CLEC, that miss affects Qwest's results for meeting OP-3.

Accordingly, although the ROC TAG may not have worked through the SIG item-by-item, there is no question that the SIG intervals are integrally related to the benchmarks *and* the retail parity

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237 June 5, 2001 Multi-State Tr. at 162 ("John Finnegan with AT&T. Did the TAG ever formally approve any of the specific Qwest standard intervals contained in the Qwest Service Interval Guide? Ms. Anderson: Not to my knowledge, *other than these three specific ones that happen to be in the Standard Interval Guide, but were related to OP-4*") (emphasis added). AT&T attempted to suggest that this review and approval did not occur because certain quantities of loops are offered in five days and other quantities in seven days. As Ms. Anderson clarified, the PIDs "jive" with the SIG because the ROC participants used the mid-range quantity in establishing the benchmarks. *Id.* at 194-95.

238 June 5, 2001 Multi-State Tr. at 162, 164.

239 June 5, 2001 Multi-State Tr. at 181-82 ("I think the benchmarks – I think the intervals in the interval guides for those loop types were higher prior to reaching the agreement on this benchmark for the same three loops. And I think that's part of the back and forth that went on in the – a lot of the subteam discussions and the TAG discussions about resolving OP-3 and 4. So, I think, in this particular case, the standard interval was one thing. And in order to close the OP-3 and 4 measures, the parties reached a compromise which impacted the Standard Interval Guide . . . .").

240 June 5, 2001 Multi-State Tr. at 181-83; *see also id.* at 196 (discussing agreement to reduce nine-to-sixteen line interval to close OP-4 PID).

241 *Id.*

242 June 5, 2001 Multi-State Tr. at 176-77.

measures in OP-4.[243] Indeed, the term "standard interval" as used in the PIDs is defined as the interval provided in Qwest's SIG.[244]

Although the parties certainly had to compromise to achieve negotiated performance measures, the goal of the ROC participants was to establish benchmarks as well as comparisons with retail analogues that gave CLECs a meaningful opportunity to compete.[245] The process was exhaustive, and covered months of negotiations, all issues were fully discussed, and give-and-take occurred on both sides. Indeed, the discussion was so comprehensive that the parties never reached impasse on the OP-3 and OP-4 measures.[246] Where benchmarks are established in the course of collaborative proceedings that permit all interested carriers to weigh in, they are presumed to give carriers a meaningful opportunity to compete.[247] The FCC recently emphasized this in its *Verizon Massachusetts Order*:

> [W]here, as here, [performance] standards are developed through open proceedings with input from both the incumbent and competing carriers, these standards can represent informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time or manner or in a way that provides them a meaningful opportunity to compete.[248]

Based upon the extensive discussions of OP-3 and OP-4, the inextricable link between the intervals in Exhibit C and the PIDs, and the consensus reached on these measures, the Commission should recognize that this issue was fully negotiated in the ROC process. The ROC CLEC participants, AT&T included, determined that the benchmarks and retail parity measures in OP-3 and OP-4, which rely upon the SIG, provide them a meaningful opportunity to compete. The multi-state Facilitator, who heard this evidence, agreed:

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243 June 5, 2001 Multi-State Tr. at 170 (PIDs and standard intervals are "symbiotic"); *id*. at 180, 188-189 (stating that there was a lot of "back and forth" on the intervals).

244 June 5, 2001 Multi-State Tr. at 178 (Mr. Antonuk reading from the PID definitions).

245 June 5, 2001 Multi-State Tr. at 187-88, 189-90.

246 June 5, 2001 Multi-State Tr. at 190.

247 *Verizon Massachusetts Order* ¶ 13; *Bell Atlantic New York Order* ¶ 55 ("At the same time, for functions for which there are no retail analogues, and for which performance benchmarks have been developed with the ongoing participation of affected competitors and the BOC, those standards may well reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete").

248 *Verizon Massachusetts Order* ¶ 13.

> The evidence demonstrates *conclusively* that the ROC established its loop installation interval related performance measures (OP-3 and OP-4) *through an open and collaborative process that benefited from full, open, and substantial participation by the CLEC community.* The evidence also established that *the discussion of those intervals (which measure percent of intervals on time and average durations) centered upon and were integrally related to the intervals of Qwest's Service Interval Guide*, which forms the basis of the installation intervals set forth in SGAT Exhibit C.[249]

Although the multi-state Facilitator found that AT&T could still challenge the Exhibit C intervals, the intervals were entitled to "very substantial weight."[250] In that workshop, AT&T failed to present any compelling evidence that the intervals fail to afford it a meaningful opportunity to compete.[251] In Washington, there is the same total absence of evidence. Accordingly, the Commission should accord the Exhibit C intervals very substantial weight and neither reopen nor revisit them.

3. The Qwest intervals are more favorable than other BOCs offer.

The Exhibit C loop intervals are in almost every instance more favorable than those offered by other BOCs. For example, Qwest examined the intervals offered by Verizon (North and South) and BellSouth.[252] Neither Verizon nor BellSouth offers a three-day interval equivalent to Quick Loop. Although Verizon North offers a 5 day interval for one to ten 2-wire analog loops,[253] the interval jumps immediately to ten days for 11-20 loops. Qwest, however, offers a six-day interval for nine to sixteen 2-wire analog loops, and a seven-day interval for 17 to 24 2-wire analog loops. BellSouth offers a four-day interval for one to five (non-designed, ie, UNE-P) 2-wire analog loops,[254] but unbundled loops require a dispatch. For designed loops (ie, unbundled), BellSouth offers a five-day interval.[255] Qwest offers a five-day interval for one to eight 2-wire analog unbundled loops, and the CLEC has until 7:00 p.m. to enter its order. For orders of six to fourteen 2-wire loops, BellSouth's interval jumps to ten days, and for orders of 15 or more loops, the interval is negotiated.[256] Qwest, on the other hand,

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249 Multi-State UNE Report at 48 (emphasis added).
250 *Id*. at 49.
251 *Id*. at 49-50.
252 Ex. 920 (Verizon comparison); Ex. 930 (BellSouth CLEC Interval Guide).
253 Ex. 920. Verizon South offers a six-day interval for one to ten 2-wire analog loops. *Id*.
254 Ex. 930.
255 *Id*.
256 *Id*. The "DDD Calculation" shows that the Targeted LSR Processing Interval is added to the Standard Interval.

offers a 6-day interval for nine to sixteen 2-wire analog unbundled loops and does not reach ICB until the CLEC orders 25 lines to the same end user customer.

For existing 2-wire digital ISDN BRI loops, Verizon offers a six-day interval for one to five unbundled loops, and a 12-day interval for orders of six to nine lines.[257] BellSouth offers a ten-day interval for one to five ISDN loops and a fifteen-day interval for six to fourteen loops.[258] In stark contrast, Qwest's interval for one to eight unbundled loops is only five days, and its interval for nine to sixteen loops is six days.

For ADSL loops, the story is the same: Qwest's intervals are uniformly shorter than both Verizon and BellSouth. For Verizon North and South, the interval is six days for one to five unbundled ADSL loops. For six to nine loops, the interval is 12 days, and at 10 loops the interval is ICB.[259] BellSouth does offer a five-day interval for one to five ADSL loops, *provided* the CLEC performs a "service inquiry" before even submitting an LSR.[260] For six to fourteen loops, the interval jumps to 10 days, and is ICB for orders of 15 or more ADSL loops.[261] Qwest offers ADSL-compatible loops in five, six, or seven days, depending on the quantity, and only provides an ICB interval on orders of 25 loops or more.

For DS1 loops, both Qwest and Verizon offer a nine-day interval, although Verizon's interval applies to orders for one to nine loops only. Qwest offers the nine-day interval for up to 24 DS1 loops. Verizon offers a five-day interval for one to five lines, so long as the order is in by 10:00 am. However, the interval jumps to 10 days for six to fourteen loops and is ICB for any larger order. Qwest does not reach the ICB interval unless the order is for 25 or more DS1 loops.[262]

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257 Ex. 920. Verizon's intervals for new 2-wire digital ISDN BRI unbundled loops is even longer. *Id*.
258 Ex. 930.
259 Ex. 920.
260 Ex. 930.
261 Ex. 930.
262 Ex. 920. Although AT&T does not dispute the DS3 interval, it is instructive to note that for DS3 loops, Qwest offers a seven-day interval for one to three lines. Verizon, on the other hand, offers an 18-day interval for orders of one to nine lines.

With regard to conditioned loops, Exhibit C to Qwest's SGAT provides for a fifteen-day interval for conditioning, which is a decrease from the 24-day interval of just six months ago.[263] This interval compares favorably with Verizon North and South, which require ICB intervals for conditioning even before the loop order can be placed. Only after the conditioning is completed will the loop be provisioned with a five-day interval.[264]

As this discussion amply demonstrates, when compared to the intervals Verizon and BellSouth offer, the intervals in Exhibit C are on the whole shorter.

In addition to Verizon and BellSouth, and in response to requests for additional information on BOC intervals, Qwest examined the intervals for DSL loops SBC offers CLECs. Although the SBC intervals are not as clearly presented as those of Verizon and BellSouth on the SBC website, Qwest discovered the following regarding SBC's intervals:

- Although SBC offers CLECs a five-day installation interval for DSL loops, there is a presurvey requirement before the interval applies. Qwest performs this type of pre-survey activity during the five-day interval.
- If conditioning is required, it occurs outside the five-day interval, and five days are added to the interval.
- If loop makeup must be determined, an additional three days is added to the interval.

Thus, when examining the SBC intervals, these "add ons" should be taken into account.

4. AT&T and Covad presented no evidence supporting shorter intervals.

Even if the Commission permits AT&T to undo the Exhibit C intervals, AT&T presented no evidence that would support modifying them. AT&T presented no evidence that the current intervals impede its ability to compete or that Qwest offers its retail customers shorter intervals. Indeed, that the CLECs opposed use of Qwest retail intervals for comparison purposes in establishing the PIDs demonstrates that they believed they would receive service quicker with benchmarks based on the Exhibit C intervals than under Qwest's retail intervals.

263 July 12, 2001 Workshop 4 Tr. at 4474.
264 Ex. 920.

At the outset, the Commission should reject any additional demands of AT&T surrounding Quick Loop with number portability.[265] As Ms. Liston testified Qwest will provide Quick Loop with number portability for conversion of an existing POTS line to analog unbundled loop with number portability.[266] Since the workshop, Qwest has determined that it will provide one to eight lines within three days, nine to 16 loops within four days, and 16 to 24 loops in five days. Thus, AT&T will get up to 24 loops that qualify for Quick Loop, with number portability, in the same amount of time Qwest proposes for provisioning one to eight new analog loops. This is a significant concession on Qwest's part, and AT&T presented no evidence supporting any shorter interval. The Commission, therefore, should approve the Exhibit C intervals for analog loops.

AT&T claims that Qwest should offer 2-wire and 4-wire non-loaded loops, Basic Rate ISDN-capable loops and ADSL-compatible loops in three, four, and five days when there is a conversion from existing service.[267] Again, Qwest points out that AT&T is the only carrier in Washington that makes this demand, and AT&T has never even ordered a non-loaded loop from Qwest.[268] Thus, AT&T makes a demand for this interval based upon no experience and no actual evidence regarding its need for this interval or Qwest's ability to meet it. Furthermore, AT&T presented no evidence supporting this request for a shorter interval, and no evidence that the current interval deprives it of a meaningful opportunity to compete. Qwest, on the other hand, demonstrated that the change AT&T proposed would require a significant change in its provisioning processes.[269] Qwest also demonstrated that provision of these loops includes a time-consuming qualification process even in a reuse situation because the CLEC may provide a different form of DSL.[270]

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265 This request is AT&T's only outstanding issue with the intervals for analog unbundled loops. July 12, 2001 Workshop 4 Tr. at 4452.

266 *Id*. at 4452-55.

267 July 12, 2001 Workshop 4 Tr. at 4463. AT&T even requested *number portability* at one point.

268 *Cf.* July 11, 2001 Workshop 4 Tr. at 4311; July 12, 2001 Workshop 4 Tr. at 4464-65.

269 July 12, 2001 Workshop 4 Tr. at 4458.

270 *Id.* Furthermore, if AT&T continues its demand for number portability in addition to the shorter interval, Qwest would have to expend significant resources to develop processes for number portability of digital loops that have traditionally applied only to loops used for voice service and for which there is very little foreseeable demand. *Id.* at 4463-64, 4465.

AT&T's demand to shorten the interval also is inadvisable because the workshop participants agreed to endorse a uniform use of a 72-hour Firm Order Confirmation, or FOC. As discussed at the workshop, Qwest conducted a xDSL FOC trial in Colorado to determine if moving to a uniform 72-hour FOC for xDSL loops would improve Qwest's performance in meeting its due dates for xDSL loops. During the 72 hours before issuance of the FOC, Qwest performs critical activities such as determining whether it can obtain facilities compatible with the DSL service CLEC seeks to provide and whether conditioning will be required. Qwest's data shows that the trial has been successful, and Qwest believes a uniform 72-hour would greatly benefit CLECs. All CLECs have agreed that pursuit of a 72-hour FOC for xDSL loops is appropriate. If the Commission were to adopt AT&T's demand for a three-day installation interval even for reuse of facilities, however, the benefits of the 72-hour FOC may be lost entirely. Obviously, Qwest would not be able to use a 72-hour FOC with an installation interval of 72 hours.

It is interesting to note that when Qwest agreed to change the interval for the xDSL-I compatible loop to match the existing intervals for 2-wire non-loaded ADSL compatible and ISDN capable loops (*i.e.*, to adopt a five, six, and seven day interval depending on number of loops), AT&T was satisfied and did not make a similar demand for conversions. The 2-wire non-loaded loop requires essentially the *same* provisioning process. Qwest is hard pressed to understand AT&T's latest request to shorten the interval for 2-wire non-loaded, ISDN, and ADSL compatible loops other than to make unsubstantiated requests and hope the Commission rules in its favor. The Commission should not support AT&T's arbitrary requests.

AT&T also challenges the nine-day interval in Exhibit C for DS1 loops. However, as Exhibit 919 demonstrates, the performance comparison for DS-1 loops for OP-3 and OP-4 that ROC participants agreed upon is parity with Qwest retail DS-1. The Exhibit C interval for DS-1 loops is the same interval Qwest provides for its retail customers.[271] Because ROC participants collaboratively

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271 July 12, 2001 Workshop 4 Tr. at 4471-72.

agreed that the benchmark for DS-1 should be retail parity, the interval in Exhibit C, which is the retail DS-1 interval, is appropriate and provides CLECs a meaningful opportunity to compete.

Regarding conditioning, AT&T and Covad make unsupported demands for an interval that is shorter than any BOC in the country provides and that is the same as the interval for new analog unbundled loops. AT&T again has little standing to complain: it has never ordered loop conditioning from Qwest. Furthermore, it presented no evidence supporting a shorter interval. Qwest, on the other hand, detailed that it had already shortened the interval from 24 calendar to 15 business days, and its 15-day interval is better than Verizon's (which is ICB).[272] During the xDSL trial in Colorado, Qwest on occasion was able to complete conditioning before the expiration of the 15 days. In those circumstances, Qwest did not require the CLEC to await the expiration of the 15 days, but turned over the loop early if the CLEC was prepared.[273]

Covad also claimed that loop conditioning is essentially "clerical" in nature.[274] However, Ms. Liston presented detailed information in her direct testimony regarding the activities Qwest must perform to condition a loop.[275] For example, a loop conditioning request requires a record review, engineering job, and dispatch of a construction technician to prepare and enter the manhole, cut away from the load coil cable stub, and resplice the loop. Of course, many requests require entering more than one manhole. Thus, conditioning is actual construction work, not just conditioning.[276] Because of the work activities required, *no* BOC performs the conditioning *and* provides installation in five days, as Covad demands.

With respect to repair and maintenance, AT&T suggested that Qwest should shorten the intervals in Exhibit C, § 1(h), which provides 24-hour interval for out-of-service conditions to 18 hours. In establishing the PIDs for MR-3 and MR-4, however, the ROC unambiguously established 24- and

272 *Id*. at 4474; Ex. 920.
273 July 12, 2001 Workshop 4 Tr. at 4474-75.
274 *Id*. at 4473.
275 *See* Ex. 885-T, Liston Direct, at 30-31.
276 Ex. 885-T, Liston Direct, at 30-31; Ex. 904; July 12, 2001 Workshop 4 Tr. at 4474.

48-hour repair intervals based upon Qwest's identical retail repair intervals. Thus, there is no question that for this interval, the ROC collaborative supports the intervals Qwest offers.

AT&T further claimed that if it is required to provide repair services within 24 hours, it needs Qwest to perform its repair functions before the expiration of those 24 hours so that it can complete its own repair obligations. AT&T's argument, however, misses the mark: if Qwest is providing repair services for AT&T, there is no "additional" work AT&T must do to address the trouble. AT&T also has not identified how long it would take it to perform any of its alleged repair responsibilities.[277] AT&T has claimed that it must test its network as part of its obligations under Section 9.2.5 of the SGAT. However, as Ms. Liston has explained to AT&T, the parties are testing *cooperatively*. Thus, any AT&T testing occurs during the same time that Qwest undertakes its own repair duties, not after.[278]

WAC § 480-120-520(8) provides a two-day interval for restoral of interruptions of telecommunications services. At the workshop, AT&T claimed that Qwest must provide repairs within 12 hours; however, the rule it relied upon applies only to outages that affect "public health and safety;"[279] it is not a standard interval for completing repairs. Even if a 12-hour interval applied for out-of-service conditions on the retail side, Qwest's performance results show that Qwest consistently provides CLECs with repair service in less than 12 hours.[280] Thus, whether the retail interval is two days or 12 hours, there is ample time for AT&T to perform any of its unenumerated repair functions.[281]

AT&T also claimed that it should shorten this interval because Qwest's repair performance is so good. This argument has no foundation. Simply because Qwest is exceeding the required interval does not imply that the interval should be shortened. The FCC has stated that maintenance and repair functions have a retail analog.[282] The repair intervals are based on the FCC rulings that require parity

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277 July 12, 2001 Workshop 4 Tr. at 4482-83.

278 *Id*. at 4483.

279 Although AT&T did not provide a citation to the rule, it appears to have relied upon WAC § 480-120-520(9), which applies to service interruptions "affecting public health and safety."

280 July 12, 2001 Workshop 4 Tr. at 4483-84.

281 AT&T claims that since Qwest exceeds its performance requirement, it should reduce the repair interval. It ignores, however, that the ROC established the 24-hour repair interval. The workshop process is inappropriate for revising the PIDs, which AT&T appears to be attempting despite its concurrence with them.

282 Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543 ¶ 140 (1997) ("*Ameritech Michigan Order*").

with retail and the agreements reached during the establishment of the PIDs that establish repair intervals based on parity with retail.[283] Consistent with FCC standards, the intervals in Exhibit C mirror Qwest's retail repair intervals.[284] Again, this mirroring of industry consensus benchmarks demonstrates that CLECs receive a meaningful opportunity to compete. The PIDs, which AT&T agreed upon, provide this assurance of a present and future opportunity to compete: for MR-3, Qwest is obligated to repair out of service conditions in 24 hours, and MR-6 (mean time to restore) assures parity treatment by comparing Qwest's wholesale and retail performance. Thus, to the extent Qwest's repair performance ever slips from its current excellent performance, the slip will be captured in the performance results for these two measures.

The CLECs presented no compelling factual evidence that would support changing any of the Exhibit C intervals. The only basis for AT&T and Covad's demands are that they want shorter intervals. Qwest has demonstrated that the intervals it offers were the product of industry collaboration and are better than two other BOCs provide. The Facilitator in the multi-state proceedings supported the Exhibit C intervals based on the evidence presented. This Commission should uphold them also.

5. ICB Provisioning Is Appropriate for OCn Loops.

Prior to Workshop 4, Qwest proposed to provide OCn loops to CLECs on an individual case basis ("ICB") basis both as to pricing and provisioning. During Workshop 4, Qwest committed to provide OCn loops at set rates that Qwest will include in Exhibit A of the SGAT.[285] Thus, the only remaining dispute relating to SGAT § 9.2.2.3.1 is Qwest's proposal to *provision* fiber and high capacity loops on an ICB. There are several compelling reasons why the Commission should adopt Qwest's proposal and allow the provisioning of high capacity OCn loops on ICB.

First, ICB is the standard that Qwest uses when it provisions fiber and high capacity loops to its Washington retail customers.[286] By seeking to use ICB for its wholesale customers, Qwest is not disadvantaging or prejudicing any CLEC but is only offering the same service that its retail customers

283 July 12, 2001 Workshop 4 Tr. at 4484-85.
284 *Id*. at 4485.
285 July 11, 2001 Workshop 4 Tr. at 4177-78.
286 *Id*. at 4172-73.

enjoy and providing it at parity. CLECs inquired at the workshop how they could be certain Qwest provided parity treatment for provisioning of OCn loops. Ms. Liston explained that CLECs and the Commission will be able to verify that Qwest provides OCn loops in a nondiscriminatory manner by comparing the Qwest and CLEC performance results for OP-3 and OP-4.[287] In addition, Qwest commits in Section 9.2.2.3.1 to provision high capacity loops in a nondiscriminatory manner.[288] Thus, CLECs requesting these loops and the Commission can be assured that CLECs will receive the same service that is currently being offered to Qwest retail customers. Notably, in Colorado, AT&T admitted that an ICB interval would be acceptable, and no party disagreed. This issue also closed in workshops in Arizona and the multi-state proceeding with all parties agreeing to the ICB interval.

Second, ICB is appropriate because there is little demand for OCn loops.[289] It is undisputed that Qwest has not received many requests for fiber and high capacity loops in Washington. This is not a case where Qwest has been flooded with orders and has encountered problems in providing timely service. There is no reason why ICB should be abandoned and arbitrary intervals that bear little or no relationship to the actual amount of time it takes to provision these types of loops be adopted. Indeed, ICB is preferable because it allows Qwest to consider and respond to the specific circumstances of each unique request. Given the virtually nonexistent current and foreseeable level of demand for OCn loops, ICB is an appropriate and effective method for provisioning fiber and high capacity loops. Qwest has stated that if demand for fiber facilities develops or Qwest establishes a set retail installation interval, it will revisit the ICB provisioning of these loops.[290]

Third, ICB is a workable standard that has been used in other situations and jurisdictions. For example, Qwest provides OCn loops on an ICB basis under its FCC Access Services Tariff (FCC1).

CLECs have argued that ICB may be unpredictable and may permit Qwest to engage in discriminatory practices that are difficult to detect. These complaints do not support the adoption of

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287 *Id*. at 4175-76.

288 SGAT § 9.2.2.3.1 ("Qwest will provision fiber and other high capacity Loops in a non-discriminatory manner, using the same facilities assignment processes that Qwest uses for itself to provide the requisite service.")

289 July 11, 2001 Workshop 4 Tr. at 4176.

290 *Id*. at 4176-77.

fixed or rigid intervals, particularly because the PIDs will ensure parity treatment. It is evident from the CLECs' concerns that the real issue surrounding ICB is the procedure associated with ICB, not the overall concept of ICB. The parties, including WorldCom, agreed to defer the definition of ICB to the General Terms and Conditions session. Given the consideration of ICB in the General Terms session of the workshop, it would be premature to summarily reject ICB for these never-ordered loops. ICB as a concept is valid and it is a well-established part of the existing provisioning process for OCn services purchased from the FCC tariff. Accordingly, the Commission should retain an ICB provisioning interval for these loops.

K. WA Loop 12: AT&T's Demand That Qwest Redesignate Interoffice Facilities As Loop Facilities Is Excessive.

AT&T requests that Qwest include language in the SGAT providing that, upon the exhaustion of distribution or loop facilities, Qwest will reassign interoffice facilities ("IOF") to make them available to CLECs for use as loops.

AT&T's demand is both unfounded under the Act and unreasonable in terms of the technical configuration of Qwest's network. The FCC has emphasized that Section 271 proceedings are not a forum for CLECs to demand their "wish list" from BOCs. CLECs are not free to lodge every conceivable demand and then contend that the BOC cannot achieve 271 approval unless they meet each of them. Section 271 proceedings are not limitless in scope and are not the proper forum for the creation of new requirements under the Act.[291] This latest request by AT&T is a perfect example of the abuses of the process the FCC discouraged.

In Loop Issue 12, AT&T claims that Qwest is obligated to consider redesignating interoffice transport facilities as loops. AT&T presented no evidence whatsoever that the Act or an FCC rule requires Qwest to accede to this demand. Nor did AT&T present evidence that Qwest redesignates IOF for itself. In fact, Qwest does not redesignate interoffice facilities as loops for itself.[292] Its planners

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291 *See SBC Texas Order* ¶¶ 22-26.

292 July 11, 2001 Workshop 4 Tr. at 4407, 4409 ("Mr. Hubbard: as a design engineer and outside plant engineer, we don't have access ourselves to IOF facilities...[a]s a design engineer, I could never get IOF to release any fibers to me to redesignate as distribution.").

forecast IOF needs carefully, and IOF facilities are not available for other uses.[293] Thus, AT&T's attempt to create a "discrimination" issue fails from the outset. Because Qwest does not redesignate IOF as loop facilities for itself, it is not obligated to do so for the CLECs.[294]

AT&T presented a single, alleged example of the "FTS 2000" project to support its demand for redesignation of IOF.[295] The unique nature of the "FTS project" does not present a "parity situation" and has no bearing on whether Qwest should, as a matter of course, be required to redesignate IOF facilities on demand by CLECs.

Beyond unreasonable, AT&T's request is extraordinarily burdensome. IOF have a different appearance with the central office than exchange fiber. The IOF fiber is normally at the center of the sheath and has to be continuously spliced in an inside concealed compartment or "waffle case" to the next central office or exchange. Therefore, it is not available for redesignation.[296] Meanwhile, exchange fiber is spliced on the outside of the waffle case, drops off, tapers down and is peeled off in manholes between central offices and is not part of the contiguous fibers that go from one central office to another.[297]

Notwithstanding AT&T's unreasonable demand, it is Qwest's general practice and part of its engineering process to transition IOF to loop facilities when an entire IOF copper plant is retired and replaced by fiber. It is and has been Qwest's practice to "reuse" these IOF facilities whenever the entire plant is in good enough shape to use as loop facilities.[298]

AT&T presented no evidence demonstrating that converting IOF to loop facility on an *ad hoc* basis is technically advisable given Qwest's plant configuration for IOF. In addition, AT&T presented no evidence that Qwest is treating CLECs differently than it treats itself for purposes of IOF reassignment. In contrast to AT&T's pie-in-the-sky demands, Qwest testified that it does not

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293 July 11, 2001 Workshop 4 Tr. at 4411, 4413.
294 *Id*.
295 July 11, 2001 Workshop 4 Tr. at 4414.
296 July 11, 2001 Workshop 4 Tr. at 4407, 4413.
297 See May 25, 2001 Colorado Tr. at 110-14 (discussing identical issue in the Colorado loop workshops).
298 July 11, 2001 Workshop 4 Tr. at 4409-10. However, Qwest will not redesignate IOF on an individual loop basis. *Id*.

redesignate working IOF as loop facilities for itself.[299] Qwest stated that will meet the only reasonable component of such a demand by reassigning IOF when Qwest transitions an entire copper cable to fiber because, unlike AT&T's other demands, this practice makes good engineering sense. Accordingly, the ALJ and the Commission should deny AT&T's demand that Qwest convert working IOF to loop facilities.

CONCLUSION

Qwest has demonstrated its compliance with checklist item 4. It has gone to extraordinary lengths to meet the demands of CLECs. On these disputed issues, Qwest's positions are firmly grounded in the requirements of the Act and relevant FCC orders. The ALJ and Commission should recommend that Qwest meets the requirements of checklist item 4.

RESPECTFULLY SUBMITTED this 7th day of September, 2001.

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299 July 11, 2001 Tr. at 4407, 4411.