BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into U S WEST COMMUNICATIONS, INC.'s [1] 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

TWENTY-EIGHTH SUPPLEMENTAL ORDER

COMMISSION ORDER[2] ADDRESSING WORKSHOP FOUR ISSUES: CHECKLIST ITEM NO. 4 (LOOPS), EMERGING SERVICES, GENERAL TERMS AND CONDITIONS, PUBLIC INTEREST, TRACK A, AND SECTION 272

[1] Since the inception of this proceeding, U S WEST has merged and become known as Qwest Corporation. For consistency and ease of reference we will use the new name Qwest in this order.

[2] This proceeding is designed, among other things, to produce a recommendation to the Federal Communications Commission (FCC) regarding Qwest's compliance with certain requirements of law. This order addresses some of those requirements. The process adopted for this proceeding contemplates that interim orders including this one will form the basis for a single final order, incorporating previous orders, updated as appropriate. The Commission will entertain motions for reconsideration of this order so that issues may be timely resolved.

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I. SYNOPSIS

1 *In this Order, the Commission reviews the Twentieth Supplemental Order (Initial Order), an initial order relating to Checklist Item No. 4 (Loops), Emerging Services, General Terms and Conditions, Public Interest, section 272 requirements, and Track A requirements. The Commission reverses the Initial Order with respect to decisions affecting loops, line splitting, line sharing, subloop unbundling, SGAT general terms and conditions, and section 272. It affirms all other issues raised by parties in response to the Initial Order.*

II. BACKGROUND AND PROCEDURAL HISTORY

2 This is a consolidated proceeding to consider the compliance of Qwest Corporation (Qwest), formerly known as U S WEST Communications, Inc. (U S WEST), with the requirements of section 271 of the Telecommunications Act of 1996 (the Act),[3] and to review and consider approval of Qwest's Statement of Generally Available Terms (SGAT) under section 252(f)(2) of the Act.

3 In this proceeding, the Commission must determine whether Qwest has sufficiently opened its local network to competition to permit the Commission to recommend to the Federal Communications Commission (FCC) that Qwest be allowed to enter the interLATA toll market. At its June 16, 2000, open meeting, the Commission allowed Qwest's SGAT to go into effect, subject to later review. The Commission has reviewed the SGAT provisions during the section 271 workshops to determine whether the provisions comply with section 252(d) and section 251 of the Act, as well as requirements of Washington state law.

4 The Commission has also outlined a process and standards for evaluating Qwest's compliance with section 271. Qwest's compliance with the fourteen "Checklist Items" listed in section 271 has been addressed through a series of workshops. The first workshop addressed Checklist Items No. 3 (Poles, Ducts, and Rights of Way), 7 (911, E911, Directory Assistance, Operator Services), 8 (White Pages Directory Listings), 9 (Numbering Administration), 10 (Databases and Associated Signaling), 12 (Dialing Parity), and 13 (Reciprocal Compensation) and provisions of the SGAT addressing these issues. The administrative law judge entered a Draft Initial Order on August 8, 2000, and a Revised Initial Order on August 31, 2000. A final Commission order resolving the disputed issues from the first workshop was entered on June 11, 2001. The Commission entered an order on reconsideration on February 8, 2002.

5 The second workshop addressed Checklist Items No. 1 (Interconnection and Collocation), 11 (Number Portability), and 14 (Resale) and provisions of the SGAT

[3] Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. § 151 *et seq.*

addressing these issues. The administrative law judge entered initial orders on February 23, 2001, and March 30, 2001. A final Commission order resolving the disputed issues from the second workshop was entered on August 17, 2001. The Commission entered an order on reconsideration on February 8, 2002.

6 The third workshop addressed Checklist Items No. 2 (Unbundled Network Elements), 5 (Unbundled Local Transport) and 6 (Unbundled Local Switching) and provisions of the SGAT addressing these issues. The administrative law judge entered an initial order on July 24, 2001. A final Commission order resolving the disputed issues from the third workshop was entered on December 20, 2001. Qwest has filed a petition for reconsideration of that order.

7 The Commission convened the fourth workshop on July 9-13, and 16-18, 2001, addressing the issues of Checklist Item No. 4 (Loops), Emerging Services, General Terms and Conditions, Public Interest, Track A, and the requirements of section 272 and provisions of Qwest's proposed SGAT addressing these issues. The Commission held a follow-up workshop on July 31 and August 1, 2001, in Olympia, Washington to address unresolved issues from the earlier workshop session.

8 During the workshop sessions, the parties resolved many issues and agreed on corresponding SGAT language. However, certain issues remained in dispute. The parties filed briefs with the Commission on September 7, 2001, concerning their disputes, and reply briefs on the Public Interest requirement and Section 272 issues on September 14, 2001. The administrative law judge entered the Twentieth Supplemental Order on November 15, 2001, an initial order finding non-compliance with respect to Checklist Item 4, Emerging Services, General Terms and Conditions, Public Interest, and the requirements of section 272 and finding compliance with Track A requirements (Initial Order). The parties argued disputed issues to the Commission on January 10, 2002. This Order resolves the issues raised by the parties in briefs, comments, and oral argument to the Commission regarding matters in the Initial Order entered following the fourth workshop.

III. PARTIES AND REPRESENTATIVES

9 The following parties and their representatives participated in the fourth workshop: Qwest, by Lisa Anderl, attorney, Seattle, Washington, Mary Rose Hughes and Kara M. Sacilotto, attorneys, Washington, D.C., and Laura D. Ford, Andrew Crain, John Munn, and Charles W. Steese, attorneys, Denver, Colorado; AT&T Communications of the Pacific Northwest, Inc. and TCG Seattle (collectively AT&T), by Rebecca DeCook, Letty S. D. Friesen, Sarah Kilgore, Mitchell Menezes, Dominick Sekich, Steven Weigler, Gary B. Witt, and Richard Wolters, attorneys, Denver; WorldCom, Inc. (WorldCom) by Ann Hopfenbeck and Michel Singer-Nelson, attorneys, Denver; Electric Lightwave Inc. (ELI), XO Washington, Inc. (XO), and Time-Warner Telecom of Washington by Gregory J. Kopta, attorney, Seattle; Covad Communications Company (Covad) by Megan Doberneck, attorney, Denver; Teligent

Services, Inc., Rhythms Links, Inc. and TRACER, by Arthur A. Butler, Attorney, Seattle; Rhythms Links, Inc., also by Douglas Hsaio, attorney, Englewood, Colorado; Sprint Corporation (Sprint), by Barbara Young, Hood River, Oregon; the Washington Association of Internet Service Providers (WAISP) and Yipes Transmission. Inc., by Richard J. Busch, attorney, Seattle; and Public Counsel by Robert W. Cromwell, Jr., Assistant Attorney General, Seattle.

IV. MOTIONS

10 On August 7, 2001, ICG Communications, Inc. and Mpower Communications filed with the Commission motions to withdraw from the proceeding, stating the reasons for their requests. On October 31, 2001, counsel for Rhythms Links, Inc. also filed a motion to withdraw from the proceeding. The motions were taken under advisement and are hereby granted.

11 On December 13, 2001, AT&T filed with the Commission a Petition for Administrative Review on General Terms & Conditions Initial Order and Petition to Reopen (Workshop IV). AT&T seeks to reopen the record to address what it perceives as Qwest's win-back behavior, i.e., use of CLEC data for Qwest retail marketing efforts. AT&T argues that the Initial Order failed to fully resolve the issue of whether Qwest is misusing CLEC wholesale data, referring to Issue WA-Loop 9: Anti-Competitive Behavior by Qwest. Parties were given an opportunity to comment by Friday, January 4, 2002. The Commission heard argument concerning this issue during the January 10, 2002 presentation. The Commission denied AT&T's motion to reopen the record finding that the affidavits supporting the motion did not present sufficient justification for reopening the record.

12 AT&T's pleading did raise a concern that the Initial Order did not discuss evidence presented during the workshop concerning Qwest's win-back activities. The Commission notes that this evidence does not support a finding of improper action by Qwest in Washington State. AT&T provided evidence of Qwest's misuse of CLEC information through an affidavit discussing one instance in Minnesota. In addition, Qwest's response to a bench request seeking all complaints to the Commission of Qwest win-back activity revealed no complaints. S*ee Ex. 1171.*

13 Covad filed a motion to file supplemental comments on the issue of CLEC access to Qwest loop information tools, based on information gained after the date for filing comments on the Initial Order. Parties were given an opportunity to comment by Friday, January 4, 2002. During the January 10 hearing, the Commission granted Covad's motion to file supplemental comments, as well as Qwest's response to Covad's motion. In addition, the Commission admitted exhibits offered by Qwest. These matters are addressed in the context of WA-Loop 3(a)/3(b), concerning access to LFACS and MLT.

14 In response to a recommendation in the Initial Order that Qwest hire an independent auditor to review deficiencies in Qwest's compliance with section 272, Qwest on November 28, 2001, filed a report by KPMG addressing those deficiencies, together with affidavits by two Qwest witnesses. AT&T filed a response to the filing on December 28, 2001. On December 21, 2001, Qwest then filed a supplemental affidavit by KPMG to support its compliance with section 272. Parties were given an opportunity to comment by Friday, January 4, 2002. The additional reports and affidavits were admitted into the record during the January 10 hearing. This issue is addressed below in conjunction with discussion of section 272 issues.

15 Finally, on January 8, 2002, Qwest filed a motion with the Commission requesting to withdraw testimony concerning section 272 issues filed by Ms. Brunsting and Ms. Schwartz prior to the second workshop. On January 14, 2002, AT&T filed a response to Qwest's motion, asserting that the testimony should remain a part of the record, as it provides evidence of Qwest's history of non-compliance with section 272 requirements. This issue is addressed below in conjunction with discussion of section 272 issues.

V. DISCUSSION

16 The administrative law judge in December 2001, entered an Initial Order addressing disputed issues from the fourth workshop. The Commission restates and adopts the findings and conclusions of the Initial Order, with the modifications discussed below.

A. CHECKLIST ITEM NO. 4: LOOPS

1. ISSUES WA-LOOP-1(b)/8(b): Obligation to Build High Capacity Facilities

Initial Order

17 The *Initial Order* concluded that Qwest must modify section 9.1.2 of its SGAT and the appropriate subsections, to state that Qwest will provide access to high capacity loops in any location in which Qwest provides high capacity loops. This would require Qwest to construct new facilities in locations where existing facilities have reached capacity. *Initial Order, ¶48.*

Qwest

18 Qwest cites the FCC's orders (*Local Competition First Report and Order*[4], *Collocation Remand Order*)[5], 8th Circuit decisions, and other states' recommended

[4] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, 11 FCC Rcd 15499 (1996) *(Local Competition First Report and Order),* aff'd in part and vacated in part sub nom, Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997)

decisions in support of its contention that it is obligated to offer CLECs access only to its existing network, i.e., the plant that is already built. *Qwest's Comments on the Initial Order on Workshop 4 issues at 3-7 (Qwest Comments).* Qwest states that it will consider build requests from CLECs in the same fashion it considers those from retail customers.

Covad

19 Covad concurs in the recommendation made in the *Initial Order*, but asks the Commission to require Qwest to amend the SGAT to reflect its obligation, and to provide the Commission and CLECs with documentation regarding terms and conditions for builds for retail customers, including requirements to contribute to the cost of construction. *Covad Communications Company's Comments on the Twentieth Supplemental Order; Initial Order on Workshop 4 Issues at 2 (Covad Comments).*

Discussion and Decision

20 Our decision in this Order rests on the reasoning contained in our decision in the *24th Supplemental Order*. We believe the term "existing network" is not meant to be taken literally, and that the FCC contemplated the kind of planning and building addressed in this issue as being encompassed in the "existing network." This is borne out by the FCC's orders and the Eighth Circuit's opinion in *Iowa Utilities, Board v. FCC*, as discussed extensively in paragraphs 13-19 of the *24th Supplemental Order*.

21 Covad's suggestions are sound. Without documentation as to the type of arrangements Qwest makes for its retail customers, the Commission and parties cannot determine if Qwest's treatment of CLECs on requests to build is at parity with the treatment of retail customers. During oral argument, Qwest stated that it does not object to disclosing its general policies regarding terms and conditions when it builds for retail customers, but does not want to disclose such information on a job-by-job basis. This distinction appears reasonable. Qwest must modify the SGAT to provide a reference to its retail building policies, and provide a method for CLECs to gain access to that information.

22 In requiring Qwest to provide facilities to CLECs in areas that are already served by like facilities used to full capacity, we simply require Qwest to treat CLECs no differently than it would treat a retail customer requesting such facilities. We do not require Qwest to provide such facilities "for free." Qwest may recover its investment

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[5] *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket 96-98, FCC 00-297, (released August 10, 2000) *(Collocation Remand Order).*

in the same way it would recover the investment made for a retail customer requesting a similar facility.

2. ISSUE WA-LOOP 2(b): Loop Conditioning Charges

Initial Order

23 The *Initial Order* held that Qwest should not impose loop conditioning charges for loops under 18,000 feet in the 47 central offices addressed in a commitment in the *U. S. WEST/Qwest Merger Settlement Agreement*.[6] As part of the *Merger Settlement Agreement*, Qwest committed to remove bridged taps, where no construction or excavation is required, and load coil encumbrances for loops 18,000 feet or less in 47 central offices, at no cost to CLECs. *Initial Order, ¶63.*

24 The *Initial Order* also accepted Qwest's proposal, in SGAT section 9.2.2.4.1, to provide refunds to CLECs where Qwest provisions a faulty loop. The *Initial Order* recommended that Qwest modify the SGAT section to provide that refunds may be administered through the bill credit process as long as the credit process is immediate and not administered through the billing dispute process. *Initial Order, ¶65.*

Qwest

25 Qwest seeks clarification of the recommendation that it not impose charges on CLECs in the 47 central offices addressed in the *Merger Settlement Agreement* commitment. *Qwest Comments at 9.* Qwest reported that it completed the project, and that it performed deloading activity in 55 Washington central offices. Qwest also stated that it has not and will not charge CLECs for the cost of the project. *Id. at 9-10.* However, Qwest stated that it did not deload loops where deloading would have disrupted service. Where technology or changes in the network would now allow deloading, Qwest seeks to charge CLECs for the cost on a going-forward basis, if a CLEC requests loop conditioning. *Id. at 10.*

Discussion and Decision

26 Based on Qwest's statements, it appears that Qwest has carved out exceptions to the commitment it made, and that the Commission accepted, in the *Merger Settlement Agreement*. A review of documents filed in the merger docket indicates that Qwest may not have informed the Commission that it had excluded some loops from the deloading project if their conditioning would have disrupted service. There is no evidence that Qwest either asked for or was granted approval for such an exemption. It is also not clear whether Qwest removed all load coil encumbrances for loops of

[6] *In re Application of U S WEST, and QWEST COMMUNICATIONS INTERNATIONAL INC. For an Order Disclaiming Jurisdiction or, in the Alternative, Approving the U S WEST, INC.-Qwest Communications International Inc. Merger*, Final Settlement Agreement Among Joint Applicants and Staff, Docket No. UT-991358, May 26, 2000 (*Merger Settlement Agreement*).

18,000 feet or less, or only those that did not require excavation or construction. According to the *Merger Settlement Agreement*, only bridged taps requiring excavation or construction were to be excluded from the project. These questions, and possible violations of the *Merger Settlement Agreement*, are appropriately addressed in the merger docket, UT-991358. The Commission will direct Staff to open an investigation into the possible violations of the settlement agreement in that docket. During the pendency of the investigation, Qwest may not charge CLECs for removing load coil encumbrances of any type, or bridged taps not requiring construction or excavation, in the 47 central offices that are the subject of Qwest's commitment in the merger settlement.

27 With respect to loop conditioning charges in Qwest's other offices, the Commission held in the Generic Cost Docket, UT-960369, that Qwest could charge for loop conditioning if requested by the CLEC. The rates and method of cost recovery of such costs is an issue in Part D of the cost and pricing docket, UT-003013. Until a decision is made in that case, Qwest may charge for loop conditioning, if a CLEC requests it, in the central offices other than the 47 offices discussed above.

3. ISSUE WA–LOOP 3(a)/3(b): Access to LFACS and MLT

Initial Order

28 The *Initial Order* determined that CLEC access to the five loop qualification tools offered by Qwest satisfies the requirement that it provide access to all loop data available to Qwest. *Initial Order, ¶74.* It found that Qwest did not need to provide access to two other tools requested by CLECs, the Loop Facilities and Assignment Control System (LFACS) and mechanized loop testing (MLT). In particular, the *Initial Order* found that Qwest's Raw Loop Data Tool (RLDT) provides competitors with loop qualification information that is as complete and timely as the information that Qwest makes available to its own employees. The FCC orders cited by AT&T and other CLECs require access to loop qualification information, but the RLDT appears to meet that requirement without raising the concerns that would flow from unmediated access to LFACS. *Id.*

AT&T

29 AT&T argues that the FCC has established that the parity standard is <u>any</u> loop or loop plant information that any Qwest employee has access to, not what is accessible to Qwest's retail operations, and that the information may not be filtered or digested. *AT&T Comments on the Initial Order Regarding Loops at 1-2*. AT&T argues that the *Initial Order* inappropriately permits Qwest to filter and/or digest the loop and loop plant information that is at issue. *Id. at 3.* AT&T asserts that Qwest has the discretion to selectively place information into the RLDT. CLECs have no way to ensure this information is complete, or at parity with the loop qualification information that is available to Qwest for its own use. AT&T asserts that Qwest's

own evidence shows that, in a trial of the process for ordering xDSL loops, a Qwest employee checks LFACS for the CLEC "because LFACS may reveal information not available through the RLDT, especially with regard to loops not already connected to a switch." *Ex. 908, n.2.* AT&T also argues that in Texas, where CLECs are given access to Southwestern Bell Telephone Company's (SWBT's) loop qualification tools, CLECs have been given the right to audit SWBT's records, "backend systems," and databases to assure themselves that SWBT is "indeed providing the required information."[7]

Covad

30 Covad filed initial comments, and on December 21, 2001, filed supplemental comments, along with a motion for leave to do so. Referring to the same document as AT&T, Exhibit 908, Covad states that the *Initial Order's* assumption that RLDT provides all the loop information CLECs would otherwise want from the LFACS and MLT is not correct. *Covad Comments at 3, 5.* Covad states that there is no factual basis for the finding in the *Initial Order* that access to LFACS would disclose proprietary or confidential information about one CLEC to another, and states that the form Qwest uses to update LFACs does not contain any proprietary items. *Id. at 4.* Covad also asserts that access to MLT will ensure that Qwest will deliver a line-shared or line-split loop capable of supporting xDSL services. *Id. at 5.* Covad requests the Commission revise this finding of the *Initial Order* and require Qwest to provide access to LFACS and MLT.

31 In its supplemental comments, Covad states that during a Change Management Forum[8] on December 12, 2001, Qwest stated that it would not guarantee to CLECs that its line-shared loops would support ADSL service. *Covad Supplemental Comments at 2.* Covad states that without a guarantee that the loop is capable of supporting DSL services, CLECs more than ever need to be able to test the loop during the provisioning process. *Id. at 2-3.* Covad stated that Qwest's refusal to guarantee the ADSL capability of a line-shared loop, along with not allowing CLECs to test the loop themselves, creates a parity issue. Covad asserts that Qwest tests its own line shared DSL loops at the time of delivery, and thus is capable of implementing an immediate line and station transfer if the loop provisioned cannot support the Qwest DSL service. *Id. at 2.*

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[7] *Petition of IP Communications Corporation to Establish Expedited Public Utility Commission of Texas Oversight Concerning Line Sharing Issues, Docket No. 22168; Petition of Covad Communications Company and Rhythms Links, Inc. Against Southwestern Bell Telephone Company for Post-Interconnection Dispute Resolution and Arbitration Under the Telecommunications Act of 1996 Regarding Rates, Terms, Conditions and Related Arrangements for Line Sharing, Docket 22469, Arbitration Award,* Public Utility Commission of Texas, pp. 105-07 (dated July 13, 2001).

[8] Qwest's change management development process included periodic meetings of Qwest and CLECs to discuss Qwest's procedures for changing processes, offerings and associated technical documents and product catalogs.

Qwest

32 Qwest asserts that it provides loop qualification data to CLECs at parity with how it is provided to Qwest's retail personnel. Qwest points to Exhibit 946, in which the OSS test vendor found that Qwest's loop qualification tools for retail and wholesale operations were at parity.

Discussion and Decision

33 The issues we must decide are: (1) whether the access CLECs have now is adequate to provide them parity, (2) whether it provides the information the FCC requires, and (3) whether additional safeguards or conditions are necessary to ensure the required access going forward. Concerning the first and second issues, Exhibit 946 demonstrates that the RLDT does provide the required information, and appears to be at parity, presently, with what Qwest provides to its itself. However, as AT&T asserts, there is no guarantee that the RLDT will continue to provide the necessary information. More specifically, there is no way of knowing whether the loop qualification tools available to CLECs will remain at parity with those Qwest is using.

34 Concerning the last issue, the *UNE Remand Order* [9]at paragraph 430 requires that Qwest provide access to loop qualification information that exists anywhere within the incumbent's back office. We have reviewed the Texas Model Interconnection Agreement (T2A), and note that it does allow CLECs access to the LFACS database of SWBT. However, it also provides that CLECs needing further information, or clarification, regarding loops other than what resides in LFACS are required to request it from SWBT. SWBT is in turn required to provide the so-called "backend" information in the same time frame and manner as it provides such information to its retail departments.[10] Qwest's SGAT does not include such a procedure, which is necessary to provide CLECs the same access to loop qualifying information that is not accessible electronically, as required by the *UNE Remand Order* at paragraph 431. Qwest must modify its SGAT to include such a procedure.

35 We also require Qwest to modify the SGAT to allow CLECs to audit the loop qualification tools provided to them, to determine that the tools provide the same information, in the same time frame, to CLECs as Qwest's internal data tools provide to its retail operations, and that Qwest provides all the information required by the FCC.

36 During oral argument, Covad agreed with Qwest that, with the exception of Pacific Bell, now SBC, no other RBOC allows or provides pre-order use of MLT. Covad further stated that MLT is not a loop information tool, but a quality assurance tool,

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[9] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, 3704 *(UNE Remand Order).*

[10] T2A, Attachment 25, xDSL-TX, at 6, 7.

similar to data continuity testing. Although we understand Covad's concerns about Qwest's provisioning of line-shared loops, given the discussion during the oral argument, we see no need to order Qwest to provide pre-order use of MLT to either demonstrate compliance with the checklist item, or as a condition of approval of the relevant SGAT section.

4. ISSUE WA-LOOP 8: Parity on Held Orders

Initial Order

37 The *Initial Order* required Qwest to apply its held-order policy in a consistent manner for retail and wholesale customers. *Initial Order, ¶79.* The *Initial Order* stated that Qwest is not obligated to build a different type of facility than it has in place. The *Initial Order* recommended that Qwest develop a way to advise CLECs why an order cannot be filled, just as it does for its retail customers.

Qwest

38 Qwest insists that its held-order policy is sound and that is has good reasons for not keeping CLEC orders on hold indefinitely, especially when it has no intention of building facilities. *Qwest Comments at 11-15.* Qwest states that it makes network and construction project information widely available to CLECs so they know what areas will support the facilities they want, and that the information should be sufficient for CLECs to know what service requests to submit.

39 Qwest also states that if facilities are not available, a CLEC is just as capable as Qwest to build facilities. It states that CLECs objected to Qwest's previous policy of holding orders indefinitely. Qwest cites the FCC's *Verizon Connecticut Order* as stating that held-order measures are diagnostic. It states that Qwest's held orders for CLECs will be measured through several PIDs. Qwest states that it should not have to hold CLEC orders that are not required to be reported to the Commission on the retail side, e.g., held orders involving more than five lines.

Discussion and Decision

40 The intent of the *Initial Order's* recommendation was to prevent Qwest from using different criteria for rejecting orders for retail and wholesale customers, which then has an affect on the parity measures for held orders in the OSS tests. During oral argument, Qwest identified that at least one of the current Performance Indicator Definitions, or PIDs, OP-15, is affected by the different treatment of orders for retail and wholesale customers. *Tr. 6354-5.* Qwest's current SGAT provisions would therefore allow skewed reporting between retail and wholesale orders. Qwest's

characterization of the FCC's *Verizon Connecticut Order*[11] is somewhat misleading. The FCC declined to require a held-order metric because there was conflicting evidence in the record. The footnotes in the section of the *Verizon Connecticut Order* section quoted by Qwest imply that other states do use held-order metrics to measure performance (i.e. New York). Given the evidence in Washington that Qwest's criteria for retail construction might differ from the criteria used to decide whether to build for CLECs, we believe a held-order metric is advisable to measure Qwest's performance. We recognize that the topic is under discussion by the ROC. If the ROC fails to treat this issue in an acceptable manner, parties may bring this matter back to the Commission for consideration.

5. ISSUE WA-LOOP 10-2: Spectrum Management – Deployment of Remote DSL

Initial Order

41 The *Initial Order* recommends that Qwest demonstrate to the Commission that it has met the FCC's interim guidelines prior to deploying a new technology in Washington. *Initial Order, ¶110.* The *Initial Order* also quotes from the FCC's *Line Sharing Order*, which sets rules for acceptance of new loop technologies. *Id., ¶108.*

Qwest

42 Qwest does not take issue with most of the recommendation on this issue in the *Initial Order.* Qwest does object to the requirement that Qwest seek "prior approval" before offering remote DSL service in Washington. *Qwest Comments at 15-16.* Qwest indicates that it has met the FCC's guidelines and is already providing remote DSL service in Washington.

Discussion and Decision

43 Since Qwest has already begun deploying remote DSL technology in Washington, it is too late for this commission to require Qwest to seek prior approval. The *Line Sharing Order* gave three circumstances for the presumption of acceptable deployment of remote DSL technology.[12] We therefore modify the recommended decision in the *Initial Order* to require Qwest to file a memorandum with the Commission in this docket that specifies which of the FCC's requirements Qwest has met for deploying remote DSL in Washington.

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[11] *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 01-100, FCC 01-208 (rel. July 20, 2001).

[12] *Line Sharing Order, ¶ 195.* The FCC's three circumstances are (1) complies with existing industry standards; (2) is approved by an industry standards body, the Commission [FCC], or any state commission; or (3) has been successfully deployed by any carrier without "significantly degrading" the performance of other services.

6. ISSUE WA-LOOP 10-3: Spectrum Management – Replacement of Interfering Technology

Initial Order

44 The *Initial Order* recommends changes to SGAT section 9.2.6.4, requiring Qwest to replace interfering T1 carrier systems with a non-interfering technology within 90 days, in order to minimize interference to CLEC customers. *Initial Order, ¶119.*

Qwest

45 Qwest claims that in some cases it may not be technically feasible to replace its own T1 facilities that interfere with other services. Qwest therefore takes issue with the requirement to replace technology that is causing interference within 90 days. *Qwest Comments at 16-18.* Qwest states that its standard practice is to segregate its own T1s into separate binder groups. Qwest also agrees to replace existing interfering T1s with less interfering technologies, "to the extent possible." *Id. at 17*. Qwest proposes revised SGAT language to try to resolve the issue. *Id. at 18.*

Discussion and Decision

46 Unfortunately, interference problems can become service-affecting to either CLEC customers or Qwest's customers. We adopt the recommendation in the *Initial Order* that Qwest replace interfering T1 carrier systems within 90 days. The purpose of the recommendation was to encourage Qwest to act quickly to mitigate interference from any technology that it is using. In instances where AMI T1[13] is in place and causing interference, that technology should be replaced, without exception. We recognize that there may be instances where the latest T1 technology may create interference, or where a lack of additional binder groups may hinder correction of the interference problem. We are also concerned that there may be instances where remote DSL may contribute to an interference problem. For these reasons, we accept Qwest's proposed rewording of SGAT section 9.2.6.4. This language will allow the Commission to resolve disputes concerning interference.

7. ISSUE WA-LOOP 12: Reclassification of Interoffice Facilities to Loops

Initial Order

[13] AMI T1, sometimes referred to as "analog T1," is an older generation T1 technology that utilizes alternate mark inversion (AMI), and is defined by the FCC as a "recognized disturber." *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability,* First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-48, ¶ 74 (rel March 31, 1999).

47 The *Initial Order* provides that "Qwest must make any unused facilities available to competitors regardless of internal labeling and past administrative practices." *Initial Order, ¶132.* In cases where Qwest has spare interoffice facilities (IOF), including fiber, within a cable, these must be used for the provisioning of UNE loops if requested by a CLEC. This recommendation is based upon the principle of "the ability to interconnect at any technically feasible point."

Qwest

48 Qwest believes the reclassification of IOF as loops goes beyond the intent of the section 271 process. *Qwest Comments at 19.* Qwest claims interoffice facilities are contained within a splice that is in the center of a sheath and is closed off. The exchange fiber is at the edge of the sheath and available for splicing. *Id.* Qwest is willing to reclassify the entire IOF copper plant when it is retired and reuse it as loop facilities.

Discussion and Decision

49 This issue is somewhat related to Qwest's obligation to build. Here, CLECs are requesting fiber where fiber is already in place. Since Qwest already has feeder facilities (loop and fiber) in use along these routes, Qwest is obligated to provide loops and/or fiber. Converting IOF to loop facilities is one option Qwest can use to fulfill that obligation. Another option is adding more fiber along the route or providing electronics to existing fiber to increase capacity for digitized loops. During oral argument, Qwest stated that reclassification of IOF to loop facilities required a reconfiguration of the network, which it claimed it is not required to perform. However, this statement is not supported by the testimony of Qwest's witness, who said only that IOF are run in a separate area of the sheath, and that it is difficult to persuade the Qwest IOF personnel to redesignate any of their spare facilities as being available for use as loop facilities. *Tr. 4406-4413.*

50 In upholding the recommendation of the *Initial Order,* the Commission does not require Qwest to convert IOF that it maintains to ensure adequate reserve facilities.

B. EMERGING SERVICES

1. ISSUE WA-DF-2: Application of Local Usage Restriction to Unbundled Dark Fiber

Initial Order

51 The *Initial Order* determined that SGAT section 9.7.2.9, which applies a local usage restriction to unbundled dark fiber, is inconsistent with prior Commission decisions. Qwest must allow unbundled dark fiber to be combined with other loop and transport elements without applying a local usage test. *Initial Order, ¶145.*

Qwest

52 Qwest relies on the FCC's *Supplemental Order Clarification*[14] to the *UNE Remand Order* as requiring local usage restrictions for loop-transport combinations such as unbundled dark fiber. *Qwest Comments at 12.* Qwest argues that "every state commission to consider this issue to date has agreed with Qwest." *Id. at 22*. Qwest argues that the SGAT provision does provide UNE combinations in conformance with FCC Rule 315(c), and further complies with the requirements of the FCC's *Supplemental Order Clarification*. *Id.*

53 Qwest objects that the *Initial Order* did not address AT&T's argument that the local usage test is not intended to apply to multiple end-users, but asserts that the FCC does address, and apply the local usage test to, situations where there are multiple-end users. *Id. at 23.* Qwest requests that the Commission reverse the recommendation in the *Initial Order* and adopt Qwest's SGAT language. *Id. at 24.*

Discussion and Decision

54 At paragraphs 20-24 of the *24th Supplemental Order* in this docket, the Commission required Qwest to modify SGAT language imposing local usage restrictions on Enhanced Extended Loops (EELS). Consistent with that decision, Qwest must modify SGAT section 9.7.2.9 to remove the local usage restriction on unbundled dark fiber.

2. ISSUE WA-DF 13: Access to Subloops at Splice Cases

22nd Supplemental Order

55 The *22nd Supplemental Order*, *Initial Order on Dark Fiber Issues*, recommended that Qwest be required to offer access to dark fiber at splice points under a rebuttable presumption that such access is technically feasible, and gave Qwest 90 days to present evidence that such access is not technically feasible. *22nd Supplemental Order, ¶11.*

Qwest

56 Qwest asserts that the technical feasibility of the access does not require that Qwest offer it. Qwest argues that the FCC determined that access need only be offered at "accessible terminals" and that splice cases do not constitute such terminals. *Qwest Comments at 25.* Qwest argues that the *UNE Remand Order* does not discuss splice cases in its discussion of "technical feasibility." Qwest states that the "best practices"

[14] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183, Supplemental Order Clarification, (Rel. June 2, 2000).

analysis, contained in the FCC's rules at 47 C.F.R.§319(a)(2)(c), is limited to "access at terminals" because the FCC rule only requires access at such points. *Id. at 26.* Qwest states that the rule's textual construction supports this interpretation, since the "best practices" section is a subpart of the rule and cannot be construed to change the rule.

Discussion and Decision

57 The *UNE Remand Order* explains at paragraph 227 that the "best practices" provision is established to recognize that "Technology may develop in ways that would render [the current FCC approach to subloop unbundling] too limiting." Thus, the FCC appeared to acknowledge that its current approach was subject to change. Qwest still has the opportunity to submit evidence to show that the access in question is threatening to the network or otherwise technically infeasible. While Qwest's argument regarding the construction of the rule is of interest, the existence of the "best practices" portion of rule 319(a)(2)(C) is persuasive. We believe the best practices portion of the rule cannot be ignored or overlooked. We therefore affirm the recommended decision in the *22nd Supplemental Order*.

3. ISSUES WA-LS 2/WA LSplit 1(A)/1(B): CLEC Access to POTS Splitters

Initial Order

58 The *Initial Order* determined that Qwest must provide the splitter either on a line-at-a-time, or a shelf-at-a-time basis. *Initial Order, ¶169.* The *Initial Order* recognized that the FCC has not obligated ILECs to provide the splitter, but also noted that the issue of ownership of the splitter is pending before the FCC. *Id., ¶166.*

Qwest

59 Qwest notes that, in the *Thirteenth Supplemental Order* in Docket No. UT-003013, the Commission found that Verizon need not provide CLECs access to its splitters, pending the FCC's reconsideration of the issue in its UNE Remand proceeding. *Qwest Comments at ¶ 29.*

Discussion and Decision

60 We note that the FCC's recent decision granting 271 approval in Missouri and Arkansas[15] confirmed the conclusion in the *Line Sharing Reconsideration Order*[16]

[15] *Joint Application by 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 Arkansas and Missouri*, Memorandum Opinion and Order, CC Docket No. 01-194, FCC 01-338, ¶ 106 (rel. Nov. 16, 2001)

that incumbent LECs have no obligation to provide splitters to competitive LECs that obtain voice services on the same line from a competing carrier. Given the Commission's decision on this issue in Docket UT-003013, and the FCC's decision, as recently as a day after the service date of the Initial Order, that ILECs are not obligated to provide CLECs access to splitters, we reverse the recommended decision in the *Initial Order*.

4. ISSUE WA-LS 4: Line Sharing Provisioning Interval

Initial Order

61 The *Initial Order* requires Qwest to amend SGAT Exhibit C to reduce the interval for provisioning line sharing from three days to one day, beginning six months after the date of the order. *Initial Order, ¶187.* Qwest's interval is based upon providing service at parity with its retail DSL product (formerly "Megabit"), which Qwest provides to customers within 10 days. The *Initial Order* finds that Qwest's provisioning of DSL service is not comparable to, and is more extensive than, a line sharing arrangement. *Id., ¶184.*

62 The *Initial Order* also concludes that the FCC "encouraged," but did not require, states to set intervals for line sharing at parity with ILEC intervals for provisioning retail DSL. *Id., ¶¶ 185-86.*

Qwest

63 Qwest requests the Commission reverse the *Initial Order* on this issue. Qwest argues that the FCC determined that line sharing and ILEC provisioning of retail DSL service are comparable, and identified the interval for providing retail DSL service as the retail parity standard. *Qwest Comments at 31.* Qwest argues that all ten state commissions to consider this issue have adopted a three-day interval. *Id. at 33.* While stating that it is not impossible to implement a one-day interval in Washington, Qwest seeks to have consistent rules across its service territory.

64 Qwest also states that since the workshop, Qwest and the CLECs have negotiated and agreed to performance benchmarks for provisioning line sharing, such that Qwest must provision line sharing within an average of 3.3 days. *Id. at 32.* Qwest notes that since the benchmark has been in place, Qwest has provided line-shared loops within an average of 1.58 days. *Id. at 33.*

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[16] *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* CC Docket No. 96-98, Third Report and Order on Reconsideration, Fourth Report and Order on Reconsideration, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, FCC 01-26 (rel. Jan. 19, 2001). *(Line Sharing Reconsideration Order).*

Discussion and Decision

65 Qwest notes that a one-day provisioning interval is possible in Washington. However, Qwest's performance to date shows that it has not been able to meet a one-day standard. The *Initial Order* should be modified to allow Qwest to retain the three-day interval for provisioning line sharing, which produces a uniform interval across its service territory, as well as an interval that matches an existing performance benchmark.

5. ISSUE WA-LS 6: Line Sharing on Fiber

Initial Order

66 The *Initial Order* relies on the FCC's *Line Sharing Reconsideration Order* in rejecting Qwest's argument that line sharing is only available on copper facilities. The *Initial Order* requires that Qwest modify SGAT sections 9.4.1 and 9.4.1.1 to ensure that Qwest must provide line sharing on fiber feeder subloops. *Initial Order, ¶198.* The *Initial Order* requires Qwest to modify SGAT section 9.4.1.1 to allow for changes in technology that would allow for more extensive line sharing on fiber facilities. *Id., ¶199.*

Qwest

67 Qwest argues that paragraph 199 of the *Initial Order* requires more than the FCC's *Line Sharing Reconsideration Order*. *Qwest Comments at 34.* Qwest asserts that the FCC has not required line sharing over fiber facilities, but is currently investigating the technical feasibility of such an offering. Qwest argues that the Commission should not require Qwest to provide a function that is not technically feasible. *Id. at 35.* Qwest also notes that the FCC, in its recent *Verizon Massachusetts Order,*[17] stated that the issue of line sharing over fiber-fed loops is the subject of further FCC review. *Id.* Qwest requests that the Commission retain the original SGAT language, or at a minimum, delete the first sentence of the proposed SGAT section 9.4.1.1: "The FCC has declared that Line Sharing applies to the entire Loop (even where Qwest has deployed fiber)."

Covad

68 While Covad concurs in the finding in the *Initial Order*, Covad requests the Commission order similar revisions throughout SGAT section 9.4, not just to sections 9.4.1 and 9.4.1.1. *Covad Comments at 6.* Covad asserts that the *Initial Order* should

[17] *In the Matter of 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 Authorizations to Provide In-Region, InterLATA Services in Massachusetts,* Memorandum Opinion and Order, CC Docket No. 01-9, FCC 01-130 (rel. April 16, 2001) (*Verizon Massachusetts Order*).

be revised to reflect that line sharing over fiber is technically feasible where there is DSLAM capability at the point the fiber and copper meet. *Id.* Finally, Covad requests that language in paragraphs 198 and 199 of the *Initial Order* be clarified to require Qwest to permit CLEC to line share over fiber through any technically feasible method, and that the ILEC's obligation to line share applies to the entire loop. *Id. at 7.* Covad suggests new language for SGAT section 9.4.1.1. *Id. at 8; see also Covad Letter dated Feb.19, 2002.*

Discussion and Decision

69 Qwest's SGAT language must include what the FCC has required ILECs to provide: Line sharing on fiber feeder subloops to allow CLECs to transmit data traffic to and from a remote terminal. We agree with Qwest that the first line of SGAT section 9.4.1.1, as proposed by the *Initial Order*, is not necessary, as it merely restates what is required by FCC order. The FCC specifically stated: "We clarify that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal)." *Line Sharing Reconsideration Order*, ¶10. We also agree, in part, with Covad's proposal to clarify the language in SGAT section 9.4.1.1 to specify line sharing technologies identified in applicable FCC rules. *See Covad Letter dated Feb. 19, 2002*.

70 We therefore direct Qwest to replace SGAT section 9.4.1.1 with the following language:

> 9.4.1.1: To the extent additional line sharing technologies and transport mechanisms are specified by applicable FCC rules, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access. Qwest also will provide CLECs with network elements to transport data to and from Qwest remote terminals including unbundled Dark Fiber, DS1 capable Loop, and OC-N. Qwest will also provide CLECs with the ability to commingle their data with Qwest's pursuant to Section 9.20 (Unbundled Packet Switching).

6. ISSUE WA-NID 1(a): Process for Ordering NIDs with Subloops

Initial Order

71 The *Initial Order* recommends that CLECs be allowed to order NIDs under SGAT section 9.5, even when NIDs are ordered with subloops. *Initial Order*, ¶*227.* The *Initial Order* recommends that Qwest specify combinations in either SGAT sections 9.3. or 9.5 for which collocation requirements are appropriate. *Id.*

Qwest

72 Qwest objects to the changes to the SGAT required in the *Initial Orde*r, asserting that the changes will enable CLECs to order subloop unbundling using the NID process, rather than the subloop process outlined in SGAT section 9.3. *Qwest Comments at 36-37.* Qwest states that the process it proposed for ordering subloops, which was rejected in the *Initial Order*, is essential to allow Qwest to inventory subloops. Qwest argues that ordering subloops using the NID process will not give Qwest the information it needs for its inventory. Qwest states that subloop ordering is not subject to collocation rules, which was the concern raised in the *Initial Order*.

AT&T

73 AT&T asserts that it intends to order subloops in accordance with the subloop process ordered by the Commission, and merely wants the ability to order NIDs on a stand-alone basis. *Tr. 6491*.

Discussion and Decision

74 The *Initial Order* expressed the concern that NIDs might be subject to a more onerous ordering process than necessary. We share that concern, but do not intend to allow CLECs to order subloops using the NID process. Subloops must be ordered using the process in SGAT section 9.3. Qwest may clarify that CLECs may either order the NID using SGAT section 9.5 and the subloop using section 9.3, or the NID/subloop combination using SGAT section 9.3. Qwest may also amend the SGAT to prohibit CLECs from ordering subloops using SGAT section 9.5.

7. ISSUE WA-NID 2(b): Disconnection of Qwest Facilities at NID

Initial Order

75 The *Initial Order* directs Qwest to allow qualified CLEC technicians to remove Qwest's facilities from the NID in cases where there are no spare terminals available for CLECs. *Initial Order, ¶238.* The *Initial Order* emphasizes the importance of following the National Electrical Code and National Electrical Safety Code to guarantee protection from harmful electrical voltages and currents. *Id., ¶¶236-37.*

Qwest

76 Qwest insists the Commission should not allow CLECs to disconnect Qwest's facilities from the protector field and thereby create a hazardous condition. *Qwest Comments at 38.* Protectors provide a ground to wires and protect equipment and buildings from electrical surges. Qwest claims its facilities would be unprotected and in violation of the National Electrical Safety Code and the National Electrical Code.

Comments Submitted After Oral Argument

77 In response to Qwest's concerns, proposed SGAT language was circulated at the oral argument. The changes to the SGAT would require CLECs to protect the network from harmful electrical hazards, while retaining their ability to make use of spare capacity. The Commission recommended that the following language be added to SGAT section 9.5.2.5:

> CLECs that remove Qwest facilities from the NID protector must terminate the spare Qwest loops on protection devices that ensure that Qwest's facilities and the customer's premises will be protected from electrical surges. CLECs will be liable for damages in situations where their technicians have failed to follow standard electrical protection and safety procedures.

78 AT&T and Qwest submitted comments to the Commission on this proposal. AT&T proposed adding, "To the extent Qwest is damaged as a result of CLEC's failure to follow standard electrical protection and safety procedures, CLEC shall be liable to Qwest, subject to the indemnity and limitation of liability provisions of this Agreement."[18] AT&T also recommended removing the following sentence from SGAT section 9.5.2.1: "At no time should either Party remove the other Party's Loop facilities from the other Party's NID."[19]

79 Qwest objected to AT&T's proposed changes as changing "the meaning of the language as suggested by the ALJ." [20]

Discussion and Decision

80 Having reviewed the parties' responses to the proposed SGAT revisions, the Commission finds that AT&T's proposed revisions are appropriate. The CLECs' liability to Qwest in this scenario should be subject to the indemnity and limitation of liability provisions of the SGAT, and it is proper to reflect that in this section. Similarly, deleting the last sentence of SGAT section 9.5.2.1 removes language contradicting the Commission's intent to allow CLECs to remove Qwest's spare loops from its NIDs under certain circumstances. Qwest must amend SGAT section 9.5.2.1. to remove the sentence "At no time should either Party remove the other Party's Loop facilities from the other Party's NID," and to add the following language to SGAT section 9.5.2.5:

> CLECs that remove Qwest facilities from the NID protector must terminate the spare Qwest loops on protection devices that ensure that Qwest's facilities and the customer's premises will be protected from electrical surges. CLECs will be liable for damages in situations where their technicians have failed to

[18] E-mail from Janet Browne, AT&T, to Judge Rendahl, January 22, 2002.
[19] *Id.*
[20] E mail from Lisa Anderl, Qwest, to Judge Rendahl, February 4, 2002.

follow standard electrical protection and safety procedures. To the extent Qwest is damaged as a result of CLEC's failure to follow standard electrical protection and safety procedures, CLEC shall be liable to Qwest, subject to the indemnity and limitation of liability provisions of this Agreement.

8. ISSUE WA-PS 2: Number of Spare Loops Required

Initial Order

81 The *Initial Order* recommended no change to the SGAT conditions under which Qwest would be required to offer packet switching. *Initial Order, ¶255.* Specifically, the *Initial Order* states that SGAT section 9.20.2.1.3 permits unbundled packet switching to allow xDSL service at parity.

Covad

82 Covad objects to the characterization of SGAT section 9.20.2.1.3 as offering parity. *Covad Comments at 9.* Covad points out that section 9.20.2.1.3 only compares a CLEC's offering of advanced services using a) a collocation of a DSLAM at a remote terminal or b) using Qwest's unbundled packet switching offering. *Id.* Covad states that the parity evaluation should compare the xDSL services offered by the CLEC over the copper loop from the central office to the NID to the xDSL service offered by the ILEC from the remote terminal. Covad refers to the FCC's interpretation of Rule 319 as requiring that CLECs be able to provide advanced services to its customer over the spare copper at the same level of quality as the incumbent LEC. *Id.* Covad states that Qwest's comparison of two CLEC services offered from the remote terminal will be meaningless, since the distance from the remote terminal to the end user, and thus the quality of service, would always be the same. *Id. at 10.*

83 In oral argument in support of its position, Covad referenced the FCC's waiver to SBC[21] from the merger conditions imposed in the SBC/Ameritech merger, granted when the FCC allowed SBC to unbundle Project Pronto.[22] *Tr. 6504*. Covad also described the kind of situation where it would be providing the same kind of service, but would be unable to provide it at the same speed as Qwest. *Tr. 6505-6*. Covad believes its proposed language would address such a situation.

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[21] *In the matter of Ameritech Corp., transferor and SBC Communications, Inc., transferee, for consent to transfer control of Corporations Holding Commission licenses and lines pursuant to sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, CC Docket 98-141 ¶4 (rel. September 8, 2000) (*SBC Ameritech Waiver Order).*

[22] Project Pronto is a $6 billion broadband infrastructure deployment project, initiated throughout SBC's 13-state region in 1999.

84 Covad also proposed adding language to SGAT section 9.20.2.1.2 to broaden that condition to include spare copper loops "that are capable of providing the same level of quality advanced services to the requesting carrier's customer as the incumbent LEC." *Covad Comments at 9-10.*

Discussion and Decision

85 We disagree with Covad's characterization of the FCC's interpretation of Rule 319. Paragraph 313 of the *UNE Remand Order* provides:

> Access to packetized services to provide xDSL service requires "clean" copper loops without bridge taps or other impediments….xDSL services generally may not be provisioned over fiber facilities. In this situation (where ILECs have deployed DLC systems), and where no spare copper facilities are available, competitors are effectively precluded altogether from offering xDSL service if they do not have access to unbundled packet switching. Moreover, if there are spare copper facilities available, these facilities may not meet the necessary technical requirements for the provision of certain advanced services. … When an incumbent has deployed DLC systems, requesting carriers must install DSLAMS at the remote terminal instead of at the central office in order to provide advanced services. *We agree that, if a requesting carrier is unable to install its DSLAM at the remote terminal or to obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market.* We find that in this limited situation, requesting carriers are impaired without access to unbundled packet switching. Accordingly, incumbent LECs must provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal. … The incumbent will be relieved of this unbundling obligation only if it permits a requesting carrier to collocate its DSLAM in the incumbent's remote terminal, on the same terms and conditions that apply to its own DSLAM. (Emphasis added.)

86 Our reading of this paragraph, along with the four conditions outlined in Rule 319 under which an ILEC must offer unbundled packet switching, appears to imply that the ILEC must offer either a spare copper loop capable of being used for xDSL service, or allow a CLEC to collocate a DSLAM at a remote terminal, and that if the ILEC offers neither one, it has to offer the CLEC access to unbundled packet switching.

87 Qwest's four SGAT conditions appear to follow the intent of this FCC interpretation. For the most part, they mirror the four conditions in the FCC rule, at 47 C.F.R.§ 319(c)(5)(i) – (iv). The SGAT section that differs the most from the parallel FCC rule section is the following:

> 9.20.2.1.3: Qwest has placed a DSLAM for its own use in a Remote Qwest Premises but has not permitted CLEC to collocate its own DSLAM at the same Remote Qwest Premises or collocating a CLEC's DSLAM at the same Qwest Premises will not be capable of supporting xDSL services at parity with the services that can be offered through Qwest's Unbundled Packet Switching.

88 The comparable FCC rule provision reads:

> 51.319(c)(5)(iii): The incumbent LEC has not permitted a requesting carrier to deploy a [DSLAM] in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section.

89 The Qwest SGAT provision does not appear to narrow the condition imposed by the FCC. It appears to broaden the condition under which Qwest would have to offer unbundled packet switching to include some situations in which the requesting carrier has collocated a DSLAM at the remote terminal.

90 Covad did not provide cites to the FCC's order waiving requirements imposed in the Ameritech-SBC merger.[23] The Commission has reviewed the FCC's order, noting that it was specifically limited to the issue of whether SBC should be permitted to offer advanced services through the BOC rather than through a separate affiliate. In the order, the FCC emphasized that it was examining competitive access to remote terminals in another proceeding and that its waiver decision did not prejudge the outcome of that proceeding.[24] The Commission therefore does not find the *SBC-Ameritech Waiver Order* dispositive on this issue.

91 Covad's proposed addition to SGAT section 9.20.2.1.2 would not add anything to the provision as it reads now, which is identical to the wording of the FCC provision. The provision refers to spare copper loops capable of supporting the xDSL services *the requesting carrier seeks to offer*. Thus, the requesting carrier can specify what it needs in order to offer its services at parity with Qwest's retail offerings. We believe the provision as written should be construed to require Qwest to provide unbundled packet switching in the example described by Covad regarding DSL transmission speed. We therefore believe no change to the SGAT is necessary to address this concern.

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[23] *SBC-Ameritech Waiver Order, see supra n. 20*.
[24] *Id, ¶2*.

9. ISSUE WA-PS 3: Line Cards in DSLAM

Initial Order

92 The *Initial Order* recommended that Qwest not be required to offer collocation of line cards in a remote DSLAM, a form of unbundled packet switching, unless all four FCC conditions for requiring unbundled packet switching have been met. *Initial Order, ¶258.*

Qwest

93 Qwest asserts that the Commission should revise paragraph 258 of the *Initial Order* by replacing the words "collocation of line cards in remote DSLAMs" with "the unbundling of packet switching" in the sentence, "Therefore, we decline to allow the collocation of line cards by CLECs in remote DSLAM unless all four conditions of Rule 319 have been met." Qwest states that the current wording in the *Initial Order* was taken from the header in Qwest's brief, and that it is a typographical error. *Qwest Comments at 39-40.*

Discussion and Decision

94 The collocation of line cards in remote DSLAMs is a form of unbundled packet switching. It was raised as a separate sub-issue in the workshops and described in Covad's brief as a "critical component of Covad's proposed unbundled access to Qwest packet-switched NGDLC functionality." The decision discussion at paragraphs 258 and 259 of the *Initial Order* was limited to a decision on this sub-issue, the heading for which was intentional. The overarching issue of whether the Commission should add packet switching to the list of unbundled network elements was addressed under Issue WA-PS 1 and encompasses the recommendation that the Commission not expand the FCC's UNE list to include unbundled packet switching. The Commission declines to amend the *Initial Order* paragraphs as suggested by Qwest.

10. ISSUE WA-SB 3: Intervals for Determining Facility Ownership

Initial Order

95 The *Initial Order* requires Qwest to remove restrictions on intervals in SGAT sections 9.3.3.5 and 9.3.5.4.1 to two business days each for determining inside wire ownership and for updating Qwest's systems with a CLEC's inventory. *Initial Order, ¶280.*

Qwest

96 Qwest claims that the CLECs and Qwest reached consensus regarding these intervals and that paragraph 280 of the *Initial Order* is no longer necessary. *Qwest Comments*

at 44. First, Qwest states that orders for inside wire will be processed outside the interval required for inventory updates. Second, Qwest states the parties agreed to a 10-day interval for the first instance of ownership determination, five days if the building owner claims to know who the owner is, and two days once a determination has been made.

Discussion and Decision

97 As currently written, SGAT section 9.3.5.4.1 provides that Qwest has ten (10) calendar days to notify the CLEC and the MTE owner about whether Qwest or the MTE owner owns the intrabuilding cable. Qwest has an additional five (5) calendar days (SGAT 9.3.3.5) to place the CLEC's inventory into Qwest's systems prior to provisioning of the subloop order. These two steps require up to 15 calendar days.

98 WAC 480-120-051 requires local exchange companies to complete installation of 90% of applications for up to five residential or business primary exchange access lines in any exchange within five (5) business days. In order for CLECs to be able to meet this requirement, the *Initial Order* recommended either shortening these two intervals to two (2) business days each, or eliminating them from the provisioning process.

99 The parties appear to have eliminated the inventory interval from the process, thus satisfying one of our concerns. The ownership interval meets the two-day requirement once ownership has been determined. We encourage the parties to establish ownership of inside wire ahead of taking orders. This will help to avoid potential conflicts with WAC 480-120-051. Qwest must amend SGAT sections 9.3.3.5 and 9.3.5.4.1 to clearly identify the intervals agreed to by the parties.

11. ISSUE WA-SB 4/5: LSRs for Ordering Subloops

Initial Order

100 The *Initial Order* requires that orders be exempt from the LSR process when CLECs order inside wiring subloops. *Initial Order, ¶289.* The *Initial Order* also requires CLECs to keep track of their own inside wire inventory and to report the changes in inside wire usage to Qwest for billing purposes. *Id.*, ¶¶*290, 297.*

Qwest

101 Qwest believes LSRs should be required for all subloops. *Qwest Comments at 42-43.* In its comments, Qwest claims that 70-80% of orders require number portability, leaving only 20–30% of inside wire orders that would fit under this issue. Qwest calls this a "tiny fraction" of all orders. Qwest asserts that 10 other states in its region require LSRs for all orders. Qwest insists that the Commission's requirement is

unreasonable and costly. Qwest also cites the difficulty of CLEC customers returning to Qwest due to internal tracking procedures when LSRs are not used.

AT&T

102 During oral argument, AT&T stated that the LSR process is completely manual, not automated, and thus more cumbersome than the usual LSR process. *Tr. 6479-80, 6484-85*. This statement is supported by Qwest witnesses. *Tr. 5567-5574*. AT&T also pointed out that evidence that the process was manual was not available when the other 10 states decided that LSRs should be required for inside wire orders. *Tr. 6483*.

Discussion and Decision

103 Given that ten other states will require LSRs for subloop orders, we will, in the interest of uniformity, allow Qwest to require LSRs for subloop inside wire orders. However, we believe CLECs should not be subjected to costly burdens when they are making additional efforts to become facilities-based carriers, especially when they are attempting to bring these facilities closer to their customers. We consider the number of subloop orders affected here to be significant. The FCC is concerned that costly interconnection and delays might impede the ability of CLECs to gain access to inside wire. We urge Qwest to automate the LSR process for subloop orders as soon as practicable. We will require Qwest to file a status report on this topic subsequent to the issuance of this Order.

C. GENERAL TEMS AND CONDITIONS

1. ISSUE WA-G 4: References in SGAT

Initial Order

104 Qwest's proposed SGAT section 2.1 in Exhibit 1170 provides that any references to statutes, rules, tariffs, or product documents would be to the most recent version. The *Initial Order* requires Qwest to eliminate a portion of SGAT section 2.1 to preclude Qwest from unilaterally modifying the SGAT to reflect changes in law or product and technical documents referenced in the SGAT. *Initial Order, ¶322.* The CLECs objected that such changes would defeat the premise of a contractual relationship. The *Initial Order* also noted that SGAT section 2.2 provides a process to address changes in statutes, regulations and interpretations, and that SGAT section 12.2.6 establishes the change management process for changes to tariffs, product, and technical documents. *Id., ¶323.*

Qwest

105 Qwest requests that the Commission reject the recommendation in the *Initial Order*. Qwest argues that the concern about changes in product and technical documents has

been resolved through modifications to SGAT sections 2.2 and 2.3 which address changes in law and conflicts between the SGAT and other documents. *Qwest Comments at 47.* Qwest argues that, for the purpose of avoiding confusion about administering the SGAT when CLECs opt-in to the agreement, it is necessary to include a provision about which version or edition of documents the parties should use. *Id. at 46-47.* Qwest argues that the Colorado hearing examiner and the facilitator for the Multi-state Proceeding have agreed with Qwest on this issue. *Id. at 47.* However, on December 14, 2001, Qwest filed a new version of the SGAT incorporating the changes recommended in the *Initial Order*. *See Ex. 1169.*

Discussion and Decision

106 If the language about reference to the most recent version of statutes, rules, tariffs, product catalogs and technical publications were added back to SGAT section 2.1, we believe it could cause confusion and the potential for conflict between SGAT section 2.1, and sections 2.2 and 2.3. Those latter sections create a process for modifying the SGAT to account for changes in law or changes to product and technical documents. Stating that the most recent version applies creates an issue of interpretation that the newest version applies while the parties sort out how to implement the change, even though section 2.2 and the change management provisions provide that the existing version applies until the parties agree otherwise.

107 The Multi-state Facilitator raises a concern about confusion for CLECs opting in to the agreement.[25] This concern, repeated by Qwest, does not stand up under scrutiny. The SGAT does not refer to the most recent version of a law, rule, tariff, or product or technical document. It refers to the existing laws, rules, tariffs and product or technical documents, until the SGAT is modified to reflect the changes. The Colorado hearing examiner has stated that the provision, in concert with the language in SGAT sections 2.2 and 2.3, does not give Qwest the ability to unilaterally alter the terms and conditions of the SGAT.[26] We agree with the hearing examiner, but find that the provision referencing the most recent version of a document may create more confusion than clarity. We therefore affirm the recommendation in paragraph 322 of the *Initial Order*.

2. ISSUE WA-G 13: Limitations on Liability

Initial Order

108 The *Initial Order* finds that the SGAT is a standard interconnection agreement, not a tariff, and looks to other interconnection agreements for resolution of contested

[25] *Multi-State General Terms and Conditions, Section 272, and Track A Report*, September 21, 2001, at 27 (*Facilitator's GTC Report*).
[26] *In the Matter of the Investigation into U S WEST Communications, Inc.'s Compliance with Section 271 of the Telecommunications Act of 1996*, Resolution of Volume VIA Issues, Docket No. 97I-198T, Decision No. R01-1193 (Nov. 20, 2001), at 15 (*Colorado GTC Order*).

limitation on liability language. *Initial Order, ¶372.* The *Initial Order* finds that: (1) SGAT section 5.8.1 should include caps on each incident of breach, but not an annual cap on damages (*Id., ¶373);* (2) SGAT section 5.8.4, the provision including expanded exclusions from limitations on liability, must include AT&T's proposed language concerning gross negligence and bodily injury, death, or damage to tangible real or tangible personal property (*Id.*, ¶*374*); and (3) Qwest must delete SGAT section 5.8.6 concerning fraud associated with CLEC service (*Id., ¶375).*

Qwest

109 Qwest objects to the recommendations in the *Initial Order* concerning the annual cap on damages and the expanded exclusions from limitations on liability, and notes that the parties have reached agreement concerning SGAT section 5.8.6 relating to fraud. *Qwest Comments at 48.*

110 Qwest argues that, contrary to the decision in the *Initial Order*, it is standard industry practice to limit damages relating to performance under a contract to the total amount charged over the course of the year. *Id. at 49-50.* Qwest asserts that without the annual cap on damages, there is no limitation on any other losses. *Id. at 50.* Qwest notes that the Texas Model Interconnection Agreement (T2A) includes such a provision. *Id.* Qwest also notes that the Colorado hearing examiner and Multi-state Facilitator have both accepted Qwest's position on this issue. *Id. at 49-50.* Qwest believes such an annual cap is reasonable, especially in conjunction with more expanded exclusions.

111 Qwest accepts language that the Multi-state Facilitator has recommended concerning expanded exclusions, and proposes that the Commission also accept this language. *Id. at 53.* The language excludes AT&T's proposed language concerning gross negligence, as well as bodily injury and death. Qwest asserts that the issues of bodily injury and death are more appropriately dealt with in the indemnity section, SGAT section 5.9.

112 Qwest notes that it has already deleted SGAT section 5.8.6 due to an agreement among the parties. *Id. at ¶54.*

Discussion and Decision

113 The effect of SGAT section 5.8 is to limit the liability of the parties to the SGAT agreement, with certain exceptions. The impasse issues concern the appropriate industry standard or practice concerning limitations on liability, how to set the limitation on damages, and what types of damages should be excluded from that limit.

114 The SGAT is not exactly a tariff, and not purely a contract between two parties. In fact, Qwest has argued that the SGAT is both like a contract and like a tariff. *See Tr.*

6512-13; Qwest Corporation's Legal Brief on Impasse Issues Relating to General Terms and Conditions at 17. We find that the appropriate industry standard or practice for SGAT language on limitations of liability is language used in other state model interconnection agreements, such as the Texas T2A Agreement.[27] Given that standard, we reexamine the appropriate limitation on the parties' liability under the SGAT, and the exclusions from liability.

115 In its closing brief, AT&T objects to Qwest's limitations of liability section, asserting that it will not create a sufficient incentive for Qwest to perform, and allows Qwest to avoid all accountability. *AT&T's Closing Brief on General Terms and Conditions at 19 (AT&T GTC Brief).* We agree that the effect of removing the limitation on "other losses" to the annual charges under the agreement is to significantly increase Qwest's exposure for liability. However, we concur with Qwest that limiting liability to annual charges is reasonable, especially given that the Texas agreement includes caps on liability to the annual charges under the agreement.[28] Thus, we reject the recommendation to remove the annual charge liability cap in paragraph 373 of the *Initial Order*.

116 During the oral argument, AT&T and WorldCom rejected the Multi-state Facilitator's proposed language for exclusions from liability. *Tr. 6517.* The Facilitator's language is not as extensive as the language recommended in paragraph 374 of the *Initial Order*. The Facilitator omitted gross negligence from SGAT section 5.8.4 and included damage to tangible real and personal property, but not liability for bodily injury or death.[29] The Facilitator noted that AT&T's proposed language combines theories of limitations on liability and indemnification.[30] The Colorado hearing examiner excludes gross negligence and intentional misconduct from the limitations of liability, referring to the Texas agreement, but does not appear to exclude bodily, injury, death, or damage to real or personal property.[31] The Texas agreement excludes willful or intentional conduct, such as gross negligence, from the limitations on liability.[32]

117 Upon review, we concur with the recommendations in paragraph 374 of the *Initial Order*. The recommendations appropriately exclude gross negligence from the limitations on liability, and also exclude bodily injury, death, and damage to real and

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[27] We note that AT&T objected during oral argument to Qwest's first introducing the Texas Agreement in its comments on the Initial Order. Throughout the workshops in this proceeding, the parties have referenced the T2A Agreement, as well as other agreements developed in other states. Given the nature of this proceeding, we believe it is appropriate to consider how other states have approached a similar issue.
[28] *Texas T2A Agreement*, §7.1.1.
[29] *Facilitator's GTC Report* at 32.
[30] *Id.* at 31.
[31] *Colorado GTC Order* at 22.
[32] *Texas T2A Agreement*, §7.1.1.

tangible personal property due to the other party's negligent acts or omissions.[33] The discussion above concerning disconnection at the NID demonstrates the need for such exclusion language for both Qwest and the CLECs.

3. ISSUE WA-G 14: Indemnity

Initial Order

118 The *Initial Order* recommends that Qwest delete SGAT section 5.9.1.2, which requires CLECs to indemnify Qwest from end-user claims, except where the claim arises from Qwest's willful misconduct. *Id.*, ¶*397.* The *Initial Order* does so, finding that the provision is not standard in interconnection agreements filed with the Commission. *Id.*

Qwest

119 Qwest objects to eliminating a provision for indemnification for end-user claims. *Qwest Comments at 54-55.* Further, Qwest recommends the Commission adopt the language proposed by the Multi-state Facilitator on this issue. *Id. at 58.*

Discussion and Decision

120 As discussed above concerning limitations on liability, the appropriate industry standard for the SGAT is other model interconnection agreements. The Texas agreement includes a provision for indemnification due to end-user claims, and excludes from indemnification losses due to gross negligence, or intentional or willful misconduct.[34] A review of the parties' positions shows that AT&T does not believe the language in SGAT section 5.9.1.2 is sufficient, and requests that the word "willful" be replaced with "act or omission of indemnified party." WorldCom recommends that each party indemnify the other for acts and omissions arising in a claim from an end-user.

121 We reject the recommendation in paragraph 397 of the *Initial Order* to delete SGAT section 5.9.1.2. We concur with Qwest and other parties that there is a need for indemnification concerning end-user claims. However, we find that the language in SGAT section 5.9.1.2 appearing in Exhibit 1170 must be modified to exclude from indemnification "losses due to negligence, gross negligence, or intentional misconduct of the employees, contractors, agents, or other representatives of the Indemnified Party." We decline to adopt the Multi-state facilitator's proposed language.

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[33] Although AT&T's proposed language states ". . . . damage to tangible real and personal property," (ex. 830-T, at 34), we believe SGAT section 5.84 should more appropriately read ". . . . damage to real and tangible personal property due to the other party's negligent acts or ommissions."

[34] *Texas T2A Agreement,* §7.3.1.1.

4. ISSUE WA-G 22: Scope of Audits

Initial Order

122 The *Initial Order* requires Qwest to modify SGAT sections 18.1.1 and 18.1.2 to expand the scope of audits allowed to include all services provided under the SGAT, while maintaining the limitation on the scope of examinations to address elements or processes related to billing for services, including reciprocal compensation. *Initial Order, ¶446.* The expansion of audit scope is necessary to allow CLECs to review Qwest's compliance with SGAT provisions regarding proprietary information. *Id., ¶445.*

Qwest

123 Qwest objects to the *Initial Order's* expansion of the scope of CLEC audit authority. *Qwest Comments at 58.* Qwest argues that such an expansion will allow CLECs to harass and overly burden Qwest without justification and disrupt Qwest's business without any disincentive such as reciprocity of audits and responsibility for cost. *Id. at 58-59.* Qwest also argues that the *Initial Order* did not demonstrate the need for such wide ranging audit authority. *Id. at 59.* Qwest believes that the dispute resolution process would adequately address CLECs' needs. *Id. at 60.* Qwest recommends adoption of language proposed by the Multi-state Facilitator, which language expands the scope of audits to include audits related to proprietary information. *Id. at 61.*

Discussion and Decision

124 While the language proposed by the Facilitator does address the CLECs' concerns about Qwest's use of proprietary information, it does not address other situations in which an audit might be appropriate, e.g., auditing the Raw Loop Data Tool to verify that it provides the same information as the LFACs data tool. We affirm the recommended decision in the *Initial Order.*

D. PUBLIC INTEREST

Initial Order

125 The *Initial Order* described the public interest requirement of section 271(d)(3)(C) as an independent requirement of section 271. *Initial Order, ¶¶456.* The *Initial Order* identified the factors the FCC has looked to in determining whether an application is in the public interest: whether the application will foster competition in the local and long distance markets, the nature and extent of competition in the local market, whether all methods of entry are available, whether there is assurance of future compliance, and whether there are any unusual circumstances that would frustrate congressional intent that the local market be open. *Id., ¶¶458, 459.*

126 The *Initial Order* found that the record was not sufficient to determine whether an application by Qwest for section 271 relief is in the public interest. *Id., ¶473.* Specifically, the *Order* stated that the Commission had not completed its review of Qwest's compliance with checklist items, and more importantly, that the OSS testing process was not complete, and that the Commission had yet to consider or approve a performance assurance plan. *Id., ¶¶474, 475.* The *Initial Order* recommended that the Commission defer its review of the public interest requirements until after the Commission approves a performance assurance plan and the vendor issues its final report on OSS test results. *Id., ¶475.* The *Initial Order* also refrained from considering allegations of "unusual circumstances," noting that some issues may be resolved through our review of checklist compliance and Qwest's performance assurance plan. *Id., ¶476.*

Qwest

127 Qwest asserts that the Commission has sufficient information and evidence of record to determine that an application by Qwest is in the public interest. *Qwest Comments at 61.* Qwest asserts that compliance with the public interest test could be conditioned on successful resolution of the checklist and QPAP inquiries. *Id. at 62.* Further, Qwest asserts that there are no unusual circumstances that would make entry contrary to the pubic interest. *Id.* Qwest requests that the Commission make a finding that approval of the application would be in the public interest, subject to any conditions of checklist compliance, implementation of an acceptable QPAP, and successful completion of an OSS test. *Id. at 64.* At oral argument, Qwest requested that the Commission find an application by Qwest in the public interest if it demonstrates checklist compliance and has an effective QPAP in place. *Tr. 6524.*

Public Counsel

128 Public Counsel argues that there is not sufficient evidence to find an application by Qwest to be in the public interest. *Public Counsel Comments at 1.* Further, Public Counsel argues that Qwest has failed to meet its burden of proof, that the Commission should reopen its examination of public interest after the final OSS report is issued, but that the Commission should find that a number of unusual circumstances weigh against a public interest finding. *Id. at 2-3.* Public Counsel argues that Qwest must, at a minimum, demonstrate that it has in place cost-based UNEs, a final OSS system that can handle commercial volumes of traffic, a PAP, and full compliance with other requirements of the Act. *Tr. 6522.*

Discussion and Decision

129 We recognize that the parties presented testimony and evidence during the workshop concerning the Public Interest requirement on the issues of the state of competition in the local market, the effect of Qwest's entry into the long distance market, Qwest's

proposed performance assurance plan, and unusual circumstances that may affect a finding of public interest. We also recognize that some parties would like us to issue a decision on that testimony and evidence. However, we concur with the recommendation in the *Initial Order* to defer consideration of the public interest issue until after the final OSS report has been issued. Based on a review of the factors the FCC relies on to consider the Public Interest requirement, we do not believe we have before us all the necessary information to make a determination of whether an application by Qwest would be in the public interest.

130 We decline to enter a decision contingent on Qwest complying with the competitive checklist, implementing an acceptable QPAP, and passing the OSS test, as we believe it would be a meaningless recommendation. Such a decision would also ignore the recent decision by the U.S. Court of Appeals for the District of Columbia remanding to the FCC, in part, its order granting section 271 approval to SBC Communications for the states of Kansas and Oklahoma. *See Sprint Comm. Co. v. FCC, No. 01-1076, (D.C. Cir., Dec. 28, 2001).* In that case, the court remanded to the FCC the specific issue of public interest, in particular whether low volumes of residential competition resulted from UNE rates that were too high, as well as a "price squeeze," presenting a situation that precluded a finding of public interest.

131 We also decline to make the finding that Qwest has failed to meet the public interest requirement. The fact that we do not yet have all the necessary information simply means that the issue is premature for decision, not that Qwest has failed to meet its burden of proof on the issue.

132 During the prehearing conference held on February 6, 2002, and in the *27th Supplemental Order; Prehearing Conference Order*, the administrative law judge advised the parties of our determination that it is premature to resolve the issue of public interest until later in the proceeding. A prehearing conference will be held on Tuesday, April 2, 2002, to establish a schedule for a hearing on the final OSS test report, the Public Interest requirement, and any remaining compliance issues.

133 To the extent that we have heard testimony and accepted evidence from the parties on the issue of public interest, we do not intend to reopen the record to allow parties to file new testimony and exhibits repeating the same information. However, to the extent the parties have *new* information concerning the state of competition in the local market, the effect of Qwest's application on competition in the local and long distance markets, assurance of future compliance, and any unusual circumstances, including the impact of the *Sprint v. FCC* decision in this state, such testimony and evidence is appropriate and will assist the Commission in making a determination of whether an application by Qwest for section 271 relief would be in the public interest.

E. SECTION 272 ISSUES

Initial Order

134 The *Initial Order* recommended that Qwest not be found in compliance with the requirements of section 272 (structural separation of the long-distance affiliate) until it expanded descriptions on its website of services performed for and by the long distance affiliate (QCC) (*Initial Order*, ¶*510*); provided evidence through a third-party report that it had corrected deficiencies in its reporting of transactions with its affiliate (*Id.*, ¶*506*); and changed its confidentiality agreement regarding the review of detailed billing information to remove a restriction that prohibits signers from disclosing possible section 272 violations to regulators (*Id.*, ¶*511*). The *Initial Order* also raised a concern regarding Qwest's omission of a late-payment clause in its contract with the section 272 affiliate. *Id.*, ¶*508.*

Supplemental Pleadings and Motions

135 As directed by the *Initial Order*, Qwest on November 28, 2001, filed a report by KPMG addressing certain deficiencies in Qwest's compliance with section 272, together with affidavits by two Qwest witnesses. AT&T filed a response to the filing on December 28, 2001. On December 21, 2001, Qwest then filed a supplemental affidavit by KPMG to support its compliance with section 272. AT&T filed a supplemental response, with an affidavit by Mr. Skluzak, on January 4, 2002. These reports and affidavits were admitted into the record during the January 10, 2002 oral argument.

136 On January 8, 2002, Qwest filed a motion with the Commission requesting to withdraw testimony concerning section 272 issues filed by Ms. Brunsting and Ms. Schwartz prior to the second workshop. Qwest had earlier requested that the Commission address the issue in a later workshop and filed new testimony during the fourth workshop, but never withdrew the original testimony. On January 14, 2002, AT&T filed a response to Qwest's motion, asserting that the testimony should remain a part of the record, as the testimony provides evidence of Qwest's history of non-compliance with section 272 requirements.

Qwest

137 In its comments, Qwest states that even though its website disclosures meet the section 272 requirements, it has expanded the descriptions of services on its website and recast its price lists to make them more user-friendly. *Qwest Comments at 73-77.*

138 Qwest states that its omission of a late payment provision in its service agreement with QCC was an "isolated incident" rather than a "systemic flaw" that would justify the conclusion that Qwest is not capable of conducting business with QCC at arm's-length. *Id. at 71-72.* It pointed out that since the agreement was posted on Qwest's

website, the terms of the agreement were available to any interexchange carrier and the agreement did not favor QCC over other carriers. It also stated that it had corrected the omission and that therefore the administrative law judge was not justified in finding that Qwest is violating the "arm's-length" requirements of section 272.

139 Qwest states that its confidentiality agreement did not prohibit parties from disclosing violations of section 272 requirements to regulators. However, it added a provision to its agreement to explicitly state that nothing in the agreement would restrict any party from disclosing possible section 272 violations to regulators. *Id. at 73; Ex. 1173; Ex. 1175.*

140 Qwest states that a third party, the CPA firm KPMG, completed a review of Qwest's transactions with the section 272 affiliate, and filed a report in November 2001. The report showed 12 instances in which Qwest's affiliate transactions with QCC violated the FCC's affiliate transactions pricing rules and the section 272 requirements. *Qwest Comments at 69.* Qwest maintains that the exceptions noted by KPMG have either been corrected by Qwest or are being corrected, and that their existence does not indicate non-compliance with section 272. Qwest notes that it has established additional safeguards and procedures in response to the exceptions in the KPMG report.

141 A review by KPMG on these additional safeguards and procedures was filed with the Commission on December 24, 2001. Parties filed comments in response on January 4, 2002. Qwest's Notice of Supplemental KPMG Declaration was accompanied by a declaration from Philip J. Jacobsen from KPMG. The declaration stated that KPMG had confirmed that Qwest had corrected the violations noted in the original KPMG review of transactions, and confirmed that Qwest had implemented new accounting and system controls designed to prevent such violations from occurring in the future.

AT&T

142 On December 26, 2001, AT&T filed a Response to Qwest's Filing of Report of Independent Auditor. AT&T objects to the report as being more limited in scope than the independent testing recommended by Liberty Consulting in the Multi-state Proceeding, since it did not address several sub-parts of section 272. AT&T also emphasizes that the report is only useful as evidence that Qwest is in violation of section 272 requirements.

143 On January 4, 2002, AT&T filed a Supplemental Affidavit of Cory Skluzak regarding a further review of section 272 affiliate transactions conducted by AT&T. AT&T's review covered the period May through October 2001, and the affidavit described several instances in which AT&T believes transactions between Qwest and QCC violated aspects of section 272.

144 AT&T noted instances in which Qwest employees performed work primarily for QCC. AT&T argues that this is a violation of section 272(b)(3), even though there were invoices detailing the work performed and the cost.

145 AT&T found services for which billings and work orders were generated months later than the time the work was performed. AT&T states that this violates the 10-day posting rule contained in section 272(c)(1).

146 AT&T noted invoices for services which were issued months after the services were first rendered, and that did not include late charges for the amounts that were not billed within 30 days after the services were rendered.

147 AT&T also noted a July 2001 invoice that implied that QCC had merged with another Qwest affiliate, LCI. AT&T believes Qwest should provide details of this merger to the Commission to determine whether QCC complies with section 272 requirements since the merger with LCI.

148 In oral argument, AT&T argued that Qwest had merely changed its written policies and provided no evidence that it had changed its behavior with respect to 272 affiliate transactions. *Tr 6547-48*. AT&T also stated its concern that QCC, as a large existing long-distance carrier, differed from the typical section 272 affiliate and that more transactions than usual were occurring. *Tr 6549*. AT&T recommends that the Commission require a more thorough audit of Qwest's transactions with QCC and its new policies and procedures, and that Qwest be required to provide more current information to the Commission regarding its nondiscrimination policies (website disclosures) and transactions with QCC from an accounting standpoint. *Tr. 6550*.

149 AT&T also voiced its concern that Qwest knew of many of the discrepancies discussed in the KPMG report, but did not correct them until prompted by third parties. *Tr. 6557*.

150 Qwest countered that it had made changes to its procedures as well as to its policies, and that it was not required to attain perfection. *Tr. 6554-55*. It also pointed out the biennial audit provisions already in place with respect to section 272.

Discussion and Decision

151 First, we deny Qwest's motion to withdraw the August 7, 2000, testimony filed by Judith Brunsting and Marie Schwartz. We concur with AT&T that the testimony provides information regarding Qwest's degree of compliance with section 272 through its previous section 272 affiliate, U S WEST Long Distance. However, we note that the testimony was merely filed with the Commission and was never offered as an exhibit. It is a part of the record in this matter, not as an exhibit, but as a filing by Qwest.

152 Second, given that the additional reports and affidavits were admitted into the record during the January 10, 2002, hearing, and the parties discussed the merits of the evidence during that hearing, we now address the issues.

153 Qwest has implemented new procedures and controls that will assist it in coming into substantial compliance with the requirements of section 272. The items raised in AT&T's Supplemental Affidavit are of concern; however, the ability of the CLECs to review the invoices and billing records of Qwest and its affiliates, and the Affiliated Interest Report that the Commission receives annually from Qwest, will help to ensure that Qwest complies with the structural separation requirements.

154 We agree with AT&T that Qwest must provide details of the merger of LCI into QCC so that we can assess the effect of the merger on QCC.

155 With respect to Qwest's website disclosures, we believe that the website disclosures, with the modifications Qwest has made, are more descriptive and are comparable to the scope of information available on the other RBOC websites.

156 We find that the late payment amendment Qwest made to the agreement with QCC is adequate. We trust that the visibility of this issue will help ensure that Qwest does not overlook it in the future.

157 With respect to Qwest's confidentiality agreement, we find that the amendment Qwest has made addresses our concerns.

158 In conclusion, we find Qwest to be in compliance with the requirements of section 272 of the Act, subject to our review of the information regarding the merger of QCC with its affiliate, LCI.

VI. FINDINGS OF FACT

159 Having discussed above in detail the oral and documentary evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues at impasse between the parties and the reasons and bases for those findings and conclusions, the Commission now makes and enters the following summary of those facts. Those portions of the preceding detailed discussion that state findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by reference.

160 (1) Qwest Corporation, formerly U S WEST Communications, Inc., is a Bell operating company (BOC) within the definition of 47 U.S.C. § 153(4), providing local exchange telecommunications service to the public for compensation within the state of Washington.

161 (2) The Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state, to verify the compliance of Qwest with the requirements of section 271(c) of the Telecommunications Act of 1996, and to review Qwest's Statement of Generally Available Terms, or SGAT, under section 252(f)(2) of the Telecommunications Act.

162 (3) Section 271 of the Act contains the general terms and conditions for BOC entry into the interLATA market.

163 (4) Pursuant to 47 U.S.C. § 271(d)(2)(B), before making any determination under this section, the FCC is required to consult with the regulatory commission of any state that is the subject of a BOC's application under section 271 in order to verify the compliance of the BOC with the requirements of section 271(c).

164 (5) Pursuant to 47 U.S.C. § 252(f)(2), BOCs must submit any statement of terms and conditions that the company offers within the state to the state commission for review and approval.

165 (6) On June 6, 2000, the Commission consolidated its review of Qwest's SGAT in Docket No. UT-003040 with its evaluation of Qwest's compliance with the requirements of section 271(c) in Docket No. UT-003022.

166 (7) During workshops held on July 9-13, July 16-18, and July 31 and August 1, 2001, Qwest and a number of CLECs submitted testimony and exhibits to allow the Commission to evaluate Qwest's compliance with the requirements of section 271(c), concerning Checklist Item No. 4 (Loops), Emerging Services, General Terms and Conditions, Public Interest, Track A, and the requirements of section 272, as well as to review Qwest's SGAT regarding these issues.

167 (8) On January 10, 2002, the Commission denied AT&T's motion to reopen the record to address alleged win-back activity by Qwest.

168 (9) Qwest's response to Bench Request No. 32 showed that no complaints have been filed with the Commission concerning win-back activity by Qwest.

Unbundled Loops

169 (10) SGAT section 9.1.2 sets limits on Qwest's obligations to build loop facilities requested by CLECs.

170 (11) In the *Merger Settlement Agreement* in Docket UT-991358, Qwest agreed not to impose loop conditioning charges on CLECs for removal of bridged taps where no construction or excavation is required, and for removal of load coil

encumbrances for loops 18,000 feet or less in 47 central offices in Washington. In implementing this program, Qwest did not perform loop conditioning when such work would disrupt customer service.

171 (12) The rates and recovery methods for loop conditioning costs are being considered in Docket UT-003013.

172 (13) Qwest has developed the Raw Loop Data Tool for CLEC use, and Qwest includes information in the Raw Loop Data Tool at its discretion.

173 (14) The standards for CLEC access to loop qualification information are contained in the FCC's *UNE Remand Order*.

174 (15) The Texas Model Interconnection Agreement includes a procedure for CLECs to request loop qualification information that is not available electronically.

175 (16) The Texas Model Interconnection Agreement allows CLECs to audit SWBT's records and back office systems to ensure that the BOC is providing the required loop qualification information.

176 (17) Except for Pacific Bell, now SBC, no RBOC allows or promotes pre-order use of mechanized loop testing.

177 (18) Qwest's held order policy differs for retail and wholesale customers.

178 (19) The FCC has established interim criteria for determining whether a loop technology is acceptable for deployment. These criteria are in effect until the FCC establishes permanent rules.

179 (20) Qwest has begun to deploy remote DSL technology in Washington state.

180 (21) Analog T1, or AMI T1, technology is a "known disturber" of spectrum, and can cause interference with other loop services.

181 (22) When Interoffice Facilities copper loop plant is retired from service, Qwest will reclassify it and use it as loop facilities.

Emerging Services

182 (23) The *24th Supplemental Order* directs Qwest to remove local usage restrictions on enhanced extended links.

183 (24) SGAT section 9.7.2.2 prohibits access to unbundled dark fiber at splice cases that are buried and are not readily accessible without excavation, and provides

that Qwest will not open or break existing splices on continuous fiber optic cable routes.

184 (25) Through oral testimony and briefs, the parties agree that access to dark fiber at splice cases is technically feasible.

185 (26) In the *Thirteenth Supplemental Order* in Docket No. UT-003013, the Commission found that Verizon need not provide CLECs access to its splitters, pending the FCC's reconsideration of the issue in the UNE Remand proceeding.

186 (27) In the *Arkansas/Missouri Order*, the FCC confirmed its decision in its *Line Sharing Reconsideration Order* that ILECs are not obligated to provide splitters to CLECs on a line split loop.

187 (28) Exhibit C to the SGAT establishes provisioning intervals for line sharing.

188 (29) Ten state commissions in Qwest's region have adopted a three-day interval for provisioning line sharing.

189 (30) Qwest has requested the Commission delete the first line of SGAT section 9.4.1.1 as proposed in the *Initial Order*.

190 (31) Covad submitted additional modifications to SGAT section 9.4.1.1 after the January 10, 2002, oral argument.

191 (32) Qwest requires CLECs to order subloops using the procedures outlined in SGAT section 9.3.

192 (33) Network Interface Devices (NIDs) may be ordered either using the procedures in SGAT section 9.5 or, if ordered with subloops, using the ordering process in SGAT section 9.3.

193 (34) A revision to SGAT section 9.5.2.5, proposed during the January 10, 2002, oral argument, would hold CLECs liable for damages when their technicians fail to follow standard electrical protection and safety procedures.

194 (35) AT&T submitted proposed language recommending that SGAT section 9.5.2.5 state that the CLEC's liability to Qwest is subject to the indemnity and limitation of liability provisions of the SGAT, and that the prohibition on parties removing the other parties' NIDs in SGAT section 9.5.2.1 be deleted.

195 (36) SGAT section 9.20.2.1.3 contains one of the criteria under which Qwest must provide unbundled packet switching. The section would require Qwest to provide unbundled packet switching if Qwest either does not permit a CLEC

to collocate a DSLAM at a remote Qwest premise, or if collocating a DSLAM at the remote premise would not be capable of supporting xDSL services at parity with services that could be offered through Qwest's unbundled packet switching.

196 (37) Paragraphs 258 and 258 of the *Initial Order* were limited to a discussion of the collocation of line cards in remote DSLAMS.

197 (38) The parties have agreed that orders for inside wire will be processed outside of the interval required for inventory updates, and to the following intervals: ten days for the first instance of ownership determination, five days if the building owner claims to know who the owner is, and two days once a determination has been made, which intervals would replace the intervals in SGAT sections 9.3.3.5 and 9.3.5.4.1.

198 (39) The LSR process for ordering subloops from Qwest is a manual process.

199 (40) Ten state commissions in Qwest's region have required CLECs to order subloops using LSRs.

General Terms and Conditions

200 (41) The SGAT refers to existing laws, rules, tariffs, or product or technical documents, until the SGAT is modified to reflect the change.

201 (42) The Texas Model Interconnection Agreement, T2A, limits the ILEC's liability relating to performance under the agreement to the annual charges under the agreement. The T2A agreement also excludes willful or intentional conduct, such as gross negligence, from the limitations on liability.

202 (43) SGAT section 5.9.1.2, as reflected in Exhibit 1170, addresses end-user indemnification by excluding from indemnification losses "caused by the willful misconduct of the Indemnified Party."

203 (44) The Multi-state Facilitator proposed SGAT language regarding the scope of audits that limits the expansion of audits to situations concerning Qwest's use of CLECs' proprietary information.

Public Interest

204 (45) The Commission has not completed its review of the comprehensive checklist items, Qwest's PAP, or the OSS test results. These items are all necessary to a determination of whether an application by Qwest under section 271 is in the public interest.

205 (46) The Commission has deferred its determination on the public interest requirement until such time as the vendor issues its final OSS test report.

Section 272

206 (47) Qwest has expanded the description of services performed by and for its long-distance affiliate, QCC; added a late payment provision to its service agreement with QCC; and amended its confidentiality agreement to explicitly state that nothing in the agreement would restrict any party from disclosing possible section 272 violations to regulators.

207 (48) On November 28, 2001, Qwest filed a report by a third party, the CPA firm KPMG, on Qwest's transactions with the section 272 affiliate that showed 12 instances in which Qwest's affiliate transactions with QCC violated the FCC's affiliate transactions pricing rules and the section 272 requirements.

208 (49) On December 24, 2001, Qwest filed Exhibit 1121, a Declaration of Philip J. Jacobsen. The declaration stated that KPMG had confirmed that Qwest had corrected the violations noted in the original KPMG review of transactions, and confirmed that Qwest had implemented new accounting and system controls designed to prevent such violations from occurring in the future.

209 (50) On December 28, 2001, and January 4, 2001, AT&T filed responses to Qwest's filings on section 272 issues.

210 (51) Based on information filed by AT&T, Qwest's long distance affiliate QCC appears to have merged with another Qwest affiliate, LCI.

VII. CONCLUSIONS OF LAW

211 Having discussed above in detail all matters material to this decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

212 (1) The Washington Utilities and Transportation Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding.

213 (2) Evidence offered by AT&T concerning win-back activity by Qwest does not support a finding of improper action by Qwest in Washington State.

Unbundled Loops

214 (3) The limitations on Qwest's obligation to build embodied in the SGAT are inconsistent with Commission policy and the goals of the Telecommunications Act of 1996.

215 (4) Without documentation of the type of arrangements Qwest makes for its retail customers, the Commission and other parties cannot determine if Qwest treats CLEC requests to build at parity with treatment of retail customers.

216 (5) Qwest's proposal to charge CLECs for certain types of loop conditioning in the 47 central offices included in the *Merger Settlement Agreement* conditions in Docket UT-991358 appears to violate the commitments Qwest made in that Agreement to provide such loop conditioning free of charge to CLECs.

217 (6) Qwest's failure to provide access to loop qualification information that is not available electronically, and Qwest's provision of loop qualification tools to CLECs without granting CLECs the ability to audit them for parity, violate the FCC's standards for CLEC access to loop qualification information.

218 (7) The disparity between Qwest's held order policy for CLECs and retail customers could result in skewed inputs for OSS test purposes. A held-order metric is advisable to measure Qwest's performance.

219 (8) It is too late for the Commission to require Qwest to seek prior approval for deployment of remote DSL technology, as Qwest has begun deploying such technology.

220 (9) An SGAT provision requiring the parties to use the Commission's dispute resolution process in cases where replacement of T1s within 90 days is not technically feasible does not violate the FCC's guidelines with respect to spectrum interference.

221 (10) CLECs must be able to interconnect at any technically feasible point, including unused interoffice facilities plant that can be converted to use as unbundled loops.

Emerging Services

222 (11) Qwest's requirement that unbundled dark fiber elements pass a local use test violates its obligation to provide nondiscriminatory access to unbundled dark fiber.

223 (12) The "Best Practices" subpart of FCC Rule 319(a)(2)(C) is not limited to access at accessible terminals.

224 (13) Qwest's SGAT provisions regarding CLEC access to splitters are in compliance the FCC's *Line Sharing Reconsideration Order* and the *Thirteenth Supplemental Order* in Docket UT-003013.

225 (14) A three-day interval for the provision of line sharing is reasonable given Qwest's current performance, and will allow Qwest a uniform interval across its service territory.

226 (15) Qwest's SGAT must reflect its obligations pursuant to FCC orders to provide line sharing over an entire loop, including the fiber portion, to the extent it is technically feasible.

227 (16) Allowing CLECs to order Network Interface Devices (NIDs) using the NID ordering process in SGAT section 9.5 will not, and should not, enable them to order subloops using the NID process.

228 (17) Allowing CLECs to disconnect unused Qwest facilities from the NID is appropriate, under certain conditions.

229 (18) The proposed changes to SGAT section 9.5.2.5 will require CLECs to protect the network from harmful electrical hazards while allowing CLECs to make use of spare capacity.

230 (19) Qwest's SGAT properly reflects its legal obligation to offer unbundled packet switching to CLECs.

231 (20) The intervals agreed to by the parties for determining subloop facility ownership will allow CLECs to meet the installation completion requirements contained in WAC 480-120-051.

232 (21) The requirement that CLECs use LSRs when ordering subloops is consistent with the process approved and required by 10 other state commissions in Qwest's region.

General Terms and Conditions

233 (22) Adding language to SGAT section 2.1 to reflect that the SGAT refers to the most recent laws, tariffs, product catalogs and technical publications may create confusion and the potential for conflict with SGAT sections 2.2 and 2.3.

234 (23) The appropriate industry standard or practice for SGAT language concerning limitations on liability and indemnification is language used in other state model interconnection agreements or SGATs.

235 (24) Gross negligence, bodily injury, death, and damage to tangible or personal property due to the other party's negligent acts or omissions are appropriately excluded from limitations on liability, especially in light of our determinations concerning disconnection of facilities at the NID.

236 (25) Language addressing indemnification for end-user claims is a necessary part of the SGAT.

237 (26) The Multi-state Facilitator's proposed language for SGAT sections 18.1.1 and 18.1.2 does not address all situations where an audit might be appropriate, such as auditing the loop qualification tools to ensure that they provide the information required by the FCC.

Public Interest

238 (27) A determination of whether an application by Qwest for section 271 relief would be in the public interest is premature. The Commission does not yet have all the necessary information to make such a decision, i.e., compliance with the competitive checklist, an operational support system (OSS) that has been proven to support commercial volumes of traffic, an approved performance assurance plan, and information concerning how the *Sprint v. FCC* decision may affect the public interest determination in this state. This lack of information does not mean that Qwest has failed to meet its burden of proof on the issue of public interest.

239 (28) A public interest determination contingent on Qwest's compliance with the competitive checklist, an approved QPAP, and a proven OSS would be a hollow, meaningless decision.

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240 (29) Qwest has made changes to its website, added a late payment amendment to its agreement with QCC, and amended its confidentiality agreement in a manner that satisfactorily addresses the concerns raised in the *Initial Order*.

241 (30) Following the review by KPMG, Qwest has implemented new procedures and controls that will assist it in coming into substantial compliance with the requirements of section 272.

242 (31) Qwest has not sufficiently demonstrated that the merger of QCC with LCI does not affect QCC's compliance with section 272 requirements.

VIII. ORDER

243 THE COMMISSION ORDERS That to secure a recommendation that Qwest complies with Checklist Item No. 4 and other requirements of section 271 review, it must alter its SGAT as necessary, and alter its behavior, consistent with the following order as to impasse items:

244 (1) The Motions of ICG Communications, Mpower Communications, and Rhythms Links, Inc., to withdraw from the proceeding are granted.

Unbundled Loops

245 (2) Qwest must revise its SGAT construction requirements to reflect the decision and requirements articulated in paragraph 48 of the *Initial Order* in this proceeding. Qwest must also modify the SGAT to provide a reference to a document available to CLECs outlining Qwest's terms and conditions for building facilities for retail customers.

246 (3) Staff must initiate an investigation into possible violations of the *Merger Settlement Agreement* in Docket UT-991358, specifically whether Qwest improperly excluded some loops from the bulk deloading project it agreed to perform.

247 (4) During the investigation, and until we resolve the issue, Qwest may not charge CLECs for removing load coil encumbrances of any type, or bridged taps not requiring construction or excavation, in the 47 central offices that are the subject of Qwest's commitment in the merger settlement. Pending a decision in the cost and pricing docket, UT-003013, Qwest may charge for loop conditioning, if requested by a CLEC, in central offices other than the 47 central offices affected by the *Merger Settlement Agreement*.

248 (5) Qwest must modify the SGAT to provide CLECs a process for obtaining loop qualification information that is not available electronically.

249 (6) Qwest must modify its SGAT to allow CLECs to audit the loop qualification tools provided to them to determine whether the tools provide all the information required by the FCC.

250 (7) The parties may bring the issue of a held-order metric to the Commission for consideration after the ROC concludes its discussion of the issue.

251 (8) Paragraph 110 of the *Initial Order* is modified to require Qwest to file a memorandum with the Commission specifying which of the FCC's requirements Qwest has met for deploying remote DSL technology in Washington state.

252 (9) Qwest must modify its SGAT consistent with paragraph 119 of the *Initial Order*, and modify SGAT section 9.2.6.4 to include its proposed language that would allow the Commission to resolve disputes concerning interference.

253 (10) Qwest must comply with paragraph 132 of the *Initial Order*, except that Qwest is not required to convert interoffice facilities it needs to maintain adequate reserve facilities.

Emerging Services

254 (11) Consistent with our decision in the *24th Supplemental Order*, we adopt the recommendation in paragraph 145 of the *Initial Order* that Qwest modify SGAT section 9.7.2.9 to remove the local usage restriction on unbundled dark fiber.

255 (12) Qwest must offer access to dark fiber at splice points under a rebuttable presumption that such access is technically feasible, consistent with the recommendation in paragraph 11 of the *22nd Supplemental Order*.

256 (13) We reject the recommendation in paragraph 169 of the *Initial Order*, and approve Qwest's proposed SGAT section 9.21.2.1 as it appears in Exhibit 1170.

257 (14) We reject the recommendation in paragraph 187 of the *Initial Order*, and direct Qwest to modify SGAT Exhibit C to include a three-day interval for provisioning line sharing.

258 (15) Qwest must replace SGAT section 9.4.1.1 as recommended in paragraph 199 of the *Initial Order* with the language set forth above in paragraph 70 of this Order.

259 (16) Qwest must amend the SGAT to clarify that CLECs may either order the NID using SGAT section 9.5, and the subloop using section 9.3, or the NID/subloop combination using section 9.3. Qwest may amend the SGAT to prohibit CLECs from ordering subloops using SGAT section 9.5.

260 (17) Qwest must amend SGAT sections 9.5.2.1 and 9.5.2.5 as set forth above in paragraph 80 of this Order.

261 (18) Qwest need not modify SGAT section 9.20.2.1.3, consistent with the recommendation in paragraph 255 of the *Initial Order*.

262 (19) Qwest must amend SGAT sections 9.3.3.5 and 9.3.5.4.1 to clearly identify the intervals for determining facility ownership, agreed to by the parties.

263 (20) Qwest must modify its SGAT to require LSRs for subloop orders. Qwest must file a status report with the Commission on its efforts to automate the LSR process within 30 days after the service date of this Order, and every 3 months thereafter until the process is fully automated.

General Terms and Conditions

264 (21) We affirm the recommendation in paragraph 322 of the *Initial Order* requiring Qwest to delete language in SGAT section 2.1.

265 (22) Qwest must modify SGAT section 5.8.1 to allow "other damages" to be limited to the annual charges under the agreement.

266 (23) Qwest must modify SGAT section 5.8.4 consistent with the recommendations in paragraph 374 of the *Initial Order*.

267 (24) Qwest must modify the language in SGAT section 5.9.1.2 appearing in Exhibit 1170 as described above in paragraph 121 of this Order.

268 (25) Qwest must modify SGAT sections 18.1.1 and 18.1.2 to expand the scope of audits as recommended in paragraph 446 of the *Initial Order*.

Public Interest

269 (26) We defer our consideration of the public interest requirement in section 271(d)(3)(C) until the vendor has issued its final report on the OSS testing process. The parties must be prepared to discuss the scheduling of our consideration of the OSS test results, the public interest requirement, and any remaining compliance issues in a prehearing conference scheduled for April 2, 2002.

270 (27) The parties may present new information relevant to the public interest requirement in section 271(d)(3)(C), but may not file or submit testimony or exhibits repeating information presented during the hearings held in July and August 2001.

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271 (28) Qwest's motion to withdraw the August 7, 2000, testimony of Judith Brunsting and Marie Schwartz is denied.

272 (29) Qwest must provide the Commission, within 30 days of the service date of this order, detailed information concerning the merger of LCI into QCC to allow the Commission to assess the impact of the merger on QCC.

273 (30) Subject to our review of information concerning the QCC-LCI merger, we find Qwest to be in compliance with the requirements of section 272 of the Act.

274 (31) The Commission retains jurisdiction to implement the terms of this Order.

DATED at Olympia, Washington and effective this day of March, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final Order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this Order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).