

9.1.2 Qwest shall provide non-discriminatory access to Unbundled Network Elements on rates, terms and conditions that are non-discriminatory, just and reasonable. The quality of an Unbundled Network Element Qwest provides, as well as the access provided to that element, will be equal between all Carriers requesting access to that element; second, where Technically Feasible, the access and Unbundled Network Element provided by Qwest will be provided in "substantially the same time and manner" to that which Qwest provides to itself or to its Affiliates. In those situations where Qwest does not provide access to Network Elements to itself, Qwest will provide access in a manner that provides CLEC with a meaningful opportunity to compete. For the period of time Qwest provides access to CLEC to an Unbundled Network Element, CLEC shall have exclusive use of the network element, except when the provisions herein indicate that a network element will be shared (such as Shared Transport). Notwithstanding the foregoing, Qwest shall provide access and UNEs at the service performance levels set forth in Section 20. Notwithstanding specific language in other sections of this Agreement, all provisions of this Agreement regarding Unbundled Network Elements are subject to this requirement. In addition, Qwest shall comply with all state wholesale service quality standards and their appropriate retail analogue or performance benchmarks.

9.1.2.1 If facilities are not available at a location where UNEs are desired by CLEC, ~~and where Qwest has deployed facilities and the unavailability is because all existing suitable Qwest facilities at that location are already in use serving Customers::~~ 1) Qwest will build facilities ~~which Qwest would be legally obligated to build to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service that are of the same type that exist at the location~~ to provide sufficient capacity to meet CLEC's request for UNEs; ~~(2) CLEC orders for UNEs above DS0 level or for Local Exchange Service quantities above POLR, will be~~ subject to the same terms and conditions ~~under which Qwest constructs or offers to construct comparable facilities to provide sufficient capacity to meet as orders for equivalent retail customers' request for services using those facilities at that location at the same location;~~ 3) If CLEC requests a specific Dedicated Transport optical capacity at a location where Qwest's capacity is limited or at exhaust, Qwest will either light additional fiber or modify existing electronics to provide additional capacity under the same terms and conditions it would construct similar facilities for its own retail Customers. CLEC will be responsible for any construction charges for which a retail Customer would be responsible. In ~~circumstances when Qwest does not construct comparable facilities for retail customers or when CLEC seeks construction terms and conditions other than those offered to retail customers~~ ~~other situations~~, Qwest will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.

9.1.2.1.1 Upon receipt of an LSR or ASR, Qwest will follow the same process that it would follow for an equivalent retail service to determine if assignable facilities exist that fit the criteria necessary for the service requested. If available facilities are not readily identified through the normal assignment process, but facilities can be made ready by the

requested Due Date, CLEC will not receive an additional FOC, and the order Due Date will not be changed.

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a Network Interface Device, card existing subscriber Loop carrier systems at the Central Office and remote terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

9.1.2.1.3 During the normal assignment process, if no available facilities are identified for the UNE requested, Qwest will look for engineering job orders that could fill the request in the future. If an engineering job currently exists, Qwest will add CLEC's request to that engineering job and send CLEC a jeopardy notice. Upon completion of the engineering job, Qwest will send CLEC another FOC with a new Due Date. If facilities are not available and no engineering job exists that could fill the request in the future, ~~Qwest will treat CLECs request as follows:~~

~~9.1.2.1.3.1 For UNEs that meet the requirements set forth in Qwest's POLR and ETC obligations, CLEC will receive a jeopardy notice. Qwest will initiate an engineering job order for delivery of primary service only. These requests will be provisioned using facilities of the same type that already exist at the location to meet CLEC's request for UNEs. When the engineering job is completed, CLEC will receive another FOC identifying a new Due Date when the Loop will be ready for installation. Upon receipt of the second FOC, CLEC can request a different Due Date by submitting a SUP to change the Due Date to a later date.~~

~~9.1.2.1.3.2 For UNEs that do not meet the requirements in Qwest's POLR and ETC obligations, Qwest will send CLEC an indication that there is a lack of available facilities and the order will be delayed. The delayed order will remain open, pending availability of facilities at parity with retail Customer orders. Upon receipt of the delayed order notification, CLEC may submit a request to build UNEs pursuant to the same terms and conditions as CLEC orders for equivalent retail services at the same location or alternatively, at CLEC's election, advance payment of a special construction charge and quote preparation fee (QPF) as described in Section 9.19 of this Agreement. In the event that an engineering job is completed that would allow delivery of the UNEs requested, or Qwest completes construction of facilities for delivery of UNEs for CLEC pursuant to a request to build as described in Section 9.19, and this occurs after Qwest sends the delayed order notification, CLEC will receive a new FOC identifying a new Due Date when the UNEs will be available for installation.~~

9.1.2.1.4 Qwest will provide CLEC notification of major Loop facility builds through the ICONN database. This notification shall include the identification of any funded outside plant engineering jobs that exceeds

\$100,000 in total cost, the estimated ready for Service Date, the number of pairs or fibers added, and the location of the new facilities (e.g., Distribution Area for copper distribution, route number for copper feeder, and termination CLLI codes for fiber). CLEC acknowledges that Qwest does not warrant or guarantee the estimated ready for Service Dates. CLEC also acknowledges that funded Qwest outside plant engineering jobs may be modified or cancelled at any time.

9.1.2.1.5 Qwest will make its retail build policy [and reports of Qwest's actual builds undertaken pursuant to that policy](#) available to CLEC upon written request. Upon receipt, CLEC will consider this information as confidential and conform to all aspects of Section 5.16 with respect to receipt of such information.