

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
4 Investigation into)
5 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
6) Volume XLIX
7 Compliance with Section 271 of) Pages 7147 to 7270
8 the Telecommunications Act of)
9 1996)
10 -----)
11 In the Matter of)
12 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003040
13 Statement of Generally) Volume XLIX
14 Available Terms Pursuant to) Pages 7147 to 7270
15 Section 252(f) of the)
16 Telecommunications Act of 1996)
17 _____)

13 A hearing in the above matters was held on
14 April 24, 2002, at 1:30 p.m., at 1300 South Evergreen
15 Park Drive Southwest, Room 206, Olympia, Washington,
16 before Administrative Law Judge ANN RENDAHL and
17 Chairwoman MARILYN SHOWALTER and Commissioner RICHARD
18 HEMSTAD and Commissioner PATRICK J. OSHIE.

19 The parties were present as follows:
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22 Washington 98191, Telephone (206) 345-1574, Fax (206)
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24 Joan E. Kinn, CCR, RPR
25 Court Reporter

1 AT&T, by REBECCA B. DECOOK and STEVEN
2 WEIGLER, Attorneys at Law, 1875 Lawrence Street, Suite
3 1575, Denver, Colorado 80202, Telephone (303) 298-6508,
4 Fax (303) 298-6301, E-mail decook@att.com.

5 ELECTRIC LIGHTWAVE, INC., and AT&T, by
6 GREGORY J. KOPTA, Attorney at Law, Davis, Wright,
7 Tremaine, LLP, 1501 Fourth Avenue, Suite 2600, Seattle,
8 Washington 98101, Telephone (206) 628-7692, Fax (206)
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11 DOBERNECK, Attorney at Law, 7901 Lowry Boulevard,
12 Denver, Colorado 80230, Telephone (720) 208-3636, Fax
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5 KENNETH WILSON

6 Cross-Examination by Ms. Anderl 7168

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1 P R O C E E D I N G S

2 JUDGE RENDAHL: We're here for our third day
3 in the April hearings in Section 271 SGAT proceeding,
4 Dockets UT-003022 and UT-003040, but we're turning to a
5 new issue today, and that is Qwest compliance with
6 Commission orders and how Qwest has reflected those
7 orders into the SGAT.

8 We have a new, a change of folks from AT&T,
9 so why don't we do a brief set of appearances. With me
10 here on the Bench are Chairwoman Chairwalter. It's been
11 a long week already.

12 CHAIRWOMAN SHOWALTER: That's not your
13 invention, that's Commissioner Hemstad's contraction,
14 Chairwalter.

15 JUDGE RENDAHL: Chairwalter, okay.

16 COMMISSIONER HEMSTAD: Always having to be
17 efficient.

18 JUDGE RENDAHL: Commissioner Hemstad and
19 Commissioner Oshie.

20 Let's have appearances beginning with Qwest,
21 Ms. Anderl.

22 MS. ANDERL: Thank you, Your Honor, Lisa
23 Anderl representing Qwest.

24 MR. KOPTA: Gregory J. Kopta of the law firm
25 Davis Wright Tremaine on behalf of ELI and with respect

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1 to general UNE issues of AT&T.

2 MR. WEIGLER: Steven Weigler on behalf of
3 AT&T.

4 MS. DECOOK: Rebecca DeCook, AT&T.

5 MS. DOBERNECK: Megan Doberneck, lawyer,
6 Covad Communications Company.

7 JUDGE RENDAHL: Thank you, Ms. Doberneck.

8 Okay, and before we get started, I had
9 circulated via E-mail to the parties and left copies on
10 the back table of an exhibit list, exhibits that we had
11 marked during the pre-hearing last week. I have given a
12 copy to the court reporter, and the parties have
13 indicated no objection to admitting these exhibits; is
14 that correct?

15 MS. ANDERL: Correct.

16 MR. KOPTA: Correct.

17 MR. WEIGLER: Correct.

18 JUDGE RENDAHL: Okay, hearing no objections,
19 the exhibits listed on the exhibit list for compliance
20 issues beginning with Exhibit Number 1500 and ending
21 with Exhibit 1533 will be admitted.

22 Okay. Also for everyone's reference, but it
23 will not be included as an exhibit, is a matrix of the
24 compliance issues, the issues that -- this began with a
25 matrix that Qwest filed with its compliance filing and

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1 Ms. Strain adapted to include CLEC comments, and we will
2 follow along that matrix to guide our discussion today.
3 The parties have indicated that the issues appearing --
4 the two issues appearing on page 1 of that matrix and
5 the first three issues appearing on page 2 will be
6 addressed by AT&T and the other parties tomorrow
7 morning, and so we will begin our discussion today at
8 the bottom of page 2 beginning with unbundled network
9 elements; is that correct?

10 MS. ANDERL: Yes.

11 JUDGE RENDAHL: Okay. And Ms. Anderl and the
12 other parties have indicated that there have been some
13 agreements, and they will indicate those as we go along,
14 but that there is one issue that will take up the most
15 time, and that is that first issue at the bottom of page
16 2 and the issue appearing on page 6. And they're
17 related issues, and because it will take up the most
18 time, I indicated that each party would have ten minutes
19 to address their concerns on that particular issue, and
20 the others should go fairly quickly enough.

21 Just a point of clarification, aside from the
22 issues on page 1 and the top of page 2, are there any
23 other issues we should defer until tomorrow?

24 MS. ANDERL: Not that I'm aware of.

25 JUDGE RENDAHL: And so we can go as far as we

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1 go today in our time period and then defer the remaining
2 time until tomorrow, okay.

3 CHAIRWOMAN SHOWALTER: I have one question.
4 Do we have the SGAT language somewhere in these
5 exhibits?

6 JUDGE RENDAHL: Yes.

7 CHAIRWOMAN SHOWALTER: In other words, if
8 we're talking about something specific, we have a place
9 to look?

10 JUDGE RENDAHL: Let's be off the record.

11 (Discussion off the record.)

12 JUDGE RENDAHL: We're going to begin with
13 issues on the matrix, the second and third issues on
14 page 11 of the matrix, and Mr. Weigler for AT&T is going
15 to begin his discussion of those.

16 MR. WEIGLER: Sure.

17 JUDGE RENDAHL: And you will need to speak
18 directly into the microphone and make sure it's on.
19 That way everyone can hear you.

20 MR. WEIGLER: Great, thank you, Judge
21 Rendahl.

22 The issue was a matter of clarification of
23 the ten day, five day, two day interval.

24 JUDGE RENDAHL: And this is, just to clarify,
25 this is that middle issue on page 11, paragraph 262 of

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1 the 28th Supplemental Order?

2 MR. WEIGLER: That's correct.

3 MR. WILSON: Ken Wilson just joined the
4 bridge.

5 JUDGE RENDAHL: Thank you, Mr. Wilson, we're
6 talking about a resolved issue, and when we need to get
7 back to you, we will get to you and swear you in.

8 MR. WILSON: Thank you, Judge Rendahl.

9 MR. WEIGLER: The language at issue involved
10 when a CLEC can get access to an MTE if -- for Qwest in
11 order for Qwest to determine the ownership of the NID
12 leading to that MTE. If -- the language was ported from
13 another record from a decision of John Antonuk, who was
14 a facilitator in the multistate proceeding, and the
15 issue -- there's a ten day -- when Qwest has never
16 determined ownership, there's a ten day interval for
17 Qwest to do so. If Qwest had determined ownership to
18 another MTE, the period of time was supposed to be two
19 days. And if the CLEC provides evidence -- if the CLEC
20 provides evidence of ten days, it's cut down to five
21 days.

22 The way the language -- reading the
23 Commission's order, the way the language seemed to be
24 interpreted is that even if it were the same CLEC that
25 was determining -- that was trying to get access, the

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1 CLEC would have to wait two days to determine -- for
2 Qwest to again determine if it owned -- if -- who owned
3 the inside wiring at the MTE. And what the facilitator
4 really said was that it was only when -- in the
5 situation where the CLEC determination was made to
6 another CLEC. For example, if AT&T -- if the MTE NID
7 has never been checked, the inside wiring has never been
8 checked, and AT&T comes up to Qwest and says, we need to
9 determine who owns the inside wiring, Qwest would have
10 ten days. But if AT&T came up and Qwest had already
11 made that determination to -- and made that
12 determination for WorldCom, then Qwest would get two
13 days. The ten day interval would be cut down to two
14 days.

15 The way the language read, it was a bit
16 ambiguous in that it could be interpreted that if AT&T
17 came up the first time and asked Qwest for inside wire
18 determine -- wiring determination, it would be ten days
19 the first time, and then AT&T would have to come up
20 again, and Qwest would get two days to make the same
21 determination. So we -- Qwest and AT&T has reached an
22 agreement that -- and you can see it -- do they -- I'm
23 not sure if they actually have the language, Lisa.

24 MS. ANDERL: It would be, Commissioners,
25 AT&T's comments on this issue were contained at Exhibit

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1 1515 at page 10.

2 CHAIRWOMAN SHOWALTER: 10.

3 MS. ANDERL: 10. There is a single spaced
4 paragraph in the middle of the page that states that
5 AT&T requests the following edit, and then there's AT&T
6 language is underlined in that paragraph within a bolded
7 sentence.

8 JUDGE RENDAHL: So the words, communicated to
9 another CLEC, and then the next line down, to CLEC,
10 those are the additional words that Qwest -- that AT&T
11 would add and Qwest has no objection to?

12 MS. ANDERL: That's right, with one
13 additional word from us.

14 JUDGE RENDAHL: And what is that additional
15 word?

16 MS. ANDERL: In the second line where it
17 says, shall provide such notification to CLEC, we would
18 like to insert the word requesting in between the words
19 to and CLEC as a point of clarification. So it reads,
20 shall provide such notification to requesting CLEC.

21 JUDGE RENDAHL: And AT&T has no objection to
22 that?

23 MR. WEIGLER: No objection.

24 JUDGE RENDAHL: Okay, thank you. So that
25 concludes that issue?

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1 MS. ANDERL: From Qwest's perspective, it
2 does, yes.

3 MR. WEIGLER: From AT&T also.

4 JUDGE RENDAHL: Okay.

5 So the second issue, Mr. Weigler, that you
6 have on page 11 of the matrix is the issue at paragraph
7 263 of the 28th Supplemental Order and Qwest's
8 compliance with that paragraph.

9 MR. WEIGLER: That's correct.

10 JUDGE RENDAHL: Okay, and this was the issue
11 that you asked Mr. Wilson to be available as a witness?

12 MR. WEIGLER: That's correct.

13 JUDGE RENDAHL: And, Mr. Wilson, you're still
14 on the bridge line?

15 MR. WILSON: Yes, I am.

16 JUDGE RENDAHL: Okay. You have been sworn in
17 in this proceeding before, but I'm going to swear you in
18 for the purposes of this hearing today. I can't see
19 you, but would you please state your name and address
20 for the court reporter.

21 MR. WILSON: My name is Kenneth Wilson. My
22 address is 970 - 11th Street, Boulder, Colorado 80302.

23 JUDGE RENDAHL: And could you raise your
24 right hand, please.

25 THE WITNESS: Yes, Your Honor.

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2 Whereupon,

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KENNETH WILSON,

4 having been first duly sworn, was called as a witness

5 herein and was examined and testified as follows:

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7

JUDGE RENDAHL: Thank you.

8

9 And do you have some questions, Mr. Weigler,
10 that you would like to ask Mr. Wilson on this, or do you
11 want him just to be available in case he needs to
12 participate?

12

MR. WEIGLER: Just be available.

13

JUDGE RENDAHL: Okay.

14

15 MR. WEIGLER: For right now. And if I could
16 just present the issue, and then it may come to the
17 point where we need -- I need to ask him questions.

17

18

JUDGE RENDAHL: Okay, well, let's go ahead
19 then.

19

MR. WEIGLER: Thank you.

20

21 This issue again involves the MTE multitenant
22 environment. AT&T is trying to access the internal
23 customer premise wiring. And the Commission indicated
24 that in order to access what both the Commission and
25 AT&T considered the NID, to access the inside internal
customer premise wiring, that AT&T -- every time that

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1 AT&T wanted to capture one of the wires at the
2 multitenant environment, meaning like an apartment
3 building or an office building, they would have to
4 submit an LSR to Qwest. And the issue -- and AT&T
5 objected to that and asked the Commission to reconsider,
6 and the Commission still indicated that AT&T would have
7 to do so. Setting that aside, the Commission also
8 indicated:

9 We believe CLECs should not be subjected
10 to costly burdens when they are making
11 additional efforts to become facilities
12 based carriers, especially when they are
13 attempting to bring these facilities
14 closer to their customer. We consider
15 the number of subloop orders affected to
16 be significant. The FCC is concerned
17 that costly interconnection and delays
18 might impede the ability of the CLECs to
19 gain access to the inside wire.

20 JUDGE RENDAHL: When you're reading, you will
21 need to slow down, Mr. Weigler.

22 MR. WEIGLER: Sure, I'm sorry.

23 We urge Qwest to automate the LSR
24 process for subloop orders as soon as
25 practicable. We will require Qwest to

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1 file a status report on this topic
2 subsequent to the issue of this order.

3 JUDGE RENDAHL: Now is that from paragraph
4 263 of the order, or is that from -- that's paragraph
5 103, correct, of the 28th Supplemental Order?

6 MR. WEIGLER: Unfortunately, I quoted it at
7 page 28. I didn't quote it via paragraph number.

8 JUDGE RENDAHL: Page 28 is paragraph 103, so
9 if you're looking at -- if anyone is looking at the 28th
10 Supplemental Order, Mr. Weigler just quoted from
11 paragraph 103.

12 MR. WEIGLER: And the reason that automation
13 became of issue is clear in the Washington record. When
14 Qwest came in originally, and I think his name was
15 Christopher Viveros from Qwest, came in and presented
16 the LSR process, and it was in rough draft at the time,
17 every time that AT&T or any CLEC would need to access
18 the internal customer premise wiring, they would have to
19 do a manual LSR to say if they wanted -- and the CLEC
20 would have to type in if they wanted Qwest or the CLEC
21 to run the jumper, and that's why -- where the issue
22 came up, and it's very clear in the record. And so the
23 whole -- the Commission's concern, I believe, at least
24 as -- that's where it was in the record and where the
25 discussion of the automated LSR concept came from. So

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1 the Commission ordered Qwest to automate the LSR
2 process.

3 On April 10th, 2002, Qwest submitted a status
4 report regarding the automation of the subloop ordering
5 process, and that is part of the Commission's record.
6 AT&T through my witness -- through our witness, Ken
7 Wilson, went through the process to determine if there
8 was an automated LSR process, and what he found is
9 articulated in pages -- Judge Rendahl, I'm not sure of
10 the exhibit number of our comments.

11 JUDGE RENDAHL: Just for the record, Exhibit
12 1505 is Qwest's status report on automating the subloop
13 ordering process. And now for AT&T's, which comments
14 are you referring to? Would it be the Attachment D
15 subloop ordering, is that --

16 MR. WEIGLER: It's --

17 JUDGE RENDAHL: Let's be off the record for a
18 moment.

19 (Discussion off the record.)

20 JUDGE RENDAHL: While we were off the record,
21 we determined again that AT&T's comments are at Exhibit
22 1515, and the information concerning subloop ordering is
23 at Exhibit 1519.

24 Go ahead, Mr. Weigler.

25 CHAIRWOMAN SHOWALTER: Can I just make -- I'm

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1 just still sort of back here when I think you said it
2 was paragraph 104 on page 28, but I think it's paragraph
3 103.

4 JUDGE RENDAHL: Okay, I thought I had said
5 that.

6 COMMISSIONER HEMSTAD: She said 103.

7 CHAIRWOMAN SHOWALTER: I finally found it.

8 JUDGE RENDAHL: It's paragraph 103 for the
9 record.

10 CHAIRWOMAN SHOWALTER: Sorry.

11 MR. WEIGLER: Looking at Exhibit 1515, which
12 is AT&T's comments, on the pages 10 and 11 of AT&T's
13 comments regarding Qwest's compliance, Mr. Wilson
14 basically did what was indicated to do in pages 1, 2,
15 and 3 of Qwest's status report regarding the automation
16 of subloop ordering process to determine if the process
17 was automated. What he found is that he couldn't even
18 order an -- the process isn't even manualized. The
19 process isn't -- as far as what Qwest said to do, the
20 process is incomplete. And it's articulated in comments
21 1515 and -- in Exhibit 1515, pages 10 through 11, what
22 Mr. Wilson did. I can walk through them.

23 JUDGE RENDAHL: Well, is it appropriate to
24 have Mr. Wilson state what he did?

25 MR. WEIGLER: That could possibly be the way

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1 to do it.

2 JUDGE RENDAHL: Mr. Wilson, are you there?

3 MR. WILSON: Yes, I am. I first went to the
4 product catalog, the PCAT, to the subloop section, and
5 there is some discussion of intrabuilding cable in that
6 document. However, it does not tell you how to order
7 intrabuilding cable, it tells you to refer to the IMA
8 guide and also to tech pub 77405.

9 JUDGE RENDAHL: 77405?

10 MR. WILSON: Yes, that's the tech pub on
11 subloop.

12 JUDGE RENDAHL: Thank you.

13 MR. WILSON: And I downloaded the current
14 version. In fact, it was a brand new version of the IMA
15 guide, that was version 7.0, downloaded that on April
16 15th. I downloaded the section on ordering, and then I
17 did a search on IDC and I did a search on --

18 JUDGE RENDAHL: What is IDC?

19 MR. WILSON: Intrabuilding cable.

20 JUDGE RENDAHL: Thank you.

21 MR. WILSON: And I also did a search on
22 intrabuilding cable, I did a search on building cable,
23 and none of those turned up anything, and there was
24 nothing in the table of contents for that section for
25 intrabuilding cable. So there is -- there's essentially

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1 nothing in the IMA guide on how to order intrabuilding
2 cable.

3 I then went to and downloaded the current
4 version of the technical publication 77405 on subloop,
5 and I looked through that tech pub in detail. There is
6 a very small section or paragraph on intrabuilding
7 cable, but it says nothing about ordering it.

8 And furthermore, in order to order -- in
9 order to be able to place an order for a Qwest facility
10 or product, you need what's called an NC or NCI code in
11 order to order anything, and there is no NC or NCI code
12 listed in the tech pub on subloops for intrabuilding
13 cable. So before a CLEC would be able to place an order
14 for intrabuilding cable, you would need one of these
15 NC/NCI codes to do that, and so far I don't -- I can't
16 find where those are listed anywhere. And the two
17 documents that I just discussed are the documents that
18 one should find that information in, so I must conclude
19 that the process isn't complete yet and certainly isn't
20 documented yet such that a CLEC could, in fact, order
21 through the electronic IMA interface intrabuilding
22 cable.

23 JUDGE RENDAHL: Okay.

24 And, Mr. Weigler, anything else in your
25 presentation?

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1 MR. WEIGLER: Mr. Wilson, are these the same
2 PCAT and technical publications that were referenced in
3 Qwest's status report regarding automation of subloop
4 ordering process?

5 MR. WILSON: Yes, they are.

6 MR. WEIGLER: And so it's very difficult, in
7 summary, it's very difficult for AT&T to determine if
8 the process has been automated. And again, our initial
9 concern was we don't want -- if we have to do an LSR,
10 and I think it's the Commission's concern too, we don't
11 want to have to type in -- have a manual process. Qwest
12 has indicated that there's an automated process, but we
13 can't determine if there's an automated process or not,
14 because we can't even -- what Qwest has indicated to do,
15 we went through and we can't find an automated nor a
16 manual process in the PCAT or the technical publication.

17 JUDGE RENDAHL: Thank you.

18 Ms. Anderl, do you have questions for
19 Mr. Wilson? As Mr. Weigler did, you have leeway for
20 argument and questioning within your time.

21 MS. ANDERL: Sure, how about testimony?

22 JUDGE RENDAHL: Well, I guess you have to
23 wear your glasses like Ms. Doberneck did yesterday.

24 MS. DOBERNECK: I brought mine if you want to
25 borrow them.

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1 MS. ANDERL: I can probably do this, Your
2 Honor, through cross. It might be a little bit more
3 difficult or awkward, especially with a distant witness,
4 but I guess I would like to ask Mr. Wilson a couple of
5 questions and then maybe give you an overview of where
6 we are from Qwest's perspective.

7 JUDGE RENDAHL: Sounds fine.

8 MS. ANDERL: Okay.

9

10 C R O S S - E X A M I N A T I O N

11 BY MS. ANDERL:

12 Q. Mr. Wilson, good afternoon.

13 A. Good afternoon.

14 Q. Do you have in front of you or available for
15 you the document that's been marked for this proceeding
16 as Exhibit 1519, which is Attachment D to AT&T's April
17 16th comments?

18 A. Yes, I do.

19 Q. Did you prepare that?

20 A. Yes, I did, or at least the basis of it. I
21 haven't -- I haven't looked to see if this is identical
22 with what I provided, but it's substantially the same.

23 Q. And, Mr. Wilson, is it a correct summary of
24 this exhibit to say that the very first substantive
25 paragraph, which states the following paragraph states

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1 the NC/NCI codes and the very last sentence of that
2 document, i.e., there is no information on ordering, are
3 basically the two problems that you have identified with
4 Qwest's PCAT section on subloop with regard to IBC
5 ordering?

6 A. Yes, the PCAT refers to the technical
7 publication and also to the IMA guide, and so that, as I
8 said, I then went to those and did not find the
9 information.

10 Q. Is it accurate that the rest of the
11 discussion on this Attachment D is a summary of areas on
12 which AT&T and Qwest do agree?

13 A. I would say that's accurate. There are some
14 comments on this that Qwest has provided some other
15 additional information in the PCAT that at least as far
16 as my memory was concerned matched with the discussions
17 in Washington.

18 Q. Okay. Do you have a copy, Mr. Wilson, of
19 Exhibit 1506, which is the subloop version 6.0 PCAT?

20 A. I don't have your exhibit. I mean I can pull
21 up the current PCAT if you would like.

22 Q. Sure.

23 JUDGE RENDAHL: So you have it available to
24 you, Mr. Wilson? This is Judge Rendahl.

25 THE WITNESS: It would take about 30 seconds

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1 here, I believe.

2 JUDGE RENDAHL: Okay, why don't you go ahead
3 and do that.

4 CHAIRWOMAN SHOWALTER: This is Chairwoman
5 Showalter, when you say you're pulling it up, are you
6 looking it up on your computer?

7 THE WITNESS: Yes.

8 CHAIRWOMAN SHOWALTER: And is that on the
9 Internet, or is that something stored in your computer?

10 THE WITNESS: No, it would be going straight
11 to Qwest, the current Qwest document on the Internet.

12 CHAIRWOMAN SHOWALTER: Thank you.

13 MR. WEIGLER: So is this the same that's --

14 JUDGE RENDAHL: Mr. Weigler, can you speak
15 through the microphone.

16 MR. WEIGLER: I'm sorry.

17 JUDGE RENDAHL: Thank you.

18 MR. WEIGLER: Is this the same version 6.0
19 that's attached to Qwest's status report regarding
20 automation of subloop ordering process, or has it
21 changed?

22 MS. ANDERL: I don't know that any of us can
23 answer that, because Mr. Wilson doesn't have the
24 document, and I don't know what Mr. Wilson is looking
25 at.

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1 MS. DECOOK: Are they dated?

2 MS. ANDERL: The version that was filed as
3 Exhibit 1516 states on the last page, last update April
4 5, 2002.

5 JUDGE RENDAHL: Have you obtained the
6 document yet, Mr. Wilson?

7 THE WITNESS: Yes, I have.

8 JUDGE RENDAHL: Does it have an update date
9 on it?

10 THE WITNESS: It says April 11th.

11 JUDGE RENDAHL: Okay, so it's a different
12 version.

13 THE WITNESS: Slightly newer.

14 MS. ANDERL: But it may not be significant
15 for purposes of what I need to do today.

16 JUDGE RENDAHL: Well, let's proceed and see
17 if we have a problem.

18 MS. ANDERL: Mr. Wilson, is it still subloop
19 version 6.0?

20 THE WITNESS: It's 7.0.

21 MS. ANDERL: Oh, 7.0, okay.

22 JUDGE RENDAHL: Let's be off the record for a
23 moment.

24 (Discussion off the record.)

25 JUDGE RENDAHL: It's clear that Ms. Anderl is

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1 looking at an earlier version than Mr. Wilson, but it
2 doesn't appear it's going to be a problem. And if there
3 does appear to be a problem, we'll address it, so let's
4 go forward.

5 BY MS. ANDERL:

6 Q. Mr. Wilson, is it correct that generally this
7 document describes the product that is generally the
8 subloop?

9 A. Yes, it does, this is the product catalog
10 section on subloop.

11 Q. Okay. And is that your understanding of what
12 PCAT stands for, product catalog?

13 A. Yes.

14 Q. And on the first page of the document, does
15 it generally describe the four different types of
16 subloop product offerings?

17 A. Yes, it does.

18 Q. And is intrabuilding cable listed there as
19 product number three?

20 A. Yes, it is.

21 Q. Okay. And would you agree that it's
22 intrabuilding cable that we're talking about with regard
23 to this AT&T issue here today?

24 A. Yes, it is.

25 Q. Okay. Now, Mr. Wilson, turn to page 9 of

7173

1 that document or scroll down.

2 A. You're going to have to help me, because the
3 Internet version does not have page numbers.

4 Q. Okay. Go to the section entitled ordering.

5 A. Yes.

6 Q. Is this generally the section, one of the
7 sections that you consulted with regard to identifying
8 whether there was an automated ordering procedure for
9 intrabuilding cable?

10 A. Yes, it is.

11 Q. Okay. And about halfway through that
12 section, do you see a sentence that says, orders should
13 be placed using IMA, and then it says, link blue text
14 to, and then there's a Web site address?

15 A. I know I saw that in the previous version.
16 How far down?

17 Q. About halfway. It's above the identification
18 of the activity types for change, disconnect, et cetera?

19 A. What's the first few words in the paragraph,
20 maybe that would help.

21 Q. Orders should be placed using IMA.

22 A. Yes, I found that.

23 Q. Okay. Do you agree that IMA is an automated
24 ordering process?

25 A. Yes, it is.

7174

1 Q. Okay. And if the instruction here that
2 orders should be placed using IMA applies to the
3 intrabuilding cable product, does that address AT&T's
4 concerns, leaving aside the NC/NCI code issue?

5 A. Well, no. See, I -- what I did in -- in that
6 sentence, I clicked on IMA, which is a link to the IMA
7 guide, and then I downloaded the IMA guide, and it did
8 not have any information on intrabuilding cable, so
9 that's -- that's the problem, one of the issues.

10 Q. Did it have information on subloops
11 generally?

12 A. Yes, it has -- I didn't -- well, I didn't
13 really look very hard for subloops. I was more
14 concerned with instructions on intrabuilding cable,
15 which were not there. So I didn't really -- I didn't
16 really look thoroughly at subloops.

17 Q. Okay. If there were instructions there on
18 subloops that applied equally to the subproduct of
19 intrabuilding cable, would -- well, I guess you don't
20 know, but would you still have concerns then?

21 A. Well, yes, because I mean we have had the
22 capability to order distribution subloop and feeder
23 subloop for some time. The intrabuilding cable is the
24 new part.

25 Q. Did you attempt to place an order for an

7175

1 intrabuilding cable subloop?

2 A. No, I did not. But I'm looking, for
3 instance, at the sections -- there are sections on, in
4 the 7.0 IMA guide, on unbundled feeder loop, unbundled
5 distribution loop, et cetera, but there is no section on
6 intrabuilding cable.

7 JUDGE RENDAHL: Mr. Wilson, this is Judge
8 Rendahl, you're looking now on your computer at the
9 current IMA guide?

10 THE WITNESS: Yes, I am, which is version
11 7.0. It's very -- I think it was only issued a few
12 weeks ago.

13 BY MS. ANDERL:

14 Q. So this is a document separate from the
15 subloop PCAT?

16 A. Yes, it's the document that if, in the PCAT,
17 if you click on the hot button where we were just
18 discussing where it says order or IMA in IMA, then you
19 go to an IMA page. And from there, you can download the
20 section on ordering, on order process. And within that,
21 there are sections on unbundled feeder loop, unbundled
22 distribution loop, but nothing on intrabuilding cable.

23 Q. What is it that you would need to know
24 besides the information that's contained in the subloop
25 PCAT and the general information on ordering subloops

7176

1 that's in the IMA guide in order for you to be satisfied
2 that the process was automated?

3 A. Well, it should be documented in the IMA
4 guide as to how to pro -- how to, you know, how to order
5 -- how to do the order. I mean this is a guide that
6 tells CLECs how they go about ordering different
7 products and how to use IMA to do that.

8 Q. Okay. And so if the process for ordering an
9 intrabuilding cable subloop is the same as one or more
10 of the other subloop product offerings, you would just
11 like that to be specified in the IMA ordering guide?

12 A. Well, it should have a section. As it has a
13 section on feeder loop and distribution loop, it should
14 have a section on intrabuilding cable.

15 Q. And if that section were simply to reference
16 one of the other sections and say it's the same, would
17 that be a concern for you?

18 A. Well, it's -- it's not the same, so yes, I
19 guess it would be a concern.

20 Q. Well, what would have to be different in the
21 ordering process about ordering an intrabuilding cable
22 subloop that you think should be identified and
23 described differently in the IMA ordering guide?

24 A. Well, it's the feeder loop and the
25 distribution loop have various types, various options,

7177

1 they're quite different. The unbundled or the
2 intrabuilding cable is very simple. I mean it's just
3 the inside wires, so there are no options. It should be
4 very straightforward. It should be like a check the
5 box. So, you know, I don't think -- I don't think it
6 has to be a very complicated section, but it just needs
7 to be there to tell the -- to tell the CLEC how to do
8 it.

9 Q. Now in connection with the NC/NCI codes,
10 let's move to that for a moment, do you have available
11 to you a copy of the technical publication 77405?

12 A. Yes, I do.

13 Q. Can you please identify for us the date on
14 that document, if it has a date?

15 A. Yes, it's issue C, dated September 2001.

16 Q. Do you know if --

17 A. That was the current -- that is the current
18 version, at least as of April 15th, that is in -- on the
19 Qwest Web site. So if a CLEC were to go -- were to want
20 to look at the tech pub, that's -- this is the copy that
21 is currently available.

22 Q. Is there a table 3-6 on that tech pub?

23 A. Yes, there is.

24 Q. And is it correct, Mr. Wilson, that that
25 table identifies the valid NC/NCI codes for unbundled

7178

1 subloops?

2 A. Yes.

3 Q. Okay.

4 A. It has about one, two, three, four, five,
5 six, seven, eight, eight types, and they all start out
6 distribution loop.

7 Q. Okay. Is there -- and so it's a table; is
8 that right?

9 A. Yes, it is.

10 Q. And there are a number of columns in it?

11 A. Yes, there are.

12 Q. And the far right column, the heading is
13 description?

14 A. Yes.

15 Q. Is there any line contained in that
16 description column that indicates it is distribution
17 loop, building wiring?

18 A. Yes, a number of them do, but that's
19 distribution loop with building wire, not intrabuilding
20 cable.

21 Q. Okay.

22 A. Different thing.

23 Q. Well, if I were to identify for you that it
24 is Qwest's interpretation that building wiring is
25 synonymous for purposes of the NC/NCI code table with

7179

1 intrabuilding cable, would that address your concerns
2 about whether there are appropriate NC/NCI codes
3 identified for ordering intrabuilding cable?

4 A. Well, it -- the description, to my mind, is
5 not -- I mean if that's what you meant, the description
6 is not accurate, because it talks about without loading
7 coils and talked about Spectrum Management, those are
8 both things that are not applicable to intrabuilding
9 cable. So it starts out by saying distribution loop,
10 which is not intrabuilding cable, and then it has a
11 number, each of these descriptions has a number of
12 further identifiers that have nothing to do with
13 intrabuilding cable. So my conclusion is that it's not
14 intrabuilding cable.

15 Q. Okay. And if someone were to clarify it for
16 you that your understanding is incorrect, would that --

17 MS. ANDERL: Well, I guess then this is the
18 problem, Your Honor, with not knowing that AT&T was even
19 bringing the witness, and maybe this is a good time for
20 me to segue into argument, is that I am advised, and, of
21 course, this is the opportunity that we have to really
22 present our rebuttal comments orally, there was no time
23 in the schedule to do written ones, I am advised that it
24 is Qwest's interpretation that the building wiring
25 reference in this table is a reference to intrabuilding

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1 cable. I am also advised that the latest issue of the
2 tech pub issue D, which may or may not be in final form,
3 but is, I believe, available on the Web, contains two
4 separate tables, a table 3.3-6 and 3-7, that table 3-7
5 breaks out and clarifies the building wiring NC/NCI
6 codes. And I guess it's difficult through
7 cross-examination to explore that much further with
8 Mr. Wilson.

9 JUDGE RENDAHL: Is that current version --

10 MS. ANDERL: But it is something that we
11 could provide as a late filed exhibit.

12 JUDGE RENDAHL: I think that would be
13 helpful, but is that tech pub the latest version
14 currently available on the Web site, or is it something
15 that's going to be made available on the Web site? In a
16 sense, is this something that AT&T could verify and
17 replicate what they had done, or do they have to wait
18 until it's made available?

19 BY MS. ANDERL:

20 Q. Mr. Wilson, do you have access to the link to
21 the tech pubs on the Web?

22 A. I just pulled it up, and it's still showing
23 issue C on the main Web site. Now there is -- the
24 process that Qwest is supposed to go through on issuing
25 new versions is to go through the change management

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1 process and issue a new release with a 30 day window for
2 CLECs to review it, so I'm currently looking at the --
3 at the main entry, that would be where their -- where
4 commercial customers and where their technicians would
5 go to look at a tech pub, and it has the old version.
6 And now I'm looking at the Web page where Qwest lists
7 tech pubs that are for review, and I don't see this tech
8 pub listed, which means Qwest has not posted a new
9 version for CLEC review yet.

10 Q. And I'm not aware of where in the status that
11 is.

12 Mr. Wilson, is the intrabuilding cable
13 portion of the subloop actually a portion of the
14 distribution subloop?

15 A. No, when a CLEC wants to buy intrabuilding
16 cable, you would not want distribution loop. That was
17 the whole -- I mean this was a discussion we got through
18 a year ago. You don't want to pay for the whole
19 distribution loop when you just want the inside wire or
20 what Qwest calls the intrabuilding cable. So that that
21 nomenclature, calling it distribution, is very
22 troubling. Furthermore, there should be no Spectrum
23 Management classes on intrabuilding cable. The CLEC
24 would be disconnecting the Qwest distribution loop from
25 the network interface device or building terminal, and a

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1 CLEC can do whatever they would want with that inside
2 wire, and Spectrum Management classes should not enter
3 into that at all, so.

4 Q. Mr. Wilson, I think you may have
5 misunderstood my question.

6 JUDGE RENDAHL: I think we will have to wrap
7 this one up so we can move on, so.

8 CHAIRWOMAN SHOWALTER: I have a question,
9 procedural question. Our order at paragraph 263 says
10 that Qwest must require LSRs, it must file a status
11 report on its efforts to automate the LSR process within
12 30 days after the service date and every three months
13 thereafter until the process is fully automated. Qwest,
14 I take it, has filed a status report and at the same
15 time claims it's fully automated. Are we talking about
16 revising the order, or are we just -- is this just
17 really a compliance issue, they filed the status report,
18 but it's debatable apparently whether it's yet fully
19 automated. If it's not full automated, they need to
20 keep filing status reports for the next three, every
21 three months until the parties either agree it's fully
22 automated or they bring it back before us to say is it
23 or isn't it fully automated.

24 So I'm just wondering if we could shortcut
25 this somewhat by saying is it agreed, (a) a report's

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1 been filed, but is it agreed, Qwest, that this is not
2 fully automated to the extent that no more reports are
3 required, and (b) would you just agree to file another
4 report in three months as the order requires, at which
5 point one would hope that it is fully automated by
6 consensus, or is AT&T asking for something more than
7 that?

8 MR. WEIGLER: Well, yes and no. I mean AT&T
9 is asking for compliance of the order, which is that the
10 process is supposed to be fully automated. Qwest has
11 indicated --

12 CHAIRWOMAN SHOWALTER: Well, no, our order
13 says that status reports must be filed within 30 days
14 and every three months thereafter until the process is
15 fully automated. So if Qwest would withdraw its
16 assertion that it is fully automated, then I'm not sure
17 what the dispute is. This isn't really a
18 reconsideration of our order is what I think, is it?

19 MR. WEIGLER: No, but it's only --

20 MS. ANDERL: No --

21 MR. WEIGLER: It's not a reconsideration of
22 your order. It's a reconsideration, as you indicated,
23 that Qwest has indicated that the process is fully
24 automated and thus complying, which is -- and it could
25 still comply with your order by filing another one in

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1 three months.

2 JUDGE RENDAHL: Ms. Anderl, would you agree
3 with what the Chairwoman explained, that there's a need
4 to file another status report to -- and allow the
5 parties to work together to determine whether the
6 process is actually working?

7 MS. ANDERL: Well, and I don't think Qwest
8 can concede that the process isn't fully automated,
9 because I think that remains our position. I think that
10 AT&T has raised some potentially legitimate questions
11 through Mr. Wilson's testimony about whether the
12 documentation is as explanatory as it could be, and we
13 will definitely look into that. And I would imagine we
14 will file another status report at least advising of
15 whether it remains an open issue in dispute. Whether we
16 do that three months hence or sooner if we're able to
17 resolve it sooner, we will certainly do that.

18 COMMISSIONER HEMSTAD: Well, as I understand
19 the company's position, the company's position is that
20 it has been automated.

21 MS. ANDERL: That's correct.

22 COMMISSIONER HEMSTAD: And with that, I would
23 say the company would say it doesn't have to do anything
24 more, so I'm not sure just where that leaves us. AT&T
25 is saying, no, it is not, and the company apparently

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1 would not intend to do anything more, so.

2 CHAIRWOMAN SHOWALTER: Well, I was
3 essentially asking Qwest if it would agree not to assert
4 that today and to work more on the text and the
5 hyperlinks and the other things so that -- and come back
6 with another report. It wouldn't have to be three
7 months from now.

8 MS. ANDERL: Well, and as I said, I think
9 that we can agree that AT&T has raised some questions
10 about the explanations and processes that we're happy to
11 explore and provide an additional response on. The
12 detail concerns that Mr. Wilson raised were frankly not
13 fleshed out before today, and I don't have access to the
14 IMA ordering guide to know if there are other sections
15 that Mr. Wilson ought to be looking at or not, so it's
16 certainly something that just needs some additional
17 research.

18 JUDGE RENDAHL: Okay, well, I think there's a
19 question has been raised though with the Commission as
20 to whether Qwest's process is fully automated.

21 CHAIRWOMAN SHOWALTER: Or maybe another way
22 to put it is that it may be fully automated, but it also
23 I think is important that whatever instructions go along
24 with that automation be readily accessible by the types
25 who would try to use it. And at least on the face of

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1 it, it appears to be somewhat difficult, so that maybe
2 this is just a matter of the documentation that goes
3 along with the automation, but the two do go hand in
4 hand.

5 JUDGE RENDAHL: I was going to suggest a
6 filing closer than three months given that it appears
7 the parties are closer together than another three
8 months filing, so I guess I would suggest the parties
9 file something within two weeks identifying whether they
10 have had a chance to resolve these issues that
11 Mr. Wilson and Ms. Anderl discussed. Is that a good
12 suggestion? Is that something that the parties can live
13 with?

14 MR. WEIGLER: Absolutely.

15 MS. ANDERL: Yes, Your Honor.

16 JUDGE RENDAHL: So then looking at my
17 calendar, if the parties would file something on May
18 8th, would that be acceptable, or is that possible
19 within the schedules that we have, or is another day
20 that week --

21 MS. ANDERL: Could we have until the 10th,
22 Your Honor?

23 JUDGE RENDAHL: I believe that's possible.
24 So why don't we have the filing on May 10th. And it
25 would help if it was a joint filing if you all agree.

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1 And if you don't, then you each file your perspective on
2 the problem or the issue.

3 MS. ANDERL: We will do that, Your Honor.

4 JUDGE RENDAHL: Okay, thank you.

5 Mr. Weigler, does that complete your issues?

6 MR. WEIGLER: It does, Your Honor, thank you.

7 JUDGE RENDAHL: Okay, so you're free to stay
8 and listen to the rest of it, or you're free to go as
9 you need to.

10 And with that, we need to turn back to page
11 2, I understand, Ms. Anderl; is that correct?

12 MS. ANDERL: That's right.

13 JUDGE RENDAHL: Okay, and we have taken up
14 some time on this issue. This next issue we talked
15 about we would give each party ten minutes to discuss
16 their issue, so why don't we take Qwest's argument on
17 this side.

18 And, Ms. DeCook, are you taking up this
19 issue?

20 MS. DECOOK: Actually, Mr. Kopta with his
21 AT&T hat is going to take this one.

22 JUDGE RENDAHL: Okay, so we have Ms. Anderl,
23 Mr. Kopta, and Ms. Doberneck, is that --

24 MS. DOBERNECK: Yes.

25 JUDGE RENDAHL: So why don't we hear from

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1 Ms. Anderl and Mr. Kopta, and then we'll take a break
2 and we'll come back.

3 MR. KOPTA: Can we be off the record for just
4 a moment?

5 JUDGE RENDAHL: Sure, let's be off the
6 record.

7 (Discussion off the record.)

8 JUDGE RENDAHL: Ms. Anderl, let's proceed
9 with you, and then we'll see where we are.

10 MS. ANDERL: Okay, Your Honor, and I guess I
11 would like to just go briefly and save most of my time
12 for response.

13 JUDGE RENDAHL: Okay.

14 MS. ANDERL: The obligation to build issues
15 came up in the context of both the general unbundled
16 network elements portions of the workshops and also the
17 loop portions of the workshops, and that's why you see
18 this issue on both page 2 of the matrix and page 6. As
19 you can see from the third column, Qwest revised quite a
20 substantial number of its SGAT sections to comply with
21 the 24th and 28th supplemental orders to incorporate the
22 obligation to build language that we believe was
23 ordered.

24 AT&T has proposed new language for several of
25 the sections at issue, primarily around the issue of the

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1 distinction that Qwest has drawn between its POLR or
2 provider of last resort obligation and that obligation
3 as it pertains to retail customers and its other
4 obligations to build or willingness to build under other
5 circumstances. I believe AT&T goes so far as to say
6 that the distinction that Qwest has drawn in its SGAT
7 language between obligation to build for provider of
8 last resort obligations and other types of facilities is
9 a distinction that the Commission has "never endorsed".

10 We would respectfully disagree with that. We
11 think that the entire obligation to serve the company
12 has is distinguished between carrier of last resort or
13 provider of last resort obligations for our retail
14 customers, which is generally the DSL or voice grade
15 local exchange requirement for up to five lines per
16 location, and all other types of obligations to serve or
17 obligation to build. That distinction is inherent in
18 all of the regulatory decisions that the Commission has
19 made vis a vis Qwest and other incumbent local service
20 providers. It's inherent in the Commission's rules
21 regarding a carrier's obligation to serve up to five
22 primary residence or business lines at a single
23 location. And it is that type of distinction that Qwest
24 has tried to capture in the SGAT sections that it
25 modified for purposes of compliance with these sections

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1 of the order.

2 The distinctions that AT&T or the, excuse me,
3 I misspoke, the revisions that AT&T proposes to remove
4 those distinctions are what is in our view wholly
5 inconsistent with the regulatory construct as it exists
6 in the state today and with Qwest's retail and wholesale
7 obligations to serve. We think that AT&T's proposed
8 revisions in its Attachment A to its comments Exhibit
9 1516 really go way beyond what the Commission ordered,
10 and we would respectfully disagree with those changes
11 and ask the Commission to endorse the language in
12 Qwest's SGAT as written.

13 CHAIRWOMAN SHOWALTER: Ms. Anderl, just so
14 I'm sure, is Attachment A, AT&T's Attachment A minus
15 their revisions exactly what you have agreed, the latest
16 of what you have agreed to?

17 MS. ANDERL: I, you know, I assumed that and
18 really only read the redlining. It was my belief that
19 they took our proposed language from our compliance SGAT
20 and marked it up.

21 CHAIRWOMAN SHOWALTER: So I mean if we can
22 look at Attachment A, we can see everything, we can see
23 what AT&T proposes and what Qwest would not have us do?

24 MS. ANDERL: Right, and Attachment B as well.

25 COMMISSIONER HEMSTAD: Where are A and B?

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1 JUDGE RENDAHL: Attachment A is Exhibit 1516.

2 MS. ANDERL: So it's 1516 and 1517, and those
3 are the two attachments that pertain to the obligation
4 to build issues.

5 JUDGE RENDAHL: Mr. Kopta, is it correct that
6 if you took out the redlining in Attachments A and B
7 that that would reflect what Qwest has filed?

8 MR. KOPTA: Yes.

9 JUDGE RENDAHL: Okay.

10 MR. KOPTA: That's what happened. In fact, I
11 created this exhibit by cutting this section from
12 Qwest's compliance filing, creating a new document, and
13 placing this in here, and then turning on the redlining
14 feature. So what's in these two exhibits is Qwest's
15 language as it proposed it and then our proposed
16 revisions to Qwest's proposed language.

17 JUDGE RENDAHL: Thank you.

18 Now, Ms. Anderl, are you reserving the
19 remainder of your time?

20 MS. ANDERL: Yes.

21 JUDGE RENDAHL: Mr. Kopta.

22 MR. KOPTA: Thank you, Your Honor. What we
23 tried to do with this language, and perhaps I should
24 take a step back, as Ms. Anderl indicates and the chart
25 indicates, there are several provisions of the SGAT that

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1 reference the obligation to build, but most of them are
2 cross references back to this, to the sections that are
3 dealt with in Exhibits 1516 and 1517. So really the
4 language that we're focused on are those two, are the
5 language in those two sections. And what we tried to do
6 was to capture what the Commission had required, which
7 was what we had proposed, and that was that we as CLECs
8 should be treated the same as any other Qwest customer
9 when it comes to building facilities that we need to
10 provide the service that we're ordering or the
11 facilities that we're ordering from Qwest.

12 Now Qwest originally had proposed this
13 provider of last resort obligation constraint on its
14 obligation to build, and in its compliance language, it
15 simply added to that by creating another hierarchy of
16 different types of orders that would be subject to an
17 obligation to build under certain circumstances. And
18 our concern is that there's nothing in the SGAT that
19 defines provider of last resort obligations. We don't
20 disagree with Qwest that it is a concept that the
21 Commission has used in rate cases and also in
22 establishing various obligations that Qwest has, but
23 there's nothing in Commission rule that defines what it
24 is. I'm not aware of anything in the Commission -- in a
25 Qwest tariff that says this is a provider of last resort

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1 obligation. And our concern is that if you're using
2 terminology, it ought to be defined in the SGAT, or it
3 ought to be defined in a Commission rule or a statute so
4 that we know what it means if it's going to be a
5 limiting factor on Qwest's obligation. And it isn't --

6 CHAIRWOMAN SHOWALTER: Are you agreeing
7 conceptually with that provider of last resort approach?

8 MR. KOPTA: No, we're not. I mean what Qwest
9 has done in its language is saying, okay, here we have
10 orders that we consider to be within our provider of
11 last resort or eligible telecommunications carrier, ETC,
12 obligations, and those we'll build. And here we've got
13 other different types of orders, and these we'll treat
14 just like any other retail order. And what we're saying
15 is, why do you have the distinction. Because if a
16 provider of last resort obligation is a retail
17 obligation, then doesn't it also fit in the second
18 category. If we have language that says Qwest will
19 build facilities for us when it builds facilities for
20 retail customers, that's going to include any provider
21 of last resort obligation.

22 CHAIRWOMAN SHOWALTER: But I mean isn't the
23 question that's being raised between the two of you what
24 lens should we be looking through, should it be if it's
25 a retail function there's parity with the CLECs, or if

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1 it's a provider of last resort function, then there's
2 parity. How do you address which it ought to be?

3 MR. KOPTA: Well, what we're saying is that
4 it's the former.

5 CHAIRWOMAN SHOWALTER: But why?

6 MR. KOPTA: If there's a retail obligation --
7 because we're sort of on different sides of the fence
8 depending on the issue. I sort of smile at this,
9 because in some cases, we want more definition, we want
10 more language, we want to break it down farther, and
11 Qwest says no, we want it more general, and sometimes
12 it's the reverse, and I think in this case it's the
13 reverse. Because I think from our perspective, what we
14 want is just capturing the general obligation that
15 whatever you do for a retail customer, you will do for
16 us. The problem with trying to break that down into
17 different pieces is that all of a sudden you need to
18 define those different pieces, and you need to find some
19 way of understanding when those apply and when those
20 don't apply.

21 CHAIRWOMAN SHOWALTER: But that's a practical
22 problem, what about philosophically? Is it -- should
23 Qwest be obligated -- why, not as a practical matter but
24 as a policy matter, why should Qwest be obligated to
25 provide you with the same type of service that it

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1 provides to its own retail customers whatever those
2 services are versus only in the case where it's a
3 provider of last resort type service?

4 MR. KOPTA: Well, I think that there's --
5 there's a policy response and there's a practical
6 response. The policy response is nondiscrimination. I
7 mean they should treat us the same as they treat anyone
8 else. If we want a loop into a particular building to
9 serve a customer, then we should get that loop if Qwest
10 would provide that same loop to the customer as an end
11 user that wants to take service using that loop. That's
12 the philosophical response. The practical response
13 is --

14 CHAIRWOMAN SHOWALTER: Can I stop you on
15 that. I understand the practical problems, but on that
16 philosophical one, well, discrimination is also just a
17 word. In other words, Qwest is asserting, yes, we want
18 to treat them differently. So the question is why
19 shouldn't Qwest be able to discriminate against the
20 CLECs in this category of services? Yes, it's
21 discrimination, but there's valid discrimination and
22 there's invalid discrimination, so why should we
23 consider this to be invalid discrimination?

24 MR. KOPTA: Well, and maybe if I give you the
25 practical response, that will answer your question.

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1 What our concern is is that if we have a customer that
2 calls us up and says, gee, we would like to take service
3 from you in a particular location. We say, great, well,
4 we don't have any facilities there, but we can get them
5 from Qwest. We call up Qwest and say, Qwest, we would
6 like whatever facilities, loops, whatever, to this
7 location. Qwest says, oh, gee, sorry, I don't have any
8 facilities that you can use, and so I'm not going to
9 give them to you. We contact our customer and say,
10 sorry, we can't deliver service there because we don't
11 have the facility. Then the customer calls up Qwest and
12 says, gee, I would like to have service from you to this
13 facility, and Qwest says, oh, gee, no problem, we don't
14 have the facilities, but we'll build them for you, and
15 in ten days you will have the service. That's the
16 concern that we have, that we're not treated the same.

17 And as an even more practical consideration,
18 I suppose we could get around it by saying to the
19 customer, well, order it from Qwest, have them build the
20 facilities for you, and then terminate service, and then
21 we'll contact Qwest and say, we want to get these as
22 unbundled network elements instead of as the service
23 that you have been providing to the customer. I mean we
24 think that's just a ridiculous way to have to do it.

25 If Qwest would build it for the retail

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1 customer, it ought to build it for us. And so it gets
2 around these practical concerns as well as just the
3 philosophical idea that why should we be treated any
4 differently than any other customer as long as we're
5 willing to do what the retail customer would do in terms
6 of if there's a requirement of an up front payment or a
7 term agreement, we're willing to do that.

8 CHAIRWOMAN SHOWALTER: So isn't your answer
9 that you are no different than a retail customer, you
10 are in effect a retail customer or you're a customer, so
11 is a retail customer?

12 MR. KOPTA: Yes, I mean we are a customer if
13 you want to think of it that way, and Qwest claims to
14 think of it that way, that we are customers, because we
15 are obtaining services from Qwest as a provider. And so
16 as a customer, we should be treated like any other
17 customer as long as we're willing to live with the same
18 terms and conditions that Qwest has established.

19 And that's how we interpret the Commission's
20 orders, both in the general UNE context as well as in
21 the specific loop context, that that's what Qwest is
22 obligated to do. And that's what we have tried to do
23 with the language that we have proposed here in terms of
24 the redlining it to take out the specific reference to
25 provider of last resort obligations or for ETC

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1 obligations and just incorporate the basic concept that
2 we get treated the same as a retail customer. If Qwest
3 doesn't build for retail customers, then they don't have
4 to build for us. I mean we can still ask and go through
5 a different section of the SGAT, but we would not get
6 any more favorable treatment than a retail customer.

7 JUDGE RENDAHL: Let's be off the record for a
8 moment.

9 (Discussion off the record.)

10 JUDGE RENDAHL: Mr. Kopta, had you finished
11 your presentation, or do you have -- you still have
12 time, I just wasn't sure what your --

13 MR. KOPTA: I think that's -- those are the
14 -- what we try to do and what the language that we
15 proposed reflects. And obviously if Qwest wants to take
16 issue with something more specific, then we can respond
17 more specifically, but that's -- that was the idea that
18 we were trying to incorporate into the language that we
19 proposed, with one exception, which is in section
20 9.1.2.1.5, which is the last page of Exhibit 1516. And
21 this was a new section that Qwest had proposed in
22 compliance with the Commission's requirements that Qwest
23 make available its retail build policy.

24 And our concern here is that -- and it's sort
25 of again animated by the same concern that we wanted to

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1 be treated the same, that they may have general
2 policies, but we don't know if and when they depart from
3 those policies in particular instances. And so we are
4 proposing that Qwest also provide us with information
5 sufficient to show that they're actually -- the policies
6 that they state are the policies that they, in fact, use
7 when they're constructing facilities for retail
8 customers.

9 So with that, as I say, I will respond to
10 anything that Qwest may have other than what I was just
11 talking about, but that's more or less what our concerns
12 were and what we tried to do in our revised proposal
13 language.

14 COMMISSIONER OSHIE: Mr. Kopta.

15 MR. KOPTA: Yes.

16 COMMISSIONER OSHIE: Let's go to Section
17 9.1.2.1, which is the first area of that proposed
18 language by Qwest in which you made some significant
19 changes in the redlining. And I guess what I'm curious
20 as to how it actually affects operations in the field.
21 Because when I read that original language from Qwest,
22 it looked like there was -- they distinguished between
23 the POLR services and then others, say that we'll treat
24 it as a, you know, for certain facilities we'll treat it
25 in the same way we do with our provider of last resort

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1 obligation. But then if there are other facilities that
2 would go beyond that, we will treat you as we would any
3 other retail customer.

4 And when I read it at least initially, I
5 thought, well, that really seems to cover, you know,
6 what I would think the CLECs would be, you know, would
7 want out of that language. In other words, there's if
8 -- it will -- it seemed to be that Qwest was saying, we
9 will build what you ask for as we would build for any
10 other retail customer. But I understand your point
11 about POLR, but I'm not quite sure how it really ought,
12 you know, what -- how it affects your operations in the
13 field.

14 MR. KOPTA: Well, I guess that -- I mean
15 that's a good practical question, and my understanding
16 obviously is that when we -- I mean I'm not the one
17 that's going to call Qwest and say we need a loop to a
18 particular location. It's going to be someone in our
19 service center, it's going to be someone that, you know,
20 got a contact from Qwest or from a customer wanting
21 service. And so that's one of the things that animates
22 what we're trying to do in this document is that they
23 need to refer to this, and it needs to be able to make
24 sense to them. So if they're looking at this and Qwest
25 says yes or no, that they will build or they won't build

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1 whatever facility that's being requested, and they go
2 back to the agreement, then they're not going to know
3 necessarily what a POLR or ETC obligation is. So that's
4 why we want to make sure that we have the information
5 from Qwest through the retail build policy or
6 information on how to implement the policy so that
7 somebody that needs to get the facility for the customer
8 is going to know what they're doing and how to go about
9 it and won't need to call me up and say, you know, Qwest
10 told me no, and is this an ETC or a POLR obligation.

11 MS. DOBERNECK: Could I add just one thing to
12 that, because I look at it specifically, I mean we fight
13 about this as lawyers, but will it help the company.
14 When I look at the language that Qwest currently has
15 proposed, the POLR responsibilities and the ETC, that
16 applies to voice service. So those sort of terms and
17 conditions under which Qwest would build will never
18 apply to Covad, because we don't provide voice service,
19 and we will never be a provider of last resort as that's
20 defined in the statute.

21 If you look at the second portion where it
22 talks about the UNEs for the local loop, it talks about
23 orders for UNEs above DSO level or for local exchange
24 service quantities above POLR. Well, we only provide
25 service at the DSO level. We don't provide our local

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1 service to our end users over DS1s or DS3s or anything
2 of that nature. So that won't help us out either.

3 Then you have the third provision, which
4 talks about quantities above POLR, and that's where I
5 think you get to Mr. Kopta's point about where we need
6 sort of the general principle embodied in the SGAT,
7 which is they'll build under the same terms and
8 conditions for their retail customers. Because as a
9 practical and a legal matter, I don't know if anybody
10 could possibly know what that means or if that would
11 translate into Qwest when it's considering whether to
12 build additional facilities within its current network
13 or its current serving network. Whether we'll ever be
14 able to take advantage of that, that's, from a practical
15 perspective, that's where I see an issue specific to
16 Covad and our ability to take advantage of what the
17 Commission has previously ordered, which is, Qwest, you
18 need to build under the same terms as conditions as you
19 do to retail customers.

20 MR. KOPTA: And just to add a little bit more
21 to that, one of the, from a practical perspective, it's
22 easier for a representative of a company to look up a
23 Qwest tariff. I mean what I would tell them is to say,
24 look what service are you offering this customer, what's
25 it comparable to that Qwest is offering, go to the

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1 tariff where Qwest offers that service, and see what the
2 terms and conditions are for if it has to build
3 facilities, and those are the same things that they
4 ought to do for you. I mean that's an easily
5 comprehensible sort of thing to do. The Commission has
6 already reviewed the tariffs to make sure that they're
7 fair, just, reasonable, and sufficient. And so that's
8 sort of a one stop shop or an easy way to determine
9 whether or not we're getting the same kind of service
10 that we should be getting.

11 If you start adding legal concepts in there
12 that aren't reflected in the tariff that require some
13 interpolation, then it becomes much more difficult for
14 people in the field to really know when they are
15 entitled and should push back on getting facilities that
16 Qwest is refusing to provide and when they should say,
17 oh, well, that's the way they treat everybody else, and
18 so we will have to be fine with that.

19 COMMISSIONER OSHIE: Thank you.

20 JUDGE RENDAHL: Ms. DeCook, you have a few
21 comments, and I know, Ms. Doberneck, you had probably
22 another issue you wanted to comment on, is it possible
23 to finish that by quarter after and then take our
24 afternoon break?

25 MS. DOBERNECK: Absolutely.

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1 JUDGE RENDAHL: Okay.

2 Go ahead, Ms. DeCook.

3 MS. DECOOK: I just have a quick comment on
4 the --

5 JUDGE RENDAHL: You need to turn your
6 microphone on.

7 MS. DECOOK: Sorry.

8 -- on the Chairman's question. When you look
9 at the obligation to build, you have to look at the Act,
10 you have to look beyond the philosophical and the
11 practical, and you have to look at what the Act
12 requires. The Act requires nondiscriminatory access,
13 and the FCC has interpreted that to mean access that's
14 equivalent to what Qwest or its affiliates -- would
15 provide itself or its affiliate or its retail customers,
16 the same terms and conditions. And in this case, that
17 means, if they would build for their retail customers,
18 they should build for the CLECs.

19 And, you know, I understand where you're
20 coming from in terms of under state law when you look at
21 discrimination, maybe there are some valid distinctions
22 that you can make between class of customers, for
23 example, and that is legitimate discrimination under
24 state law. But under federal law, that's not legitimate
25 discrimination. They can't discriminate against the

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1 CLECs and provide something to their retail customers
2 that they won't provide to the CLECs. So I think it's
3 different when you do the analysis under the law, the
4 federal law, than what you might do under analogous
5 state law principles.

6 The other kind of --

7 CHAIRWOMAN SHOWALTER: Don't assume from my
8 question where I'm coming from. It's just a question to
9 try to make the advocates defend their position.

10 MS. DECOOK: And I appreciate that, and I'm
11 just filling the record to make sure our position is
12 clear on that.

13 And one comment I have on Attachment A and B,
14 there was a question asked about whether if you looked
15 at the redline and ignored the redline, if that would be
16 Qwest's proposal, and that's true to an extent. When we
17 inserted information that wasn't in Qwest's original
18 document, that doesn't show up very well on a black and
19 white document. Now if you have a color document, it
20 shows up as red typing. But I don't think it shows up
21 -- it's marked, so you can kind of tell where we have
22 marked, but the difficulty comes when we have redlined
23 and marked in the same place. So we can submit a late
24 filed exhibit that specifically underlines the text that
25 we added so that that's clear, if that would be helpful.

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1 JUDGE RENDAHL: I think this does include
2 underlining and strike throughs, but we can verify that
3 at the break. You and Mr. Kopta can get together and
4 verify that.

5 MS. DECOOK: I will do that, because my copy
6 doesn't have it.

7 JUDGE RENDAHL: Thank you.

8 Ms. Doberneck.

9 MS. DOBERNECK: Thank you. My issue, Covad's
10 issue, excuse me, is related but separate. In Section
11 9.1.2.1.5, Qwest does include consistent with the 28th
12 Supplemental Order language that it will provide its
13 retail build policies to CLECs so that we know what
14 criteria Qwest is applying when it's determining whether
15 to build. Where Covad raised an objection was with
16 respect to Section 5.16, which addresses confidentiality
17 issues.

18 Ms. Anderl and I have agreed on behalf of our
19 respective clients to compromise to language to resolve
20 Covad's objections to the reference of Section 5.16, and
21 we can provide that specific language. But in essence,
22 it is that to the extent Qwest claims that information
23 is confidential, we will negotiate an appropriate level
24 of confidentiality to make sure Qwest has its protection
25 and we can disseminate it within Covad or to any CLEC

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1 within the company so it can actually be used consistent
2 with the agreement.

3 There is one caveat to our agreement,
4 however, and that is, as Mr. Kopta indicated during his
5 comments, that AT&T and Covad concurred in this, and I
6 don't know who all else Mr. Kopta is representing so I
7 will limit it to AT&T and Covad for the moment, the
8 request that Qwest produce information specifically
9 showing jobs it had built utilizing the criteria that it
10 says it will apply when it's considering whether to
11 build new facilities.

12 Now to -- depending on how the Commission
13 resolves that issue, a reference to Section 5.16 may be
14 appropriate, but it is contingent on Commission
15 resolution of the proposed language regarding production
16 of or identification of specific jobs built to those --
17 according to those criteria.

18 And I will add there's one further caveat,
19 and I hate to do this, it's a decision tree. As you
20 know, Qwest has agreed within its SGAT where it has a
21 planned build job of \$100,000 or more, Qwest will make
22 that planned build job publicly available by its ICONN
23 data base.

24 JUDGE RENDAHL: ICONN is spelled?

25 MS. DOBERNECK: It's all caps, I-C-O-N-N.

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1 JUDGE RENDAHL: Thank you.

2 MS. DOBERNECK: To the extent the Commission
3 says, well, that ICONN disclosure is sufficient, then we
4 revert to sort of the original compromise language, or
5 actually then we would revert to the original agreement,
6 because that's a publicly disclosed information and no
7 confidentiality would attach, so that is the end of it.

8 And I realize that there's multiple layers to
9 our issue, but I think we have compromise language if
10 you reject the language and that we can reach agreement
11 if you accept the AT&T language in order to address the
12 confidentiality concerns.

13 JUDGE RENDAHL: Thank you.

14 With that, I think we ought to take our
15 afternoon break, and we will come back and hear
16 Ms. Anderl's response and any questions from the Bench,
17 and then we will move on. So let's be back --

18 CHAIRWOMAN SHOWALTER: Maybe we should just
19 finish. How much more, Ms. Anderl?

20 MS. ANDERL: I probably have five minutes.

21 JUDGE RENDAHL: Would you prefer to keep
22 going and finish this issue?

23 CHAIRWOMAN SHOWALTER: Yeah.

24 JUDGE RENDAHL: Okay, we'll keep going then.

25 Ms. Anderl, you're on.

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1 CHAIRWOMAN SHOWALTER: I will just say the
2 issue I want you to address, which is, all right, assume
3 that POLR and ETC is a valid distinction and that you
4 have certain obligations there and not obligations that
5 aren't those functions or services. But if you, in
6 fact, do build for those other discretionary services,
7 what is your reason for not having to build also for the
8 CLECs in the same circumstance?

9 MS. ANDERL: Well, we do have to.

10 CHAIRWOMAN SHOWALTER: Okay.

11 MS. ANDERL: And we think that language is
12 captured in the SGAT.

13 CHAIRWOMAN SHOWALTER: All right.

14 MS. ANDERL: And I don't think that's really
15 what Mr. Kopta's complaint is.

16 CHAIRWOMAN SHOWALTER: Then what is the
17 distinction you're trying to draw?

18 MS. ANDERL: Well, I think the distinction
19 we're trying to draw is that there are different levels
20 of obligation whether you're building for your provider
21 of last resort obligation or you're choosing to build
22 for a retail customer because you think you can make
23 money on it or you have a general shortage of facilities
24 in that area and the request for a build coincides with
25 your planning process. And what I thought we were doing

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1 with this SGAT language was really clarifying for the
2 CLECs what they would get when so that they didn't have
3 to guess, look, is this what you do for a retail
4 customer or not. I thought that we had tried to break
5 it down in a more granular way so that the CLECs had a
6 clearer understanding.

7 For example, turn to page 2, not numbered, of
8 Attachment A, Exhibit 1516, and you can see the two
9 paragraphs 9.1.2.1.3.1, which is stricken through
10 entirely, and the one below that, which is about half
11 struck through and I don't think anything added to it.
12 Those two paragraphs try to draw the distinction between
13 -- I mean it says generally what we will do for CLECs,
14 but it distinguishes between what we will do for CLECs
15 because we're doing it for -- we would do it for an
16 equivalent retail customer under our POLR obligation and
17 what we would do for CLECs otherwise. And it seems to
18 me that the CLECs should want to know that they will get
19 the treatment that's in paragraph 9.1.2.1.3.1, in other
20 words, that they will receive a jeopardy notice right
21 away and that Qwest will initiate an engineering job
22 order for delivery of primary service. That is what we
23 do, and I guess if the language in the SGAT said, you
24 know, generally just do what you do for retail, that
25 wouldn't change any of this as our internal process.

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1 But, you know, we came to the Commission very
2 generally in these workshops and to the CLECs and said,
3 look, we propose that we just do for you guys, excuse
4 the colloquialism, what we do for our retail customers.
5 And they said, no, no, no, that's not enough, we want
6 you to do more, we want you to do different things. And
7 when the Commission ordered that we, you know, treat the
8 CLECs at parity with the retail customers and build
9 under other circumstances, we felt it necessary for our
10 own internal purposes and to be clear with the CLECs to
11 communicate what it is we're doing.

12 I think it's interesting that Ms. Doberneck
13 said, you know, gee, how will they ever know what
14 they're entitled to under the POLR obligation, how could
15 anybody ever know. We live under that obligation every
16 day. We think we know what we have to do to meet our
17 provider of last resort obligation, and we think we know
18 what our rights and obligations are when it's not a
19 provider of last resort facility.

20 CHAIRWOMAN SHOWALTER: What is your objection
21 to AT&T's revisions?

22 MS. ANDERL: I will go with the easy one
23 first, but that's probably not the one you want to hear
24 about, 9.1.2.1.5, we have an objection there, but that's
25 not really the build policy. On that small section, we

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1 don't think that the Commission ever required us to
2 provide reports of actual builds, and we do object to
3 that as outside the scope of compliance with the
4 Commission's order. We're willing to provide our
5 policy, and we're willing to post on the ICONN data base
6 those engineering jobs that are in excess of \$100,000 in
7 total cost, and we're committed to do that in our SGAT
8 language. We don't think that there's any basis for
9 providing reports of actual builds.

10 I have been reading through the stricken
11 through and underlined sections, and I frankly have been
12 struggling with whether they do, if you take out the
13 strike throughs and delete or, you know, leave the
14 strike throughs in and leave -- take out the
15 underlining, whether it still makes whole sentences, so
16 I guess I have some questions, but.

17 MS. DECOOK: Well, that was our intent.

18 CHAIRWOMAN SHOWALTER: I meant the substance
19 of it.

20 MS. ANDERL: Yeah.

21 CHAIRWOMAN SHOWALTER: I mean if you -- I
22 haven't really heard what is wrong with this language.
23 So far I have heard that it actually sounds as if you
24 agree on the policy, at least at large, and that you
25 said it one way in a quite detailed way, AT&T would take

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1 some of that detail out as maybe confusing the issue.
2 So the next question is, is there anything wrong with
3 removing some of this language? Is there anything in
4 here that worries you or bothers you?

5 MS. ANDERL: And I would definitely want to
6 take another look at it. It occurred to us that it was
7 inappropriate to remove that distinction since the
8 distinction is one under which we operate with our
9 retail customers, and for parity purposes, it ought to
10 be retained in as much detail and with as much clarity
11 as possible in the SGAT.

12 COMMISSIONER HEMSTAD: Well --

13 CHAIRWOMAN SHOWALTER: I mean it seems like,
14 yes, POLR and ETC, they're real things, but when does
15 that difference make a difference, and does it make a
16 difference in this case if you're -- it seems like it
17 could only make a difference if there's a different
18 obligation from Qwest to the CLECs when it is providing
19 a non-POLR ETC service even though it is also providing
20 that same non-POLR non-ETC service to its retail
21 customers. But I asked you that question, you said no,
22 that wouldn't be the case. So why do we need to know
23 whether this is POLR or ETC in this situation?

24 MS. ANDERL: I know, that's a very good and
25 legitimate question, and I guess I need to think some

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1 more about that. I think though that I guess there are
2 circumstances under which we believe we are required to
3 build for CLECs under this Commission's orders where we
4 would not be required to build or we would not choose to
5 build for our retail customers.

6 CHAIRWOMAN SHOWALTER: That AT&T's language
7 or our order mandates?

8 MS. ANDERL: The Commission's order mandates.

9 CHAIRWOMAN SHOWALTER: So when is that and
10 where and how is that reflected I guess in the AT&T
11 revisions of this language?

12 MS. ANDERL: Well, and that's one of the
13 things that I would want to double check with the AT&T
14 language and our language. I think that we have tried
15 to draw up three categories of service, when we build
16 for a retail customer for ETC, and that's what we will
17 do for the CLECs under the same terms and conditions,
18 and then when we build for a retail customer for a
19 non-provider of last resort, and that's what we will do
20 for the CLECs under the same terms and conditions, and
21 then when we would tell a retail customer we're not
22 going to build for you. To the extent the Commission's
23 orders require us, this Commission's orders, require us
24 to either hold that order indefinitely or actually
25 build, that's a third category, and we have tried to

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1 distinguish those three categories within our language,
2 because there are three separate categories, and I think
3 it's relevant, or not relevant, I think it's important
4 for clarity's sake and identification of legal
5 obligations to have those broken out in here.

6 Now if it's not and the requirement is just
7 say, do what you will do for retail and then for the
8 CLECs additional construction requirements, if the CLECs
9 pay, et cetera, et cetera, there may be some room to
10 simplify this language, if that's what Mr. Kopta's
11 clients' concerns are is that, you know, the devil is in
12 the details and there's too many details. Part of the
13 problem --

14 CHAIRWOMAN SHOWALTER: Get rid of the
15 details, no devil.

16 MR. KOPTA: Would that it were that simple.

17 COMMISSIONER HEMSTAD: Ms. Anderl, maybe I'm
18 oversimplifying, but as I understand your argument, you
19 make the distinction between two different kinds of
20 retail customers. First one is to whom you have -- owe
21 an obligation, and a second category of retail customer
22 to whom you don't owe an obligation. Am I tracking with
23 that?

24 MS. ANDERL: I think that's right. I mean
25 but I don't really want to agree that we have retail

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1 customers to whom we owe no obligation.

2 COMMISSIONER HEMSTAD: Maybe I should say a
3 potential retail customer where, as you said earlier,
4 where you can decide to do it or not do it with the
5 criterion being whether you make money or not.

6 MS. ANDERL: Or other considerations.

7 COMMISSIONER HEMSTAD: Okay, whatever they
8 may be, but they fall outside of the provider of last
9 resort criterion.

10 MS. ANDERL: That's correct.

11 COMMISSIONER HEMSTAD: And you can decide
12 whether you want to serve them or not, and you may have
13 differences with us about that from time to time, but
14 that's a different dimension of the issue, I suppose.

15 MS. ANDERL: Right.

16 COMMISSIONER HEMSTAD: And so when -- so you
17 distinguish between two categories of retail customers,
18 and the CLECs say, well, just treat us like you would
19 treat any retail customer, but part of that problem
20 presents itself then is the discretionary group as to
21 whether you're going to provide service to that group or
22 not, and then how would that relate to what you would
23 have to provide to the CLECs.

24 MS. ANDERL: Right, well, and I think that
25 that is an issue, and that's why I think our more

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1 detailed language is appropriate. Because if there are
2 different types of retail customers, some to whom we owe
3 an obligations to serve up to a certain amount of
4 facilities and some to whom we do not, and we say to the
5 CLECs we're going to treat you just the same as we treat
6 our retail customers, it seems to me that the CLECs
7 would legitimately want to know, well, how is it that
8 you treat them. And if we have, you know, distinctions
9 between them, don't the CLECs want to be aware of what
10 those distinctions are.

11 And I think that's what drove the requirement
12 in Section 9.1.2.1.5 to provide the CLECs with our
13 retail build policy, but it seems to me that the
14 definitions or the descriptions of the POLR obligation
15 and non-POLR obligations contained within the body of
16 this SGAT section, again, I'm not hearing the CLECs say
17 they have particular problems with how we have defined
18 those, just that we have tried to define it.

19 COMMISSIONER HEMSTAD: How would you respond
20 to the hypothetical that Mr. Kopta gave where the
21 customer first -- where the CLEC contacts you and says
22 we want to serve a customer, and you say no you don't
23 have facilities there, but then the customers calls you
24 and you say yes we'll build?

25 MS. ANDERL: That shouldn't happen. Under

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1 the Commission's orders, you know, as they are written
2 and as we are implementing them, we don't believe that
3 we have that option in Washington, and it should not
4 happen.

5 COMMISSIONER HEMSTAD: Well --

6 MS. ANDERL: I mean if it did, I would assume
7 Mr. Kopta would come to me.

8 COMMISSIONER HEMSTAD: As Chairwoman
9 Showalter, I will use the long description, that I'm not
10 suggesting it's a distinction without a difference, but
11 you're merely arguing that your policy would be such
12 that it would not be discriminatory towards the CLECs.
13 I guess that's what you're saying. Or that it could not
14 be as applied, discriminatorily applied.

15 MS. ANDERL: Right, I mean if the CLECs came
16 to us and said, we would like, you know, a DS1 or a DS3
17 between point A and point B, and we said, you know, we
18 don't have any facilities available for that, we should
19 then go in to the next step, which is if this were a
20 retail customer, would we offer to build the facilities
21 for that retail customer, and under what terms and
22 conditions would we offer to do so. The CLEC is
23 entitled to those same terms and conditions and that
24 same offer and so therefore should not be told we have
25 no facilities and we won't build in a circumstance where

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1 if a retail customer requested the identical thing we
2 would say yes. I mean that's not supposed to happen,
3 and I'm not frankly aware that it has.

4 CHAIRWOMAN SHOWALTER: Well, maybe some of
5 these details should go into your build policy. If
6 you're interested in articulating these different
7 functions you have, you might say if it's POLR or ETC we
8 build, if it's something where the Commission has
9 ordered that we build for a CLEC because it's paying, we
10 build, and if it's something different, you know,
11 something in that sort of middle group, at certain times
12 I assume you decide you are building, and in other areas
13 or under certain circumstances you're not building. Can
14 you lay that out?

15 COMMISSIONER HEMSTAD: I should think the
16 last thing you would want would be the remedy that
17 Mr. Kopta describes to his scenario where they would
18 simply say, well, then fine, go to Qwest and have them
19 build and then come back to us, and then you would be
20 left with I assume some kind of stranded investment.

21 MS. ANDERL: Well, under Mr. Kopta's
22 scenario, probably a couple of things might happen. One
23 is that the retail customer would have a termination
24 liability under a long-term contract with us, but also
25 that the CLEC who he's representing would then want to

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1 use the same facilities that we just built for the
2 retail customer, so we wouldn't have a stranded
3 facilities issue. But I would agree with you in
4 principle that we would have a situation that we don't
5 want to have.

6 JUDGE RENDAHL: I have a --

7 COMMISSIONER OSHIE: I just want to make sure
8 that I have a good feel for where this has been, the
9 discussion, and I think I know the answer, but I want to
10 be clear. The question isn't whether Qwest will build,
11 as I understand it. I mean there will be, and I hate
12 the to use the terms that there would be no
13 circumstances, but I can't think of any circumstances
14 where Qwest wouldn't build for a CLEC. The issue that
15 we have been discussing is just what the terms may be
16 for that construction. I mean in other words, if a
17 retail customer said, I will pay for it, you know, I
18 know you don't want to do it for whatever circumstances,
19 but hey, I will cover the cost, you build it, Qwest,
20 doesn't Qwest build under those circumstances?

21 MS. ANDERL: Not always, no.

22 COMMISSIONER OSHIE: Not always. And what
23 circumstance would it, you know, if the customer was 25
24 miles out in Eastern Washington in your territory and
25 said, I want the line and I'm willing to pay for it,

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1 would you say, no, we're not going to provide the
2 service even though you will pay for the interconnection
3 to the nearest facility?

4 MS. ANDERL: Well, I think that -- well,
5 certainly if it's outside of our incumbent local
6 exchange area, we wouldn't. But even under the
7 circumstances where we are within our incumbent local
8 exchange area, assuming the most extreme circumstance
9 where the customer not only opens the trench, but buys
10 all the facilities, pays the labor costs to install it,
11 et cetera, et cetera, there may be circumstances, and I
12 don't believe that anyone has ever offered to do that
13 for us because it's very, very, very expensive, there
14 may be a point where we would decide because that
15 extends the reach of our network and therefore obligates
16 us to potentially serve along the entire 25 mile stretch
17 where we're not currently obligated to do so and the
18 maintenance costs or other either kinds of overheads
19 associated with having that one customer, we might say,
20 to the extent we're not legally obligated to do so, this
21 is not something we want to do.

22 Now it's pretty hypothetical but -- and, you
23 know, additionally, if -- well, I think I will just
24 leave it there. I mean I don't know that it's ever
25 happened, but I can not say that, you know, even if a

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1 customer in a neighborhood said, you know, I want a DS3,
2 I want to run, you know, an Internet service provider
3 out of my garage or basement, maybe if the customer paid
4 the full costs of that installation up front the company
5 would install the service. Perhaps not. If it were a
6 competitively classified service in a certain area and
7 the company did not think that it could recover its
8 investment on the monthly charges or was afraid that it
9 would be left with stranded facilities if the individual
10 went out of business and there aren't too many needs for
11 a DS3 in that neighborhood, there may be a business
12 choice not to do that. Typically customers do not pay
13 the full investment in labor of that up front. They
14 would potentially offer to do it on a long-term
15 contract, but there may be times where the business case
16 just doesn't prove itself out even under a long-term
17 contract.

18 COMMISSIONER OSHIE: And I guess I understood
19 in this, in the circumstances that we're discussing here
20 today, that if the CLEC would agree to pay those costs,
21 Ms. Anderl, that that's how, as I understood it, they
22 would agree to pay the costs of construction, and so
23 there would be no stranded investment of Qwest
24 necessarily. That would be the loss to the CLEC, so.

25 JUDGE RENDAHL: Why don't we take a break and

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1 come back, and I have a few issues that may take five
2 minutes or so to resolve, and I don't know how long your
3 issues are, so I suggest that we take a break and come
4 back at 10 to 4:00, and then we will be back on the
5 record. Let's be off the record.

6 (Recess taken.)

7 JUDGE RENDAHL: We're back after our
8 afternoon break, and we just have a few closing thoughts
9 I guess on this issue on page 2 of the build policy.

10 Ms. DeCook, did you have a comment you wanted
11 to make?

12 MS. DECOOK: I guess I have some background
13 very briefly, because when Qwest -- when we first raised
14 this issue with Qwest in the workshops, their response
15 was, we're not going to build for you under any
16 circumstances. They moved off that position and then
17 said, we'll build for you under the POLR. When we build
18 under our POLR obligations, we'll provide you with the
19 same access to build opportunities as we do under our
20 POLR obligation, which is why the POLR language got into
21 the SGAT the way it is. They then came out with their
22 held order policy, and some of that language is
23 reflected in some of the 9.1.2.1.3 and its subsections.
24 And then this Commission ordered them to build in a
25 nondiscriminatory manner in any situation that they

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1 build for their retail customers.

2 So I think our concern at least in part, and
3 we have concerns with some of the specific language, but
4 part of the concern is that this is an iterative
5 document that really started out with the POLR
6 obligation being reflected on there, and then they
7 shortcutted and just add the other stuff, and it becomes
8 very awkward, cumbersome, difficult to understand, and
9 at least in Megan's case doesn't even reflect Covad's
10 types of facilities and the ability to get build
11 opportunities for those facilities. So that's really at
12 least one of the genesis of our revision of this
13 language is to try to simplify it to make it more
14 accurately reflect what you ordered and get rid of some
15 of the historical overlay that Qwest had put into the
16 document and simply reflect the obligation.

17 JUDGE RENDAHL: Thank you.

18 Are there any questions from the Bench, any
19 more than have already been asked?

20 I have a few. The first is, Ms. Anderl, if
21 you look at Exhibit 1503, which is the redlined version,
22 and you look at on page 124, that's where Section
23 9.1.2.1 appears.

24 MS. DOBERNECK: Is that on Exhibit 1502 or
25 1503, on 1503 I have page 127.

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1 JUDGE RENDAHL: No, I'm looking at 1503,
2 Section 9.1.2.1.

3 MS. DOBERNECK: Okay, I just have off paging
4 then.

5 JUDGE RENDAHL: And there's about, oh, a
6 little over halfway down in the middle, the word CLEC is
7 crossed out. Do you see that?

8 MS. ANDERL: Actually, I don't, because I
9 only brought with me, and I apologize for that, the
10 non-redlined version.

11 JUDGE RENDAHL: Okay, well, will you accept
12 subject to check --

13 MS. ANDERL: Mr. Kopta is going to share,
14 thank you.

15 I see it.

16 JUDGE RENDAHL: Okay. And if you turn to the
17 next page under Section 9.1.2.1.3.2, do you follow that
18 number?

19 MS. ANDERL: Yes.

20 JUDGE RENDAHL: And you look second line up
21 from the bottom, there's the word it says same terms and
22 conditions as CLEC orders, it appears that that CLEC
23 should also be crossed out to be consistent, and I just
24 wonder whether you're -- you probably don't have any
25 thoughts on that, but I just reflect it for the record

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1 and note Qwest may want to change that in the event that
2 the Commission decides to retain the language that Qwest
3 has put in here.

4 MS. ANDERL: So 9.1.2.1.3.2?

5 JUDGE RENDAHL: Yes, the second line up from
6 the bottom.

7 MS. ANDERL: CLEC orders for equivalent
8 retail services.

9 JUDGE RENDAHL: Correct, that CLEC order,
10 that CLEC, that word CLEC may need to be deleted to be
11 consistent with the language in paragraph 9.1.2.1.

12 CHAIRWOMAN SHOWALTER: Well, I see why it is.
13 It's because of the previous one on page 124, that the
14 sentence or subpart of the sentence begins with CLEC
15 orders. In other words -- wait a minute, that's kind of
16 funny too.

17 JUDGE RENDAHL: You may need to use your mike
18 if --

19 CHAIRWOMAN SHOWALTER: Oh.

20 MS. ANDERL: I think, Your Honor, I
21 understand your point to be that it may not be
22 appropriate to use the word CLEC as a modifier for
23 orders here.

24 JUDGE RENDAHL: Correct.

25 MS. ANDERL: Because we're really not talking

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1 about CLEC orders there, we would be talking about the
2 retail customer --

3 JUDGE RENDAHL: Orders generally.

4 MS. ANDERL: -- or other customer orders.

5 JUDGE RENDAHL: Correct.

6 MS. ANDERL: I will make a note of that and
7 ask if that additional correction should be made.

8 JUDGE RENDAHL: Okay, thank you. And that is
9 assuming as the modifier that, you know, subject to this
10 oral argument the Commission decides to retain Qwest's
11 language.

12 Okay, the next question I have on this issue
13 is on 9.1.2.1.5, and it doesn't matter which version
14 you're looking at, just the issue of Qwest making its
15 retail build policy available period and the question of
16 I guess where and how, and maybe it needs to be more
17 specific as to where this build policy is made available
18 to the CLECs. And I guess your perspective on whether
19 this is something that should be filed with the
20 Commission to be made available, should it be made
21 available on a Web site, just, you know, how this should
22 be made available, and how can CLECs compare it, you
23 know, does it -- and how do you compare a version, just
24 some practical issues. And that I don't believe the
25 Commission raised initially, but upon review, it's

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1 something to think about.

2 MS. ANDERL: Yes, Your Honor. I think our
3 proposed implementation of that requirement is that it
4 would be a written document that resides within Qwest
5 that we would make available to a CLEC upon a CLEC's
6 written request, so it was not our intent at this point
7 to post it. However, because there was no real mandate
8 in terms of how we were supposed to make it available,
9 that's our proposal for implementation. I'm not sure
10 how fluid that document is and whether it changes often
11 enough that there need to be updates or versions or not.

12 JUDGE RENDAHL: Okay, I guess I would maybe
13 make a Bench Request, and I think that would be Number
14 47, just to have a clarification of how fluid that
15 document is, is it subject to any of the change
16 processes, you know, just a sense of where that document
17 would reside and how fluid it is.

18 And that's the end of my clarification on
19 this topic.

20 MS. ANDERL: Okay, Your Honor, I will make a
21 note of that Bench Request and respond.

22 JUDGE RENDAHL: Thank you.

23 MS. DECOOK: Just a question on that, it's
24 not clear that there is just a single build policy
25 either. There may be multiple policies for different

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1 categories of service, types of service.

2 JUDGE RENDAHL: Okay, so to the extent that
3 there is more than one build policy, if you could add to
4 that Bench Request, it would be helpful to know if there
5 is one build policy or multiple build policies, and
6 again, where it or they reside and whether it or they
7 are fluid, these are fluid.

8 MS. DECOOK: Thank you.

9 JUDGE RENDAHL: Okay, with that, I think we
10 can probably move on from this topic.

11 So turning to page 3 finally, Ms. Anderl, I'm
12 going to have you sort of run us through here and
13 identify whether these are resolved or not. And then if
14 there's a need to discuss it, then you can point out who
15 needs to discuss it.

16 MS. ANDERL: Sure. Ms. Doberneck and I
17 talked about Covad's issue in connection with 9.6.2.1,
18 and subject to the representation I'm about to make, I
19 believe she is content with the SGAT language with no
20 changes. The representation that I need to make is that
21 we had inadvertently omitted a change to SGAT Section
22 8.3.1.9 that Mr. Kopta pointed out to me, that that is
23 Section 8 is the collocation section, the subsection
24 that I referred to is a specific section that addresses
25 the channel regeneration charge, and we will file that

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1 proposed new language. I guess it might make sense to
2 just go ahead and hold -- have it filed on May 10th when
3 we're already filing comments on the subloop ordering
4 process. And when we make that change to that channel
5 regeneration charge section, that addresses Mr. Kopta's
6 concern that he has had since January that we
7 overlooked, and it addresses Ms. Covad's concern,
8 Ms. Doberneck's concern. See how easy that is to do.

9 JUDGE RENDAHL: Okay, so the change to
10 Section 8.3.1.9, does that go back to Workshop II, if my
11 recollection is still, if my memory still serves me?

12 MR. KOPTA: Yes, it does, and it was
13 something that we discussed at the last compliance run
14 through. It was one that we after that compliance
15 hearing got together with Qwest and came up with
16 language that was agreeable to both of us, but it didn't
17 get incorporated into the latest version of the SGAT.

18 JUDGE RENDAHL: Okay, thank you for that
19 clarification. So on the first issue on page 3, there
20 is no issue between the parties, and the second issue on
21 page 3 has been resolved per your discussion.

22 MS. DOBERNECK: That is correct.

23 JUDGE RENDAHL: And, Ms. Anderl, you will be
24 filing language that reflects your agreement on that
25 section?

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1 MS. ANDERL: Yes.

2 JUDGE RENDAHL: And is the 10th an
3 appropriate date to be doing that?

4 MS. ANDERL: We'll either do it on the 10th
5 or if we for some reason file a compliance SGAT prior to
6 that time incorporating other changes, we will
7 incorporate it there, and then it will appear in our --
8 or it will show up in May 10th comments and then in the
9 next compliant SGAT after that.

10 JUDGE RENDAHL: Okay, thank you.

11 So the next issue then would be the third
12 issue down on page 3, there is no issue.

13 MS. ANDERL: Right.

14 JUDGE RENDAHL: Is that correct?

15 MS. ANDERL: Right, and I think we all agree
16 that with one exception we're only talking about issues
17 where there's text in the CLECs' comments column.

18 JUDGE RENDAHL: Okay, so we can move on to
19 page 4 now?

20 MS. ANDERL: Yes.

21 JUDGE RENDAHL: Well, to the extent that
22 there is no language for CLEC comments on page 4, I have
23 a question for you, Ms. Anderl, on the first issue. And
24 I guess I would ask you to look at paragraph 114 of the
25 13th Supplemental Order, if you have that with you.

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1 MS. ANDERL: I do. Yes, Your Honor, I'm
2 there.

3 JUDGE RENDAHL: Okay, and I'm almost there,
4 and I guess the concern is that the language that Qwest
5 has filed does not quite comply in that Qwest didn't
6 include the proposed waiver in the SGAT.

7 MS. ANDERL: 9.23.3, may I turn to the SGAT
8 section then?

9 JUDGE RENDAHL: Yes. I don't see any waiver
10 language, but I'm --

11 CHAIRWOMAN SHOWALTER: Does this still apply
12 to anything? I mean I notice it's time dated. Two of
13 the four necessary conditions have to do with ordering
14 before May 16th, 2001, and identifying things in writing
15 by August 1st, 2001.

16 MS. ANDERL: Yeah, Your Honor, I do believe
17 that's probably -- the second piece is probably
18 dispositive. I mean there may be circuits out there
19 that were ordered during the relevant time period, but I
20 think that we thought that by now the SGAT didn't have
21 to contain that language, because we were pretty well
22 past August 1st, 2001.

23 JUDGE RENDAHL: You're probably right. Okay,
24 thank you.

25 And I also guess if you look at 9.23.3.17,

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1 which is the next issue down, I guess there's a concern
2 that this language is not quite the same as language in
3 SGAT Section 6.4.1 or Section 12.3.8.1.5. I know that's
4 a lot of numbers.

5 MS. ANDERL: No, you know, and I remember,
6 Your Honor, from the last compliance discussion, I
7 believe we agreed to sync up the subsections in Section
8 12 and Section 6. If you have identified here another
9 kind of misdirected calls marketing section where the
10 language ought to be made consistent, we would be happy
11 to do that.

12 JUDGE RENDAHL: And that's the concern.

13 MS. ANDERL: 6.4.1.

14 JUDGE RENDAHL: And 12.3.8.1.5.

15 MS. ANDERL: Thank you, we will include that
16 in the next SGAT revision.

17 JUDGE RENDAHL: Okay, and I don't have any
18 other comments on anything else on this page, nor do I
19 on the fifth page, which I don't see any CLEC comments,
20 and we have done page 6.

21 On page 7 I guess just on the first issue,
22 Qwest essentially has stated that it will comply with
23 the requirement, and I guess the question is to the
24 CLECs, is that sufficient for your needs, is there
25 anything else that might need to be done to confirm that

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1 Qwest will comply?

2 MS. DOBERNECK: On behalf of Covad, I think a
3 representation to this Commission that Qwest will comply
4 with paragraph 247 would be sufficient for us at this
5 time.

6 JUDGE RENDAHL: Mr. Kopta.

7 MR. KOPTA: On behalf of ELI, that was
8 sufficient. I mean obviously if we have a dispute, then
9 we can point to the Commission order, but it didn't seem
10 to require anything in the SGAT. I certainly don't want
11 to add a list of 47 wire centers as another exhibit to
12 the SGAT.

13 JUDGE RENDAHL: Ms. DeCook, anything
14 different?

15 MS. DECOOK: No, same for AT&T.

16 JUDGE RENDAHL: Okay, just wanted to make
17 sure that we captured everything.

18 And the same for the next issue, the
19 requirement was that Qwest modify the SGAT to provide a
20 process. Oh, this is the issue we're bumping.

21 MS. DECOOK: Right.

22 JUDGE RENDAHL: Forget it, we're bumping this
23 to the May hearing, the second issue on page 7.

24 MS. DECOOK: But, Your Honor, just for the
25 record, it doesn't reflect any CLEC comments on this,

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1 and we did file comments on this.

2 JUDGE RENDAHL: Okay. And off the record I
3 had asked AT&T and any other CLECs who have issues to
4 address them with Qwest between now and the time the
5 compliance filings are due for the May hearing to see if
6 we can resolve any issues ahead of time. And I know
7 AT&T filed language changes, and so to the extent you
8 can discuss those with Qwest off line, that would be
9 helpful.

10 MS. DECOOK: Right, I guess the ball's in
11 their court from our perspective.

12 JUDGE RENDAHL: Okay, so whatever
13 communications you can have will be helpful.

14 MS. DECOOK: Will do.

15 JUDGE RENDAHL: Okay. And then the next
16 page, page 8, that first issue, there are CLEC comments,
17 and is that you, Mr. Kopta, or is that Ms. DeCook?

18 MS. DECOOK: That would be me.

19 JUDGE RENDAHL: That would be Ms. DeCook
20 finally.

21 MS. DECOOK: Well, I would have said a lot on
22 the last issue, but since you bumped me.

23 The concern I raised about this particular
24 issue was Section 9.2.2.1.3.1.

25 JUDGE RENDAHL: Now shall we look at the

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1 redlined version of the SGAT for this; will that be
2 helpful?

3 MS. DECOOK: I believe it's on page 135 if my
4 pagination is right.

5 JUDGE RENDAHL: 9.2.2.1.3.1, I have page 129,
6 but anyway, we're there.

7 MS. DECOOK: Close enough, I can tell my
8 system is not working today, my computer system that is.

9 The issue that I raised about this particular
10 section is that this was never discussed in -- this
11 particular language was never discussed or agreed to by
12 any of the parties in Washington. I believe that this
13 particular language originated from the hearings
14 commissioner in Colorado as his attempt to resolve the,
15 at least in part, the access to loop qualification
16 information, and it actually may have even come from the
17 facilitator in the multistate. But the point is that
18 this is not language that has been presented to this
19 Commission for review or has been approved by this
20 Commission or is reasonably designed to implement any of
21 the orders of this Commission.

22 It's particularly problematic, I don't have a
23 problem necessarily with the first sentence in the
24 section so long as it's clear that access that is
25 discussed here will be afforded pursuant to the loop

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1 qualification procedures that are ultimately agreed to
2 in 9.2.2.8. But the second and third sentence
3 contemplates an access process that's different than
4 what's been ordered by the Commission for purposes of
5 accessing loop qualification information. So,
6 therefore, we think it's inconsistent with the
7 Commission's order, it's inconsistent with any other
8 processes that we have utilized in the past for
9 implementing language revisions, and that it should be
10 stricken or modified.

11 JUDGE RENDAHL: Ms. Anderl.

12 MS. ANDERL: Your Honor, I guess it's our
13 view that there -- I think this was one of the sections
14 that we do not claim was ordered by the Washington
15 Commission, but we do not believe it is in violation of
16 any Washington Commission revisions. It offers the
17 CLECs the ability to get information under
18 circumstances, different and additional information
19 under circumstances to which they would not otherwise
20 necessarily be entitled to it. And to that extent, the
21 additional conditions I guess that Qwest would ask or
22 that the Colorado hearing commissioner imposed are
23 appropriate. And certainly mediated access is an
24 industry standard in a number of instances, and so that
25 does not seem to be inappropriate, especially as long as

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1 Qwest does so only in a manner reasonably related to the
2 need to protect confidential information. And I think
3 this Commission and other commissions have a fairly long
4 and consistent tradition consistent with the Telecom Act
5 of allowing Qwest to recover its costs, incremental
6 costs, for those types of services. So it seems to us
7 not noncompliant with the Commission's order and an
8 additional piece that Qwest is willing to offer to do.

9 JUDGE RENDAHL: Ms. DeCook.

10 MS. DECOOK: Just briefly, Your Honor, this
11 information that is being sought in this section is the
12 spare facility information for loops that are not
13 connected to the switch. That is the information that
14 you need to get access to when IDLC is present. You
15 need to find out alternative methods for provisioning
16 service to that particular customer that's served by
17 IDLC. That is precisely one of the issues that was
18 raised in connection with getting access to the
19 engineering records, that office information that you
20 ordered under the access to loop qualification issue
21 that we bumped. So in my view --

22 JUDGE RENDAHL: So is the main issue whether
23 the CLEC should have to pay for it or not? Is that what
24 this new language raises?

25 MS. DECOOK: No. The main issue is the

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1 mediation and the costs that go along with mediating
2 access, because you can't mediate access to engineering
3 records. The access that you ordered is to give us the
4 ability to find out what is available in their back
5 office records, and that's the part that's inconsistent.
6 If we have the ability to get a manual record search,
7 then there's no need for mediating access and for us to
8 have to pay for that. It's already covered in your
9 order on the access to loop qual information.

10 JUDGE RENDAHL: Ms. Anderl, any response?

11 MS. ANDERL: Yes, Your Honor. I seem to have
12 lost the second half of AT&T's brief, but that's okay,
13 because this is in the first part of the discussion.
14 AT&T's discussion in its brief on this issue is very
15 short. It's the top half of page 4. And I guess in
16 order to really respond any more clearly than I have, it
17 would be helpful for me to know which provisions of
18 which order AT&T claims the insertion of this section is
19 inconsistent with. AT&T makes a general claim that this
20 is inconsistent with the Commission's order relating to
21 access to loop qualification information, but we don't
22 see it that way and don't know why AT&T thinks that it
23 is.

24 MS. DECOOK: It's in the 28th Supplemental
25 Order, discussion and decisions paragraphs 33 through

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1 35.

2 CHAIRWOMAN SHOWALTER: I have a question,
3 AT&T objects to the new language that's been proposed in
4 here, but what about what we ordered, which is that you
5 must modify the SGAT to allow the CLEC to audit loop
6 qualifications tools, and I see that that's a pending
7 order on reconsideration here, so maybe you're waiting,
8 but what about what -- what about what is not in here at
9 the moment?

10 JUDGE RENDAHL: Just for your clarification,
11 because we weren't sure if we were going to get an order
12 on reconsideration out in time for this compliance
13 hearing, we're reserving -- it makes it somewhat odd in
14 that, yes, the order has been issued on reconsideration
15 and that in some sense the decision has been made, but
16 we're going to wait to talk about those issues. That's
17 the deferred issue we just talked about.

18 CHAIRWOMAN SHOWALTER: All right, thank you.

19 JUDGE RENDAHL: We're going to defer that
20 until the May hearing, at least on the audit portion of
21 that.

22 MS. DECOOK: Well, actually, we have deferred
23 all of it, and that should be made very clear, because
24 we briefed it, it's ready for discussion, but we're
25 deferring it for Ms. Anderl's benefit so we can deal

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1 with it all in one sitting.

2 JUDGE RENDAHL: So do we need to bump this
3 portion of it too?

4 MS. DECOOK: Well, to the extent I suppose
5 that you are -- well, I think you can analyze your order
6 and determine whether what Qwest is proposing is
7 inconsistent with your order or not. I don't know that
8 you need to wait to deal with our proposed modifications
9 that address compliance with your order to reach that
10 ruling, but it's your discretion.

11 JUDGE RENDAHL: Let's hear Ms. Anderl's
12 response on this and close this out. And to the extent
13 that you all can continue to work on this between now
14 and May, that would be helpful too.

15 MS. ANDERL: Your Honor, I guess I would just
16 suggest that there is not in our view anything in the
17 discussion and decision paragraphs 33, 34, and 35 that
18 requires unmediated access. There was some discussion
19 about the concerns associated with unmediated versus
20 mediated access, and the initial order held that the raw
21 loop data tool appeared to meet the requirement of
22 providing CLECs access to loop qualification information
23 without raising the concerns that would flow from
24 unmediated access to LFACs, and so there was certainly
25 some recognition that there were problems and issues

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1 with unmediated access. I don't see a prohibition
2 either in these discussion paragraphs or in the ordering
3 paragraph that would prevent us from providing
4 information to this particular subset of loop
5 information on a mediated basis.

6 MS. DECOOK: Your Honor, we haven't requested
7 it on a mediated basis. It's not available on a
8 mediated basis today, and we have under your order the
9 ability to obtain it via paper records, and so we don't
10 see any reason why we should pay for mediated access
11 when we haven't asked for it.

12 JUDGE RENDAHL: Thank you. I think this is
13 one issue we can address and move the other issues from
14 that portion of the order to May. I think it's discreet
15 enough to do that. Are there any questions on this
16 particular issue?

17 All right, let's move on to the second issue
18 on page 8. I note that Qwest did file its memo with the
19 Commission on deploying remote DSL technology, and I
20 guess any thoughts from the CLECs on this that you want
21 to respond to? I guess I'm wondering if it was filed
22 before or after you prepared your comments with the
23 Commission.

24 MS. DECOOK: I know I didn't see it. It may
25 well be in my in-box.

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1 JUDGE RENDAHL: Okay.

2 MR. KOPTA: There are a couple of things that
3 Qwest did file on the 11th. There's another issue later
4 on here with regard to Section 272, and it was going to
5 be my proposal that we deal with those in the next round
6 of compliance issues since this came after their April
7 5th compliance filing, which is what I thought we were
8 addressing today.

9 JUDGE RENDAHL: Okay. We did in a sense
10 already address the subloop issue with Mr. Weigler, and
11 that was filed in compliance on April 11th, which is why
12 I think we were looking. But to the extent the parties
13 would like to address this later and need more time to
14 do so, we will bump that to May.

15 MS. DOBERNECK: That would be greatly
16 appreciated, Your Honor.

17 JUDGE RENDAHL: I don't want to push too much
18 to May, because I think we need to focus our efforts
19 primarily on public interest in that session, and I
20 think we need to focus on that.

21 MS. ANDERL: I guess along those lines, Your
22 Honor, maybe we can address this procedurally later, but
23 if parties intend to address issues during the May
24 compliance hearings that have not been briefed today,
25 such as these compliance memoranda, I would think that

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1 it would streamline the process if we had some of those
2 comments in writing prior to.

3 JUDGE RENDAHL: I think you're right, and I
4 will think about that after we finish tonight, and
5 tomorrow we can talk about what filing date might be
6 appropriate. But again, I don't want to bump too many
7 more to May, because we just don't have the time in May
8 to do it.

9 Okay, the next issue is an issue that AT&T
10 raised. Is that you, Ms. DeCook?

11 MS. DECOOK: Yes, Your Honor. This was just
12 a request for clarification, I think, from the -- to the
13 Bench, because there was something in your order that
14 appeared to require Qwest to make a revision to Section
15 9.2.6.7 that appeared to have been already resolved by
16 agreement between the parties. So it wasn't clear what
17 your intent was or whether that was just an oversight.

18 JUDGE RENDAHL: Okay, and that would be first
19 looking at the 28th Supplemental Order, that's paragraph
20 252; is that right?

21 MS. DECOOK: My citation is to the 20th
22 Supplemental Order, paragraph 116. I'm not sure if it's
23 in the 28th as well.

24 JUDGE RENDAHL: Well, we're talking about --
25 I mean the 20th is the initial order, and this is the

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1 final order, and we're talking about compliance with the
2 final order, so I guess I need to tie back.

3 MS. DECOOK: I'm not sure if it was addressed
4 in your 28th or not.

5 JUDGE RENDAHL: Let's be off the record for a
6 moment.

7 (Discussion off the record.)

8 JUDGE RENDAHL: I think Ms. Anderl is going
9 to try to explain this.

10 MS. ANDERL: I think AT&T's concern is only
11 that we were required -- that Qwest was required to
12 revise 9.2.6.7 by the 20th Supplemental Order, which was
13 an initial order, and that at the time the 20th
14 Supplemental Order was entered, the parties had already
15 reached an agreement to delete that section and put that
16 on the record. And so the question was simply, was the
17 Commission or the ALJ rejecting that agreement between
18 the parties, or was it simply an agreement that didn't
19 get captured in the record and reflected in the initial
20 order. I believe that --

21 MS. DECOOK: That sounds good.

22 JUDGE RENDAHL: Well, and to the extent
23 that --

24 MS. DECOOK: No, that's accurate.

25 JUDGE RENDAHL: -- that there was an

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1 agreement between the parties that somehow didn't get
2 reflected in the record, then I think we will have to
3 take a look at it given what you have raised today. But
4 to the extent you have all agreed to it, it's probably
5 likely it should be deleted, but I think we would like
6 to take a look at the interplay and how that works.

7 MS. DECOOK: And it may have occurred post
8 workshop. I know I looked at this at the time I wrote
9 these comments, and I don't know what I determined, but
10 I do know that this was an issue that WorldCom and Qwest
11 took off line, and then I think they reported back later
12 and indicated that they had resolved their issue, and
13 they may have even put some language in the record at
14 that point.

15 JUDGE RENDAHL: Okay, well, to the extent it
16 wasn't in the record, it is now in the record, and I
17 think that will give us an opportunity to take a look at
18 that, so thank you for that clarification.

19 Okay, we will move on to page 9 unless
20 there's anything else we need to talk about on that
21 page. Okay, page 9, the first issue it looks is a Covad
22 issue.

23 MS. ANDERL: Yes, Your Honor, and if we look
24 at Covad's comments, Exhibit 1530, at page --

25 MS. DOBERNECK: 6.

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1 MS. ANDERL: Thank you.

2 MS. DOBERNECK: You're welcome.

3 MS. ANDERL: At lines 18 through 20, the
4 language that is there is acceptable to Qwest with the
5 addition of one sentence at the end that I could read
6 into the record and that we can submit with our filing,
7 if you would like, on the 10th of May. Would you like
8 me to read it?

9 JUDGE RENDAHL: Yes, if you could read it in,
10 and then I think it's appropriate to file it.

11 MS. ANDERL: Okay. So Covad wants to add the
12 first come, first serve language, that's not a problem
13 for us. We would also like to add though language that
14 says:

15 Should additional facilities be
16 available after all held orders are
17 filled, Qwest will make the additional
18 loop facilities available to fill new
19 orders on a first come, first serve
20 basis.

21 JUDGE RENDAHL: Okay.

22 MS. ANDERL: So that's just the next step
23 after you fill the held orders. There may be new
24 orders, and if we were going to express the first come,
25 first serve on held orders, we thought it just kind of

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1 completed the thought to add this sentence.

2 JUDGE RENDAHL: And is that agreeable to
3 Covad?

4 MS. DOBERNECK: It is.

5 JUDGE RENDAHL: And is that agreeable to
6 AT&T?

7 MS. DECOOK: I don't think that's an issue
8 that we raised.

9 JUDGE RENDAHL: Okay, I just wanted to close
10 the loop to make sure we don't get then an objection to
11 that.

12 MS. DECOOK: No objection.

13 JUDGE RENDAHL: Okay. I note on this point
14 that there is also an AT&T comment, and has Qwest
15 resolved that with AT&T?

16 MS. ANDERL: Yes. AT&T suggested that the --
17 well, let me back up for just a minute. This Section
18 9.1.14 refers to the issue of converting interoffice
19 facilities to loop facilities. AT&T would like to add a
20 reference to SGAT Section 9.7.2.5(a), and we looked at
21 that and said that is okay with us if you add a
22 reference to (b) as well in that subsection. And
23 basically what it is is a reference to capture the
24 thought that when you convert interoffice facilities to
25 loop facilities, you're going to hold some portion of

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1 them back for spare, for maintenance, maintenance spare,
2 and any facilities you might need to meet your provider
3 of last resort obligation. I hate to say that's in
4 there, but it is. And so AT&T has referenced that they
5 would like a limitation to that SGAT, a reference to
6 that SGAT section to limit how much spare we would hold
7 out, and we agreed with that, and we're simply
8 completing the thought by adding references to sub a and
9 sub b.

10 JUDGE RENDAHL: And is AT&T agreeable to
11 that?

12 MS. DECOOK: We are, Your Honor.

13 JUDGE RENDAHL: Okay, so these issues have
14 been resolved by the parties?

15 MS. DECOOK: Yes.

16 JUDGE RENDAHL: Thank you.

17 And the next issue is pending order on
18 reconsideration. Is that something that's more
19 appropriately bumped to the next, to May?

20 MS. ANDERL: Yes.

21 JUDGE RENDAHL: Okay.

22 MS. ANDERL: Well, actually, I think because
23 of the order on reconsideration, there won't be any
24 change to the SGAT language.

25 JUDGE RENDAHL: Okay.

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1 MS. ANDERL: But if parties have issues, we
2 can certainly talk about it then.

3 JUDGE RENDAHL: Okay. So if there is an
4 issue on that by the parties, that will be addressed in
5 May, and we will set a comment period for that tomorrow
6 morning.

7 The last issue on page 9, there were no
8 comments by CLECs, and I'm assuming silence means that
9 this is acceptable, but I just wanted to clarify that.

10 CHAIRWOMAN SHOWALTER: There's still silence.

11 JUDGE RENDAHL: There's still silence, it's
12 acceptable, okay.

13 MS. DOBERNECK: Acquiescence.

14 JUDGE RENDAHL: All right, the next page,
15 page 10, there are no CLEC comments, but I have a
16 question for the parties about the last issue,
17 particularly to AT&T, and that is whether you still have
18 any objections to the language on the subloop ordering
19 process in Sections 9.5 and 9.3.

20 MS. DECOOK: That would be Mr. Weigler.

21 JUDGE RENDAHL: Well, to the extent that he's
22 not here and to the extent that there were no comments
23 raised, we'll assume that it's acceptable.

24 MS. DECOOK: That would be my assumption too.

25 JUDGE RENDAHL: Okay.

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1 Moving to page 11, now these were
2 Mr. Weigler's issues, and we have addressed those.

3 CHAIRWOMAN SHOWALTER: Did we leave the first
4 one?

5 JUDGE RENDAHL: The first issue, there were
6 no CLEC comments, but we have a question as to whether
7 in SGAT Section 9.5.2.5, and I'm going to look at that,
8 so for the record again that's 9.5.2.5, in that last
9 sentence, CLECs who remove Qwest facilities must notify
10 Qwest of that action, and this may reflect, my memory is
11 not serving me well whether this was something that was
12 addressed on reconsideration, whether Qwest needs to add
13 within ten days to that last sentence. To the extent
14 that it was in the final order, it should be included.
15 To the extent it was the order on reconsideration, I
16 guess we can address that in May.

17 MS. DECOOK: Well, that sentence is
18 redundant. That last sentence is unnecessary, because
19 if you look further up, it says, in such instances,
20 CLECs will provide Qwest with written notice, and I
21 think you can put the ten days in there and just get rid
22 of the last sentence.

23 JUDGE RENDAHL: Ms. Anderl.

24 MS. ANDERL: Our footnote says that the last
25 sentence was added just for additional clarity, and so

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1 to the extent that it's already clear, I don't disagree.

2 JUDGE RENDAHL: Okay. And to the extent that
3 the ten days is reflected in the petition, in the issues
4 raised in the petition for reconsideration, then we will
5 address that in May. I will just make a note of that,
6 but I think the parties do agree that that last sentence
7 should probably be stricken.

8 CHAIRWOMAN SHOWALTER: Shouldn't it say, the
9 first sentence, the CLEC must provide rather than will,
10 as it is must down below, but this is a requirement, not
11 a prediction, right?

12 JUDGE RENDAHL: So in such instances, CLEC
13 must provide Qwest with written notice.

14 Okay, so we will move on, unless there's
15 anything further, we will move on to page 12, and the
16 first issue noted is a Covad issue on the second issue
17 down.

18 MS. ANDERL: And, Your Honor, we have a
19 representation about that language as well. Covad
20 suggested that Qwest add language to the SGAT clarifying
21 that where we did not charge the loop conditioning
22 charge or were required to credit it that we should
23 provide that credit on the next bill. And we talked to
24 Covad about that and discussed the potential problems
25 with making a credit available on the "next bill" if it

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1 wasn't discovered until close to the end of the billing
2 cycle. And so we have agreed with Covad to accept
3 Covad's language and add a sentence or accept Covad's
4 concept and state that any credit to which a CLEC is
5 entitled under this provision will be automatically
6 credited by Qwest to the CLEC's bill within 60 calendar
7 days as opposed to the next billing cycle.

8 JUDGE RENDAHL: And is that acceptable to
9 Covad?

10 MS. DOBERNECK: It is.

11 JUDGE RENDAHL: So it's now been noted in the
12 record, but if you could file that with your May 10th,
13 whatever you're filing on May 10th. I can't remember --

14 MS. ANDERL: A lot.

15 JUDGE RENDAHL: -- everything you're filing
16 on May 10th, but.

17 Okay, the next issue is also a Covad issue.
18 Has that also been resolved?

19 MS. ANDERL: Yes, half of it. Half of that
20 box has been resolved.

21 JUDGE RENDAHL: Okay.

22 MS. ANDERL: Covad suggested a rewrite of
23 Section 9.1.2.1.3.2, and we accept that rewrite. The
24 Covad language is contained in Covad's comments.

25 MS. DOBERNECK: Exhibit 1530 at page 5.

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1 JUDGE RENDAHL: Okay, to the extent that it's
2 in that exhibit, I'm not sure we need to read it into
3 the record.

4 MS. ANDERL: It's long.

5 JUDGE RENDAHL: It's long, and so if you
6 would just file that with your May 10th filing that's
7 getting longer.

8 And then the second issue there is not
9 agreement to?

10 MS. ANDERL: That's correct.

11 JUDGE RENDAHL: Okay, Ms. Doberneck, why
12 don't you go ahead.

13 MS. DOBERNECK: Thank you. What these
14 particular provisions address is Qwest's held order
15 policy, and what that policy is, originally Qwest
16 announced that it was going to eliminate a backlog of
17 orders that were currently being held because there were
18 no facilities available to fill those orders. Qwest
19 also implemented on a going forward basis a policy in
20 which if orders were placed by a CLEC and no facilities
21 were available or there was no planned engineering job
22 to fill those orders, then the order would be rejected.
23 Well, as a result of discussion, briefing, and
24 Commission order, we have altered that held order policy
25 to provide that much as or I suppose exactly as Covad

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1 recommends in Exhibit 1530 that those orders be held at
2 parity with retail orders.

3 Now one of the things that contributed to the
4 Commission's order in determining that CLEC orders had
5 to be held at parity with retail orders was the notion
6 that there's a queue, there's a line where -- there's a
7 big bucket where these orders go into, and they sit
8 there and wait hopefully for the day when Qwest will
9 say, yoo hoo, there's some facilities available to fill
10 this order. Now we've gotten past that point, but there
11 is a particular provision in the SGAT, and that's at
12 9.2.2.3.2, which states that:

13 If a CLEC orders a 2 or 4-wire
14 non-loaded or ADSL compatible unbundled
15 loop for a customer served by a digital
16 loop carrier system, Qwest will conduct
17 an assignment process which considers
18 the potential for a LST, which would be
19 a line and station transfer, or
20 alternative copper facility. If no
21 copper facility capable of supporting
22 the requested service is available, then
23 Qwest will reject the order.

24 It's Covad's position that as an initial
25 matter, that is just frankly inconsistent with what the

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1 Commission has ordered and now what Qwest has accepted
2 as language in the SGAT with respect to the held order
3 policy. And it is the exact same issue that Judge
4 Rendahl identified in the initial order, which is there
5 is a parity issue here. These orders are just waiting
6 to be filled on a first come, first serve basis.

7 Now what Qwest is trying to do here is inject
8 some reality, which is, well, if there's digital loop
9 carrier, this order is never going to be filled. But
10 what Qwest also recognizes within that same section is
11 that there's a possibility to work around digital loop
12 carrier, because there's a possibility that as they go
13 through the loop assignment process that facilities, a
14 clean pair of copper with no digital loop carrier or
15 anything like that on the loop, will be found by Qwest,
16 and that order will be able to be provisioned. So if
17 there's the possibility of a work around because Qwest
18 will determine that facilities are currently available
19 or may become available if my order gets to sit in line
20 waiting for facilities to become available, then that's
21 what should happen with this particular provision as
22 well.

23 It's no different than the held order policy.
24 The held order policy looks just at are there
25 facilities, yes or no. This is a minor -- a subset of

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1 it, which is, well, we can't fill your order with this
2 loop, but facilities may become available because we can
3 work around it. And it's our position that we should
4 be, similar to where we have discussed this elsewhere,
5 that we should be able to have our order sit in the held
6 order bucket. And if facilities do become available
7 where we can provision around this digital loop carrier,
8 that we should have the opportunity to take advantage of
9 that.

10 JUDGE RENDAHL: Ms. Anderl.

11 MS. ANDERL: Thank you, Your Honor. I have
12 double checked the redlined version of the SGAT, and we
13 did not footnote this particular language as compliant
14 with any particular order. I did not check the January
15 SGAT to see if we footnoted it at that time, however, we
16 think that this very, very small subsection and very
17 kind of unique circumstance that we have captured in
18 this section of the SGAT is directly compliant with the
19 Administrative Law Judge's order, Your Honor's order.

20 JUDGE RENDAHL: 20th Supplemental Order.

21 MS. ANDERL: Thank you, the 20th, on
22 paragraph 79. And there the Commission discussed
23 Covad's issue with regard to a desire for a copper loop
24 when a customer is served by digital loop carrier, and
25 the Commission there said or the Administrative Law

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1 Judge there said, and this was not reversed by any
2 Commission order, the Commission does agree with Qwest
3 that Qwest is not obligated to build a different type of
4 facility, i.e., copper in place of digital carrier or
5 fiber in place of copper. And I think that what we were
6 trying to do with this language was kind of capture that
7 thought, that there are -- this is a situation where we
8 are not required to either hold the order or construct a
9 copper loop for the CLEC and that this language best
10 implemented that holding.

11 And I guess I would agree with Ms. Doberneck
12 that this is related to the obligation to build issue,
13 but it is somewhat different. I guess held orders is
14 the other side of the obligation to build. It's what
15 you do before you build or at the time that you realize
16 you may or may not have an obligation to build, but it
17 becomes clear when there are held orders. But I don't
18 think that this is a situation where Qwest is required
19 to when a carrier orders a facility on a physical
20 facility specific sort of a basis, in other words, we
21 only want copper, and we are able to say you can have a
22 loop but it's not going to be copper, I don't think that
23 we are obligated to do anything else in that kind of
24 unique circumstance. Now I know Covad will say, well,
25 gee, that's not really unique, that's our only business,

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1 but I do think that this language appropriately
2 implements what we believe the Commission was saying in
3 that paragraph 79.

4 JUDGE RENDAHL: Ms. Doberneck.

5 MS. DOBERNECK: Thank you. The issue -- we
6 addressed this thoroughly in Workshop IV, because
7 there's two ways there can be no facilities available to
8 fill an order. One is there just are no facilities or
9 there are no facilities that can fit that particular
10 order. We want a 2-wire non-loaded loop and there's no
11 2-wire non-loaded loops available, but there are other
12 types of facilities, fiber optic, ISDN loops, something
13 of that nature. I don't see how allowing an order to
14 hold, to remain in the held order bucket waiting for
15 facilities that will fill that order because there are
16 no compatible facilities currently available is any way
17 the same thing as saying Qwest has an obligation to
18 build facilities very specific to what Covad would like
19 to order.

20 We discussed this thoroughly in the workshops
21 with the understanding that no facilities included no
22 facilities, incompatible facilities, or just simply not
23 exactly what the CLEC wanted, and that the CLEC, much
24 like a retail customer, should have the right and the
25 ability to let that order remain with Qwest in the event

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1 or in the hope that there will become facilities either
2 available to meet our specific need or to just fill the
3 order generally, whatever. But we're not -- I'm not --
4 certainly not suggesting that by requesting that the
5 Commission order Qwest to eliminate the last sentence of
6 9.2.2.3.2 that that any how translates into an
7 obligation to build just because we want Qwest to lay
8 some more copper so Covad can provide DSL service.

9 MS. DECOOK: Your Honor.

10 JUDGE RENDAHL: Ms. DeCook.

11 MS. DECOOK: AT&T joined Covad on this
12 particular proposed revision, and I think it's important
13 to understand that this is the same thing as a held
14 order policy. The held order policy is being applied
15 still despite the Commission's order in the narrow
16 situation of IDLC, and I think it's important for the
17 Commission to understand that in an IDLC situation,
18 there are only two really economical ways for a CLEC to
19 get access to a customer that's served off of IDLC. You
20 can either do UNE platform, or you can wait and take the
21 availability of a spare copper loop.

22 And I think all Ms. Doberneck has requested
23 is if there isn't spare available at the time that you
24 submit the request, allow that request to stay on hold
25 in the event that spare copper does become available.

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1 And it could become available through a customer
2 migration to other carriers. There could be freeing up
3 of copper loops in that location. And so it's important
4 from a CLEC's perspective to be able to reach those
5 customers, and we want to be able to be on hold in the
6 event that that loop spare copper does become available.

7 MS. DOBERNECK: And just to add one point to
8 give you a sense of, you know, how facilities become
9 available, I hope you don't all, as I do, read
10 publications like Telephony and Wireless Review and
11 things like that, but one of the things currently going
12 on in the industry right now is, as you know, massive
13 use of cell phones. And what the trend is showing is
14 that customers are terminating their local wire line
15 voice service from say Qwest, and they're just using
16 their cell phone. That's their primary form of
17 telephone service. They use a cell phone. They don't
18 have telephone service at home.

19 So for every customer, for example, who says,
20 you know what, I got a cell phone, I got a phone at
21 home, I never use my home phone, I'm just going to use
22 my cell phone and reduce that cost, they cancel their
23 phone service. That facility becomes available. It's
24 that kind of thing, you know, and that would -- might be
25 the type of facility, for example, that Covad or any

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1 other provider who otherwise couldn't provide service
2 now can do, because all of a sudden that facility has
3 become available. And we just want the opportunity if
4 facilities do become available to use them and to
5 provide service to a customer who has indicated that
6 they want service from us.

7 CHAIRWOMAN SHOWALTER: I have a question, if
8 you made an initial request and were told that
9 facilities weren't available, and you were put into the
10 bucket, and four or five months go by, and then you get
11 a call to say yes this is available, in that situation,
12 are you still tied to your original retail customer, or
13 if your retail customer has gone off, gotten a wireless
14 phone, would you be able to substitute a different
15 retail customer by virtue of being in line? How do you
16 see it working? And if that's the case, is that a
17 problem, is that an effective way for a new retail
18 customer to skip in line, or are you the customer, and
19 you the wholesale customer stay in line?

20 MS. DOBERNECK: The way, and I can only speak
21 for Covad, the way we do it, we submit an LSR for a
22 specific end user customer. We also have a business
23 policy in place just recognizing at a certain point the
24 customer will say, I have waited too long. So if we
25 place an order and Qwest comes back to us and says

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1 there's no facilities, there's no compatible facilities
2 for your order, we place that order in the held order
3 queue for 30 calendar days based on our own internal
4 research that at 30 calendar days we probably don't have
5 a potential customer, and at that point, we cancel it.
6 So for Covad, it is very -- it's an order waiting in
7 line to be filled for a very specific end user customer
8 who has asked us for service.

9 I think there is also a greater benefit
10 which, you know, there is the potential not just for
11 Covad but if, you know, facilities become available,
12 then they are available for anybody to use, but I don't
13 think you would then bump up, you know, some new
14 customer who then comes in and kind of bumps into that
15 particular facility.

16 CHAIRWOMAN SHOWALTER: So you don't -- you
17 would not have an objection to having to identify the
18 end user customer that's being held in line, and if that
19 person is not still around by the time this is made
20 available, then you're not in line with respect to some
21 other customer?

22 MS. DOBERNECK: Right, well, we have already
23 disclosed our customer, because we say we want you to
24 provide a loop to, you know, Joe Smith at XYZ address,
25 so that's already disclosed. And if, for example, then

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1 we cancel our order and it was available -- I mean for
2 that particular customer, if they canceled with Covad
3 and went to the other person, they would be behind us in
4 line. So, you know, if all the orders ahead of that
5 customer got canceled, I certain -- and then Joe Smith
6 was up again with a new carrier, you know, that's just
7 the way the line works, and I certainly wouldn't object
8 to that.

9 CHAIRWOMAN SHOWALTER: The reason I'm asking
10 is that if you were allowed to hold your place in line,
11 it would certainly be an incentive not to cancel the
12 order.

13 MS. DOBERNECK: Right.

14 CHAIRWOMAN SHOWALTER: Because then you might
15 as well keep your place in line and see who was
16 available as a retail customer at the point at which
17 this becomes available, and it seems to be that's quite
18 different anyway than being tied to the original retail
19 customer.

20 MS. DOBERNECK: Right, well, my understanding
21 it's -- I mean your place in line is your order, and I
22 suppose if you were a particularly savvy retail
23 customer, you would place an order with a whole slew of
24 providers, so if you knew you had a facilities problem
25 to your residence, you as an end user customer would be

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1 in line via a bunch of different carriers. But the way
2 I understand it operating is it's, you know, it's held
3 in line by order by order by order, which reflects the
4 location, and once that order is canceled, then the next
5 location as reflected in the next order becomes number
6 one to be filled.

7 CHAIRWOMAN SHOWALTER: So in your view, an
8 order by the CLEC can not be transferred from one
9 location to another?

10 MS. DOBERNECK: No, what, you know, unless we
11 had -- I mean, you know, and this is getting into
12 hypothetical, unless we had the next order in line or
13 some next order in line was another Covad order and say
14 they were in the same neighborhood, and then maybe they
15 could take advantage of those facilities. But that's
16 sort of hypothetical, and we take it on. If it's our
17 order and it's our turn, great. If not, we cancel and
18 move on.

19 JUDGE RENDAHL: Ms. DeCook.

20 MS. DECOOK: Well, and that's an area --
21 you're not substituting an order, you're just moving to
22 the next order in line. And, you know, the order is the
23 definer of what's in line and who gets the next, in a
24 first come, first serve scenario, who gets the service,
25 and it's based -- it's customer specific, location

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1 specific, and so it's not transferable.

2 CHAIRWOMAN SHOWALTER: That was my question.
3 It just took me a little while to express it.

4 JUDGE RENDAHL: Ms. Anderl, did you have a
5 response to that question?

6 MS. ANDERL: Just briefly, I was just going
7 to comment I think Ms. DeCook's correct, but this is an
8 interesting situation, because this is a situation where
9 we would not hold an order for a retail customer.
10 Indeed, a retail customer couldn't even place an order
11 for a facility specific type loop. They couldn't call
12 us up and say I want a copper loop. They could call us
13 up and say, is DSL available to my house, and we would
14 check and say either yes or no. And if it's yes, great,
15 and if it's no, that's the end of the story.

16 And so I have to confess that I have not
17 investigated in any depth what process problems this
18 presents for us, because I know that in terms of filling
19 the orders, held orders, on a first come, first serve
20 basis, I don't know that we have internally a way to
21 sort them by physical type of facility. In other words,
22 if we held an order for this particular location, and I
23 need to double check on this, I don't know if our
24 systems would keep coming back and saying, well, there
25 are facilities available. And then there would be some

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1 sort of -- I don't know if there would be a manual check
2 required to look and say, well, oh, no, there are
3 facilities, but they're not copper. I don't know if
4 holding an order like that poses process problems for
5 us. We really came here to argue, you know, the legal
6 issues, but I just wanted to raise that kind of as a
7 placeholder.

8 JUDGE RENDAHL: Ms. Doberneck, and then
9 Ms. DeCook and then any questions from the Bench, and
10 then I think that we should probably call it quits for
11 the day.

12 MS. DOBERNECK: One point of clarification,
13 we don't order a specific facility. We place an order
14 for a location. Whatever facilities we get, if they
15 work, they work, great. So I want to be clear that
16 we're not ordering we want, you know, loop 1, whatever.

17 But in response to Ms. Anderl, I feel rather
18 comfortable stating that when we place an order, we
19 place an order for a loop with a particular set of
20 technical parameters. Qwest has a loop assignment
21 process that runs through its data base of facilities
22 that are -- might be available to assign the first
23 facility that as -- to assign the first facility
24 available that meets those technical specifications.
25 And it certainly has been represented in the workshops

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1 that as -- that the technical parameters of the loop
2 that we are requesting, once it goes into that held
3 order bucket, that the ongoing sort of loop assignment
4 process, whatever software systems Qwest utilizes have
5 the capability to, you know, look at the technical
6 parameters for each order and to continue to do the
7 assignment process as it's sitting there in the held
8 order bucket. So as facilities become available that
9 would meet that need, then we would be so notified.

10 JUDGE RENDAHL: Okay.

11 MS. DeCook.

12 MS. DECOOK: Very briefly, just looking at it
13 from a non-data perspective, when you place an order for
14 a loop, you're placing an order for a loop that goes to
15 that customer. You're not necessarily putting the kind
16 of parameters on it that you would if you were going to
17 provide data over that loop. In that situation when
18 it's served on IDLC, which is the scenario we're talking
19 about, Qwest has agreed to conduct a line and station
20 transfer which searches for spare copper facilities so
21 that a CLEC can provision service to that customer.
22 Otherwise, we can't. So it's really a unique situation,
23 because they have the ability to provide service to the
24 customer on an IDLC, they can't unbundle a loop that's
25 on an IDLC, so as a result, they have agreed to look for

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1 spare facilities.

2 And in terms of applying the held order
3 requirement that you have adopted, it's a natural
4 extension to say, in this situation, you hold those
5 orders too and see if spare facilities become available.

6 JUDGE RENDAHL: Okay, is there anything from
7 the Bench on this issue?

8 Okay, I think, Ms. Anderl, anything?

9 MS. ANDERL: There is only one other disputed
10 issue on the matrix, maybe others, you know, other than
11 the ones that need to be done tomorrow, and maybe other
12 than the ones that Your Honor has questions about, but
13 it's not a big one.

14 JUDGE RENDAHL: Which issue is that?

15 MS. ANDERL: It's on page 14.

16 JUDGE RENDAHL: Okay, and I guess I'm
17 wondering, can we maybe take -- this seems to be a good
18 place to stop, and if it's possible to discuss it
19 tomorrow, why don't we do that. Because I think, as I
20 count, we have your issue, the two issues that
21 Ms. Frieson will address tomorrow morning, and then I
22 have a few clarifying questions, about five or six
23 clarifying questions. So I think that's feasible to do
24 tomorrow, so I think, so that we don't all just start
25 fading, why don't we end the session today.

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1 All right, we will be off the record until
2 9:30 tomorrow morning.

3 (Hearing adjourned at 5:15 p.m.)

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