

1 BEFORE THE WASHINGTON UTILITIES AND
2 TRANSPORTATION COMMISSION

3 In the Matter of the)
 Investigation into)
 4)
 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003022
 5)
 Compliance with Section 271 of) Volume XXII
 6 the Telecommunications Act of) Pages 3119 to 3335
 1996)
 7 -----)
 In the Matter of)
 8)
 U S WEST COMMUNICATIONS, INC.'s) Docket No. UT-003040
 9)
 Statement of Generally) Volume XXII
 10 Available Terms Pursuant to) Pages 3119 to 3335
 Section 252(f) of the)
 11 Telecommunications Act of 1996)
 _____)
 12

13 A workshop in the above matters was held on
 14 March 14, 2001, at 8:30 a.m., at 1300 South Evergreen
 15 Park Drive Southwest, Olympia, Washington, before
 16 Administrative Law Judge ROBERT WALLIS.

17 The parties were present as follows:

18 THE WASHINGTON UTILITIES AND TRANSPORTATION
 COMMISSION, by PAULA STRAIN, 1400 South Evergreen Park
 19 Drive Southwest, Post Office Box 40128, Olympia,
 Washington, 98504-0128.

20 WORLDCOM, INC., by ANN HOPFENBECK, Attorney
 21 at Law, 707 - 17th Street, Suite 3600, Denver, Colorado
 80202.

22 AT&T, by RICHARD WOLTERS and DOMINICK SEKICH,
 23 Attorneys at Law, 1875 Lawrence Street, Suite 1575,
 Denver, Colorado 80202.

24 Joan E. Kinn, CCR, RPR
 25 Court Reporter

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1 QWEST CORPORATION, by ANDREW CRAIN, JOHN
2 MUNN, LISA ANDERL, and MARK REYNOLDS, Attorneys at Law,
3 1600 Seventh Avenue, Suite 3206, Seattle, Washington
4 98191.

5 ELECTRIC LIGHTWAVE INC.; ADVANCED TELECOM
6 GROUP, INC.; and XO COMMUNICATIONS, INC.; by GREGORY J.
7 KOPTA, Attorney at Law, Davis, Wright, Tremaine, LLP,
8 1501 Fourth Avenue, Suite 2600, Seattle, Washington
9 98101.

10 MCLEOD USA TELECOMMUNICATIONS SERVICES INC.,
11 by MARIANNE HOLIFIELD, Attorney at Law, 10021 - 41st
12 Avenue Northeast, Seattle, Washington 98125.

13 SPRINT CORPORATION, by BARBARA YOUNG,
14 Attorney at Law, 902 Wasco Street, Hood River, Oregon
15 97031.

16

ALSO PRESENT:

17

18 JILL WICKS, WorldCom
19 KAREN STEWART, Qwest
20 KENNETH WILSON, AT&T
21 REX M. KNOWLES, XO Communications
22 TIMOTHY PETERS, Electric Lightwave
23 RACHEL TORRENCE, Qwest
24 DAVE DITTEMORE, Staff
25 NANCY LUBAMERSKY, Qwest

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2	INDEX OF EXHIBITS		
3	-----		
4	EXHIBIT:	MARKED:	ADMITTED:
5	LORI SIMPSON		
6	587 Corrected	3122	3122
7	594	3122	
8	KENNETH WILSON		
9	619		3148
10	620		3163
11	621		3163
12	622		3201
13	623 (Withdrawn)		
14	624 (Withdrawn)		
15	625 (Withdrawn)		
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17	TIMOTHY H. PETERS		
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P R O C E E D I N G S .

JUDGE WALLIS: This is the March 14, 2001, session in the matter of Commission Dockets UT-003022 and 3040. This session is being held in Room 108 of the Commission's office building in Olympia, Washington.

We are going to take care of some administrative matters and then proceed with the meat of today's session. Among the administrative matters are the acknowledgement that Qwest has provided a corrected copy of Exhibit 587 designated 587 corrected. We are substituting that document for the original Exhibit 587. At Qwest's request, we are also marking for identification a three page document entitled September 29, 2000, ex parte as 594 for identification.

We are also going to be hearing the participation of witnesses Peters and Knowles today, and why don't we take care of the administrative matters on that now and mark Mr. Peters' responsive testimony as Exhibit 661-T for identification and Mr. Knowles' responsive testimony as Exhibit 671-T for identification.

Are your witnesses present in the hearing room?

MR. KOPTA: They are.

JUDGE WALLIS: Could we ask them to raise

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1 their right hands, please.

2 (Witnesses REX M. KNOWLES and TIMOTHY
3 PETERS sworn in.)

4 JUDGE WALLIS: All right, I believe that
5 exhausts my list of preliminary matters. We are picking
6 up on our agenda with the Thursday, March 15 session
7 checklist item two, UNE combination items, and on the
8 list of issues with UNE-C-1. And with that, we will
9 turn matters to Qwest.

10 MR. KOPTA: Your Honor, this is Greg Kopta,
11 if I might interject at this point. While this list of
12 issues is fairly comprehensive with respect to SGAT
13 provisions, one of the issues certainly from our
14 perspective is Qwest's current compliance under existing
15 interconnection agreement. Certainly we believe that
16 the Commission has been very clear in prior workshops
17 and proceedings in this case that that is one element of
18 this case that the Commission will investigate at this
19 point.

20 And Mr. Peters' testimony has an extensive
21 discussion of the extent to which Qwest is not complying
22 with its current interconnection agreement with ELI.
23 This does not appear to be an issue that was addressed
24 in responsive testimony by Qwest, so it may not be
25 something that needs to be discussed further at this

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1 workshop. However, we would just note for the record
2 that from our perspective, this is a disputed issue and
3 therefore would not want to have that disregarded simply
4 because it doesn't happen to be on this particular
5 issues matrix.

6 JUDGE WALLIS: Yes, we have acknowledged that
7 the matrix is not intended to be a complete list of
8 issues, but only a guide for discussion purposes.

9 MR. KOPTA: Thank you.

10 MR. CRAIN: Andy Crain from Qwest. It's our
11 understanding that we have addressed all the issues
12 raised in Mr. Peters' testimony. If there's -- and
13 maybe we addressed it in terms of this is what the law
14 says, and I think we have a dispute about whether or not
15 your -- the interpretation of your interconnection
16 contract. So if you want to talk about that today,
17 we're more than happy to do that, and we can identify it
18 as a new issue.

19 MR. KOPTA: And I appreciate your
20 clarification, and I didn't mean to say that it was
21 totally ignored, that the discussion was included in the
22 context of specific SGAT provisions that raised the
23 issue, and so I'm not claiming that there are
24 substantive disagreements that are not on the table.
25 It's just a different perspective on it as opposed to

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1 the way that it was discussed in Qwest testimony of
2 being focused on whether or not the SGAT complies with
3 legal obligations. The flip side of that is whether
4 those issues as they arise in existing interconnection
5 agreements represent a satisfaction of Qwest's current
6 existing legal obligations, not simply the proposal of
7 obligations in the SGAT.

8 JUDGE WALLIS: Very well.

9 Mr. Crain.

10 MR. CRAIN: First issue we have identified is
11 UNE-C-1. It's an issue WorldCom addressed in its
12 testimony about Qwest's CLEC questionnaire. And Nancy
13 Lubamersky probably would address this.

14 MS. LUBAMERSKY: As described in
15 Ms. Stewart's rebuttal testimony, UNE-C-1, the Qwest
16 product questionnaire is attached as Exhibit 26, and we
17 agree that it is longer than a number of other BOCs
18 individual product questionnaires, but it is one
19 document. It allows the CLEC ordering numerous UNEs and
20 resale services to simply fill out one document and then
21 they're done.

22 Last summer, the Arizona third party tester
23 identified some areas where that questionnaire needed
24 some clarification, so we added seven pages of
25 instructions to describe what is necessary. The

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1 information is required to put a CLEC into business,
2 ranging from the services ordered, the USOCs and
3 identifiers required for the services, and of great
4 interest to both parties, billing information, billing
5 format, billing experts, billing notification, billing
6 addresses, billing formats. This particular
7 questionnaire will also be considered by the ROC 13
8 state third party tester to assure that it is
9 sufficiently clear and sufficiently easy to use, again
10 to allow an efficient competitor equal opportunity to
11 compete.

12 MS. WICKS: WorldCom would like to respond.
13 There are several issues with the product questionnaire.
14 One simplified issue, of course, is the length of the
15 questionnaire. And although Qwest does intend for the
16 questionnaire to be inclusive, there are various
17 competitive local exchange carriers who have been in the
18 business who have filled out this questionnaire time and
19 time again. The length of the questionnaire and the
20 amount of information that is required within the
21 questionnaire presents a problem for CLECs who simply
22 need to update or add unbundled network element
23 combinations.

24 And in this case, I understand that Qwest has
25 the obligation to be nondiscriminatory, so the process

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1 by which the questionnaire is put into Qwest's system, a
2 CLEC like WorldCom who has filled out this information,
3 that Qwest has this information, is asked to refill the
4 questionnaire out, and then that questionnaire is placed
5 behind other CLECs who have -- who need to have all of
6 their information loaded into the systems. We feel that
7 it's unnecessarily long, it's unnecessarily cumbersome,
8 especially for local exchange carriers who have been
9 working consistently with Qwest, and that it shouldn't
10 necessarily be a requirement to obtain network
11 combinations.

12 MS. LUBAMERSKY: Ms. Wicks, just to make sure
13 I understand, your main concern at this point is the
14 amendment process?

15 MS. WICKS: That's among the greater
16 concerns. Overall I think, and we see it in UNE-C-1
17 issue, UNE-C-2 issue, and again at UNE-C-5, is the
18 overall burdon on the CLEC in order to simply obtain a
19 product offering from Qwest and the amount of
20 administrative detail that a CLEC must go through for
21 what should be a very simple ordering process.

22 MS. LUBAMERSKY: The CLEC is allowed to use
23 ditto marks or no change in the amendment; are you aware
24 of that?

25 MS. WICKS: I am aware of that. It doesn't

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1 necessarily get us around the problem of having the
2 questionnaire processed behind other CLECs or data LECs
3 who have had to fill out the questionnaire, you know,
4 the 50 or so page questionnaire in its entirety. There
5 is no abbreviated questionnaire for us, which also may
6 lead to mistake in duplicating information. And
7 similarly, there's no way to sort of bump those people
8 who filled the questionnaire out to the front of the
9 line or put them in a different process so that they're
10 not waiting behind people who are updating or who are
11 filling out the questionnaire in its entirety.

12 MS. LUBAMERSKY: Again, there's no reason to
13 be concerned about errors of putting the same
14 information in again, because you just don't have to
15 fill that part out in the amendment.

16 So I know we could go on to UNE-C-2, because
17 that's a timing issue that I think you were referring to
18 right now, but on UNE-C-1, we have a product
19 questionnaire that's all inclusive of every product that
20 could be requested. And for new CLECs, many of them
21 only fill out a portion for their initial service
22 offerings. Others choose to be more expansive in their
23 planning. The amendment is shortened, and again, only
24 needs to be filled out for new areas, not a
25 reaffirmation of that which has not changed.

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1 MS. WICKS: Right. I think what this in
2 practice turns out to be -- I think in this room this
3 process sounds great, and I think if it works the way
4 that you're describing it would be great. But what
5 happens is between the parties' account teams or people
6 placing the orders on our end, they misunderstand the
7 questionnaire partially because of its length and
8 partially because they don't understand which
9 information Qwest needs and which information they can
10 simply put ditto marks on. So there's -- there seems to
11 be a disconnect in what information is absolutely
12 necessary for Qwest and what information we can simply
13 put N/A or a ditto mark in.

14 MS. LUBAMERSKY: Well, there's seven pages of
15 descriptions that you're suggesting -- and that has been
16 approved as adequate by the Arizona third party tester
17 and is being considered by the ROC 13 state tester, you
18 find that to be --

19 MS. WICKS: I find it, again, in theory it's
20 absolutely -- it's fine. But in practice, we're getting
21 miscommunication between our account team and our
22 carrier management group. So somewhere between what's
23 happening in these proceedings and what's actually
24 dribbling down to the account teams, there's a
25 disconnect.

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1 MS. HOPFENBECK: Ms. Lubamersky, I would like
2 to ask you a few questions just so that the record is
3 clear about the circumstances under which the CLEC is
4 required to complete the questionnaire. Under what
5 circumstances is a CLEC required to fill in the complete
6 questionnaire?

7 MS. LUBAMERSKY: The complete questionnaire
8 as defined as Exhibit 26?

9 MS. HOPFENBECK: Yes.

10 MS. LUBAMERSKY: A CLEC need fill out the
11 entire questionnaire only when they want all services
12 listed under item 17 of that questionnaire.

13 MS. HOPFENBECK: It's true that a CLEC who
14 seeks to order services that that CLEC has not ordered
15 in the past must fill out at least a portion of the
16 questionnaire again; is that right?

17 MS. LUBAMERSKY: A CLEC must use the
18 amendment questionnaire to add new services to their
19 existing agreement.

20 MS. HOPFENBECK: And the amendment
21 questionnaire is different than the initial product
22 questionnaire?

23 MS. LUBAMERSKY: Yes, it is Exhibit 27,
24 KAS-27.

25 MS. HOPFENBECK: Ms. Wicks, it would help

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1 probably if you could just outline factually what
2 WorldCom's experience has been with respect to this
3 questionnaire I mean in terms of when we have been
4 required to fill it out and how it has affected us
5 problematically.

6 MS. WICKS: Actually, for the most part, we
7 in the process haven't even really made it to the
8 questionnaire. We're still fighting with the contract
9 amendment, which I will get into at length later, I'm
10 sure. I think generally -- and I will say up front that
11 I haven't firsthand put in orders or been required to
12 fill out the questionnaire myself. But in discussing
13 with our carrier management group, there have been
14 several instances back in April when we were trying to
15 place orders in Washington, in Colorado, in Minnesota,
16 where we have filled out portions of the questionnaire
17 and been notified by our account team that these
18 portions were either inconsistent with our original
19 questionnaire, or they, Qwest, had required further
20 information, or they simply weren't processed. But I
21 think overriding, the questionnaire is something that we
22 haven't generally gotten to. We have still been
23 fighting with the regular amendment that Qwest is
24 requiring.

25 MS. HOPFENBECK: And then with reference to

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1 your testimony regarding a problem with having to wait
2 in line behind other CLECs, what's your understanding of
3 exactly what that process is and what the wait is?

4 MS. WICKS: This discussion actually occurred
5 while we were in negotiations for our contract amendment
6 where we were actually evaluating the questionnaire
7 language, which in the negotiation was eliminated from
8 the amendment as a compromise between Qwest and
9 WorldCom. Our understanding from Qwest's negotiator at
10 the time was that although we did fill out a portion of
11 the questionnaire, the processing time for the
12 questionnaire would remain the same whether we were
13 filling out the whole thing or just part of it simply
14 because the order in which Qwest receives the
15 questionnaire must remain intact and that they would be
16 processing full questionnaires as they came in first
17 come, first serve.

18 And I had asked the negotiator whether we
19 could adjust the process or whether Qwest had been
20 making plans at all to adjust the process so that CLECs
21 who had already, as it were, stood in line once already
22 for the full questionnaire could have an expediated
23 process for the questionnaire amendment. And the
24 response to that was no, and that Qwest felt that it
25 would be violating their obligation of nondiscriminatory

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1 processing of orders if they were to do something of
2 that sort.

3 MS. HOPFENBECK: And so what's WorldCom's
4 recommendation with respect to that? Is it that Qwest
5 design an expedited process for amendment, for CLEC's
6 who are submitting amendments?

7 MS. WICKS: Absolutely. WorldCom believes
8 that Qwest could still fulfill its obligation for
9 nondiscriminatory access by changing its perspective on
10 how the questionnaires are processed and, of course,
11 process the questionnaires in total when they are
12 received, but once a CLEC has completed the
13 questionnaire once, have an expedited process for the
14 questionnaire amendment.

15 MS. LUBAMERSKY: We have kind of linked into
16 UNE-C-2, which is the timing, how long it takes us to
17 load the new information about either a brand new
18 questionnaire or a request for new services. We are
19 proposing shortening that time frame so that SGAT
20 Section 9.23.5.1.5, we're proposing that to be changed
21 to two to three weeks. We are in the 12 day time frame
22 today on updating and allowing new USOCs, new field
23 identifiers, new products to be loaded into our three
24 systems, IABS, CRIS, and CPPD, which stands for
25 co-provider product data base. That's in a two to three

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1 week time frame now, and we're continuing to endeavor to
2 shorten that time frame.

3 I will check to determine whether we can
4 create parallel paths, one for new and one for
5 amendment. I would be reluctant to say I know that will
6 work, because it's kind of like one toll booth, and even
7 if you have two lanes, it's still one group which is the
8 recipient of the USOCs, PIDs, prices, product list that
9 puts it into those three systems, but I will determine
10 whether that is a feasible alternative. It is our
11 belief that in committing to a shorter time frame as
12 identified in UNE-C-2 that the best way is to make it
13 all faster rather than to create parallel systems.

14 MS. WICKS: I think that's definitely a step
15 in the right direction. I just have a question of
16 clarification. It looks like you're modifying
17 9.23.5.1.5 to allow three weeks for accurate loading of
18 combination rates. Is there any movement on the part of
19 Qwest to expedite actually attaining band numbers and
20 actually processing the questionnaire outside of doing
21 the parallel path? Because it's my understanding that
22 first you get the questionnaire. There actually is no
23 time frame in here for the amount of time Qwest has to
24 process that questionnaire. And then it can take three
25 to four weeks to load the accurate rates. Is that

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1 correct?

2 MS. LUBAMERSKY: No.

3 MS. WICKS: Okay.

4 MS. LUBAMERSKY: Once the questionnaire is

5 complete, our commitment is two to three weeks for

6 loading.

7 MS. WICKS: Okay.

8 MS. HOPFENBECK: But I think that bypasses is

9 there a time frame within which the questionnaire -- oh,

10 once it's complete and turned in to?

11 MS. LUBAMERSKY: That's correct.

12 MR. CRAIN: Yes.

13 MS. WICKS: So once it leaves the CLEC and

14 goes to Qwest, then it's two to three weeks.

15 MS. HOPFENBECK: So what you're saying, is it

16 true that obtaining the billing account number would

17 also occur within that two to three weeks, so loading

18 means that process as well?

19 MS. LUBAMERSKY: The BAN is within your

20 control. You go in and get the BAN. Now we are

21 modifying our BAN process, again an area identified by

22 the ROC tester, that to get a BAN in EDI required use of

23 the GUI and that was determined not to be or suggested

24 not to be the best business practice, and we have

25 modified that. So BANs will be made available to both

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1 EDI and GUI users on a parallel path. But the BAN is
2 yours to get. You fill it in, and then yes, within two
3 to three weeks of the completed questionnaire, they will
4 be loaded into the three systems.

5 MS. HOPFENBECK: So it's pretty much a take
6 back for us. It's a take back for you to explore the
7 parallel path, and I think, one, if you can do a
8 parallel path for amendments and non-amendments, and
9 two, whether that helps.

10 MS. LUBAMERSKY: Correct, if they both end up
11 two to three weeks --

12 MS. HOPFENBECK: Right, then it probably
13 wouldn't --

14 MS. LUBAMERSKY: -- it seems like documenting
15 two wouldn't be a benefit. We're concentrating on
16 making the loading of either new or amendment two weeks.
17 That's what we're working toward. At this point it's 12
18 days, so hence the two to three week language we have
19 proposed for the SGAT.

20 MS. HOPFENBECK: Just out of curiosity, you
21 referenced this change to the SGAT, and I'm not sure, is
22 there an exhibit that has this change in it?

23 MR. CRAIN: There is not.

24 MS. LUBAMERSKY: It is hot off the press.

25 MS. HOPFENBECK: My SGAT doesn't have the

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1 change in it, so I just wanted to --
2 MS. WICKS: I talked you into it today?
3 MS. LUBAMERSKY: Yesterday.
4 MS. WICKS: Oh, okay.
5 MS. LUBAMERSKY: We have noticed the CLEC
6 community through change management that our rate sheets
7 will be provided between the CLEC and Qwest in an Excel
8 form. And because it's in an Excel spreadsheet there
9 isn't retyping into IABS, retyping into tabs, retyping
10 into CPPD, so the use of the Excel spreadsheet for the
11 equivalent of Exhibit A rates.
12 MS. HOPFENBECK: Has a shortened process?
13 MS. LUBAMERSKY: Right.
14 MS. HOPFENBECK: So just so we're clear on
15 what the change is, can we just look at the provision
16 and delineate the change.
17 MR. CRAIN: Yes. In 9.23.5.1.5, it currently
18 says:
19 Step three, allow three to four weeks
20 for accurate loading and UNE combination
21 rates.
22 It should now say, allow two to three weeks.
23 And I would express some concern about our
24 ability to put certain CLECs ahead of others in terms of
25 loading rates into our systems. I think we have to do

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1 it first come, first serve. It's not a question of how
2 big the questionnaire is. It's a question of for those
3 people who are loading, simply those people who are
4 loading rates and USOCs into our systems, can we say
5 some CLECs go ahead of others. And I would say better
6 business practice, more nondiscriminatory to say it
7 doesn't matter if you're first coming into the market or
8 you have been in the market for a while, if you want new
9 rates loaded, it's just one queue.

10 MS. WICKS: And I think I'm making a
11 distinction between the actual loading of rates and the
12 processing of the questionnaire. I don't think we want
13 to bump anybody as far as, you know, if they're in line
14 and their questionnaire has been processed, we wouldn't
15 expect for our rates to be loaded first. But we don't
16 -- if it is in the same process flow, we don't want to
17 have to wait behind a bunch of questionnaires that need
18 to be processed in their entirety when we have already
19 filled those out, we have already metaphorically stood
20 in line through Qwest's questionnaire process.

21 MS. HOPFENBECK: But am I correct on this,
22 Nancy, based on your testimony, is it true that as the
23 SGAT is currently written, processing a questionnaire
24 has to occur within this two to three week period, that
25 -- this is what I understood. I don't think it's

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1 written this way in the SGAT, but this is what I
2 understood your testimony to be was that from the time
3 that the completed product questionnaire is received by
4 Qwest, Qwest is proposing that the loading of the UNE
5 combination rates will occur within two to three weeks
6 from that time?

7 MS. LUBAMERSKY: That's correct, and I
8 believe that's how it is written.

9 MS. HOPFENBECK: Well --

10 MS. LUBAMERSKY: Because step 3 is the
11 product questionnaire is complete, 4, get the BAN, 5, we
12 load. So Ms. Wicks' statement was a bit confusing to me
13 just now, because the other -- many, many entities
14 within Qwest use information in the product
15 questionnaire. That goes on from the time it's
16 completed and in many work groups many things occur.
17 The piece we were trying to take here was the loading of
18 the USOC identifier rates and rates. That piece, upon
19 completion of the questionnaire, that piece we will
20 commit to completing in two to three weeks, whether it's
21 new or amended.

22 MR. CRAIN: Can I make a suggestion if it
23 would allow for more clarity. Should we add the word --
24 should we change this to say to allow two to three weeks
25 from Qwest's receipt of a completed questionnaire?

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1 MS. HOPFENBECK: Yeah, that's exactly.

2 MS. WICKS: That's perfect.

3 MR. CRAIN: Okay.

4 MS. LUBAMERSKY: Good.

5 MR. PETERS: I have a clarifying question if
6 I could. This is Tim Peters for ELI. Step number 2 I'm
7 still not clear on, obtain bill account number, the BAN,
8 through account team representative. So what I thought
9 I heard was that we actually secure that ourselves
10 through some electronic interface, but what the SGAT
11 says is we get that through our account team
12 representative. And our recent experience on going
13 through that particular process was that was also a
14 stated three to four week process that actually took
15 much longer than that.

16 So I'm -- this is still not clear on what
17 process -- I'm not clear on what the actual process is
18 and what the time frame is for the steps, particularly
19 number 2. And I would like number 2 clarified as to who
20 actually is responsible for getting the billing account
21 information and how long that takes in the overall
22 process.

23 MR. CRAIN: We are going to have to get back
24 to you on that. We need a little more clarity on that.
25 I thought I had it more clear in my mind than I did, so.

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1 MS. HOPFENBECK: And then I would just raise
2 one other concern that I think is related to what we
3 have been talking about, which is I think that the
4 language and the movement in the time frame, to allow
5 two to three weeks from Qwest's receipt of the complete
6 questionnaire for accurate loading, is appropriate
7 language to include in the contract. The question that
8 still is outstanding is whether we have a problem with
9 knowing what a completed questionnaire is, because I
10 think that's -- that's been one of the problems that I
11 understand we have had is in the communication with --
12 between the account teams and being assured that we are
13 completing the portion of the questionnaire that we need
14 to complete to accomplish where we're going.

15 And as I understand your testimony, Nancy,
16 you have said that the instructions have recently been
17 revised, is that right, for the questionnaire?

18 MS. LUBAMERSKY: Yes, October or November of
19 2000 based on the third party test plan, yes.

20 MS. HOPFENBECK: Now would those be
21 instructions for the original questionnaire or the
22 instructions for the amendment questionnaire?

23 MS. LUBAMERSKY: They are one and the same.

24 MS. HOPFENBECK: Okay.

25 MS. LUBAMERSKY: So they are appended to the

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1 original questionnaire and also are the road map to
2 complete the amendment as well.

3 MS. HOPFENBECK: Okay. What I think we will
4 do is commit to take back to review those instructions
5 to make sure that some of our concerns haven't been
6 taken care of there, and then we will bring back if we
7 need to at a follow up any specific concerns we have
8 about clarity in those instructions.

9 MR. SEKICH: Ms. Lubamersky, Dominick Sekich,
10 AT&T, and I'm sorry if I missed it, were these
11 instructions included as an exhibit?

12 MS. LUBAMERSKY: Yes, they were appended
13 there, well, the last matrix of it, KAS-26.

14 MR. SEKICH: Thank you.

15 MS. LUBAMERSKY: Version 12 questionnaire.

16 MR. CRAIN: So to summarize, on UNE-C-1,
17 you're going to take back review of those instructions,
18 UNE-C-2 we are going to come back with some more clarity
19 on the obtaining of BANS, that process, and we have made
20 some changes to 9.23.5.1.5.

21 MS. HOPFENBECK: And we have a take back to
22 tell you whether we can live with those changes.

23 MR. CRAIN: Okay.

24 MS. HOPFENBECK: We just have to go back to
25 our people.

03143

1 MR. WOLTERS: Is there still a take back on
2 the parallel process of UNE-C-1?

3 MS. LUBAMERSKY: Whether it would speed up
4 loading to have two paths to the loading process.

5 MR. CRAIN: And MCI, or I'm sorry, WorldCom
6 was going to take back whether or not this clarity
7 resolves their need for doing that or not. Because I
8 still am not convinced we can do that and meet our
9 nondiscriminatory obligations.

10 MS. HOPFENBECK: I think the issue is really
11 whether if you could do a parallel process for loading
12 the information that's in the questionnaire, does that
13 then in turn result in shortening again the time that it
14 takes to load the UNE, the rates that are really dealt
15 with. I mean the question is how --

16 MR. CRAIN: Yeah.

17 MS. HOPFENBECK: -- will you continue to look
18 at ways for shortening this process in general?

19 MR. CRAIN: And the answer to that is yes.
20 My understanding, and I think that's maybe Nancy should
21 be answering this, but is the time period we're talking
22 about is the loading of the rates is the long pull
23 intent here. It's not like we sit around and wait to
24 process all the other information while we're loading
25 those rates. And that's basically what we're talking

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1 about. So we would be talking about putting people in
2 front of other people for the rate loading process.

3 MS. LUBAMERSKY: Right, I was picturing --
4 the go back I took was could the three people who load
5 rates into the three systems do one new, one amend, one
6 new, one amend. And if the list -- if the line were
7 shorter for amend, it might help. But then again if it
8 turned the other way, it could be a disadvantage. But I
9 will find out if it's doable, and at the same time the
10 team I know is working on making that loading process
11 shorter for all.

12 MS. WICKS: I think it would help me at
13 least, and I think it would help our carrier management
14 team, to have a better understanding from this group of
15 what the process is as it relates to what's in the SGAT
16 provisions. Because I think that what we're getting is
17 different information from either our account team or
18 the negotiators as far as the process. Because
19 honestly, the way it was explained to me was that it
20 was, you know, sequentially, (A) you finish the
21 questionnaire, then it takes them time to process the
22 questionnaire, then they begin to load the rates. And
23 it sounds to me like that's not necessarily the case.

24 MS. LUBAMERSKY: Right, but, in fact, the
25 questionnaire upon completion is parsed to the work

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1 groups that need it, and the portion that's parsed to
2 the loading folk can -- they do that upon receipt.

3 MR. CRAIN: Okay, then moving on I think to
4 UNE-C-3, Dom, is this one of the --

5 MR. SEKICH: No.

6 MR. CRAIN: -- your handouts from yesterday?

7 MR. WOLTERS: Yes, 619.

8 MR. SEKICH: No.

9 MR. CRAIN: Do you want to caucus?

10 MR. SEKICH: 9.23.1.2.

11 JUDGE WALLIS: Let's be off the record for a
12 moment.

13 (Discussion off the record.)

14 MR. SEKICH: 619 is a proposal AT&T made to
15 replace Section 9.23.1.2.1. I think we will see a
16 similar issue as we talk about other sections of the
17 SGAT. Qwest at various places accepted some of AT&T's
18 proposals but organized them in different subsections,
19 so it may be a bit confusing as we work through this. I
20 note that in Section 9.23.1.2.1 as it appears in 573,
21 which is the SGAT Lite prepared by Qwest and submitted
22 in this proceeding, new language has been added. It is
23 not the language that AT&T proposed for this section.
24 Could you clarify before we go further what the added
25 language is intended to accomplish?

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1 MR. CRAIN: 9.23.1.2 I believe contains the
2 language that you are or very similar to the language
3 that you proposed in 619, and I think this is something
4 we discussed in Colorado and we agreed upon.

5 MR. SEKICH: That's true, and I'm -- that's
6 where I'm -- I'm getting there, but I'm trying to parse
7 through the language --

8 MR. CRAIN: Yes.

9 MR. SEKICH: -- so we can be assured that
10 like ragout it's all in there.

11 MR. CRAIN: Yes, 9.23.1.2.1 is language that
12 you have proposed.

13 MR. SEKICH: As part of 619. Oh, no, I'm
14 sorry, you're talking 1.2.1.

15 MR. CRAIN: Yeah, 619, that section comes,
16 oh, we're going to have to run into that later, I think.

17 MS. STRAIN: Mr. Sekich, could you clarify
18 for me on Exhibit 619 whether you really mean to replace
19 the existing section in its entirety. The section on
20 Exhibit 619 doesn't appear to be similar at all to the
21 section in the SGAT.

22 MR. SEKICH: It's not, this is the section
23 adopted from our testimony. Events have run on, Qwest
24 has variously accepted, rejected language, but
25 incorporated it into the SGAT at places other than where

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1 AT&T proposed.

2 MS. STRAIN: Okay, my question is, so we
3 could delete the words, to replace existing section in
4 its entirety, and that would better reflect what it is
5 you want to do?

6 MR. SEKICH: Yes and no.

7 JUDGE WALLIS: That's clear.

8 MR. SEKICH: I think we can -- we can jump --
9 we can short circuit this issue, make things easier. I
10 was just trying to parse through the actual section as
11 reflected in the SGAT. This language -- substantially
12 similar language is included now in the SGAT at
13 9.23.1.2. This proposal, though I'm happy it's in the
14 record right now, I think we can close the issue, the
15 proposal AT&T has made here should not be operative,
16 since the language has been included but in a different
17 location.

18 MS. STRAIN: Okay.

19 MR. SEKICH: So just to be clear, AT&T's
20 position is that UNE-C-3 is closed.

21 MS. STRAIN: We like clarity.

22 MR. SEKICH: Now looking at the actual SGAT
23 section that's referenced in the matrix though is where
24 things get murky is 9.23.1.2.1, changes have been made
25 to this section, and I'm clarifying what the changes

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1 are, and perhaps it's another issue that AT&T had raised
2 or --

3 MR. CRAIN: That is another issue. That's in
4 your Exhibit 625, and I think that would be -- we would
5 be running into that in UNE-C-12.

6 MR. SEKICH: Right, so this might be a
7 twofer.

8 MR. CRAIN: This is a twofer.

9 MR. SEKICH: Because I have looked at that
10 language. That language is acceptable to AT&T.
11 Organized here is fine. So let's go ahead and close
12 UNE-C-12 as well.

13 MR. CRAIN: Hey, we're moving now.

14 JUDGE WALLIS: Moving on to 13.

15 MR. WOLTERS: Before we move on, since we did
16 include this exhibit and I don't think there's any harm
17 in admitting it, why don't we move to admit 619 if
18 nobody has any objections.

19 JUDGE WALLIS: Is there any objection?

20 There being no objection, 619 is received.

21 MR. CRAIN: Moving on to UNE-C-4, I think the
22 language that's referred to here is in Exhibit 620.

23 MR. SEKICH: There are probably three
24 separate distinct issues included when we look at
25 Section 9.23.1.2.2. One issue is separately identified

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1 in the matrix. You will see it identified as UNE-C-6.
2 Language AT&T proposed to be included at another
3 section, actually language that appears in Exhibit 621,
4 was substantially -- substantially similar language was
5 included at Section 9.23.1.2.2. I recommend, this is
6 jumping ahead, that UNE-C-6 be closed as well, because
7 that language has been included.

8 AT&T's original proposal was to replace the
9 section that is now shown as 9.23.1.2.2 in its entirety.
10 I think now that would be wrong, because it includes
11 language that we advocated for. However, there are I
12 guess two additional issues. One is the language shown
13 in Qwest's SGAT Lite at this section not underscored was
14 the existing language. AT&T has concerns about not
15 being able to directly connect to a Qwest finished
16 service. Accordingly, AT&T believed that concept should
17 have been rejected and deleted and replaced with the
18 proposal, which is I think our third and final issue in
19 this section, that we had included in Exhibit 620. Our
20 proposal in Exhibit 620 allows a CLEC to order UNE
21 combinations and to designate any technically feasible
22 network interface.

23 If I can proceed with a couple of questions,
24 first off, has AT&T's proposal in Exhibit 620 been
25 adopted at any place in the SGAT?

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1 MR. CRAIN: No.
2 MR. SEKICH: Would Qwest object to adopting
3 that proposal at any place in the SGAT?
4 MR. CRAIN: Shall we address the first issue
5 first and then --
6 MR. SEKICH: That's fine.
7 MR. CRAIN: In terms of deleting the phrase,
8 UNE combinations will not be directly connected to a
9 Qwest finished service without going through a
10 collocation, we will not agree to eliminate that
11 language. I don't know if that needs to be identified
12 as a separate issue.
13 MR. SEKICH: I think we could retain the
14 issue that's been given here, UNE-C-4.
15 MR. CRAIN: So I think that's at impasse.
16 MS. STEWART: Well, it's right here, I mean
17 it's the same concept.
18 MR. CRAIN: Well, they're a little different.
19 MR. WILSON: I guess one question, what are
20 the types of services that you're intending to preclude
21 here? Because the concept of finished service is not
22 found in any FCC orders to my knowledge, so I guess
23 maybe some explanation.
24 MR. CRAIN: The FCC tends to refer to tariff
25 services in their, for example, their EEL order, they

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1 say that under the local use restrictions EELs can't be
2 connected to tariff services. Generally what we would
3 be talking about here are mainly DSL, which the FCC has
4 been clear that we do not have to provide if it's not --
5 if it's -- if it's not along with our local service. It
6 would be DSL access services and voice messaging are the
7 ones that I can think of.

8 MR. WILSON: Well, another -- I believe that
9 actually LIS local interconnection service is considered
10 a finish service. And I think this preclusion might
11 create a problem if a CLEC were say extending a LIS
12 trunk in some manner. Have you thought of those
13 circumstances?

14 MS. STEWART: I thought that LIS trunks could
15 not be used to access UNEs, and so LIS trunks would be
16 an appropriate limitation in this location.

17 MS. HOPFENBECK: That's an issue which --

18 MS. STEWART: It might be an issue between
19 the parties.

20 MS. HOPFENBECK: Between the parties that's
21 -- and in this jurisdiction at least, the Commission's
22 initial order on interconnection has acknowledged -- I
23 mean has basically found as an initial matter that
24 interconnection mid span can be used to access unbundled
25 network elements.

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1 JUDGE WALLIS: I'm going to remind people to
2 please keep your volume up even though you're right
3 across from each other. There are others in the room
4 who need to hear.

5 MR. CRAIN: With the resolution of that, and
6 it's an initial draft order that hasn't been addressed
7 by the Commission, this section then may need to be
8 revised to conform with that, but that is still an
9 impasse issue at this point.

10 MS. WICKS: I think from our perspective,
11 finish service seems to be a term that's not industry
12 standard, and it's obvious that there are some
13 definitional parameters around it as far as what a
14 finish service is. I think it would be helpful for us
15 to have maybe a definition. I don't know if we want to
16 make it a define term or outline what exactly finish
17 service is in language. So if we can't connect to DSL
18 access or voice mail and you have already included
19 tariff language in there, then let's say what it is
20 rather than putting an additional label on it that may
21 cause confusion in the future.

22 MR. WOLTERS: Andy, this is Rick Wolters. I
23 have a concern that the SGAT goes broader than the scope
24 of the Commission's or the FCC's declaration. I mean
25 you said that generally the FCC uses the world tariff

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1 services, and you gave one example being the EELs, but
2 I'm not -- I think we ought to limit it. If there are
3 specific references in the FCC order to tariff services,
4 I think we ought to identify those and make it limited
5 to those instead of coming up with a broad definition of
6 finished service and then expanding the scope to
7 whatever FCC limitations were put on.

8 MR. CRAIN: We believe that this issue is
9 consistent with FCC orders, so I don't think it needs to
10 be limited in any way. I think this is completely
11 consistent with current FCC orders on UNEs.

12 MR. WILSON: Well, but kind of to WorldCom's
13 point, at the current moment, Qwest controls the
14 definition of finished service, so you could put
15 anything in here. You could call anything a finished
16 service.

17 MR. CRAIN: If you would like us to provide
18 some further definition of that, I will actually try to
19 get that to you by tomorrow.

20 MS. WICKS: I think we need to understand
21 what it is before we can take a position on it and fight
22 the battles.

23 MR. SEKICH: Just to be clear for the record,
24 Qwest's intent by this provision, could you explain
25 that?

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1 MS. STEWART: The Qwest intent with the
2 provision is that when a CLEC purchases unbundled
3 network elements from Qwest, they can purchase those
4 elements and assemble them in any manner in which they
5 choose. However, that Qwest is not agreeing that
6 unbundled network elements will be combined to Qwest
7 finished services.

8 But in, just as a side note, in reality, some
9 of the finished services you could obtain as unbundled
10 network elements. So you can get to the net same
11 result, and I will just use a small example of perhaps
12 residential, finished residential service. If Qwest has
13 a 1FR and you're purchasing that as a finished service
14 1FR, we would not agree that you could attach the UNE of
15 call waiting at a UNE rate to that finished service.
16 However, you can purchase all of the piece parts to make
17 a residential line out of the UNEs, so all you would do
18 is you would order residential service as a combination
19 of UNEs, and one of the UNEs you would add would be call
20 waiting or any other vertical services.

21 So it's -- that's what the issue is, is you
22 -- if you are going to become a UNE facility based
23 carrier, you get the facility based UNEs, and we will
24 either combine them or you can combine them.

25 MS. HOPFENBECK: So I mean it seems like this

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1 discussion has made it clear that Qwest kind of has two
2 purposes, that this particular phrase has two operative
3 purposes. One, which is the one I understand you to
4 have just described, Ms. Stewart, is to essentially
5 limit what CLECs can combine. I mean it sort of puts
6 bounds upon what proper combinations are. So that what
7 I understood you said -- you say that it's Qwest's view
8 that while the CLECs can combine all unbundled network
9 elements that they want, they can not mix and match
10 unbundled network elements with finished services,
11 services that would -- could also be purchased on a
12 resale basis essentially.

13 MS. STEWART: I think it's --

14 MS. HOPFENBECK: Is that right?

15 MS. STEWART: Yeah, maybe -- maybe let me use
16 a different -- another illustrative example. It's a mix
17 and match issue, because not necessarily have all of
18 Qwest retail tariffs been updated with everything that
19 has happened on the wholesale side in every state. Now
20 eventually those tariffs may change, and this example
21 may not be a feasible one.

22 But let's say that a CLEC wants to create the
23 equivalent of a private line circuit. So they look in
24 the SGAT, and they see that an unbundled loop, and I'm
25 just -- these are illustrative, making these numbers up,

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1 is \$15, and interoffice transport is \$.50 a mile. They
2 go over to our retail private line tariff and they see
3 that transport is \$2.50 a mile. So then, well, that's
4 not a good thing. But they see a channel term for
5 private line is \$12. So it's sort of that go -- trying
6 to go into the retail tariff and say give me this retail
7 channel term, which is a loop, but combine it with my
8 UDIT interoffice, I mean, you know, trying to mix and
9 match tariff shopping is really the issue from my
10 perspective.

11 In addition, there are services that Qwest is
12 not obligated to provide, such as DSL service, unless
13 we're the underlying voice provider. We have the
14 example of LIS trunking, which I'm not an
15 interconnection witness, but from the conversation here,
16 I understand there's some issues going on in Washington.

17 In addition, Qwest does not agree, I wasn't
18 in the workshop on Monday, has not agreed to make voice
19 messaging service available as unbundled network
20 elements, and nor is it required to. In addition, there
21 are some restrictions on our ANI features that we have
22 developed that are not available on an unbundled basis.

23 So there are some examples. So there really
24 is a two objectives I guess would be the word with this
25 section.

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1 MR. CRAIN: And what this really comes down
2 to is in the FCC, the Act, everything I have seen
3 talking about UNEs talks about combining UNEs, doesn't
4 talk about anything about we have an obligation to allow
5 anyone to combine UNEs with other things. So our legal
6 obligation comes from the fact that UNE could be -- we
7 have agreed to combine UNEs for you, the Ninth Circuit
8 has said we need to combine UNEs. You have the
9 obligation -- we have the obligation under the Telecom
10 Act to allow -- to provide you UNEs in a way that you
11 can combine UNEs together. There's nothing that says we
12 have an obligation to allow you to combine UNEs to other
13 finished or tariff services for anything else. I mean
14 if you look at our legal obligations, this is completely
15 consistent with our legal obligations.

16 MR. SEKICH: Does Qwest's SGAT allow a CLEC
17 to combine Qwest UNEs with a network element of the CLEC
18 or a third party?

19 MR. CRAIN: Yes, and that is clear in 9.1.6,
20 I believe, or is it 9.1.8.

21 MR. SEKICH: Is it your position --

22 MR. CRAIN: Oh, 9.23.

23 MR. SEKICH: Is it your position that Qwest
24 is not obligated to do that?

25 MR. WOLTERS: Let me ask another question.

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1 MR. CRAIN: The only reason I'm hesitating is
2 I need to go back and look at the Ninth Circuit opinion.
3 Other than the Ninth Circuit opinion, we have no legal
4 obligation to do that. That was part of the FCC rules
5 that were vacated by the Eight Circuit. The Supreme
6 Court did not reinstate those rules in the Eight
7 Circuit. It recently confirmed that those rules
8 remained vacated. So I need to look at the Ninth
9 Circuit opinion about the combining your elements with
10 ours, but.

11 MR. SEKICH: Regardless, it's permitted
12 though in the SGAT?

13 MR. CRAIN: Yes.

14 MR. WOLTERS: Andy, a question I think that I
15 have is you kind of jumped from direct connected to
16 combined, and so you have been talking about your
17 obligations that you have not to combine or your
18 obligation to combine, but this is a little different.
19 This is directly connected, which means this doesn't
20 even allow the CLECs to connect outside of the
21 collocation.

22 MR. CRAIN: And what I explained was if you
23 look at the Act and if you look at all the FCC rules I
24 have seen talks about we have the obligation to provide
25 you unbundled network elements in a way that you can

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1 combine with other unbundled network elements. That's
2 our legal obligation.

3 MR. KNOWLES: This is Rex Knowles from XO.
4 I've got a couple of points I think are probably
5 appropriate to discuss at this point. And that is the
6 difference between Qwest's legal obligations and what is
7 realistically available to competitors to have done over
8 the past five or six years and where we're at today, so
9 the reality aspect of it.

10 Up until very recently, and most of this is
11 going to be related to the private line combinations, if
12 you will, up to very recently, CLECs were not able to
13 get high capacity loops, DS1, DS3 type loops, and we
14 were forced to order all of these types of services off
15 of the access tariffs, if you will, in order to get
16 them, or private lines tariffs to get them. That was
17 the only available option. And another scenario, if
18 there is no facilities available, Qwest would not build
19 for the CLECs, so in that -- that's another scenario
20 where we're required to order it out of a private line
21 or some kind of a finished service offering.

22 So the reality is even though there's
23 obligations to provide unbundled network element
24 combinations, if you can't get the unbundled network
25 element, there's no viable way to do the combination, so

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1 you're put in a situation where you're forced to buy it
2 on tariff service or the finished service, if you will,
3 and then when you do get finally the right to get UNEs
4 or high capacity loops, you're in a situation where
5 you've got your network combined with a variety of
6 different things, and you have the prohibition on
7 mingling different types of services, and that's an
8 issue that we will get to later, but I just wanted to
9 make sure we have that reality sense of where we're --
10 why we're getting to the situation we're in today and
11 why this is a larger concern.

12 MR. CRAIN: And that is an issue that we will
13 address in EELs. I would suggest that because we do not
14 have an obligation to build things like UDIT, the FCC is
15 very clear we don't have an obligation to build UDIT,
16 the fact that then you have to go to some kind of
17 private line based process or build your own or buy it
18 from someone else is in my mind completely allowable and
19 completely fine. The FCC basically made clear we don't
20 have an obligation to build you a network. We have an
21 obligation for -- to allow you access to our unbundled
22 network elements, but we don't have to build your
23 network for you, and that's essentially what you're
24 asking us to do.

25 MR. KNOWLES: What I'm talking about here is

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1 not that specific issue, but the fact that you have a
2 choke point in your network where you won't have any
3 facilities available, and nobody else potentially has
4 that as well, that everything that's beyond that, for
5 instance, if it's interoffice transport, if there's a
6 DS3 that needs to be built, then everything beyond that,
7 all the channel term go out to the customer prem, you
8 can't buy DS1 capable loops, you can't use UDIT MUXing.
9 None of those are feasible, because they would have to
10 be combined with that DS3 transport mechanism. That's
11 the issue.

12 MR. WILSON: And I would say we're going to
13 get to the facility available issue in UNE-C-9. Well,
14 actually it's designated as UNE-C-11, so maybe we can
15 address that in a few moments.

16 MR. CRAIN: Okay. So UNE-C, where are we
17 now?

18 MR. WILSON: UNE-C-4, I believe you said you
19 would take back the definition of finished services so
20 we can focus maybe what the dispute is.

21 MR. CRAIN: Okay.

22 MR. SEKICH: That doesn't end our discussion
23 of C-4, and I'm not sure if for convenience we want to
24 designate a new issue or create a subissue here. As I
25 mentioned, AT&T had provided some -- provided a proposal

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1 as Exhibit 620 which sets forth language AT&T would seek
2 to be included in the SGAT. I guess the question I had
3 started to pose earlier was, was this or has this
4 proposal been put any place in the SGAT?

5 MS. STEWART: No, it has not, and since it's
6 new language that would not be -- that has not been
7 incorporated and now may not be a fit in the prior
8 section, perhaps making it UNE-C-20 as we have done in
9 the back here where there aren't specific SGAT reference
10 sections, we could add it as an additional item and then
11 refer to your exhibit.

12 MR. CRAIN: Which would make UNE-C-4, AT&T
13 recommends that or parties recommend that the second
14 sentence of 9.23.1.2.2 be eliminated, and then UNE-C-20
15 is addressing the language AT&T proposes in Exhibit 620.

16 MR. SEKICH: I think that's a fair
17 representation of the issues. Shall we wait for
18 UNE-C-20 or take it up now?

19 MS. STEWART: I don't mind taking it up now.
20 As you do know, it's a network technical issue. We may
21 be drawing upon our technical network witness. I don't
22 know if it's better to do a little looping or whether
23 Rachel can speak from the back.

24 MS. TORRENCE: I'm sorry, I was looking at
25 another issue.

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1 MS. STEWART: Let's take it up after the
2 break, if we could, and we will bring Rachel up here.

3 MR. SEKICH: As has been our custom, I think
4 we made reference to Exhibit 621, which is language that
5 has in substance been added to the SGAT, can we move to
6 have that admitted before we move on?

7 JUDGE WALLIS: Are you also moving 620 at
8 this time?

9 MR. SEKICH: Yes.

10 JUDGE WALLIS: Is there objection to either
11 of those documents?

12 Let the record shows there is no response,
13 and 620 and 621 are received.

14 JUDGE WALLIS: Let's be off the record.

15 (Brief recess.)

16 JUDGE WALLIS: Let's be back on the record,
17 please, following our morning recess. Moving ahead to
18 item C-5.

19 MR. CRAIN: UNE-C-5 is an issue raised by
20 WorldCom about the requirement to have an amendment to
21 provide certain combinations, and I think we have made
22 it clear that it's our policy that if a CLEC has the
23 underlying elements and prices of a combination in their
24 contract, they don't need an amendment to order
25 combinations. But if they do have the missing elements,

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1 then they're going to need to have an amendment to
2 incorporate those missing elements.

3 MS. WICKS: WorldCom's position is that in
4 general, just from a practical standpoint, that the
5 language contained in these contracts should be, and as
6 WorldCom's language is in our prior interconnection
7 agreements, broad enough to order a UNE combination. It
8 should be the CLEC's option as to whether they accept
9 the pricing and the product offering as Qwest has it
10 without the need for an amendment rather than to have
11 the requirement of going into amendment negotiations
12 with Qwest.

13 Qwest in other proceedings has made a
14 representation that the amendment process is easy, and
15 adding the terms and conditions that are required by
16 using an amendment is also a very easy process.
17 WorldCom has not had that experience. This issue has a
18 very special place in my heart, because next month we're
19 celebrating the one year anniversary of placing an order
20 for unbundled network elements in Washington, and we
21 have yet to have a completed executed amendment which
22 will allow us to do so.

23 We have been in solid negotiations since
24 August. We have gone through two negotiation teams, and
25 now we're in the process, and I'm a nice person, and now

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1 we're in the process of negotiating through the actual
2 SGAT 271 team in order to gain resolution to the sore
3 that has become this amendment or this amendment that
4 has become a burr in our saddle.

5 WorldCom maintains the position that the
6 general terms and conditions in our interconnection
7 agreements, just as the generalized terms and conditions
8 in this SGAT, should be able to include new elements and
9 new products as Qwest introduces them, which is sort of
10 the subissue to this.

11 The subissue is Qwest's practice in
12 productizing offerings, things going like managed cut
13 from a service to an actual product offering. In
14 September at the beginning of our negotiations, Qwest
15 had adjusted their EEL product to be EEL-C and EEL-P, at
16 which point new terms and conditions were added within
17 the amendment process, and those terms and conditions
18 are also contained herein, which required some
19 negotiation.

20 It is not WorldCom's position that no
21 negotiation is necessary or no interaction between the
22 parties is necessary. However, WorldCom does feel that
23 there are processes and language contained in our
24 interconnection agreement as in this agreement that
25 would allow us to attain new Qwest products and

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1 services.

2 And I guess I will conclude my comments with
3 something that is deferred, but the language contained
4 in the special request process and the bona fide request
5 process also speaks to Qwest's practice of not
6 recognizing something as an element until Qwest has
7 actually productized it. So WorldCom takes issue in
8 general of having to amend anything.

9 MR. CRAIN: I think we need to add a little
10 clarity here. An amendment is necessary if there's an
11 underlying element that is not in a contract and if
12 there is no element or price within the contract. It's
13 not whether or not you can order three things in
14 combination. You can order three things in combination
15 without an amendment as long as the underlying elements
16 are within the contract.

17 And the issue we have had with WorldCom, I
18 believe, is the issue of shared transport and whether or
19 not that element and price were in the contract, and
20 that has led to a long and -- a long negotiation that,
21 well, if they would just accept our terms, there
22 wouldn't be any question. But I mean that's -- that's a
23 -- I said that jokingly, but negotiations strike out
24 because of positions taken on both sides.

25 And there are opt in provisions. If anybody

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1 else has a contract out there that WorldCom wants to
2 pick and choose, they're more than able to do that.
3 Same thing with the SGAT provisions. So I think our
4 position is reasonable in terms of the ability to order
5 things and the need for an amendment if there's an
6 element or a price that's needed to be incorporated
7 within the contract.

8 MS. WICKS: And I think WorldCom to that
9 statement at the beginning of negotiations was willing
10 to take the pricing that Qwest had offered. And, in
11 fact, we at first were willing to simply order the
12 products off the web site and take our lumps as they
13 come. To that, Qwest responded that no, in fact it was
14 necessary, whether WorldCom agreed to everything or not,
15 it was necessary to memorialize these terms and
16 conditions in our contract.

17 And as far as the statement about opting in,
18 WorldCom specifically as it relates to the EEL issue had
19 certain special needs, waiver language. If, in fact, we
20 were actually going to go through the amendment process,
21 we wanted to have language that wasn't sort of one size
22 fits all. Our understanding was we weren't able to
23 order UNEs or UNE-P even though the underlying elements
24 were broadly included in our interconnection agreement,
25 our interconnection agreement said basically any

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1 technically feasible element at any point you can order
2 in combination, and Qwest did not think that was
3 sufficient language. So we entered into negotiations
4 and have since been at a standstill.

5 And this brings me to another point that I
6 hesitate to bring up, but I think it deserves to be on
7 the record that the amendment process is burdensome
8 because Qwest does not empower its negotiation teams to
9 make decisions in a real time negotiation situation. We
10 have heard on numerous occasions that their negotiation
11 team will only go as far as the SGAT language does, that
12 they would not deviate from the SGAT language. And if
13 they had -- if they -- if we did give them a request to
14 adjust language, the take back length of time can be as
15 long as three to four months.

16 In one situation, actually it's still going
17 on, back in November we presented them with language
18 that we preferred in reference to our waiver that's
19 pending at the FCC for EELs. Their negotiation team
20 three weeks later agreed to it and then back in I
21 believe early February took that agreement off the table
22 and put that language back into negotiation.

23 So not only are we going backwards in
24 negotiations, but we're getting certain representations
25 from Qwest that as the SGAT proceedings evolve, the

03169

1 language that we're -- we have agreed to in negotiations
2 is actually being pulled away from us. So the end
3 result is that the negotiations really are having no
4 effect. Qwest is influencing us as much as they
5 possibly can to simply choose the standard form
6 agreement that they have provided or the SGAT language.

7 MR. WILSON: AT&T actually has the same types
8 of frustrations. This is a personal issue for me,
9 because I was involved starting over five years ago in
10 negotiations, then AT&T went into arbitration, we
11 negotiated again after arbitration, the Commission ruled
12 on our interconnection agreements, and we got a
13 contract. But then we find out through trying to order
14 things that we didn't get what we thought we got. And I
15 mean it seems pretty clear to me that Qwest is simply
16 refusing to provide elements that they are required to
17 provide in combinations that were generally covered in
18 our initial language that was approved by the
19 Commission.

20 MS. STRAIN: Ms. Wicks, would you explain
21 what the process is that you referred to for ordering
22 things off the web site?

23 MS. WICKS: As I understand it, and this is a
24 process that we weren't able to partake in, but as I
25 understood it, we should be able to go into the web

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1 site, fill out the questionnaire, receive the BAN
2 numbers, and simply order the product via ASR LSR. That
3 was our initial understanding, that this should be
4 something we should be able to do, it's productized, the
5 prices are out there, and they're available. We fail to
6 understand why we should amend general language in our
7 interconnection agreement when the product's available,
8 the terms are disclosed by Qwest on the web site, and
9 we're willing to go in and simply order the product and
10 take our lumps.

11 MR. CRAIN: Then let me suggest that we take
12 this, and I would like to address it again tomorrow
13 morning, because I may be able to -- I would like to
14 address again tomorrow morning the issue of the web
15 site. The question there is not -- the question there
16 is are all the rates, are all the elements contained in
17 a contract, and the rates and elements need to be in a
18 contract to be able to provision or order a product.

19 The issue of what is productized and what is
20 not productized is a different issue. It's an ordering
21 issue. We have developed a special request process to
22 be able to do that for things that we have very little
23 demand for. But in terms of being able to order
24 combinations of elements, what needs to be in the
25 contract are all of the elements that make up that

03171

1 combination.

2 MR. SEKICH: Could you explain briefly
3 productization?

4 MS. STEWART: Karen Stewart from Qwest.
5 Going to take a -- put a general example on the question
6 of productization. As indicated by Ms. Wicks and by
7 Mr. Wilson, that an interconnection agreement may
8 contain broad language that says you can order any
9 technically feasible unbundled network element. But in
10 reality, when there's something we've got to put an
11 order into our ordering system, it's not sufficient to
12 pass an ASR or an LSR with, you know, in the remarks
13 section what I really want is that any technically
14 feasible transport. Somehow you have to be able to
15 communicate to Qwest, here's exactly the service that I
16 want to order, this is the time frame, here's the A to Z
17 location, here's the price, maybe it's something that
18 hadn't ever been rated or costed.

19 So what Qwest has done, which is actually
20 similar to what every company does when it offers
21 services to customers, to the extent that a service or a
22 product that they're offering is something that they're
23 going to be offering to a lot of other people, then they
24 established billing codes and identification in the old,
25 you know, predivestiture days, and we still use USOC,

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1 universal service ordering codes, so that when somebody
2 wants to order a residential line, we can just put an
3 order out that says put in one 1FR.

4 Okay, so you need to have a way to order and
5 communicate, and then when that goes to our provisioning
6 people and they see one 1FR, the USOC, they know what to
7 put in. When one 1FR hits the billing system, the
8 computer is able to go to a table and look up for this
9 state in this central office or this distance from the
10 CO or, you know, because, you know, the table can become
11 quite complicated, it's \$14 for a 1FR, can pull out \$14
12 and put it on the bill.

13 Once again, all of those processes can not
14 happen with a vague give me any technically feasible
15 transport put in remarks to the system. So what we have
16 attempted to do is for the out and out unbundled network
17 elements and the combinations of unbundled elements that
18 we know we're going to see each and every day, we have
19 done all of those steps. If you order an unbundled
20 loop, you've got a way to communicate that, you can
21 indicate NCI codes that even further define the
22 technical parameters of that unbundled loop, there's
23 prices there, et cetera. But in general, that's what
24 "making a product" is and why it is necessary.

25 MR. SEKICH: Is it fair to characterize that

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1 as a process of standardization?

2 MS. STEWART: I think it's within every
3 product there's an element of standardization, but
4 within the standard, there are technical options that
5 you can choose yes or no. And part of how you
6 communicate that with unbundled loops, as an example,
7 would be an unbundled loop, and we do have a few
8 different categories, whether it's analog or, you know,
9 nonloaded. But use the NCI codes then to tell exactly
10 from a technical standpoint here's the design that I'm
11 looking for, the parameters for that to meet. So within
12 an umbrella of standard doesn't mean you can't have
13 options on what you actually get underlying that.

14 MR. SEKICH: I can envision two scenarios.
15 The first one sounds like a scenario similar to what
16 WorldCom has encountered where there is a provision in a
17 contract that says, I keep thinking of my ice cream
18 examples, right, WorldCom's contract says they get ice
19 cream from you. You have several different products.
20 You have vanilla, chocolate, strawberry. Instead of a
21 communication back to WorldCom, well, what flavor would
22 you like, we can -- we're sure happy to help you out,
23 they get a communication back, you don't offer a -- we
24 don't have to provide you ice cream, because you haven't
25 told us what kind you want, so would you amend your

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1 contract to make sure you specify that you want vanilla,
2 you want chocolate, you want strawberry. And that's
3 kind of the way I have sort of -- we have sort of
4 anticipated what WorldCom's issue was.

5 The second scenario I can think of is the
6 contract says, we get -- you get -- you provide us ice
7 cream, and by the way, that ice cream will be rocky
8 road. And Qwest says, well, you know what, we haven't
9 developed rocky road, but chocolate is pretty darn
10 close. But you -- and from that, there are a couple of
11 other alternatives. You can get chocolate, or you know,
12 what, you better amend your contract, because, you know,
13 if you want to try to order rocky road, you're not going
14 to get it, the closest we can come to that is chocolate.

15 MS. STEWART: I would like to respond to your
16 analogy. We haven't -- first of all, we have an
17 interconnection agreement with WorldCom. Hope you don't
18 mind, we're going to continue using you.

19 MS. WICKS: That's okay.

20 MS. STEWART: And it says you can order ice
21 cream. The actual questionnaire that we were just
22 talking about, the product questionnaire, part of the --
23 and, in fact, the very critical part of the product
24 questionnaire is what's that kind of ice cream you want
25 to order, be sure and tell us. Is it chocolate, is it

03175

1 vanilla, is it strawberry, so that we can order in and
2 put into our billing and ordering systems chocolate,
3 vanilla, strawberry, and we've got to make sure that
4 you've got everything you want. So, for example, they
5 want chocolate, vanilla, strawberry, chocolate with
6 nuts. So we look in, we go chocolate, da, da, da, with
7 nuts.

8 Now I'm going to come to UNE-P, not that I
9 want to dwell on the negotiations on interconnection
10 agreements, but for this UNE-P platform combination, if
11 there was not -- there was chocolate, strawberry, et
12 cetera, but there wasn't nuts that's identified between
13 WorldCom and Qwest, we have not determined the price for
14 nuts, and in this case shared transport I'm going to use
15 as the example, then it comes back saying, your contract
16 doesn't have a price for nuts, and we've got some
17 options on how that can be. You can opt into another
18 agreement, you can accept our SGAT terms and conditions,
19 which I would actually think is analogous to the attempt
20 to order off the web site, or you can negotiate unique
21 terms and conditions for nuts. And that's where I think
22 we are for WorldCom on a bunch of issues. So we are
23 doing that.

24 Now your question is, we're all happy, we're
25 moving down the road, and now all of a sudden they want

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1 rocky road, which is chocolate with nuts and --

2 MR. SEKICH: Marshmallows.

3 MS. STEWART: -- Marshmallows, okay. Now

4 marshmallows may be actually in their interconnection

5 agreement somewhere, maybe it's strawberry with

6 marshmallows, but this actual nuts, rocky road, you know

7 chocolate, nuts, and marshmallows kind of all working

8 together as a combination doesn't appear to be there.

9 And that's where the special request process can come in

10 and say, I want to order rocky road, it's this, this,

11 and this. We look and we say, yeah, this, this, and

12 this, all of these things are in your contract, because

13 marshmallows is over here with strawberry, but we

14 obviously can disconnect that association, bring it over

15 here.

16 It's a one time thing that we all do to set

17 up how is it going to be ordered, what's the USOCs,

18 what's the pricing, it's everything. You only do it for

19 the very first order of the very first time you order

20 this unique combination of rocky road. And then if you

21 order a second one, you don't need to do that anymore.

22 We have established the process.

23 If another CLEC comes in and says, I want

24 rocky road, we now have the process developed and we're

25 able to do that. If we have five CLECs all want rocky

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1 road, then you're right, we go back into our
2 interconnection agreements and to our SGAT, and now
3 we've got chocolate, vanilla, strawberry, and rocky
4 road, because a lot of people want to order it.

5 MR. CRAIN: Let me add some clarity here.
6 The whole ice cream thing has gotten way -- if what you
7 mean by ice cream is you have -- if ice cream means you
8 have loops, and we have said we will provide you, or
9 transport, DSO through OC192 and other bandwidths as
10 they become available in the network, we have developed
11 products for the frequently ordered types of transport,
12 DSO, DS1, DS3, but 192 we haven't, well, we hardly ever,
13 I don't know if we have ever received an order for it,
14 it's hardly ever available, it's sort of a one off deal,
15 you have to calculate the price at the time you do that
16 because it's --

17 MR. SEKICH: Well, question.

18 MR. CRAIN: Let me just walk you through
19 this. In that case, we have developed products for the
20 lower bandwidths, you can submit a special request for
21 the higher bandwidths, we will come back to you and say
22 this is how much it's going to cost for this when you
23 get it.

24 If you're talking about combinations, if the
25 elements are in your contract and you have prices within

03178

1 your contract for those combinations, you can get those
2 in two ways. For the frequently ordered combinations,
3 we have developed products which have specific USOCs
4 which make it efficient for us to provision those to
5 you. So you get those USOCs, you just submit a USOC for
6 UNE-P, boom, we get it to you. For those things that
7 are hardly ever ordered and for those things that are
8 sort of unique every time they are ordered, you submit a
9 special request, and we come back and we say, for these
10 three things that we hardly ever get an order for, this
11 is -- this is when you're going to get it, this is the
12 time frame, and this is how we're going to provide it to
13 you.

14 For things that are not in your contract, for
15 elements that aren't in your contract and you don't have
16 a price, then you need an amendment. So it's more like
17 you don't have cones in your contract. If you want a
18 combination of these kind of ice cream, this cone, and
19 the nuts, you need an amendment to get the cones in your
20 contract. But to get the combination once it's in
21 there, you don't need an amendment.

22 MS. WICKS: Well, I would like to jump in
23 here just because I think this whole piece parting is
24 exactly what WorldCom has had issue with. It sounds
25 wonderful that we're going to add terms and conditions,

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1 but in reality, WorldCom has been denied access to UNES
2 for close to a year because Qwest will, you know, is
3 piecemealing these elements into, well, you don't have
4 this specific element.

5 And I point to the general terms and
6 conditions at 9.23.3, terms and conditions, which is
7 language that says, Qwest shall provide
8 nondiscriminatory access to UNE combinations, and this
9 is very standard language, quality of UNE combinations
10 Qwest provides. And then towards the bottom:

11 Qwest will be equal between all CLECs
12 requesting access to that UNE
13 combination, and where technically
14 feasible, the access and the UNE
15 combination provided by Qwest will be
16 provided in substantially the same time
17 and manner to that which Qwest provides
18 to itself. In those situations where
19 Qwest does not provide access to UNE
20 combinations to itself, Qwest will
21 provide access in a manner that provides
22 CLEC with a meaningful opportunity to
23 compete.

24 Part of our argument stems from, well, if
25 Qwest has the elements and Qwest is saying that it will

03180

1 provide elements to us as it provides to itself, then
2 why can we not have access to elements that are already
3 productized within Qwest's network. It seems like we're
4 just getting left out of the game because we didn't
5 specifically productize in our contract the way Qwest
6 has productized out. Similarly, this is not a
7 meaningful opportunity to compete when we are left in
8 negotiations for a year in order to add very simple,
9 simple products and combinations that generally -- ice
10 cream that's referred to in our contract.

11 MR. CRAIN: I would like to say one thing and
12 then defer this to further discussion tomorrow. The FCC
13 has defined things as unbundled network elements. The
14 problem we have with WorldCom is there was one unbundled
15 network element that wasn't in your contract that didn't
16 have a price. We have been working with you to include
17 those and include a contract for you to provision --
18 provision UNE-P for you. We have had disputes over
19 various terms and conditions. And when I look at those
20 terms and conditions, I don't see all those as being
21 just simple clear requests on WorldCom's part.

22 We have things like you mentioned the issue
23 about an amendment for or the waiver request that FCC --
24 that WorldCom has before the FCC. We have -- we reached
25 agreement on language in an Arizona workshop on how that

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1 should be handled. WorldCom then didn't agree that that
2 ought to be the terms and conditions it will use in its
3 contract, and we have been hashing that one out. This
4 is not simply us stonewalling. This is working out
5 terms and conditions with a CLEC who wants specific
6 terms, specific conditions that we haven't agreed to
7 100% of those.

8 And I'm not saying you need to absolutely
9 agree with everything we say for you to get an
10 amendment, but there is a process, and if we have
11 disputes, then we go to arbitration. We are negotiating
12 in good faith. We are taking what I believe are
13 reasonable positions. And once there are other
14 contracts out there that have amendments, then you can
15 opt into those as well. This is not a simple issue of
16 just Qwest saying no, no, no. This is a long, drawn out
17 negotiation because of various terms and conditions we
18 haven't been able to agree on.

19 MS. WICKS: Right, and I think I do need to
20 clarify. I first of all think that it's not entirely
21 that we have disagreed. I think that Qwest has changed
22 negotiation teams, which has drawn out the process
23 considerably. The SGAT proceedings obviously have had
24 an effect on negotiation.

25 But WorldCom on certain issues, and I need to

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1 say for the record that the pricing has never been an
2 issue in negotiation. So in as much as that was the
3 dispute on Qwest's part, we probably shouldn't have been
4 required to do an amendment in the first place.

5 But notwithstanding that, there are some
6 elements, some combinations that we're in full agreement
7 on, but we're unable to execute the amendment because
8 Qwest is insisting that we accept all of these products
9 and do it at once. And once we complete this amendment,
10 there will be no ability on the part of WorldCom to
11 simply accept new products as Qwest comes up with them.

12 In fact, that's one of the sticking points in
13 negotiation, that WorldCom feels that, okay, we've gone
14 through this once, we've spent a year of our negotiation
15 time doing this, when we're out of negotiations for a
16 UNE combinations amendment, we should have language in
17 there that will allow us to be flexible with Qwest so
18 that if Qwest productizes a new element, we can accept
19 that without having to reamend, that it would be CLEC's
20 sole option to either accept what Qwest has as far as
21 terms and conditions on its web site and just go ahead
22 and order that, or the CLEC can opt to renegotiate
23 additional terms that would be associated with that
24 element.

25 MR. CRAIN: And that is a point I would like

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1 to address tomorrow, but if you're talking about simply
2 accepting the terms and conditions on the web site, you
3 can put those -- and we'll put those into an amendment,
4 and we'll put that into your contract immediately. But
5 what you're talking about is not accepting those terms
6 and conditions. You're talking about having separate
7 and different terms and conditions, and that's what
8 we've been negotiating about.

9 MS. WICKS: I think we're talking about both.

10 MS. LUBAMERSKY: One fact that concerns me is
11 that we have more than 20 CLECs who have negotiated
12 UNE-P amendments, more than 12 have purchased and have
13 installed tens of thousands of UNE-Ps. So there's a
14 disconnect.

15 MS. WICKS: I don't know if it's negotiation
16 team specific or the fact that our negotiation team got
17 changed, but I have documentation of version after
18 version after version. It took us, you know, three
19 months to do the managed cut amendment, because we don't
20 get the time from the negotiator, I don't know if we're
21 not up on the negotiator's priority list, or Qwest has
22 two and three week take backs on issues that WorldCom
23 requests, most of which the negotiator says he's taking
24 back to the product team. And thirdly, the negotiators
25 are deferring most of their language disputes to what

03184

1 happens in the SGAT proceedings. So I think basically
2 WorldCom is not willing to on certain issues take the
3 money and run. On other issues, we certainly would be
4 able to.

5 MR. CRAIN: And it's my understanding from
6 the negotiation team that it's WorldCom who has also
7 been saying I want to wait for the workshops to resolve
8 this issue or that issue.

9 MS. WICKS: That was our position until about
10 the beginning of December, at which point we said enough
11 is enough, we need to resolve this on our own. And we
12 have attempted to escalate, to which point, and this
13 probably evidences that, the negotiators have apparently
14 punted the negotiations that were into their SGAT 271
15 team to help work out with our executives, which I think
16 merely evidences that the negotiators have no power and
17 no authority to move anywhere beyond the language than
18 what Qwest provides as a standardized document.

19 MS. STRAIN: Can I ask a quick question. If
20 there is something in Exhibit A and it's an element and
21 there's a rate for it and some CLEC wants to order that,
22 is that something that has to -- do you then have to
23 amend the interconnection agreement for that item so
24 it's equivalent to a retail customer having a special
25 contract and then ordering things out of the tariff?

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1 MR. CRAIN: You mean Exhibit A in the SGAT?

2 MS. STRAIN: Yeah, if somebody orders
3 something through the SGAT, it's in the SGAT as an
4 element, it's on Exhibit A as an element, and they order
5 it, does it require amendment of their interconnection
6 agreement?

7 MR. CRAIN: It requires an amendment to their
8 interconnection agreement. It requires us to load the
9 BANS and the USOCs for that element because the -- we
10 need to be able to put into our system that this CLEC is
11 now -- we now have an agreement with the CLEC to
12 purchase this particular element.

13 MS. LUBAMERSKY: And it would help to say
14 that the amendment is different. It is an opting in to
15 that portion of the SGAT, Section 9.2, whatever, plus
16 the rates associated. And if a CLEC wants to opt in to
17 a section of the SGAT, that's a rather immediate --

18 MR. CRAIN: And if you look at Sections 1.1
19 of the SGAT, it's very clear that opting into the SGAT
20 and taking various terms is a simple and easy process.
21 Where it becomes not simple and not easy is when then we
22 renegotiate terms and conditions and when CLECs want to
23 have a different -- different terms and conditions than
24 the contract.

25 JUDGE WALLIS: Why is it essential that the

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1 item be specifically listed in the contract?

2 MR. CRAIN: These are two companies doing
3 business together, and the simplest point is that the
4 USOCs, the billing rates, CLECs have various billing
5 rates that are not always the same as what's in Exhibit
6 A of the contract, need to be loaded into the system for
7 that CLEC to be able to order that.

8 JUDGE WALLIS: Why is a contract amendment
9 necessary in order for the information to be loaded into
10 the system?

11 MR. CRAIN: It is the, I don't know, it's the
12 way that the Telecom Act set up the process.

13 JUDGE WALLIS: What provision in the Telecom
14 Act requires that?

15 MR. CRAIN: Section -- I don't -- I don't
16 know if it absolutely requires it, but if it's not that,
17 what is it, what do you do, is it a written piece of
18 paper, is it an E-mail, is it a -- how does that happen,
19 how do we --

20 MS. STRAIN: Well, I guess I would --

21 MR. CRAIN: And how do we know that the CLEC
22 is accepting the terms and conditions in terms of being
23 able to order that and provision that? What terms and
24 conditions are we applying to that element in terms of
25 when we provision that element?

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1 MS. STRAIN: Can I maybe give you an example.
2 If you have a special contract with a manufacturing
3 company and they had certain items that were -- that had
4 to be dealt with in a special contract because you did
5 not have a tariff for them and because they wanted them
6 to be done in a different way than what was in your
7 tariff, they also then purchased items out of your
8 tariff, would you amend the special contract every time
9 they changed something they were ordering out of your
10 tariff, or would your tariff terms and conditions and
11 billing codes allow that person to purchase items out of
12 the tariff without having to amend the special contract?

13 MR. CRAIN: In -- I would suggest, and I
14 would like to address this again tomorrow, because I
15 think we might be able to resolve all of this, so is
16 that -- the way Section 252 set up this process, the way
17 the SGAT process is set up, the way -- the way this
18 whole industry has been set up is that it is a contract
19 based process. That's why pick and choose has been made
20 a fairly efficient, easy process. That's why -- that's
21 why all of those provisions are out there that aren't
22 necessarily -- that's how those processes are set up in
23 terms of being able to get those and incorporate them
24 into contracts.

25 MR. WILSON: I got to respond to that. I

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1 think this is the way Qwest has set it up, and it is
2 very disturbing to me that it's not -- when the CLEC
3 wants something that either they have now made a product
4 or that a governing body like the FCC has said it must
5 provide, it takes a long drawn out process to get it
6 into the contract, such as shared transport. I mean
7 that's a well known element, it was proved, it was
8 remanded by the FCC long ago, and yet it takes a long
9 time to get it in.

10 But the day the Eighth Circuit said they
11 didn't have to provide UNE-P, even though it was in many
12 people's contracts, the day that it was thrown out by
13 the Eighth Circuit originally, they stopped providing
14 it. You could call in and try and order it, and the
15 people taking the orders would tell you, oh, we don't
16 have to provide that now because the Eighth Circuit says
17 we don't.

18 I think this is the problem. If they
19 interpret a new rule to their benefit, it's gone out of
20 your contract that day. If something is now approved by
21 a commission or the FCC, it takes a long-term
22 negotiation process to get it in. And I think that is a
23 tremendous problem that the CLECs have been suffering
24 under for five years.

25 MS. LUBAMERSKY: Mr. Wilson, I'm concerned --

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1 I think in the past there's a lot of history that would
2 support some statements being made. But in the last
3 nine months, eight and a half months, if someone wants
4 something out of the SGAT, it's a quick amendment. We
5 verified that starting last summer and from the early
6 states, and it's happening. More than 20 CLECs have
7 taken a section of UNE-P and done a pick and choose on
8 the rate terms and conditions, and it's in and running.
9 Now most state commissions including Washington need to
10 approve that amendment, but it's working, and that's an
11 advantage of the SGAT. It's happening, it's been
12 happening for the last eight months.

13 MS. WICKS: I would actually counter that --

14 JUDGE WALLIS: I'm going to suggest that at
15 this point I have heard Qwest saying let's wait until
16 tomorrow because they want to be better prepared for the
17 discussion. I think we're getting into an area of
18 discussion that is less likely to produce agreement, and
19 I'm going to suggest we just continue this item, not
20 talk about it anymore, but take it up again tomorrow.

21 Mr. Crain, would that work for Qwest?

22 MR. CRAIN: That works for me.

23 JUDGE WALLIS: For the others?

24 MS. WICKS: That's fine.

25 JUDGE WALLIS: Okay.

03190

1 MR. CRAIN: UNE-C-7.
2 MS. STEWART: I think 6.
3 MR. CRAIN: I think we already closed 6.
4 MS. STEWART: Oh, I'm sorry.
5 MR. CRAIN: Looking to see if you have a
6 handout for that one.
7 MR. WOLTERS: Number 7 is 622.
8 MR. SEKICH: AT&T's proposal as found in
9 Exhibit 622 may have been incorporated by Qwest in other
10 sections of Section 9.23. The issues addressed in
11 AT&T's proposal relate to a prohibition on disconnection
12 of UNEs that are already combined unless specified by
13 the CLEC as well as other issues. Can I maybe seek a
14 confirmation of that, AT&T's proposal was to include it
15 here at 9.23.1.3.
16 MR. CRAIN: And I think a lot of it is in
17 9.23.1.3.
18 MR. SEKICH: Okay, could you --
19 MR. CRAIN: And then --
20 MR. SEKICH: I'm sorry.
21 MR. CRAIN: I'm sorry, you're talking about
22 in your -- the final sentence, you're talking about the
23 basically nonrecurring charges. This is an issue that
24 we addressed in 9.23, oh, where is it, 9.23.4. We
25 originally had language that we would have cost based

03191

1 nonrecurring charges. MCI suggested that we change that
2 and have it state that those be consistent with existing
3 rules, and we did change it.

4 I think the reference to TELRIC is up in the
5 air in light of the Eighth Circuit opinion, but I think
6 that -- I mean this was something that's been considered
7 in the cost docket, there are prices that are being set,
8 that have been set in the cost docket. We are saying
9 that they ought to be cost based, and we did --
10 originally had language that it would be cost based, but
11 the parties wanted it changed back to say something that
12 would -- they would be consistent with existing rules.

13 MR. WOLTERS: Andy, I brought this up in
14 Colorado, that change was made by WorldCom and --

15 MR. CRAIN: And agreed to by AT&T.

16 MR. WOLTERS: Well, no.

17 MR. CRAIN: Yes.

18 MR. WOLTERS: I think what happened was is
19 they asked for it to be TELRIC based, and what was, I
20 said in Colorado, what got lost in the concept was your
21 language said the cost would be your cost. And part of
22 inherent in that notion was the fact that we wouldn't
23 have to pay nonrecurring charges for every UNE because
24 you would only charge the actual cost to combine them,
25 so we wouldn't have to pay the nonrecurring charge for

03192

1 the loop, the switch, transport, you would say whatever
2 our actual cost was. So in essence, we kind of
3 addressed the loop charge issue.

4 And what happened was when you went back to
5 the TELRIC, it kind of lost that concept that you would
6 only charge us what your actual cost to you, to Qwest
7 was to combine them. And I asked in Colorado if you
8 would go back and look and maybe leave the TELRIC
9 language, but also add that concept back in. Because
10 now that concept is not embodied anywhere in your rate
11 section about what the -- that you will only charge
12 actual cost for combining UNEs, not each individual NRC.

13 MR. CRAIN: So you would like some kind of
14 language saying --

15 MS. STEWART: Well, I think we got to be
16 careful, because there really are two situations here,
17 and I want to make sure that we don't misspeak. One is
18 conversion, we agreed that you wouldn't pay the
19 nonrecurring for the con -- the nonreoccurring -- if
20 you've got an existing combination, it's going to be
21 converted to a combination of unbundled network
22 elements, but all of the UNEs have been installed and
23 you have paid all the, let's assume, the nonrecurring
24 charges associated with that combination, perhaps it was
25 previously ordered by the retail customer and you're

03193

1 doing a conversion, then yes, we would convert all of
2 the combination of elements, excuse me, the what was
3 previously a finished service into a combination of
4 unbundled network elements on a cost base, what does it
5 take to turn this from this existing installed thing and
6 make a billing record change, some cases it goes from
7 flat to measured, there are sometimes central office
8 work, and you would have the cost to do that.

9 What you are now coming back, it's a slightly
10 different thing, you're saying a new install, this is
11 the first time I'm installing these UNEs.

12 MR. CRAIN: Actually, this is, Karen, just
13 for transitioning of an existing service to a
14 combination.

15 MS. STEWART: That's what this is, but I
16 believe AT&T here was trying to take it the step further
17 of installing new combinations, and those are
18 potentially two different situations. That's the point
19 I'm trying to make here. One was a conversion issue,
20 and yeah, we had agreed it would be cost based, and
21 that's being resolved in the cost dockets. The second
22 one is the first time around installing of the UNEs.
23 That's a totally different story. For installing the
24 loop, we need the nonrecurring to install the loop.

25 MR. CRAIN: Would -- I mean we could add some

03194

1 language back in that says something like charges for
2 conversion of existing services to combination of
3 network elements are -- or nonrecurring charges are set
4 forth in Exhibit A and are based upon the costs of the
5 work done to convert those services. Would that be
6 acceptable?

7 MR. WILSON: I think if you put in an if any.
8 There may not be any work.

9 MR. CRAIN: There usually is even just
10 processing an LSR or something, but --

11 MR. WOLTERS: What are the --

12 MR. CRAIN: -- I understand.

13 MR. WOLTERS: Excuse me, what are the rates
14 reflected in Exhibit A for an existing UNE combination
15 that's retail, presently retail, that's being converted
16 to UNE, the UNE platform?

17 MR. CRAIN: I think for -- we'll get back to
18 you on that one.

19 MR. WOLTERS: Okay, I think the language --

20 MR. CRAIN: Basically we're agreeing that
21 we're not going to just add up all the NRCs and --

22 JUDGE WALLIS: Excuse me just a second, it's
23 really hard for us to hear when there's a lot of
24 conversation going on.

25 MR. CRAIN: We have agreed that we're not

03195

1 just going to simply add up all the NRCs and there will
2 be a separate NRC based upon the work that is actually
3 required to convert that service. I will put together
4 some language and put it back in there.

5 MR. WOLTERS: That would be very helpful.

6 MS. STRAIN: So that was a Qwest take back?

7 MR. CRAIN: Yes.

8 MS. STRAIN: Did you say that UNE-C-6. Is
9 closed?

10 JUDGE WALLIS: Yes.

11 MS. STRAIN: Thank you.

12 MR. CRAIN: Dom, I think the other concepts
13 you have in this paragraph are captured, but if there's
14 something else.

15 MR. SEKICH: We think there may be one
16 concept that perhaps hasn't been captured.

17 MR. WILSON: It's about the middle of the
18 paragraph, the sentence that starts, when existing
19 services including but not limited to access services
20 employed by the CLEC are replaced with a combination of
21 network elements or equivalent functionality, and then
22 it continues on. And I think the continued portion
23 which says, Qwest will not physically disconnect or
24 separate, that is included by itself.

25 But I think what is missing is the existing

03196

1 services, and I think I would certainly change that, the
2 sentence that I just read, to include the words,
3 elements ordered as access services. Because I think we
4 already had a bit of a discussion, and we will probably
5 have additional discussion today on the case where CLECs
6 have been essentially forced to order services under
7 access tariffs because the UNE elements simply weren't
8 available to us until recently, and so that there is an
9 interest in converting those to UNEs. And what this
10 sentence is trying to do is to make sure that when
11 you're doing those conversions, there isn't any
12 disconnect and reconnect.

13 MR. CRAIN: Now I would -- I will take it and
14 see if I can add something like that. First of all, we
15 don't necessarily know what services you're providing
16 through UNEs. We know that UNEs are combined, but we
17 wouldn't know that if you're doing something -- if
18 you're providing -- if you're buying services from us.
19 It seems to me you're adding further restrictions upon
20 this language and it's worse for you. But I will see if
21 I can put together some kind of further -- some language
22 about this applies when you're converting something that
23 is some kind of finished service here.

24 MR. WILSON: I think it needs to be also.
25 And I take your point that your language was general to

03197

1 UNE combinations, but I --
2 MR. CRAIN: It covers everything but --
3 MR. WILSON: Well, so you think your language
4 covers --
5 MR. CRAIN: Yes.
6 MR. WILSON: -- this situation?
7 MS. STEWART: I want you to look at 9.23.1.3,
8 the last sentence. Well, I mean it's obviously the
9 whole sentence, but I think the last sentence covers the
10 concept you were trying to have in the first part of
11 Exhibit 622, in that middle part you referenced.
12 MR. WOLTERS: I think what Ken was saying is
13 your sentence is limited to existing UNE combinations.
14 MS. STEWART: No.
15 MR. WILSON: Well, I -- maybe a slight change
16 in the last sentence would suffice. Where it says
17 currently interconnected, if we added after
18 interconnected something like, as a, I hate to use the
19 word, finished service.
20 MR. CRAIN: Hey, we're going to define it.
21 MR. WILSON: I think that's where maybe a
22 little clarity needs to be added for our comfort, and if
23 you can think about that.
24 MS. STEWART: How about as a working service
25 or functionality?

03198

1 MR. WILSON: That might do, a working
2 service.

3 MR. CRAIN: Sold.

4 MR. PETERS: Let me clarify this. Does this
5 mean that the CLEC has already ordered it as a combined
6 functioning service, or could it be that it's already
7 combined and functioning to the customer but provisioned
8 by Qwest currently or even potentially under CLEC?

9 MR. CRAIN: It would be either. For example,
10 if, and I think the glaring example is our fight before
11 the Eighth Circuit and the Supreme Court, if somebody is
12 ordering 1FR, if a customer is receiving 1FR service
13 from -- actually, with the CLECs, it's more likely want
14 it to be service from Qwest, and the CLEC wants to
15 convert that to UNE-P, we're not going to go out and
16 take apart and then put back together or put back
17 together. It's just going to be -- it's just going to
18 be converted to --

19 MS. STEWART: The only concern I would have
20 is the example of another CLEC. I mean Qwest is
21 providing the service as a 1FE as Andy described, and
22 then you came, yes, we'll convert it, leave it all
23 functional. But if another CLEC is providing -- has
24 purchased unbundled network elements from Qwest, those
25 unbundled network elements are being provided, we

03199

1 wouldn't necessarily know whether they're adding -- that
2 that CLEC may be adding some additional functionality we
3 don't know about, or that CLEC may need to release the
4 unbundled loop but doesn't need to release the
5 switchboard. I mean I guess I hesitate to interpret
6 this to mean that you can pick up a combination that
7 another CLEC is doing without disconnect or change just
8 because we may be providing some underlying piece of it,
9 so I don't think we can go to that extreme.

10 MR. WILSON: Well, but there are situations
11 where you can do that.

12 MS. STEWART: Perhaps in a UNE-P. If a CLEC
13 is purchasing an end to end UNE-P, they're not adding
14 anything to it, then there's a change from one CLEC to
15 another CLEC, then yeah, we can do it. So I just wanted
16 to be clear that I didn't want to assume that in all
17 cases that could happen, because we don't know what the
18 CLEC is doing or if they have added something to it.

19 MR. PETERS: And is this particular language
20 in 9.23.1.3 intended to include conversions of existing
21 finished services, or is that addressed elsewhere?

22 MR. CRAIN: This is to address conversions.

23 So are we clear with saying UNEs that are
24 currently interconnected as a working service or
25 functionality?

03200

1 MS. STEWART: Yeah, and functional, that
2 doesn't make sense.

3 MR. CRAIN: Or is it working service and
4 functional, if that adds the clarification you needed?

5 MR. WOLTERS: I think the ambiguity with this
6 that I see, although you may have expressed that you can
7 convert something that's a finished service to UNEs,
8 your first statement, when CLEC orders in combination
9 UNEs that are currently interconnected, you may consider
10 say special access or something not technically UNEs.

11 Even though they could be arguably network elements that
12 comprise special access, you may not be using UNEs in
13 this case to represent an existing service that --

14 MR. CRAIN: That language is not intended to
15 say they need to be currently purchased as UNEs.

16 MR. WOLTERS: That's I think the kind of the
17 what is not quite picked up here.

18 MS. LUBAMERSKY: Currently combined and
19 ordered together as a resale or retail service?

20 MR. CRAIN: Do you want to change UNEs to
21 network elements? That's the language that you had
22 originally.

23 MR. SEKICH: Yeah, I was going to say our
24 convention has been to use network elements, lower case
25 n, lower case e, to represent a very generic network

03201

1 element. UNEs capital, all caps, meant to apply to the
2 defined term unbundled network element, so that might be
3 the fix.

4 MR. CRAIN: Okay, can we say, when ordered --
5 all right, let me -- we'll take it at lunch and come
6 back, and I think we will be able to resolve it.

7 MS. STEWART: Right, we have the concept, and
8 we want to be responsive. We just want to not try and
9 wordsmith on the record. We will bring back a finished
10 recommendation.

11 MR. WOLTERS: Before we move on, if there are
12 no objections, I would like to go ahead and admit 622.

13 JUDGE WALLIS: Is there objection?

14 There being no objection, 622 is received.

15 MR. CRAIN: Now UNE-C-8 is 9.23.1.4 if I can
16 find that.

17 MS. STEWART: I think this issue has been
18 addressed in 9.1.1 and 9.23.1.2.

19 MR. SEKICH: I think we should close issues
20 9, sorry, issues UNE-C-8 through UNE-C-10. That will
21 save us some time. We note that these three sections
22 that these issues refer to include language that we're
23 going to be discussing next in UNE-C-11, so our concerns
24 are probably more appropriately addressed as part of
25 that issue.

03202

1 MR. WILSON: Each of those sentences has the
2 facilities -- provided that if facilities are available
3 clause, and we think that the rest of the language in
4 this paragraph is okay, but we do have a big problem
5 with that clause, but that is addressed in UNE-C-11, so
6 we can address that there.

7 MR. WOLTERS: We could almost show it
8 combined with UNE-C-11 or --

9 MR. CRAIN: I think the language -- I think
10 the issues raised in the other ones are resolved, but
11 the remaining issue is UNE-C-11.

12 MR. WOLTERS: Close it out.

13 MR. SEKICH: Close.

14 MS. LUBAMERSKY: Close 8, 9, and 10, and
15 we'll deal with all the leftover.

16 MR. CRAIN: Issue 11 relates to 9.23.1.4
17 through 9.23.1.6, and we are talking about obligations
18 to combine elements on behalf of CLECs, and we have
19 committed to do three things. We're committed to
20 combine network elements that are ordinarily combined in
21 our network. We have committed to combine UNEs that are
22 not ordinarily combined in our network, and we have
23 combined -- committed to combine UNEs with CLEC -- with
24 UNEs provided by the CLEC. Each one of these is
25 conditioned with the phrase, where facilities are

03203

1 available. We discussed this some yesterday.

2 We have -- we are not obligated to build UNES
3 on behalf of CLECs, but we have committed to building
4 DSO loops essentially when we have an obligation, a
5 legal obligation, to build for retail customers. The
6 FCC has made clear for things like UDIT and dark fiber
7 we have no obligation to build. This language I believe
8 is consistent with that policy, and I understand that
9 that is probably going to be an impasse issue. We're
10 going to get you some language tomorrow on that. I
11 don't know what further we need to discuss here, but.

12 MR. KNOWLES: Are you specifically limiting
13 it to DSO loops?

14 MR. CRAIN: We would -- I mean basically if
15 we have a legal obligation, which really only applies to
16 DSO loops, to build because of our polar obligations for
17 retail customers, we will build those loops for CLECs.

18 MR. PETERS: Let me ask, because obviously
19 the language of where facilities are available appears
20 I'm sure throughout the SGAT, and we have not run up
21 against this, but our fear is that we don't clearly
22 understand what would constitute facilities not being
23 available.

24 And so a situation where we order a DS1 to a
25 customer and you get a response that the facilities

03204

1 aren't available, there could be any number of reasons
2 why that is, and it could span from the fact that there
3 just doesn't happen to be sitting right there at that
4 customer's prem a pair, a cable pair, that's connected
5 all the way back to the central office and that is
6 currently DS1 capable. So that could be the extreme to
7 where there just -- there physically is no copper plant
8 anywhere to be found, and Qwest would have to build more
9 plant to put it in.

10 And our concern is that this language is
11 very, very vague and subject to interpretation such that
12 Qwest could say we aren't even going to go out and
13 rearrange pairs to free anything up, because that would
14 be the facilities aren't readily available. So has
15 there been any discussion, having not been here, about
16 defining that yet?

17 MR. WILSON: No, there hasn't, and after
18 looking back at transport, I think this also occurs
19 prominently in Paragraph 9.6.1.1, and I share
20 Mr. Peters' concern. I think we need Qwest to define
21 what they mean by facilities not available, because we
22 addressed this a little bit in construction yesterday,
23 and I have always assumed that what is meant by
24 facilities not available means that Qwest would have to
25 go lay in the ground new copper or fiber or whatever and

03205

1 that they're not required to do that. But I'm concerned
2 that Qwest may be interpreting this much more broadly,
3 so.

4 MR. CRAIN: What we're talking about here is
5 essentially the obligation to construct facilities, and
6 I will try to clarify and define that. The thing that
7 we are going to be -- we will do things like run
8 jumpers, we will do things like what the Supreme -- what
9 the Eighth Circuit called minor modifications to a
10 network to make UNES available. So if you want me to
11 try to clarify this language, I can, but there is not --
12 there is not an implication here, there is not intended
13 to be one, that if facilities are available and there
14 needs to be some kind of minor modifications that we
15 aren't going to do that.

16 MR. WILSON: Well, let me pose an example.
17 Suppose to get DS1 out to a customer location, you had a
18 DAX frame or something that has a certain number of DS1
19 cards in it, and there are no more spare cards left. So
20 would you call that facilities not available? In other
21 words, you wouldn't put another card in, another DS1
22 terminating card in a frame to allow us to get a DS1?

23 MR. CRAIN: I think I need to get a little
24 clarity on that one. It's my understanding that in most
25 circumstances we do things like put in cards and

03206

1 electronics.

2 MS. STEWART: Right.

3 MR. CRAIN: I'm not sure if there isn't some
4 -- I need to find out if there's some kind of thing that
5 cuts, \$100,000 or something like that. But in virtually
6 every situation, we can do that for you.

7 MR. WILSON: So this is pretty much limited
8 to not digging up the ground and putting in new fiber or
9 new copper just for our purpose?

10 MR. CRAIN: That is generally what this is
11 limited to, yes.

12 MS. STEWART: But there may be situations --
13 you used the example of a card.

14 MR. CRAIN: We also --

15 MS. STEWART: We would put in a card, but we
16 wouldn't necessarily put out all of the electronics if
17 there were no electronics out to that customer's
18 location. So, for example, I mean I don't know how
19 likely this would be, but let's say that fiber runs
20 through the basement of a building, but we have never
21 attached electronics to that fiber. It would be a build
22 to go in and break a splice or create a splice and
23 build, put in all the electronics to put some type of
24 fiber distribution panel to terminate. We would not do
25 that.

03207

1 MR. WOLTERS: Why is that not a minor
2 modification to the network?

3 MR. CRAIN: Well, first of all, in dark fiber
4 made it clear we don't have an obligation to do that in
5 the dark fiber, and that's really what we're talking
6 here.

7 MS. STEWART: Well, but even it it's lit,
8 they made it clear in the FCC that we don't have to put
9 in add/drop multiplexers on SONET rings. We only have
10 to make existing add/drop multiplexers on SONET rings
11 available. So that would probably be the better fit for
12 that one. So I just wanted to clear that there are
13 situations where a major capital investment of equipment
14 would need to be done, and that could be considered a
15 build. So it's not always digging up a street and
16 specifically laying copper. There can be electronic
17 situations where extensive electronic work would have to
18 be done. But if that electronics is there and you just
19 need a card to activate another DS1, yeah, we would put
20 the card in if there's room in that cabinet to make that
21 next DS1 be available.

22 MR. WOLTERS: Well, if somebody did ask for
23 facilities, a situation you said you wouldn't have to
24 make available, you would not have to make it available
25 because of the work, would you respond to the CLEC that

03208

1 we would not make it available, or would you respond
2 saying we have all these construction charges we have to
3 do, and if you want to pay the construction charges, we
4 may make available.

5 MR. CRAIN: I believe that is what we
6 discussed yesterday in Section 9.19, that you can submit
7 requests, and then we will consider that in terms of
8 doing that.

9 MR. WOLTERS: Okay, well, let me ask you
10 another question. Qwest doesn't inventory what we will
11 call facilities by product, does it? It just has a pool
12 of facilities that if I want to go in and order special
13 access, it has to go to the same pool, or if you want to
14 order transport, you go to the same pool. So if I go
15 in, do you look to see if you have a facility that's
16 available, you don't have an inventory say for special
17 access and say, well, we identified that facility as a
18 special access facility so it wouldn't be available?

19 MR. CRAIN: The only distinction we make is
20 this little tiny pool called CLEC facilities. No.

21 MS. STEWART: I think I can answer the
22 question.

23 MR. CRAIN: For the record, that was a joke.

24 MS. STEWART: I think generally, and I got my
25 network witness here who will I'm sure pipe up if my

03209

1 general analogy is not sufficient for technical reasons,
2 generally we have got a pool of unbundled two wire
3 copper loops out there. And it's not these are for
4 residents, these are for businesses, these are for
5 private lines. There's basically this general pool of
6 copper loops out there, and you're correct, the next
7 inquiry that comes in, be it special access, CLEC,
8 Qwest, retail, whatever, it all comes in here, and you
9 put in queue and say, is there something that's going to
10 fit my need to right where I want to go. In general,
11 that's true.

12 Are you saying is there ever a situation
13 where access can be kind of divided, and the only
14 example that comes to my mind is that there may be
15 adjoining facilities where some has been earmarked for
16 interoffice, and they really terminate end to end in two
17 central offices, and we have kind of said that's going
18 to be interoffice stuff. And these are stuff we have
19 grouped over here, and these are going to be outside
20 plant to end users. So I think you might find a big
21 picture split on things, and I'm thinking specifically
22 fiber, where this is the interoffice pool and this is
23 the loop outside plant pool. That's the only example I
24 can think about that you may run into a split.

25 MR. WILSON: So there shouldn't be a

03210

1 situation where we order an unbundled loop or unbundled
2 transport and it's not available, but then we order the
3 same, the same run as private line, and it is available,
4 that shouldn't occur?

5 MS. STEWART: I'm not saying that we never
6 for our retail products make decisions to construct.
7 So, for example, let's suppose a customer comes and
8 says, and I think this was even alluded to earlier by
9 Mr. Knowles, that we don't have something, but if you
10 would sign a three year contract with termination
11 liabilities that make sure that we incur our costs, we
12 will do that build for you. So there can be different
13 situations between retail where based on the length of
14 time, the contract, services being ordered by the
15 customer, we will make the business decision to build.
16 So I think it can exist that you could get it one way
17 and not the other.

18 MR. WILSON: But I wouldn't expect --

19 MS. STEWART: Because it's a build.

20 MR. WILSON: But I wouldn't expect that. I
21 mean usually when you're constructing, this is months
22 long process. I wouldn't -- I would be surprised to see
23 if I sent in an order for an unbundled loop or transport
24 and that was refused for no facilities, and then I
25 immediately put in an order for private line and you

03211

1 gave me a three year contract and I signed it and it was
2 available in two weeks. It would seem to me that the
3 facilities were really there all the time.

4 MR. CRAIN: We're becoming much more
5 efficient in building.

6 MS. STEWART: No, it's back to electronics,
7 okay. Let me give you an example, and this isn't being
8 -- if we have dark fiber and the dark fiber is
9 available, we would make the dark fiber available. So I
10 don't want this analogy to suddenly get into we're not
11 doing dark fiber, I'm just using it as an example.

12 Okay, let's suppose fiber is there, and it's
13 lit, and we've got electronics out there, and its an
14 OC48 or whatever. And you come to us and say, do you
15 have any spare dark fiber or capacity at an OC48 level.
16 We look and we say, no, because we've only got this one
17 OC48 and we have done whatever. Subsequently we get
18 requests, and a request is an end user customer wants
19 an, you know, an OC192, and it would take total change
20 out of the electronics. And I don't know the time line
21 and ordering of putting in electronics, but we may make
22 the business decision to remove the existing electronics
23 on that fiber, put in new electronics, create new
24 capacity, and build. And then I believe that would be a
25 much shorter interval, I don't know if two weeks, than

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1 an actual construction.

2 So that's why I wanted to be cautious that
3 the build isn't just not putting wire in the ground,
4 that frequently a build is around the business decision
5 to spend \$200,000, \$300,000 a half a million bucks on
6 totally new electronic equipment. And in some cases
7 electronic equipment that's very expensive can go in
8 very quickly. So I don't know if that analogy is quite
9 a fit, but I just wanted to clarify that on a retail
10 basis, we may make a decision to invest and upgrade and
11 replace electronics, i.e., build.

12 MR. WOLTERS: Question. I have heard and
13 seen, you know, heard situations where Qwest has said
14 essentially that their records are not always that good,
15 and they don't always know what's available in the
16 network. So you may put in an order, and you get a --
17 they look at their existing records, they get a FOG, you
18 get a FOG, and then when Qwest goes to place the order,
19 they see that facilities are not available, okay. So
20 you get back a notice saying essentially, well, we
21 thought we did, but we don't have the facilities.

22 At the same time, I'm concerned about
23 situations where your records say none is available, but
24 if you go out into the network and make a special look
25 at what you have and check, your records may be, you

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1 know, your record -- if your records are not always
2 accurate, they could be inaccurate the other way, where
3 if you went and looked, there would, in fact, be
4 facilities.

5 And I'm concerned that when you initially say
6 facilities are not available, we get the record look up,
7 and then if you have a customer that comes to you and
8 wants essentially the same circuit, you may send a
9 person out to look to see if that facility actually, in
10 fact, exists and your records are accurate. So I'm
11 concerned that -- that there's some provision that we
12 have some assurance that the same type of consideration
13 is given to the CLECs to verify that, in fact, the
14 record -- the facilities do not exist. And I think
15 there's an incentive to -- for the CLECs to use your
16 existing records, not take the time to go out maybe and
17 look, and have more of an incentive for one of your
18 customers to do that actual work to see if that facility
19 exists.

20 I don't know how you address that, but I
21 think that is a concern the CLECs have, whether -- and I
22 think we believe that in some circumstances Qwest makes
23 more of an opportunity to search out availability for
24 facilities than they would do for a CLEC if they have a
25 customer that asks for those facilities. That is a

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1 concern that I don't see is addressed.

2 MS. STEWART: I want an opportunity to chat
3 on that. I do want to respond to the issue of the
4 inaccuracy. I think typically what you're going to see
5 is it is this situation that we show that facilities are
6 available, and we believe that they sincerely are
7 available. Then we get out there and we discover that
8 part of the facility is not usable. So, for example, we
9 may show that there's dark fiber with four strands, we
10 get out there, we go to do the job or whatever our
11 records show that. Then we get out there, and one of
12 the strands is bad, and we can't deliver four, but maybe
13 we can deliver three, or maybe we can deliver two. Same
14 thing on copper loops. We look and we see there's a
15 copper loop, we get out there and find out, no, the pair
16 is bad and it's unrecoverable, and so now we don't have
17 facilities.

18 I am not aware that it would be that typical
19 that we would go out and find there's facilities we
20 didn't even know about that weren't in our records. I
21 think that more that they're in the records and they
22 have not been removed. And I just wanted to clarify, I
23 don't think -- and particularly when you look at the
24 high cap stuff that's working off electronics and we've
25 got other, you know, ways in which they're inventoried

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1 and done within our system, so I don't think we have
2 kind of stumbled across a bunch of work we didn't know
3 about, because we've got electronics equipment
4 monitored. Dark fiber, I think that could be the case.
5 Copper loops, maybe that could be the case, so.

6 But as to the issue of would a CLEC -- could
7 a CLEC make a request and would the CLEC be willing to
8 pay Qwest to go out and do a manual look, if the records
9 -- I mean here's what I heard you saying. You would
10 like a provision in the SGAT that says, it came back no
11 facilities available, is there a way that a CLEC can
12 order a on site we dispatch somebody and do a true look
13 to confirm no facilities are available, can you order
14 that as an option. Is that what I'm hearing?

15 MR. WOLTERS: Well, I think -- I mean you
16 could always probably write a provision like that, but I
17 think what I'm more concerned about is that we get the
18 same type of service for looking for facilities that you
19 would give one of your customers. When your records
20 essentially say no facilities are available, we get the
21 same treatment to determine, in fact, whether your
22 records are accurate or not.

23 So if you have a customer that comes to you
24 and says, I want this facility, I mean I want a private
25 line facility, and say your private lines rates are

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1 \$2,000 and your UNE rate is \$300, that you have the same
2 incentive for the \$300 customer to determine whether the
3 facility exists that you do for the \$2,000 customer for
4 the private line. Do you do anything special for them
5 to determine when your records say that there's no
6 availability, do you go out and say, well, you know,
7 there -- we may be able to do something to, you know,
8 serve this customer? Are we treated the same? That's
9 what I'm concerned about.

10 MR. CRAIN: Let me see if I can put together
11 something that can satisfy you on that one.

12 MR. KNOWLES: I have just a couple of
13 follow-up questions. First of all, you said that the
14 DSO is the only one that you're aware of that you would
15 actually have an obligation to build, so your specific
16 -- I want to make sure that I'm accurate. You're
17 specifically stating that if a CLEC wanted to order DS1
18 capable loop and there was no facilities available and
19 we ordered as a special access or a private line, those
20 routinely get built if there's a construction job
21 required. That's not what you're saying would be the
22 same as what your DSO example?

23 MR. CRAIN: No, because we --

24 MR. KNOWLES: It's not if you will build,
25 it's if you're obligated to build?

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1 MR. CRAIN: Yes, it's a legal obligation to
2 build.

3 MR. KNOWLES: Do we have a list of what you
4 consider legal obligations, or is it literally limited
5 to DSO two wire unbundled --

6 MR. CRAIN: As far as I know, it's -- it is
7 that.

8 MS. LUBAMERSKY: It is the retail requirement
9 in each state. Isn't that the best place to look?

10 MS. STEWART: It's tied to whatever our
11 retail obligation to build in a state is, and so it's
12 every state is specific and different, but that
13 generally those are tied to some type of carrier of last
14 resort obligation, which typically you're looking at a
15 1FR 1FE type of situation, which is a two wire analog
16 loop, so that's how you kind of follow through to get
17 the two wire unbundled --

18 MS. LUBAMERSKY: We're not attempting to
19 define that. We are relying on a state requirement.

20 MR. KNOWLES: I understand.

21 MR. CRAIN: Okay.

22 MR. KNOWLES: The follow-up question I have
23 then is if Qwest would build it if you bought it as a
24 tariff service, and the CLEC agreed to pay the same
25 amount but keep it as a UNE, is that something that

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1 Qwest would be willing to look at?

2 MS. STEWART: Well, I think it's your issue
3 about your --

4 MR. KNOWLES: It will field into that, but
5 the whole point is Qwest will do it for the prices that
6 are associated with the retail service, and if that's
7 the case and that's the only issue that's causing them
8 not to build --

9 MR. CRAIN: So is it -- so you're saying if
10 we were -- if you're willing to pay the retail --

11 MR. KNOWLES: Let me give you an example.
12 DS1 capable loop let's say is \$70. A channel term from
13 special access say is \$125. If we go out and say we
14 want a DS1 capable loop, Qwest comes back and says no
15 facilities available, what XO typically is required to
16 do to serve our customers, we turn around and then order
17 it as a private line or a special access. We pay the
18 \$125, Qwest says okay we've got that, it isn't something
19 we will build. They don't have special construction per
20 se, but they will say, for these terms and conditions,
21 this pricing, we will build this.

22 And what I'm saying that, as Karen has
23 already seen, is the problem that I have with the whole
24 commingling issue, if I can take the same thing, price
25 it somewhat differently, and have it still considered to

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1 be an unbundled element for purposes of combinations, is
2 that something that Qwest is willing to look at?

3 MR. CRAIN: That's something that we're going
4 to have to come back to you on. It's something that, to
5 be honest, hasn't come up yet, so.

6 MR. PETERS: You can talk to Perry Hooks.

7 MR. CRAIN: Okay.

8 MS. STEWART: It has come up with Perry?

9 MR. PETERS: Yes.

10 MR. WILSON: And I guess my concern in
11 Mr. Knowles' example is his example sounds like the
12 situation where you put on a minimal amount of
13 electronics, and he got the service, but as a private
14 line, and then he had to convert it, and so I'm not sure
15 that's really building.

16 MR. KNOWLES: Well, in my experience, and I'm
17 not trying to support Qwest by any stretch of the
18 imagination, but in my experience on this, it really has
19 been construction jobs where they really put us on
20 service inquiry. It hasn't been only electronics to
21 date.

22 MR. WOLTERS: Could we make that a separate
23 number?

24 MS. STEWART: Yeah.

25 MR. WOLTERS: I think that's an issue that I

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1 would really like to see made a number. And I think,
2 Rex, tell me if I'm wrong, is first is whether you can
3 pay the retail charges to construct it and then call it
4 a UNE so you could combine it with other UNES.

5 MS. STEWART: Right.

6 MR. WOLTERS: Then what -- and then I think
7 the issue is what will be the recurring charge for
8 that --

9 MR. KNOWLES: Well, and that -- I was -- I
10 was actually asking generically as far as nonrecurring
11 and recurring.

12 MS. STEWART: Because we --

13 Mr. KNOWLES: Because I want to keep the
14 nondiscriminatory. If they will do it -- if they will
15 do it for retail in terms and conditions, but just by
16 calling it a UNE they won't, I would consider that
17 discriminatory and problematic.

18 MS. STEWART: Right, and I did want to
19 confirm, and I think Mr. Knowles has already kind of
20 left there, that in making the decision to construct, we
21 do look equally at what are the reoccurring and what are
22 the nonreoccurring charges. It is the package we look
23 at when we make the decision to construct.

24 MR. WOLTERS: So could we make that UNE-C-21
25 now?

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1 MR. CRAIN: Yes, UNE-C-21.

2 MS. STRAIN: Yeah, if somebody would maybe
3 recap what that issue is for the benefit of the issues
4 log.

5 MR. KNOWLES: Oh, you want me to do that
6 right now, okay, I thought you wanted me to draft
7 something up.

8 MS. STRAIN: No, just kind of --

9 MR. KNOWLES: Off the top of my head?

10 MS. STRAIN: Off the top of your head, yes.

11 MS. STEWART: Maybe I can try it. It would
12 be for the record UNE-C-21, can a CLEC elect to pay
13 retail rates and charges for a network element that
14 needs to be constructed, but still have that finished
15 facility be considered a UNE that can be combined to
16 other unbundled network or other UNEs, the capital N,
17 U-N-E-S.

18 MR. WOLTERS: And I think the subparts are
19 what would be the recurring and the nonrecurring
20 charges.

21 MS. STEWART: Right, but I'm going to already
22 tell you it's packaged, but we can make it a subitem if
23 you would like.

24 MS. STRAIN: May I ask is there also, did I
25 hear somebody say there was a parity issue with that in

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1 that they would build it at one rate but not --

2 MR. KNOWLES: If they would build it as a
3 private line service for the terms -- for the same
4 price, recurring and nonrecurring, would they build it
5 for the same price as a UNE.

6 MS. STEWART: I do have kind of one issue
7 that I want to put out on the table on this. What Qwest
8 would not want to be in the unenviable position of doing
9 is having the CLEC be able to request a service on a
10 month-to-month contract, I mean not a contract,
11 month-to-month let's even say a tariffed rate. So they
12 come to Qwest and they say, I'm willing to pay the UNE
13 rate, excuse me, I'm willing to pay the retail rate to
14 put in this UDIT, this unbundled dedicated transport
15 between office A and office B, and I will just take that
16 tariff rate, charge me month to month. So therefore,
17 they get it at the tariffed rate, it's put in, then the
18 very next day they put in an order to convert that
19 facility to a UNE. Not all of our services we make the
20 decision to construct are totally tied to term and link
21 contracts. In some cases, the decision may be made to
22 build just based on the expected life span of what that
23 facility will stay in. Do you know what I'm trying to
24 say here, that we may put it --

25 MR. KNOWLES: We always leave it in for two

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1 days before we convert.

2 MS. STEWART: I mean I just wanted to be
3 clear that a lot of times we make the decision to build
4 for a DS1 not only -- I mean if the customer says, hey,
5 I'll take that for three years at this rate, and I will
6 sign a contract, that's a real easy decision to make the
7 decision to build. Sometimes there may be situations
8 where the retail customer says, hey, I want to order
9 that, and I'm willing to pay the tariffed rate, which
10 may be higher, and there's no term involved, two years,
11 three years, and we may still make the decision to
12 construct because typically on the retail side that
13 would stay in for 20 months or 36 months or whatever.
14 Typically retail customers do not order DS1s and then
15 disconnect it the next day. There is an average life
16 span that those things stay in and working. And so I
17 just kind of want to be cautious and let you know that
18 as we're crafting this language, that issue is going to
19 have to be addressed.

20 MR. KNOWLES: That will probably need to be
21 addressed specifically, because on the flip side, we
22 would want it to be explicitly addressed, because we
23 don't want the issue to result -- continue for
24 perpetuity either.

25 MS. STEWART: Right, I understand.

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1 MS. STRAIN: Well, I still need some more
2 clarification on this. So is there an issue that --
3 what I heard Ms. Stewart say is that Qwest may make a
4 decision to construct new facilities for a retail
5 customer if they were assured of a certain term, but may
6 not be willing to construct those same facilities if
7 they were called UNEs and they were constructed at a
8 lower price. Did I hear that correctly?

9 MS. STEWART: That is correct.

10 MR. WILSON: I have one suggestion for the
11 general facilities availability language for Qwest to
12 think about when they're redrafting, and that would be
13 to replace the general language that says provided that
14 facilities are available with something more like,
15 except where transport facilities will never be
16 available. My concern is that, except where transport
17 facilities will never be available. The problem is that
18 once you build for your own purposes or some either
19 internal purposes or for an end user, once you build it,
20 then it is available as a UNE.

21 MR. KNOWLES: And what Qwest typically has
22 done from my experience is when you order something and
23 it goes held for no facilities as a UNE, it's put on
24 what they call service inquiry, and it stays there until
25 something else pushes the job out. And when they do

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1 another job, then they'll try to fill that. But it
2 could take six months, a year, two years, or never, you
3 never know.

4 MR. WILSON: Well, once it's there, then it
5 should be available.

6 MR. KNOWLES: Right.

7 MS. LUBAMERSKY: Ken, we dealt with this in
8 earlier SGAT language by confirming that available is at
9 the point of inquiry. Available is not defined as the
10 day of the SGAT or the day of any other document. That
11 our definition of available in the SGAT is at the point
12 of order, exactly to Mr. Knowles point that today it
13 might not be available, but in six months, an equivalent
14 order could be available. And our definition is at the
15 point of service request, are there facilities
16 available. If so, we will complete the order. If not,
17 there is a number of steps that could occur. But your
18 suggestion of never would be inappropriate, because it
19 would deny access to facilities as they became
20 available, and that's no one's intent.

21 MR. CRAIN: And the question is, what do you
22 do with the order, and I don't -- and the question would
23 be what do you want to have done with the order rather
24 -- is it something that we commit to do, or is it
25 something that we say we will hold onto this, and if

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1 something comes available we will do it, or do you want
2 us to send it back, and where does this mysterious issue
3 of cancellation charges come in. So I mean that kind of
4 broad sweeping language doesn't really make a whole lot
5 of sense.

6 MR. WILSON: Well, I was actually trying to
7 capture a little -- maybe there's something better and
8 clean, but I was actually trying to capture I think what
9 was just said, that the language that's currently there,
10 which just simply says provided that facilities are
11 available, would suggest that if they're not, under the
12 conditions that we have discussed, then that order would
13 always be rejected rather than the situation that is
14 actually happening. And I think the CLECs should have
15 the option of leaving the order there to see when they
16 do become available, and then they would be provisioned.
17 I think -- and I think you should have either choice.
18 If facilities are not available and you indicate that
19 they won't -- you're not sure they ever will be, then we
20 should have the choice of canceling the order at no
21 charge or leaving it there to see if they become
22 available.

23 MR. KNOWLES: And I believe that is your
24 current practice. You don't cancel the orders for
25 there's no facilities available. You leave it there for

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1 an indefinite period of time, and the CLEC would either
2 have a chance of just waiting for it or canceling and
3 ordering something else. So I don't know that -- maybe
4 the word is not right, but I don't think the concept
5 should be a problem.

6 MR. PETERS: Is that true for UNE orders? I
7 mean I have a project with a special access private
8 line, but we have not got experience on the UNEs yet to
9 know how they handle those.

10 MR. KNOWLES: That's my experience with it,
11 yeah, but if we had it in language, that would be --

12 MS. STRAIN: One last question, Ms. Stewart.
13 Is there experience that CLECs, you mentioned that
14 retail customers are not likely to abandon, to ask for
15 facilities to be built and then abandon them, is there
16 experience on your part with the CLECs doing that; is
17 that something that has happened?

18 MR. CRAIN: The question is not abandoning.
19 The question is immediately then switching, saying, oh,
20 thanks, we understood that we ordered this at blank
21 rate, but tomorrow we want to submit an LSR and convert
22 to the old UNE rate.

23 MS. STEWART: That's right. I think that you
24 were -- I was not clear. When I meant the CLEC
25 abandoning it, I meant abandoning it at the retail rate,

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1 not continuing at that retail rate.

2 MS. STRAIN: Thank you.

3 MR. WILSON: But let's explore that just for
4 a moment, because I guess my question is, why wouldn't
5 that be appropriate in most situations. If you do -- I
6 mean generally you decide to build something with more
7 than one customer. I mean the CLEC may be one of
8 several, and you build it, and then why wouldn't it be
9 available at a UNE rate once it's built rather than a
10 retail rate?

11 MS. STEWART: I don't want to -- we have our
12 Washington expert in the room because there are some
13 state specific nuances here, is I -- Qwest, just like
14 other CLECs, on its retail products can make the
15 decision to recover nonrecurring costs through recurring
16 charges. So it's not a given that all Qwest products
17 when you put in the installed product that a complete
18 nonrecurring rate is recovered up front. We are able
19 and to recover nonrecurring through reoccurring charges,
20 so that's why its a problem. If all retail services
21 totally recovered recurring -- nonrecurring at the time
22 of the install, it would probably be less of an issue.

23 MR. KNOWLES: So the specific issue for the
24 discussion I think probably, should there be a minimum
25 period of time prior to a CLEC's ability to change it

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1 from the retail pricing to UDIT pricing.
2 MS. STEWART: That is correct.
3 MR. KNOWLES: Or UNE pricing.
4 MS. STEWART: Right, and I think the analog,
5 coming back to our obligation to build an analog two
6 wire loop, I mean I think that's the classic. If it's
7 determined for whatever reason to meet our carrier last
8 resort obligation that we're actually required to
9 construct to an end user, we don't charge that end user
10 the \$1,200, I'm making that number up, you know, the
11 \$1,200 to install that loop out to that residential
12 customer. We can't recover it from that specific
13 individual customer. What we will have to do is go back
14 and charge that customer our standard installation of
15 nonrecurring of \$30, and over time, we're going to hope
16 that we get the \$1,200 back that it took us to put it
17 in. So specifically in unbundled loops that's a real
18 construction issue, because nonrecurring charges have
19 typically been pretty low for residential customers.
20 MR. WILSON: Well, I think we will see what
21 language you come back with and go from there.
22 MR. CRAIN: Making it work today.
23 MS. STEWART: We may have to break at 3:00
24 today.
25 MS. STRAIN: So can I list UNE-C-21 as a

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1 Qwest take back?
2 MR. CRAIN: Yes.
3 MS. STRAIN: Because you're going to work on
4 some language?
5 MR. CRAIN: Yes.
6 MS. STRAIN: Thank you.
7 MR. CRAIN: UNE-C-13, I was looking for
8 9.23.1.8 in your handouts, I didn't see --
9 MS. LUBAMERSKY: It's in the testimony.
10 MR. CRAIN: Yeah.
11 JUDGE WALLIS: Let's be off the record for a
12 minute.
13 (Discussion off the record.)
14 (Luncheon recess taken at 12:00 p.m.)
15
16 A F T E R N O O N S E S S I O N
17 (1:35 p.m.)
18
19 JUDGE WALLIS: Let's be back on the record
20 following our noon recess, and I understand that the
21 parties have had the opportunity to engage in some
22 discussions over the noon hour; is that correct?
23 MS. STEWART: Yes.
24 JUDGE WALLIS: And AT&T will state the
25 results of those discussions.

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1 MR. SEKICH: Sure, I think there remain a few
2 issues to discuss. However, the number probably has
3 decreased, and let me go through quickly and suggest
4 which issues AT&T, as indicated as the party raised
5 them, which issues we believe are closed for AT&T's
6 purposes. Unfortunately, we opened or suggested to open
7 two additional issues, but I think their disposition is
8 probably very quick as well.

9 UNE-C-13 related to two exhibits AT&T
10 submitted. For clarity on the record, those exhibits
11 were 625 and 623. AT&T is satisfied that issues raised
12 in the language AT&T has proposed have either been
13 included or because of development of the issues are no
14 longer significant to AT&T. Accordingly, we recommend
15 that this issue, UNE-C-13, be closed with no further
16 activity required by Qwest to update the SGAT or
17 whatever.

18 UNE-C-14 relates to Section 9.23.1, and this
19 issue as well, AT&T's view is that it is closed. Qwest
20 has made clear in other places both by making it clear
21 on the record and also making modifications to the SGAT,
22 which we note are included here, that accommodations do
23 not -- are not limited to preexisting or precombined
24 UNEs, and that satisfies AT&T that our concern that we
25 raised in our testimony is adequately addressed. So

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1 UNE-C-14 is closed.

2 UNE-C-18 and UNE-C-19 were proposals that
3 AT&T had made to develop specific combination products.
4 AT&T withdraws its proposal to include as products the
5 items identified in the matrix at these issues. We will
6 note that these products could be developed possibly
7 through the BFR process, which I think makes important
8 our discussion of that BFR process when we turn to it
9 later in this proceeding.

10 I should note that we will discuss at some
11 point probably in the ordinary course of working through
12 these issues UNE-C-20, which was created earlier today,
13 which relates to AT&T's Exhibit 620.

14 And AT&T has identified two additional issues
15 that we probably can dispose of now, since they probably
16 can be handled rather quickly. One we might identify as
17 UNE-C-22, understanding that UNE-C-21 was an issue
18 identified by XO, I believe. And UNE-C-22 would be
19 AT&T's proposal for insertion of language at Section
20 9.23.2. AT&T's proposal here is to insert the term, but
21 not limited to, after the words, UNE combinations are
22 available in, in the very first sentence of that Section
23 9.23.2. So that the clause that you see on the first
24 line would read now:

25 UNE combinations are available in, but

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1 not limited to, the following standard
2 products.

3 And I understand that's acceptable to Qwest.

4 MR. CRAIN: Yes, it is.

5 MS. STEWART: Yes.

6 MR. SEKICH: And that would close that issue.
7 I identified it as an issue so that we would be able to
8 track it when we see the next iteration of the SGAT. I
9 should note that AT&T filed an exhibit that incorporates
10 -- points to that change. That exhibit was I think 624.
11 It had other proposed language that I think AT&T is
12 satisfied has been accommodated elsewhere in the SGAT,
13 but I just wanted to make sure we on the record were
14 clear where that exhibit figured.

15 Finally, AT&T proposes to identify an issue
16 as UNE-C-23, and for lack of a better word we might
17 describe this as the indemnification issue. AT&T
18 submitted Exhibit 626, which proposes language for
19 Section 9.23.3.1. This language is substantially the
20 same as the language AT&T advocated for Section 9.1.2
21 that we discussed at length yesterday. There's -- I
22 think it's 9.1.2. This is where we had proposed certain
23 standards, including the standards set forth in Section
24 20 of the SGAT, as well as certain wholesale and retail
25 service quality standards, as well as setting forth an

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1 indemnification provision. This language, as I
2 mentioned, is substantially the same if not identical to
3 the language we proposed there. And this position I
4 think, and I think Qwest agrees, should be the same, so
5 that this issue should be considered at the same time
6 the other issue is considered. For tracking purposes, I
7 propose we identify it here as UNE-C-23.

8 MS. STRAIN: Could you just repeat the SGAT
9 section and the exhibit number that refers to this
10 issue?

11 MR. SEKICH: Yes, the exhibit number would be
12 626, and the SGAT section would be 9.23.3.1.

13 MS. STRAIN: Thank you.

14 MR. SEKICH: That's it.

15 JUDGE WALLIS: Do you wish to withdraw
16 Exhibits 623, 624, and 625?

17 MR. WOLTERS: It's really your preference
18 whether we actually show them as withdrawn or not asked
19 to be admitted. They have only been marked, so --

20 JUDGE WALLIS: They have been identified.
21 For our administrative purposes, I would prefer to note
22 that they have been withdrawn.

23 MR. WOLTERS: Okay, 623, 624, and 625 will be
24 noted as withdrawn.

25 JUDGE WALLIS: Thank you.

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1 MR. CRAIN: We move on to UNE-C-15.

2 Actually, Karen suggested this is probably a good time
3 to address AT&T/Qwest open issue, which is UNE-C-20.

4 JUDGE WALLIS: Excuse me just a second,
5 again, we're getting some conversation in the room, and
6 it's really hard for the court reporter and the rest of
7 us to follow. And I'm going to invite folks again, not
8 critically, but merely note that you can have unfettered
9 conversations out in the hall. The room on the east
10 side of the building that has the bookcase in it has a
11 desk at the back. You have relative privacy in there if
12 you want to go in there.

13 Mr. Crain.

14 MR. CRAIN: We suggest we go to UNE-C-20 and
15 then back to 15, 16, and 17 following that.

16 MS. STEWART: It's a stand alone issue and
17 not as involved as some of the other ones. What the
18 issue was was that AT&T had proposed language that Qwest
19 would add to the SGAT. Qwest does not agree to add the
20 language that AT&T had recommended. The primary concern
21 that Qwest had with the language is Qwest believed the
22 language could be interpreted to require Qwest to
23 provide UNEs in a particular manner within an underlying
24 facility.

25 For example, if a UNE can be provided either

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1 over copper or over fiber or over digital loop carrier
2 and in all cases we could meet the technical
3 requirements for that UNE as set forth in NCI codes,
4 then Qwest has to retain the flexibility to provide that
5 UNE in whatever underlying infrastructure it can, and we
6 were concerned that that language could take that
7 necessary and important flexibility away from Qwest.
8 And so therefore, we did not agree to interpret the
9 language.

10 We believe many of the other issues as far as
11 at technically feasible interfaces and et cetera can be
12 dealt with with NCI codes. We do have a technical
13 network witness, Rachel Torrence, who is also here
14 available if there are any questions beyond my overview
15 of the Qwest concerns, and she is available to respond
16 to specific technical questions.

17 I believe AT&T wanted to now make some
18 comments on that language.

19 MR. WILSON: Well, I think there are really
20 two issues here. The first is the issue of interfaces,
21 and that's what the language in the first of our
22 paragraphs addresses is interfaces at different levels
23 that may be needed. Now I guess the question is, are --
24 does Qwest consider that we will be limited in any way
25 in our ordering of UNEs or UNE combinations in the

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1 interface levels that we would use. I know we have
2 language on different types of transport, different
3 types of loop and multiplexing that we can add in
4 combination. Is there any known limitation to our
5 ability to get various combinations, mix and match if
6 you will, of these elements?

7 MS. STEWART: The only limitation would be
8 one of a technical feasibility or practical standpoint.
9 For illustrative, like a DSO might not be able to be
10 directly connected to an OS OCn level service. So
11 perhaps though you could design a situation where there
12 was some type of MUX or electronics in the center of
13 that that would make that technically feasible. So
14 other than the fact that mixing and matching of
15 interfaces does require that technical ability, and plus
16 it does require that we have the facilities in place in
17 the network to make that happen, because you could also,
18 of course, get into a special build, special
19 construction situation if the type of unique equipment
20 you required wasn't available.

21 So what I'm trying to say is the fact that
22 they're different doesn't mean that you can do it, but
23 from a reality standpoint, depending on what you're
24 asking for. If you're asking for a straightforward
25 bring in some DSIs to a three to one MUX and MUX up to a

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1 DS3, then yes, we could do that. That's a combination
2 that exists in our network, that's standard and exists
3 in our network.

4 MR. WILSON: Okay, so you're basically saying
5 if it meets the feasibility requirements that it's not
6 specifically prohibited.

7 MS. STEWART: Correct.

8 MR. WILSON: Okay. Well, I think given that,
9 we will take this part of our language back and see if
10 we feel it's adequately addressed.

11 The second issue then is I believe you
12 mentioned an issue of the type of facility that a
13 particular UNE or combination is being provided with,
14 and I think we could specifically look at the last
15 sentence in the Exhibit Number 620 as an example, and
16 this is talking about DS1 being provided either as an
17 xDSL or by xDSL facilities or by AMI, which is more the
18 standard DS1 type of a repeater facility. And we have
19 -- both languages say the CLEC can order at its option
20 either of those. And I guess it sounded as though Qwest
21 did not feel the CLEC could order -- and at the CLECs
22 option. And I guess I would ask is that a policy
23 decision or some other consideration?

24 MS. TORRENCE: I can't address from a policy
25 perspective, but I can say that when we're asked to

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1 provide say the DS1, it has always been at our
2 discretion to determine what underlying facility is
3 going to be providing that DS1. You're ordering a DS1.
4 How we give it to you should be our business basically
5 is the way we've looked at it. You're getting what
6 you're asking for. How we provide it to you should be
7 irrelevant. And we have never offered the option of a
8 retail or a wholesale customer coming to us saying we
9 want a DS1 and we want it over fiber. That's never been
10 an option we have offered.

11 MR. WILSON: Does Qwest have the ability to
12 select from multiple technologies? I mean is it
13 technically feasible to make a choice?

14 MS. STEWART: What my understanding, and
15 maybe we can have our technical witness address this, is
16 that when Qwest does an assignment, there is a hierarchy
17 that goes out and searches for here is the optimal
18 thing, if this is available, I will provision it that
19 way first. If that isn't available, the system will do
20 this, this, and this.

21 I'm not sure that it wouldn't take a manual
22 extensive rewrite of our provisioning systems,
23 particularly if something is the garden variety of DS1,
24 to have to override that, because it is an underlying
25 hierarchy that says, when you're given the chance, you

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1 will do this, this, and this, and maybe we can expand
2 upon it.

3 For example, analog T1 at the DS1 we're
4 trying to do away with because of potential specter
5 management issues, and so that's like the last effort
6 that's picked. And so we do have an automatic
7 assignment function that does give a hierarchy to the
8 most desirable technical facility based on a going
9 forward network center.

10 MR. WILSON: Don't you have the ability
11 though to go into, for instance, the TIRK system to look
12 to see how -- the different facilities that a route is
13 provided on, so you do have the ability to select
14 technology I would think.

15 MS. TORRENCE: We're working under the
16 assumption that we have copper, fiber, or any multitude
17 of spare facilities, and that's generally not the case.
18 Our systems generally bring up the first spare facility
19 based on this hierarchy. And if we want to go even
20 further than that, it might require say -- say you want
21 a facility that's presently provided over the LC, you
22 wanted a straight copper loop that was close to the
23 office, that would -- that would mean that we would have
24 to go in there and recondition something, take one pair,
25 flop it over to something else, clear a pair, and give

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1 it to you, where we could just give you the facility you
2 were asking for over the DLC. And as long as we meet
3 the parameters of what it is you're ordering, it should
4 be irrelevant how we get it to you.

5 But again, the assumption that you're making
6 is that we have spare facilities of every type and we
7 can go in and pick and choose, and that's generally not
8 the case.

9 MR. WILSON: Yeah, I guess then in the
10 example of a DS1 provided over AMI or xDSL, there would
11 be issues, for instance, if you were at a customer
12 premises and the customer had a need to extend the
13 facility in a campus environment, there could be
14 situations where the DS1 provided over a DSL would not
15 be able to make that extension, where DS1 over AMI would
16 be able to do it. So I think there's some concern that
17 there would be situations where it might be important to
18 be able to select between two technologies, given that
19 the two were there.

20 I mean this has to have a caveat of where
21 available I think to some extent. I'm just concerned
22 that Qwest has the ability to do this itself if it so
23 chooses, and putting a limitation into the SGAT would
24 preclude the CLEC from being able to do the same thing.

25 MS. TORRENCE: Again, when you order a

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1 facility, say a DS1, to a point, you're ordering a
2 facility with X capability to that point. If we deliver
3 it to that point, we don't know what you will be using
4 it for. We're giving you say a DS1 capable loop to
5 point X. We don't know what you're doing beyond that.
6 I don't see how we can provision a facility to you
7 without knowing what the parameters that you're looking
8 for are.

9 MR. WILSON: Well, I think --

10 MS. TORRENCE: I hope I'm making myself
11 clear.

12 MR. WILSON: You are, and I think that's
13 exactly why it might be reasonable for the CLEC to
14 choose which technology should be used, because we would
15 be the ones that knew what would be riding on it.
16 Whereas if we just put the order in and took pot luck,
17 maybe we would get the right technology and maybe not.

18 MS. TORRENCE: It's not pot luck if you order
19 what it is you actually need.

20 MR. WILSON: But I mean the specific example
21 in our paragraph is the DS -- the two types of DS1. And
22 as I have said, if I have a need to extend the facility
23 at a customer premises, for example, the distance may
24 cross a threshold for the xDSL provided, whereas the AMI
25 might not. And also I could easily repeater the AMI and

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1 get it extended, whereas the xDSL by its nature is more
2 distance limited.

3 MS. STEWART: Mr. Wilson, I think I'm a
4 little confused with the analogy, and maybe hopefully
5 you can help me out. If we deliver a DS1 and we meet
6 all of the technical parameters and standards as set
7 forth by Bellcor in our technical pubs, and et cetera,
8 et cetera, for a formatted templated DS1 signal, we send
9 it to you, it terminates at some electronics at the
10 customer plant. Now I understand your issue is I may
11 want to do something more, go beyond. But aren't you
12 going to have to interface our DS1 to your equipment
13 that's going to do the repeaters and go forward. And
14 why if ours came in on an xDSL facility, it was properly
15 templated, properly met all the DS1 requirements, why
16 wouldn't you be able to do then a connection to your
17 equipment that's going to pick it up and move it off.

18 I mean your -- our DS1 is still going to be
19 designed end to end. You're not really going to be able
20 to go in the middle of our DS1 and insert your repeater
21 equipment. You're still going to have to put the two
22 DS1s together, and whatever thing you're using to put
23 the two DS1s together is going to have the capability to
24 take both types of facilities.

25 So that's the part where if we have a design

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1 to point, we make the requirements of the design to
2 point, you're still going to have to put in a whole
3 different set of electronics to build your extra leg.
4 You're not going to move our electronics out further on
5 the customer prem.

6 MR. WILSON: In the example that I was using,
7 it's not an issue at the wire center end. The issue
8 would be at the far end, at the customer premises, where
9 the provisioning of DS1 over xDSL is limited to a
10 certain distance. So if you look out toward the
11 customer premises, if there was a need at the customer
12 premises say in a campus type environment to extend the
13 loop further than Qwest was provisioning, you can get a
14 situation where the xDSL simply can't be extended,
15 whereas the AMI could be extended by repeatering on the
16 customer premises. So your reply was really focusing on
17 the wire center, and I was focusing on customer
18 premises.

19 MS. STEWART: If I sounded like I was
20 implying on the customer, the CO, I'm talking about at
21 the customer prem location. Basically, if we terminate
22 a DS1 at the customer prem location for a CLEC, it's
23 going to end in probably some type of smart jack or the
24 equivalent thereof. You're going to plug into that
25 jack.

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1 What I'm saying is if you're going to plug
2 into that jack to go some extension, and whatever
3 technology you're using to now, lack of a better word,
4 kind of piggyback to extend that, you're still going to
5 have to put your own electronics, your own circuit or
6 whatever it is you're going to do to go out there. And
7 I'm not aware that when that smart jack when you're on
8 the jack side of that, what we provided on the other
9 end, be it xDSL or DS1 or AMI, doesn't make any
10 difference. It's a templated DS1 terminating in an
11 industry standard smart jack.

12 Now you're going to plug into that jack, so
13 it doesn't matter how we gave it to you. As long as
14 it's good to that point, you can pick up and use
15 something different, assuming that's technically
16 feasible and all that. But to the customer end of what
17 we're delivering on the customer side of that jack or
18 the CLEC side of that jack is transparent over what was
19 there before.

20 MS. TORRENCE: And again, we are giving you
21 exactly what it is you are asking for to that point X
22 that we are designing to. If you need something beyond
23 the capabilities of that DS1 at that point X, that's
24 something that should have been ordered above and beyond
25 or in addition to.

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1 MR. WILSON: Well, I guess I get back to the
2 question, can Qwest for itself or its customers pick the
3 technology that would be used for a loop or a
4 combination?

5 MS. TORRENCE: The way we pick facilities now
6 is what is spare and will meet the templated signal.

7 MR. SEKICH: If you had a choice between a
8 DS1, AMI, or xDSL, assuming those facilities are
9 available to you, would Qwest have the ability to
10 discriminate between them in provisioning to itself?

11 MS. TORRENCE: Well, but there's a very big
12 difference between what we pick for ourselves and the
13 situation that Mr. Wilson laid out in that we would know
14 we were going the full distance across that campus, and
15 we would provision accordingly. We wouldn't just say,
16 oh, I'm just going to the doorstep of the campus, and
17 that's as far as I have to go, so I will just pick
18 whatever will get me there. If I know I have a distance
19 to go beyond that, that would have been incorporated in
20 my initial design. Whereas when you are ordering to a
21 point X, I don't have any way of knowing what will be
22 beyond point X and what the demand beyond that point
23 will be, if any. And again, we will be delivering
24 exactly what you have ordered to the point.

25 MR. WILSON: And I think that's kind of

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1 exactly my point, that because you don't know and I
2 know, can I pick which technology, because --

3 MS. TORRENCE: Well, by the same token, can't
4 you just come to us and say, I know that I need this,
5 this is what I'm purchasing from you?

6 MS. STEWART: The real design point is
7 further out.

8 MS. TORRENCE: Yeah, the real design point is
9 further out.

10 MR. SEKICH: Well, are you saying the option
11 is not for the CLEC to choose the technology, DS1, AMI,
12 or xDSL, but to tell you what the design to point is?

13 MS. STEWART: Correct.

14 MS. TORRENCE: Basically.

15 MR. WOLTERS: Even though you don't build all
16 the way to that point?

17 MR. WILSON: And maybe that gets to the
18 critical issue. What if it is a large campus and you
19 don't have facilities now, and you won't build because
20 it's a UNE, so I have to provision my own cable on the
21 campus, so how do -- I mean how do I -- essentially
22 you're not -- you're stopping at say the equipment room
23 or the minimum point of entry, and either I have wire or
24 the customer has wire that we're going to use to go on
25 out. And so I think what I'm actually asking is, can't

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1 we -- how do we tell you what we need, because we --
2 what we need is DS1 over AMI, not DS1 over xDSL, because
3 one will work and one won't. I think that --

4 MS. TORRENCE: I think more the point is how
5 do I get what I need to point X plus whatever, not
6 necessarily dictating what the underlying facility
7 should be as long as you get whatever templates in you
8 need to the point you need it at. As Karen mentioned
9 earlier, we have a hierarchy of how -- we're looking at
10 manually going through. You're asking us to look at
11 everything you've got or every order that you have
12 submitted to us to a certain point and disregarding the
13 hierarchy of how we select the technology that we're
14 using.

15 MR. WOLTERS: Well, could we order a, say for
16 example, a 5,000 foot DS1 to a 4,000 foot termination?
17 I mean a 5,000, you know, a loop that would work to
18 5,000 or 7,000 feet, but we're only going to terminate
19 it at 4,000 feet, so we really only want a certain
20 portion of the loop, but it would be designed as if it
21 was going the whole length? Because I think that's what
22 Ken is saying.

23 MS. STEWART: Well, I guess the part I'm --
24 oh, sorry.

25 MR. DITTEMORE: Dave Dittimore for Staff, can

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1 I rudely interrupt and suggest that maybe because you
2 have highly sophisticated customers here, the CLECs,
3 that you maybe split your service offering, offer a DS1
4 using xDSL technology and DS1 using AMI technology and a
5 DS1 using fiber technology, knowing full well it won't
6 be offered -- each one wouldn't be offered in every
7 central office, but in those cases where there might be
8 those options, then the CLEC could -- the CLEC could
9 make that option on a very informed basis that maybe
10 another retail user wouldn't realize the difference, but
11 where a sophisticated user like AT&T, for example, might
12 know that they need an AMI based DS1, they would be able
13 to order such a thing, and then you could make up your
14 own cost basis and price.

15 MS. STEWART: We could take that back.

16 MS. TORRENCE: One point I would like to make
17 here in reference to the xDSL is that generally if we
18 want to deploy the technology using electronics to an
19 area, it's because we have a copper deficiency, and it
20 was more efficient to do it on a DLC system or whatever.
21 We do not necessarily have all these spare facilities
22 everywhere that we can go through the hierarchy and
23 decide which one we want.

24 MR. WILSON: Well, but I think there
25 certainly is some acknowledgment that you may only have

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1 one in a particular area, but you may have both, so two
2 or three. So I think it would be where there is --
3 where there is a choice, you would get it, and where
4 not, you wouldn't.

5 MS. STEWART: Ken, in your opinion, how many
6 products would we be looking at doing this for? I think
7 Staff has a suggestion that we're going to take back and
8 discuss, which is when we have a known situation of a
9 known underlying transport facility, perhaps we could
10 have DSL pot luck and DSL AMI, DSL xDSL, or whatever.
11 You might have to maybe even look at three because you
12 would be willing to take either in some cases. But how
13 many services would we be looking at where you think
14 that the underlying technology really affects your
15 ability to extend it?

16 You see, that's the part where, to be honest,
17 I'm not 100% convinced that regardless of what we gave
18 you at the jack if it met the parameters, you wouldn't
19 be able to extend either one just as easily or just as
20 well, especially if you have to put any kind of
21 repeaters on. Once you're on your side of the jack,
22 what we did on our side of the jack I believe is going
23 to turn out to be immaterial. So I am not 100%
24 convinced we've got a technical problem on this issue.
25 But even if we did, how many of them do you think we

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1 have like this?

2 MR. SEKICH: By products, are you referring
3 to the offerings outlined in the SGAT?

4 MS. STEWART: No, just generally on the
5 interfaces that are out there. I mean when you get --
6 once you get to DS3, you're all fiber, so nothing above
7 DS3, I guess maybe DS1.

8 MR. WILSON: I think maybe Mr. Dittmore hit
9 the primary interest would be the three DS1 types that
10 he mentioned. I mean there are others, but these are
11 the -- I think these are the ones that would cover the
12 vast majority of situations.

13 MS. STEWART: Okay, the DS1s.

14 MR. WILSON: Yes, when you go to higher
15 speeds, that's generally all fiber anyway.

16 MS. STEWART: Right.

17 MR. CRAIN: So why don't we take this back.

18 I think we're now at UNE-C-15, which is an
19 ELI concern asking for a standard combination of
20 unbundled loops and multiplexing.

21 MR. PETERS: Let me start. The reason we
22 have asked for this be defined in the SGAT is that we've
23 got conflicting -- received conflicting answers to the
24 question of what would an unbundled MUX and an unbundled
25 loop be considered. About four months ago when this

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1 issue first came up, we were told that that would be an
2 EEL MUX, which I think is consistent with Ms. Stewart's
3 testimony on this matter.

4 Now more recently, however, and this is just
5 within the past week, we have been told by the Qwest
6 product manager that it's not a MUX at this point in
7 time, or an EEL, excuse me, because there is no physical
8 transport involved. So that the latest definition we've
9 got is that it does not classify as an EEL. Since it's
10 not an EEL, it's not eligible for conversion, and so we
11 will talk about this a little more I think when we get
12 into the EEL section.

13 But this is a situation where both elements
14 are contained in the interconnection agreement. Our
15 current interconnection agreement with Qwest makes
16 reference to the fact that we can use a MUX to aggregate
17 loops. But at this point in time, we don't have an
18 answer on just what Qwest is going to call this. So if
19 you can enlighten me a little more today, that would be
20 great. If not, we're still looking for an answer.

21 MS. STEWART: Okay, maybe, I'm not sure I can
22 totally answer or enlighten, but maybe I can --

23 MR. CRAIN: Confuse more.

24 MS. STEWART: Yeah, confuse more, narrow
25 focus the issues between the parties. This is an issue

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1 I think is going to bleed into the EEL discussion, and
2 maybe it's just as well to introduce it here and maybe
3 seek resolution perhaps in the EEL section.

4 Qwest does provide multiplexing to CLECs upon
5 request. However, the multiplexing that Qwest provides,
6 and as was anticipated by the FCC in I believe the first
7 report and order, so used to saying UNE remand I have to
8 rethink, first report and order that MUXing is a feature
9 functionality of transport, that typically when you put
10 in a MUX, how you circuit ID and put in the MUX is by
11 the high side transport part of the MUX.

12 Now you really don't just install a
13 multiplexer in a central office on its own stand alone
14 just all by itself, because obviously it would have no
15 functionality. You either have to bring in the low side
16 and tie it down, or you have to bring in the high side
17 and tie it down, and so that's sort of the design to
18 point. And it's typically, and if I, once again, we've
19 got our technical expert here if we need a technical
20 question answered, but typically it would be the high
21 side of the MUX and the circuit ID associated with the
22 high side of the MUX, and I'm using a DS3, DS1, three to
23 one, one to three multiplexer, is that the DS3 transport
24 that's coming in is the circuit ID that is putting in
25 and establishing and tying down the MUX in the office.

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1 Then individual DS1 orders can come in onto the low side
2 of the MUX.

3 So what happens is now we have a request
4 where they want to have the multiplexer in the office
5 but not necessarily use as the design to circuit ID
6 identification being a high side DS3 UDIT, which is
7 typically where you would see it. I think what the
8 request here, if I can understand it is, can we put in a
9 MUX where we start with the low side, the loop side?

10 MR. PETERS: No, I think the example that you
11 just went through is really what we have -- what we have
12 historically done on a tariff basis is we establish an
13 M13 MUX that's tied down to our collo in that same
14 serving wire center. And then as we have special access
15 T1s that we order out to customer locations, those are
16 just assigned a particular slot on that MUX. We provide
17 CFA I believe. And so what we want to do is just mimic
18 that on a UNE basis.

19 It's clearly a combination that is done
20 extensively. We must have 1,500 to 2000 T1s that they
21 all go to a Qwest MUX. We don't own any MUXing in our
22 central office. So every T1 of ours terminates on a MUX
23 somewhere in the Qwest network. So we basically want to
24 have that same combination of elements on an unbundled
25 basis, and we would anticipate that that initial stand

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1 alone MUX would be ordered as a UNE MUX with a DS3
2 termination into our collo.

3 MS. STEWART: So if I can maybe speak here,
4 when we were talking about the typical DS3 transport
5 facility or UDIT coming in and tying down the MUX, you
6 want to do that -- the functional equivalent of that
7 except for instead of it being a maybe long hauled DS3
8 UDIT that's between offices, it's really the equivalent
9 of a DS3 EICT into your collocation, so it's transport,
10 DS3 level transport, and the MUX, but we're talking
11 very, very, very short transport of just the EICT within
12 the office to get to your collo.

13 So you're still -- I mean it's not a dispute
14 that we -- that -- it's not a dispute between the
15 parties that Qwest needs some type of high side DS3
16 facility to tie the thing down to. What the dispute is
17 is what is that facility, how do I order it, and then,
18 oh, by the way, I want to bring in these DS1s on a
19 regular basis onto it. Is that --

20 MR. PETERS: That's part of it. The other
21 part is once you bring in, we do have this issue, once
22 you bring a DS1 in, is it as simple as terminating that
23 DS1 on that MUX, or as we have been told, do you have to
24 have DS1 termination on our side of it as well? Which
25 does not, I don't think, fit the nondiscriminatory and

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1 efficient standard that the language has, but basically
2 that's what we have been told at this point. Not only
3 do you have to have the DS3 side to tie down, so to
4 speak, you have to have DS1 to tie down as well.

5 And that gets back into the old spot frame
6 type approach to this. So it's, you know, we know we
7 have to have a DS3 termination into our collo, that's
8 fine. We're not sure what will happen. We have some
9 orders that are in progress as we speak to establish a
10 stand alone UNE MUX. We're not sure what will happen
11 when we send in the first T1 order to terminate on that
12 MUX. We're not optimistic that it's just going to go
13 through, but, you know, we'll see.

14 MS. TORRENCE: Those T1s are going to be
15 unbundled?

16 MR. PETERS: Yeah, UNE loops, T1s coming in.
17 So we do need a definition from Qwest,
18 because it makes a difference on -- it's going to make a
19 differences whether you consider it and treat it as an
20 EEL for conversion perspective and I think also on a
21 going forward basis how you combine them.

22 MS. STEWART: So phase two, is it okay if I
23 just kind of restate, make sure I fully understand, the
24 second request is that in our existing MUX product
25 associated with transport, admittedly maybe short DS3

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1 transport here, you're requesting that we have a direct
2 connection option where the DS1 loops that when an order
3 came in for an unbundled, DS1 unbundled loop, we would
4 take it all the way from the customer prem right down to
5 tying it down on the MUX, and there would be no need to
6 take that DS1 into your collo be assigned an ITP pair
7 and come back out to get to the MUX?

8 MR. PETERS: Correct.

9 MS. STEWART: You're asking, can we do a
10 service order process where basically the low side of
11 the MUX would be the CFA you would give us, and that's
12 exactly where we would design to the DS1?

13 MR. PETERS: Yes, I think so.

14 MS. STRAIN: Mr. Peters, when you use the
15 word tie down, you have to have it tied down to the low
16 end, does that -- is the significance of that is that
17 you will get charged for a connection between the MUX
18 and the low end by Qwest that otherwise you feel you
19 wouldn't be charged; is that the deal?

20 MR. PETERS: Right, and I don't know what we
21 would do with a T1 termination into our collo. I mean
22 we have nothing physically in our collocation today that
23 that would go to. Everything in our collo is optical.
24 Every interface request today is optical. So that
25 requirement, just technically I guess the wire would

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1 physically come in and go through one loop in the cage
2 and back out to some frame. And then from there,
3 everybody has to order another ITP or EICT, we're not
4 sure, then from that frame into the low side of the MUX.
5 And we want basically a direct connection at the MUX
6 itself.

7 MS. STRAIN: Okay, thank you.

8 MS. STEWART: I think I can suspect what some
9 of the issues might be, you know, subject to the
10 inevitable subject to check qualification. There really
11 are a couple of issues. Number one, I believe our
12 multiplex EEL product within the EEL product itself, I
13 believe there's a capability to do what you're asking
14 for. That you -- if you -- it's -- the multiplex EEL
15 product assumes that the DS3 is a UDIT that you're tying
16 down to, but let's for sake of discussion here, that we
17 could make the DS3 UDIT be this incredibly short EICT,
18 and then you can put the MUXs in. I mean then you can
19 add on the DS1 as a, for lack of a better word, augment
20 of an existing facility that's in there. And I believe
21 that's a capability, and we can do that within the
22 product.

23 Second, let's suppose, step outside of the
24 process flow for EEL and there's just a MUX that's been
25 tied down with a DS3. Now you're not within the EEL

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1 realm. You have just ordered that. You have gone into
2 transports, said give me the MUX, give me the DS3
3 transports but only the EICT work, so the little
4 transport. Now subsequently later you just want to pass
5 an unbundled loop order and pass for DS1 and have that
6 terminate on the MUX. I suspect what the problem might
7 be is that I believe our internal process flows and
8 assumptions around DS1 loops assumes it's designed to
9 the equivalent of the collo or a some other type of
10 network demarcation point. I'm not sure within the
11 process flow of a DS1 stand alone unbundled loop there
12 can be an assumption of a different type of addressing
13 as would be associated with a CFA at the MUX.

14 So long story short, I think if my attorney,
15 make sure I'm not -- my attorney is running away from me
16 -- is that Qwest is willing to allow direct connections
17 of unbundled loops to MUXs. What I am concerned about
18 is being able to tell you within what time frame.
19 Because I am concerned that within the unbundled DS1
20 loop process flow and assumptions on provisioning that
21 there may be some challenges there in making that
22 happen. So what we may need to do is look at for all
23 intents and purposes perhaps using that multiplex EEL
24 process flow for these type of applications. So I just
25 put that caveat.

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1 We're not apposed or disagreeing that a CLEC
2 shouldn't have a direct connection option when they want
3 a combination of unbundled network elements. I'm just
4 trying to acknowledge what I believe is a very real
5 underlying assumption in how loops in particular were
6 designed to go to a collo cage, kind of as a stand alone
7 UNE, so we order them as a stand alone UNE, our system
8 wants to somehow deliver them to a collo cage, and now
9 we have to come up with a way to say, no, in this
10 application of this combination, I don't want to go to a
11 collo or equivalent thereof, I want to go to the low
12 side of that plex. I think that is a process issue.

13 MS. HOPFENBECK: It's not a process issue
14 with respect to having the MUX attached to what is
15 equivalent -- what's really EICT as opposed to UDIT?

16 MS. STEWART: Yeah, in fact --

17 MS. HOPFENBECK: That doesn't raise a process
18 question?

19 MS. STEWART: No, I do not believe so. I
20 think the real process issue is when you try to order a
21 stand alone unbundled loop as a stand alone UNE, the
22 underlying assumption is it's into a network demarcation
23 established at the demarcation point be it a MUX or,
24 excuse me I mean be it a collo or something else. When
25 you have a conversion or a combination of unbundled

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1 network elements that goes in at one time, we do sort of
2 an end to end circuit ID, and it's internal to us in our
3 systems what happens in the middle. Do you see what I'm
4 trying to say?

5 So there's like two ways you can get a loop.
6 You can get a loop stand alone by itself, or you can get
7 a loop as part of a package. And when it's part of a
8 package, then you can -- we have the ability to go from
9 customer prem to customer prem or whatever, and we make
10 all the connections internal into our system. So I
11 think it becomes a gray area now when you're trying to
12 bring a stand alone item and put it in with the MUX.

13 I don't know if I have added any clarity
14 here, or does this sound familiar to anything you have
15 been told as far as a concern about the stand alone DS1s
16 coming in?

17 MR. PETERS: No, you know, we weren't -- it
18 was -- the policy was that it had a loop through your
19 collo.

20 MS. STEWART: Yeah.

21 MR. PETERS: And we knew technically that was
22 not necessary, because technically you can do it if it's
23 special access.

24 Well, I hear you saying that Qwest has a take
25 back on that.

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1 MS. STEWART: Yes, we have a technical how
2 would it work take back, not a take back on whether we
3 will allow a direct connection. We will allow a direct
4 connection.

5 MR. PETERS: Okay.

6 MS. STEWART: It's just how it would happen
7 and in what time frame and how you would need to order
8 it. That's what we'll take back.

9 MR. PETERS: I assume -- and obviously the
10 direct connection is preferable. I also assume that if
11 we were to do some kind of an ICDF type connection, that
12 could be inserted between the MUX and between the T1s
13 coming in and avoid the additional spot T1 ITP's coming
14 in and out of the cage, but we would prefer the direct
15 connection obviously. We know the ICDF is available as
16 a point of demark as well, but there's once again
17 additional cost involved because of additional frames in
18 there.

19 MS. STEWART: That one for sure I will say I
20 know would work. If you just went to the equivalent of
21 an ICDF collocation tie down location, yes, you
22 definitely can install unbundled loops right to an ICDF,
23 no problem. And at that point then, of course, you can
24 do the jump over. My only concern is when we don't have
25 an unbundled stand alone DS1 loop and I don't have the

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1 equivalent of an ICDF collo address to tie down to.
2 That's the design in the system that I suspect may be an
3 issue here.

4 MR. WILSON: A couple of comments. I do not
5 think that this configuration as it was described by
6 Mr. Peters should be considered an EEL or part of the
7 EEL section. Because as I understand it, ELI is
8 providing the transport from their collocation back to
9 their switch, so this is not an EEL, which is a
10 combination of loop and transport. And the fact that
11 multiplexing is only identified in the transport section
12 I think is a little problematic, because it would then
13 imply that what ELI needs would be an EEL, because the
14 mult -- it needs multiplexing and loop, just that simple
15 combination.

16 And this is like meat and potatoes, this is
17 done all the time by CLECs, and I think the solution is
18 either to put an additional multiplexing section in the
19 loop section or to split out multiplexing in its own
20 section not as part of the transport. Because I think
21 that ELI or any CLEC should be able to get the
22 combination of loop and multiplexing delivered to their
23 collocation so that they can supply the transport, and I
24 certainly don't think they should have to run their DS1
25 in and out, and I don't even think they should have to

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1 use an ICDF, because if it adds another frame, you're
2 not -- I don't think we want to go through that
3 nosebleed again either.

4 MR. PETERS: And the other piece we would,
5 and this is the way we're configured today, is on that
6 same multiplexer that has, you know, maybe 10 or 15
7 local loops on it that are currently all bought as
8 special access, we also have special access that meets
9 the definition of an EEL, that goes from that serving
10 wire office to a different end office, and so we will
11 talk more about this when we get into the EEL
12 conversion, but, you know, I struggle with not calling
13 these EELs as well, because it's basically then the
14 response is you can't convert those because they're not
15 EELs. So, you know, I understand what Ken's saying, but
16 I'm not sure I would agree with that just yet, because I
17 --

18 MR. WILSON: Well --

19 MR. CRAIN: To clarify --

20 MR. PETERS: It's half the answer, you know.

21 MR. CRAIN: To clarify here, I think we ought
22 to clarify whether or not you can call these EELs. If
23 they're not EELs, you can still -- well, we think
24 they're EELs, but we're not saying that you can't
25 convert EELs. The question I'm going to have then is

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1 local use requirements, but we will get to that in EELs.

2 MR. PETERS: Which brings up another point.

3 MS. HOPFENBECK: I thought when you were
4 saying you can convert them, I thought, oh, you're
5 willing to agree.

6 MR. CRAIN: No.

7 MS. STEWART: I did want to make one comment
8 if I could, because I don't want to lose this, because
9 it may be a very critical issue when I come back with
10 how you can put a DS1 to a MUX. The simple fact that
11 the DS1 goes to an ICDF does not necessarily create
12 another frame or another point of termination or
13 whatever in the office. Because in reality, this DS1 is
14 not going to go from the customer prem right to this
15 MUX. That DS1 is going to come into some type of frame
16 in the office, it's going to be jumpered from that frame
17 to the MUX.

18 I would agree the question is do you have to
19 pay anything new and unique and different for that
20 termination on that frame because it is "ICDF
21 collocation", so there may be a pricing issue, but I beg
22 to differ that it is in reality the way we need to
23 provision this or provision it short term requires the
24 equivalent of that, that in no way is saying there's an
25 additional unnecessary frame. That is going to go from

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1 a frame in the office to the customer frame. It is
2 going to be jumpered from that frame to the MUX. So I
3 just -- that was implied that the ICDF frame would be a
4 totally unnecessary frame, and that may and is not in
5 fact correct.

6 MR. SEKICH: Can I ask one question, which
7 was suggested by a comment Andy made, which was loop
8 plus multiplexing as we have discussed it here is an
9 EEL. That was the statement Qwest made; is that
10 correct?

11 MS. STEWART: Yes.

12 MR. CRAIN: Yes.

13 MR. SEKICH: Can you explain why?

14 MS. STEWART: Because --

15 MR. PETERS: Let me also clarify though that
16 that's in direct conflict with the product folks on this
17 issue as of last week, so be aware of that before you
18 answer.

19 MS. STEWART: Maybe I ought to jump to an EEL
20 commitment that Qwest is willing to make, and I am
21 taking this a little out of order.

22 MR. SEKICH: Let me restate the question, or
23 let me pose it again. Why is loop and multiplexing an
24 EEL?

25 MS. STEWART: Because multiplexing is a

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1 feature function of transport. That's where its
2 located, that's where the FCC identified it. And
3 whether it's an incredibly short piece of transport, an
4 EICT, it's still a feature functionality of that high
5 side transport.

6 MR. WILSON: Well, that will be an impasse
7 issue there.

8 MS. STEWART: That's fine.

9 MR. WILSON: I'm glad we identified it.

10 MS. HOPFENBECK: Isn't that sort of a
11 tithonic, that it's only in transport because it is in
12 transport?

13 MS. STEWART: But it is, I mean it is.

14 MS. HOPFENBECK: It's a feature and function
15 of transport because it's in transport, I mean if it's
16 not in transport?

17 MR. CRAIN: You're talking about loops going
18 into a MUX with the DS3 coming out of the MUX it's the
19 functional equivalent of an EEL.

20 MS. HOPFENBECK: Couldn't it be high speed
21 loop; isn't it low speed loop to high speed loop? Isn't
22 that another way of thinking?

23 MR. CRAIN: I wouldn't call that last piece a
24 loop.

25 JUDGE WALLIS: I'm going to break in here and

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1 suggest we go off the record for just a minute for a
2 couple of discussion items.

3 (Brief recess.)

4 MR. CRAIN: And if I could make a suggestion
5 then, we were talking about UNE-C-15, and I think we
6 have talked about two things here, will we provision
7 loops directly into a MUX, and then have the DS3 go to a
8 collocate. I think that is basically captured in what
9 UNE-C-15 is.

10 I think we have identified a second issue
11 that I think we and ELI knew was there, maybe other
12 people were surprised, but I would identify that as
13 UNE-C-24, and that issue is essentially -- and I looked
14 for EEL, and I thought it was identified in EEL, but
15 maybe it will come into it, but do the local use
16 restrictions apply to loop to MUX to DS3 to collocation,
17 and I would suggest that we have identified an impasse
18 issue there.

19 MR. WILSON: I would like to say a few words.
20 I think we are quite surprised that Qwest is considering
21 the combination of loop and multiplexing that would --
22 that then goes directly to a collocation cage as an
23 enhanced extended loop or EEL, thereby I guess by
24 implication saying that the multiplexing and some short
25 piece of wire to the collocate is transport. I think

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1 it's very clear to AT&T that the restrictions that the
2 FCC was imposing on EELs for the situations where
3 transport was carrying the loop to a far -- a distant
4 collocation in another wire center. To call the short
5 wire from the multiplexer to the CLEC's collocation cage
6 in the same wire center transport I think is quite a
7 stretch.

8 And what it does is it will allow Qwest to
9 impose local use conditions on this configuration where
10 when, in fact, the FCC is not allowing that. So I think
11 we are very strongly opposed to this definition, because
12 it puts the CLEC through another hurdle that it need not
13 go through. The CLEC has gone to the expense of
14 provisioning its own facilities clear to this wire
15 center. I mean we can't provision them farther than
16 that.

17 So what Qwest is saying is there's no way to
18 get a loop, an unbundled loop that's not an EEL. I mean
19 that's essentially what they're doing. At a DS1 level,
20 there's no way to get a plain unbundled loop where all
21 you need is multiplexing. You can't do it. So I think
22 that is quite wrong.

23 MS. STEWART: Karen Stewart, if I could
24 respond to Mr. Wilson's statements. First of all, to
25 kind of step back, he said there's no way we can get

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1 access to just an unbundled loop without the local use
2 restrictions, and that's not correct. If the unbundled
3 loop terminates in a collocation cage, local use
4 restriction would not apply. When they have an
5 unbundled loop, goes to their cage, we don't know what
6 they're doing with it, and that's clear.

7 It's the second piece, he said and they just
8 need multiplexing. That's the point. Now they need a
9 combination of an unbundled loop and multiplexing in the
10 high side DS3, which may be admittedly an incredibly
11 short EICT, it's now become a combination of a loop and
12 some type of transport and its associated multiplexing.
13 It's now a combination, and that is exactly what the FCC
14 said in its supplemental order to the UNE remand, that
15 if it's a combination of a loop and some type of
16 transport, then it follows the local use restrictions.

17 So I think by his very own words, I agree
18 with him I mean as far as a stand alone loop into
19 collocation, local use restrictions do not apply,
20 wherein we agree. He doesn't want just an unbundled
21 loop to a collocation cage. He wants a combination of a
22 loop plus a MUX and the high side transport that ties
23 down that MUX, therefore we believe it's an EEL.

24 MR. PETERS: Tim Peters for ELI. First off,
25 I want to go on record as agreeing with what Mr. Wilson

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1 said about Qwest's interpretation of that being an EEL,
2 the combination of a MUX and a loop being an EEL, and by
3 virtue of that, then being faced with Qwest's decision
4 to impose the local use restrictions on that. And in
5 response to what Ms. Stewart has said, ELI disagrees
6 with their interpretation of what the FCC has said
7 constitutes an EEL.

8 The FCC clearly defined an EEL as a loop
9 combined with transport that goes from one office to
10 another office. It did not contemplate a loop hooked up
11 to an incumbent LEC provided MUX and terminated in that
12 collo as being an EEL. That -- I don't know where you
13 can get that interpretation out of that, out of any of
14 the FCC orders on that, so.

15 JUDGE WALLIS: Ms. Hopfenbeck.

16 MS. HOPFENBECK: Well, I would add this too
17 in that I think in terms of analyzing whether this is an
18 EEL, whether the local use restrictions apply, it's
19 important sort of to think about the background of what
20 gave rise to those local use restrictions, and I think
21 this really goes to Tim's point about what this service
22 really is that we're talking about.

23 And the concern that the FCC was trying to
24 address in establishing the local use restrictions was
25 the concern about this point in time using what are

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1 functionally equivalent facilities for special access
2 services on the one hand, which is services that go to
3 an office, that transport would go to an office in the
4 special access office, not to -- I mean that -- I guess
5 there's no analogy I don't think when you're -- it's
6 just a loop and MUXing to a special access facility.

7 JUDGE WALLIS: Ms. Strain.

8 MS. STRAIN: What FCC order and what section
9 of that order, Mr. Peters, were you referring to when
10 you said the FCC didn't define the situation you were
11 describing as an EEL?

12 MR. PETERS: Generally the order -- there
13 were three of them, and I think we can get a reference
14 here. The first was the FCC UNE remand order as it's
15 being referred to.

16 MS. STRAIN: Okay.

17 MR. PETERS: Then there was a supplemental
18 order to that and I believe a supplemental clarification
19 order. Those three all discuss the, first off, the
20 issue of what is an EEL and the combination of a loop
21 and transport defining an EEL. The second order talked
22 about the conversion process and tried to better define
23 how you would convert an existing combination of private
24 line or special access where a loop and transport were
25 combined. And the third one defined it, clarified it

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1 even further on the local use restrictions that would
2 apply on the conversion of an existing combination of a
3 loop and transport special access circuit. And the
4 context of that whole discussion was only conversions of
5 those existing combinations, and we can get specific
6 order references.

7 MS. HOPFENBECK: Those orders are all
8 referenced in WorldCom's and AT&T's briefs that we filed
9 in Workshop 1 on the ratcheting issue, and I'm trying to
10 get those for you right now.

11 MR. WILSON: Specifically in the UNE remand,
12 FCC 99-238, Paragraph 477 has the definition of the EEL,
13 and it says:

14 It's a new network element comprised of
15 unbundled loop
16 multiplexing/concentrating equipment and
17 dedicated transport (the enhanced
18 extended link or EEL).

19 Clearly they considered it a combination that
20 included a transport, which is not what we are
21 considering in this discussion. We're considering just
22 in the office, a loop and multiplexing, no dedicated
23 transport.

24 MR. SEKICH: We will note that dedicated
25 transport in this definition was distinguished from

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1 multiplexing and concentrating. It was added as a
2 separate component of EEL.

3 MR. CRAIN: And can I make one clarification.
4 477 says that people asked them to identify as a
5 separate unbundled element the EEL, those three things.
6 Paragraph 478 said we decline to define the EEL as a
7 separate network element in this order.

8 MR. WILSON: It's not defined as a separate
9 network element, but they defined it as a combination,
10 and that's the definition of the combination. So there
11 was a -- the CLECs wanted them to make it a stand alone
12 element, that combination an element. They didn't do
13 that. They defined it as a specific combination, and
14 they have restrictions on local usage that you have to
15 meet to use it, but it specifically says the loops that
16 are dedicated transport.

17 MR. WOLTERS: I would like to point out a
18 couple of other references. I mean the FCC discusses
19 the EEL in Paragraph 15, Paragraph 288, and I think the
20 one in Paragraph 288, the discussion of switching, is
21 even clearer, and when they talk about serving a
22 customer from a different end office, so I think there
23 was some contemplation that there was a dedicated
24 transport went from one central office to another
25 central office, that it was different than central

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1 offices served a customer.

2 MR. CRAIN: To give you the other sites, the
3 supplemental order was issued on November 24, 1999, FCC
4 99-370. And what --

5 MS. HOPFENBECK: I have the order.

6 MR. CRAIN: And the supplement on
7 clarification? The supplemental order of clarification
8 was issued on June 2, 2000. It's FCC 00-183. The key
9 issue here is in the supplemental order, the FCC said
10 that ILECs can constrain the use of loop transport
11 combinations. And the supplemental order clarification
12 defines exactly what that constraint is, which is they
13 have to be carrying a certain amount of local traffic.

14 The issue we have here and the -- the narrow
15 issue we have here is what is a MUX. Is it -- is it
16 part of transport, is it part of a loop, is it either,
17 is it stand alone. We would say that the MUX is
18 transport, and it's in the access world it's called zero
19 weighted transport. It is a piece of transport that
20 goes from the MUX to the collo cage.

21 MS. STRAIN: So that's the impasse issue
22 that's we're looking at?

23 MR. CRAIN: That's the impasse issue, and I
24 don't -- we could talk all afternoon here.

25 MR. WILSON: And maybe the only additional

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1 comment I would make is that it's pretty clear in other
2 sections of the order that the loop can contain
3 multiplexing. It's specifically laid out in several
4 paragraphs defining the loop and attached electronics.
5 And the FCC considers multiplexing part of attached
6 electronics, so that's Paragraph 175 for attached
7 electronics in FCC 99-238. And the loop definition to
8 refer to is Paragraph 167 of the same order.

9 MR. SEKICH: That's the UNE remand order.

10 MS. STRAIN: Okay.

11 MR. CRAIN: And I think that is our impasse
12 issue.

13 MS. STRAIN: Thank you.

14 MR. CRAIN: So I think UNE-C-24 is clear
15 impasse.

16 UNE-C-15, I think we had a take back to ELI
17 to explain a little more clearly exactly how the direct
18 connection between a loop and a multiplex and a MUX
19 would work.

20 MR. KOPTA: This is Greg Kopta. I think as
21 part of that explanation, regardless of the resolution
22 of UNE-C-24, there will need to be some kind of
23 clarifying language in the SGAT, whether it's going to
24 end up being considered an EEL or whether it's going to
25 end up considered being its own combination. Right now

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1 it's not addressed in the SGAT, and so in addition to
2 the technical explanation, I'm assuming that Quest would
3 contemplate providing some additional SGAT language that
4 summarizes or embodies that explanation.

5 MR. CRAIN: I didn't assume it before, but I
6 guess I do now.

7 And I think we can move on to UNE-C-16 unless
8 there's more we want to talk about there.

9 JUDGE WALLIS: Maybe this would be a good
10 time for a break.

11 MS. WICKS: I believe we can finish both of
12 these.

13 JUDGE WALLIS: Okay.

14 MS. WICKS: UNE-C-16, it appears that Qwest
15 has added language that WorldCom had requested, and so
16 it's high time we closed something, and we do.

17 MR. CRAIN: Thank you.

18 MS. WICKS: Oh, you're welcome.

19 And 9.23.5.1.1 I think better states the
20 issue that we were discussing this morning at length, so
21 maybe we should close -- I don't know if I'm supposed to
22 do this.

23 MS. HOPFENBECK: Go ahead.

24 MS. WICKS: Thank you, UNE-C-5 and leave
25 UNE-C-17 open for further discussion tomorrow morning.

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1 Does that sound okay with everybody?
2 MS. STRAIN: Does the long discussion that we
3 have here on issue UNE-C-5, does that -- maybe we ought
4 to transfer down to UNE-C-17.
5 MS. WICKS: Yes.
6 MS. STEWART: Let's combine.
7 MS. WICKS: Let's combine, either way.
8 MR. CRAIN: Why don't we just combine --
9 MS. STRAIN: Could we just close 17 since its
10 shorter?
11 MR. CRAIN: That works.
12 MS. WICKS: Whatever you want.
13 MS. HOPFENBECK: We only thought that 17
14 expressed the issue a little more clearly than 5 did.
15 MS. STRAIN: But the discussion happened in
16 the context of 5, so what about taking the explanation
17 under 17 and putting it up in 5.
18 MS. HOPFENBECK: That's great.
19 MR. WOLTERS: And then close 17?
20 MS. WICKS: Yes.
21 MR. CRAIN: And then after the break, we move
22 on to EELs, which I think we have already started.
23 JUDGE WALLIS: All right, we will be back in
24 about 15 minutes.
25 (Brief recess.)

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1 JUDGE WALLIS: At this time, we're going into
2 the next segment, which has to do with EELs.

3 Mr. Crain.

4 MR. CRAIN: The first EEL issue is EEL-1.
5 It's an ELI issue. In Section 9.23.3.7.1. Qwest has
6 included the, in that section and in the sections
7 following, the FCC's local use restriction for the
8 combinations of loop and transport that is set forth in
9 the supplemental order and the supplemental order
10 clarification that we discussed before.

11 ELI wants the restriction to apply only to
12 conversions, I believe this is their position,
13 conversions to EELs rather than the provisioning of new
14 EELs. I don't -- Qwest, well, that is not consistent
15 with the FCC's order. If you look at the FCC's
16 supplemental order which first allowed for such a
17 restriction, the FCC clearly stated that:

18 LECs can constrain the use of
19 combinations of unbundled loops and
20 transport network elements as a
21 substitute for special service subject
22 to the requirements of this order.

23 The orders of the FCC are not restricted at
24 all to just conversions of special access to EELs. It
25 also applies to new combinations of EELs.

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1 MR. PETERS: I would just like to comment on
2 that particular point. This is Tim Peters for ELI.
3 That we do not agree with that interpretation of the FCC
4 order, that the context of that entire discussion
5 centered around the conversion of existing tariff
6 services to what the FCC had defined as EELs and in our
7 view wasn't to contemplate new combinations going
8 forward, because the federal law does not -- FCC is not
9 allowed to require that. So to the extent that we are
10 combining loops and transport on a going forward basis,
11 that's done under state commission orders, and that
12 would be consistent with the Ninth Circuit decision.

13 So I think this is probably just going to end
14 up being an impasse issue. We do not agree with that
15 interpretation of the FCC's rule. And I think this
16 comes up in a couple of other sections here, and we will
17 note those as they come up.

18 MR. CRAIN: And I agree, this is an impasse
19 issue.

20 MR. WILSON: I think I would just like to
21 comment. It's an administrative nightmare for CLECs a
22 lot of times to produce evidence or conclusively prove
23 to Qwest that these loops would meet the restrictions,
24 and I think I would have to agree that if we knew EELs,
25 it shouldn't be necessary.

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1 MR. CRAIN: And I guess the only point I
2 would add to that is what's required here is a self
3 certification by the CLEC, and then Qwest has a right to
4 audit on a going forward basis, so I think -- I think
5 that issue is pretty clear. I think the law is pretty
6 clear. And I think we can go to impasse.

7 EEL-2 is a WorldCom issue, but I think it's
8 also an issue that was mentioned by ELI. It refers to
9 Section 9.23.3.7.2.7. And according to WorldCom, and I
10 also believe ELI made the same distinction, both parties
11 claim that the FCC did not limit the connection of a
12 qualifying EEL with a connect service, and I would state
13 that the FCC was I think crystal clear on this point.

14 In each of the three options allowed to CLECs
15 to prove or to establish that local service or that an
16 EEL would be carrying local service, the FCC stated in
17 each one of those options, and this is in Paragraph 22
18 of the supplemental order of clarification, that this
19 option does not allow loop transport combinations to be
20 connected to the incumbent LEC's tariffed services. I
21 think the language we have in this section is consistent
22 with the FCC's rules, and I think it's entirely
23 appropriate that it's there.

24 MS. HOPFENBECK: I think this is principally
25 a legal issue as to what the appropriate interpretation

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1 of the supplemental order of clarification is.

2 JUDGE WALLIS: Ms. Hopfenbeck, can you keep
3 your volume up, please.

4 MS. HOPFENBECK: And I think we should just
5 deal with it on briefs.

6 MR. CRAIN: This is at impasse essentially?

7 MS. HOPFENBECK: Yes.

8 MR. CRAIN: Okay.

9 JUDGE WALLIS: So noted.

10 MR. WOLTERS: One question. If the EEL goes
11 to a CLEC's collo, goes in a CLEC collo, you're
12 basically saying it still can connect with tariffed
13 service, right?

14 MR. CRAIN: Right, yes, and I think the FCC
15 order is pretty clear on that.

16 Moving on to EEL-3, EEL-3 deals with Section
17 9.23.3.7.2.6. I'm getting tired of all these numbers.
18 ELI suggests I guess that this section be deleted. This
19 section allows Qwest to perform audits, and basically
20 it's an audit once per year to ascertain whether or not
21 these circuits are actually complying with the local use
22 restrictions. This section is once again completely
23 consistent with the supplemental order of clarification
24 where the FCC specifically allowed for such audits.

25 MR. PETERS: Tim Peters for ELI. Can we keep

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1 this open until I have an opportunity to talk with my
2 counsel?

3 MR. CRAIN: Sure.

4 MR. PETERS: Come back to that.

5 MR. CRAIN: I think the EEL-4 is the same
6 issue as EEL-1, it just applies to a separate section of
7 the SGAT. And I would suggest that it's the same
8 resolution, it's an impasse issue that we will deal with
9 on briefs.

10 MR. PETERS: I would agree with that.

11 MR. CRAIN: EEL-5 deals with 9.23.3.7.2.12.8.
12 In ELI's -- this is a similar issue to the issue that we
13 addressed earlier on the general combinations issue, and
14 we also addressed it in the general unbundled network
15 elements issue. We have no obligation to build, and to
16 the extent that that's going to impasse, I think we
17 ought to treat it consistently. We are going to bring
18 back some additional language, and I think we might be
19 able to do that by tomorrow morning to deal with the
20 general topic, but I think unless there's reason to talk
21 about this further.

22 MR. PETERS: ELI agrees that this is the same
23 issue concerning Qwest's obligation to build that we
24 discussed earlier.

25 MR. CRAIN: I guess we leave this open until

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1 tomorrow morning and then take them all at the same
2 time.

3 EEL-6 is an issue about TLAs. It refers to
4 Section 9.23.3.12. This is an issue -- I think ELI may
5 have more to say on this issue in terms of this
6 language, that this is similar language, or it's exactly
7 the same language that we --

8 MR. WOLTERS: I think you struck this.

9 MS. HOPFENBECK: You struck this.

10 MR. CRAIN: That's exactly what I was going
11 to say. We have agreed to take that language out,
12 however, I think ELI may have more to say on that,
13 because our position is it's not necessary here in this
14 contract, because whether or not a TLA applies is
15 governed by either the tariff or the contract that
16 either exists for the previous service between us and
17 the CLEC or between us and the end user customer, so it
18 doesn't need to be addressed here, but --

19 MR. SEKICH: With that said, to clarify
20 Qwest's position, you will still nonetheless not delay
21 any kind of conversion if, in fact, TLA penalties are to
22 be applied. Because part of this language states that
23 conversion of services will not be delayed due to the
24 applicability of TLA or minimum period charges. Setting
25 aside for a moment whether or not parties dispute the

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1 application abilities, is it still Qwest's position that
2 it won't delay the conversion?

3 MR. WOLTERS: In fact, it may be wise to
4 leave that last part of this paragraph that we had taken
5 out before, add it back in, the part that Dominick read,
6 to make that clear.

7 MS. HOPFENBECK: I guess our view was --

8 MS. STEWART: AT&T has addressed a concern
9 that there are two issues, one, an issue of whether TLA
10 may apply or not may indeed be an issue to do with the
11 other service that's being disconnected. But in
12 addition, this paragraph makes a commitment that we will
13 not delay the conversion while we're discussing the
14 applicability of TLA. And so he thought perhaps the
15 last part of the sentence might need to stay. In my
16 reviewing of it, I think if you wanted to keep alive the
17 concept on the second part of the sentence, you almost
18 need to keep the whole section.

19 MR. SEKICH: Well, so long as the CLEC can be
20 assured that there won't be interruption of service, I
21 guess the issue is if it's merely conversion of resold
22 some sort of existing service, it really is an issue of
23 who pays what; is that correct?

24 MS. STEWART: That is correct.

25 MR. CRAIN: In the situation we are talking

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1 about with ELI, that is what we're talking about. Would
2 you agree?

3 MR. PETERS: I'm not sure which discussions
4 you're referring to with us. I mean we didn't say
5 anything yet, so.

6 MR. CRAIN: Oh, okay.

7 MR. PETERS: Go ahead and respond.

8 MR. CRAIN: Yes, we're talking about here who
9 pays what.

10 MS. HOPFENBECK: I have something to say on
11 this point, because this issue, of course, was raised by
12 WorldCom in the other context. And it seems to me that
13 there are two different types of situations where TLA
14 may apply, and the solution on how they are addressed in
15 the SGAT may be different, or it may be appropriate to
16 treat them differently. One is the situation where
17 whatever TLA liability is at stake with the conversion
18 is owed not by the CLEC but by a third party customer.
19 And in that instance, it is my view that the SGAT should
20 refer not at all to that kind of TLA.

21 MR. CRAIN: Okay.

22 MS. HOPFENBECK: That that is an obligation
23 that exists as between Qwest and a third -- an entity
24 that is not a party to the SGAT, and it seems to me
25 under those circumstances, there could be no argument

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1 that the intervals or the agreement that exists between
2 we the CLEC and you the ILEC would not apply. They
3 would apply and be bound by them regardless of your
4 dispute with the third party.

5 MR. CRAIN: And that is the agreement we have
6 had in the last few days, few weeks.

7 MR. PETERS: And let me ask to clarify, is
8 that what this language is referring to is that
9 situation?

10 MR. CRAIN: This referred actually to both
11 situations.

12 MS. HOPFENBECK: And this language also
13 refers to the other situation, which is the situation
14 where the CLEC has been doing business with Qwest as a
15 resaler and is now converting service from resale
16 service to UNE service.

17 MR. CRAIN: They would also -- it's also
18 resale or special access or --

19 MS. STEWART: Retail or --

20 MR. CRAIN: Retail.

21 MS. STEWART: Some other type of -- any other
22 type of offering.

23 MR. CRAIN: But the TLA, that contract for
24 the tariff exists between Qwest and the CLEC rather than
25 between Qwest and the end user.

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1 MS. HOPFENBECK: And in that circumstance, I
2 do think it's appropriate to include in the SGAT that
3 there would be no delay regardless of a dispute as to
4 whether TLA should be paid, there should be no delay in
5 a conversion from whatever service we are converting to
6 the UNE service.

7 MR. SEKICH: Can I ask a question. When an
8 order is placed for conversion of a service, is there
9 any point within Qwest's processes where an inquiry is
10 made as to whether or not TLAs have been assessed and/or
11 paid?

12 MS. STEWART: There is a part within the
13 process that determines whether TLAs may be applicable
14 or not, and for lack of a better -- I'm going to use a
15 -- back in the -- dealing with residential service, if
16 you were doing a move, you had a to and a from, so
17 you're kind of moving the location. You're not really
18 disconnecting and reconnecting the service. There's
19 kind of a to and a from.

20 And when you think about a conversion,
21 there's almost that type of concept going on. You're
22 going, you know, from a retail to a UNE, so there is
23 sort of the -- it's the same service, but there is this
24 conversion to and from element. So when you do the from
25 part or the equivalent of the disconnect of the pricing

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1 of the original service, there is an element that will
2 trigger whether a TLA is due or not on that service.

3 MR. SEKICH: I understand.

4 MS. STEWART: So if you've got a retail or a
5 special access circuit, you have purchased it on a
6 contract, perhaps we constructed facilities we only
7 constructed because you signed a three year agreement,
8 it's now year two and then a TLA hits because you're
9 only keeping it two years instead of three, there is
10 something in getting rid of that, that from that pricing
11 structure that will trigger a TLA happening.

12 Now we go to the to, going into UNEs. I'm
13 not aware that there's anything in the UNE conversion
14 installing it now as a UNE or, you know, in our billing
15 systems putting it in as a UNE that says I'm going to
16 see if TLAs have been paid or not before I do that.
17 That doesn't happen.

18 MR. SEKICH: There's no rule that would
19 require payment of a TLA before whatever it is, LSR,
20 ASR?

21 MS. LUBAMERSKY: Right, we are not --

22 MS. STEWART: Let me just check with my OSS
23 expert, go ahead.

24 MS. LUBAMERSKY: We are not holding hostage
25 any request for UNE. We will seek for payment of the

03290

1 other charges associated with the other account through
2 that normal process.

3 MR. SEKICH: All right. So it sounds like a
4 promise on the part of Qwest in the SGAT akin to what
5 was provided in the last part of this section would be
6 appropriate. And I would suggest that we could include
7 the language as follows:

8 If CLEC wishes to convert a resold
9 service to a UNE combination service,
10 whether TLA or minimum period charges
11 may be applicable will not delay the
12 conversion of such services.

13 MR. CRAIN: The only thing I would -- are you
14 okay with that?

15 MS. LUBAMERSKY: The only -- do we need any
16 protection that says, but we're going to use the normal
17 course of business to recover the minimum service or TLA
18 on the resold. I need your advice on whether we need
19 that explicit statement, we will do so, but not to delay
20 the UNE.

21 MR. CRAIN: Yeah, we will do so. Let me take
22 -- you want me to take this back and see if I can draft
23 something, because there are two issues. I think we
24 need to say something that -- we say here that those
25 charges will apply. I think we understand that the

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1 general concept we have come to in the last few weeks is
2 the thing that governs that is the contract or the
3 tariff that preceded -- that governed that earlier
4 tariff. So I think we need some language, and I think
5 WorldCom provided us some language that is pretty
6 appropriate that says, this isn't going to -- this
7 language doesn't affect whether or not that applies, but
8 to the extent that we are collecting that, we won't
9 delay the conversion to UNEs.

10 MR. SEKICH: I would --

11 MR. CRAIN: Also, I'm not sure it applies
12 just to resale. It applies to any -- CLECs buy all
13 sorts of services out of tariffs or with contracts, and
14 I think I need to draft something that basically applies
15 to all of that.

16 MR. SEKICH: That would be great. We will
17 look forward to looking at that language, and I think
18 we're probably close to closing the issue out.

19 MS. HOPFENBECK: I will just tell you that
20 hearing what you had in mind in terms of making an
21 affirmative statement, that you would seek to recover
22 any applicable TLA under that ordinary course under that
23 previous contract and would not delay UNE order, I think
24 may be the clearest way to approach this.

25 MR. CRAIN: Okay. Does that close EEL-6?

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1 MS. STRAIN: Take back.

2 MR. CRAIN: Okay, and I hope to have that by
3 tomorrow morning.

4 Moving on to EEL-7, I think EEL-7 has been
5 dealt with. It's 9.23.3.14, which we have agreed to
6 take out of the contract, and it's the forecasting
7 language.

8 MR. WOLTERS: So it's now reserved for future
9 use, right, Andy?

10 MR. CRAIN: Yeah, we actually agreed, EEL-7
11 is closed.

12 EEL 8, this is the same issue on nonrecurring
13 charges that I guess I get to come back tomorrow morning
14 with some additional language from our discussion
15 earlier today. So I would say this one is -- should be
16 -- do we want to leave this as a separate issue, close
17 it and just refer to the earlier issue, or just treat
18 them the same way?

19 MR. WOLTERS: What was the section number for
20 the earlier issue? It may have been in the general
21 section.

22 MS. STRAIN: I think if the section number is
23 different, it would be easier for us if you left it as a
24 separate issue so that we don't lose track of where it
25 needs to be changed for right now.

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1 MR. PETERS: We could just reference the
2 other section.

3 MR. CRAIN: Tell you what, for now, this is a
4 take back, and when I bring back the language, I will
5 tell you if it needs to be changed twice or once.

6 EEL-9 is the same as --

7 MS. LUBAMERSKY: This is UNE-C-2 revisited.

8 MR. CRAIN: And the question there is do we
9 leave this one open. We will treat this one exactly the
10 same way as the one before.

11 MR. WOLTERS: Let me ask, I don't think the
12 actual issue of the loading of the rates ever came up,
13 but let me ask you this. I think what's happening in a
14 number of states that have gone to cost dockets that are
15 passing rates, I think some of the contracts are
16 conforming to the new rates. And I guess I'm wondering
17 if this to me appears like a time consuming process to
18 do this for every CLEC. I mean can't you when you start
19 a new load of a questionnaire have a pop up in the rate
20 section with the existing commission approved rates, and
21 then look at the person's ICA defaults to different
22 rates instead of for every CLEC just adding the same
23 rates time after time after time? Because to me it's
24 just a programming issue that once you log onto the
25 program that you can't populate all of these fields with

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1 existing rates and only change them if the contract is
2 different.

3 MR. CRAIN: We mentioned earlier that we have
4 reduced the time frame for loading these rates and that
5 we're continuing to work on reducing the time frame
6 more. One of the things we're looking at is doing
7 exactly that, so we still haven't figured out if that's
8 feasible, but that is one of the things that we're
9 looking at to try and reduce that time frame even
10 further.

11 MS. HOPFENBECK: On this point, I wanted to
12 ask a question about -- that I should have asked
13 earlier, but it does relate to the same issue. When
14 Qwest populates a system with loads rates, does it have
15 to do it three times to cover the three different former
16 Bell territories? I mean are there three different
17 systems for each USOC, Northwest Bell, Mountain Bell,
18 and I don't even know what the --

19 MS. LUBAMERSKY: The answer is yes and no.
20 It varies based on the agreements. Most of the loading
21 is by state, because states have different rates. So
22 generally there's loading of 14 different USOCs for the
23 product X. I know of none where it -- it varies between
24 the western, central, and eastern region representing
25 the three former Bell companies, so no, it is generally

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1 1 or 14.

2 MS. HOPFENBECK: When it's one, I guess my
3 question is are there three different systems that that
4 one rate has to be loaded in, one for each of the
5 regions?

6 MS. LUBAMERSKY: There are three different
7 CRIS systems and three different service order
8 processors, but the loading is generally by state by
9 rate.

10 MR. CRAIN: Nancy, you referred to three
11 systems they need to be loaded in this morning; I think
12 the confusion there is what do those represent?

13 MS. LUBAMERSKY: Oh, yeah, the three I
14 described were CRIS, the end user and LSR based billing
15 system, IABS for LIS, and UDIM billing and CPPD.

16 MS. HOPFENBECK: I did understand that.

17 MR. CRAIN: Okay.

18 MS. HOPFENBECK: But I did believe that --

19 MS. STEWART: Can I add a slight
20 clarification to Nancy's piece. Qwest does have three
21 different systems behind -- in its 14 state region, it
22 does have generically three provisioning systems, so for
23 example, three versions of CRIS, three versions of like
24 we used to use CORD here and they used SOPAD, and so
25 there are differences. The interface between us and the

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1 CLEC, what we have attempted to do, of course, is to
2 minimize that, and so the CLEC doesn't have to deal with
3 that issue.

4 So it's sort of like the CLEC comes in and
5 asks for something, then we have to do the conversion
6 that lets it work in all of the three. So once it's set
7 up as a product, then no, we don't have to go into those
8 three systems. As Nancy said, we really go in state by
9 state and that by default you sort of get into the three
10 systems. But the first time a product is offered, the
11 very first time that somebody wanted to do rocky road,
12 at the risk of mentioning ice cream, we do have to go
13 into each of those three systems to make it work, and
14 sometimes our flexibility within those three systems is
15 different, so the ability to put in a brand new thing
16 for the first time, the critical path is going to be
17 whichever one of those is longest.

18 So the first time something is set up, yeah,
19 we do. But once it's set up and now just an additional
20 CLEC is ordering a new CLEC, no, then we don't. So I
21 don't want to say there aren't going to be situations
22 we're going to come back and say there was a specific
23 provisioning issue in a specific one of the CRIS systems
24 for something new the first time. Is that --

25 MS. HOPFENBECK: Yes, that's exactly what I

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1 wanted to know.

2 MS. STEWART: Yes, you can. And Nancy was
3 going from the new person coming in, not the building of
4 a new product, so that's why I wanted to clarify that.

5 MR. CRAIN: I think we can move on to EEL-10.
6 EEL-10 is an issue that was raised by WorldCom about
7 whether or not we can adopt a single process for
8 ordering EEL combinations. We had originally developed
9 a ASR based process for EEL-C or EEL-D?

10 MS. STEWART: I've got to read my own notes.

11 MR. CRAIN: We used to have two, we have now
12 moved to a one LSR process for all EELs except for EELs
13 that involve multiplexing, which will involve an LSR and
14 an ASR.

15 MS. STEWART: Yes, because there's transport
16 and loops.

17 MR. CRAIN: Notice has gone out to the CLECs
18 about that issue, and I think the changeover happens --

19 MS. LUBAMERSKY: It was announced as a
20 product announcement February 19 with a notice period
21 and a movement to obligatory 1 LSR effective March 25.

22 MR. CRAIN: Does that close this issue?

23 MR. SEKICH: Can I ask if changes need to be
24 made to the SGAT to reflect that, and if so --

25 MR. CRAIN: You know, I bet they do.

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1 MS. STRAIN: If you've got an SGAT reference
2 for that issue, that would be helpful.

3 MR. CRAIN: Sure.

4 MS. STRAIN: There isn't one on the log.

5 MR. SEKICH: Perhaps you could look at
6 9.23.5.4 is the one place I note LSRs and ASRs are
7 referenced, as well as 9.23.5.1.6.

8 MR. CRAIN: Actually, I think those two
9 sections are consistent with what we're doing, because
10 those relate to general UNE combinations, and they
11 basically refer to either ASRs or LSRs. I think the
12 place we have to look is 9.23.3.7.2.11 and 12.
13 Actually, it's 3.23.3.8, which is the next section,
14 ordering, and we will need to revise 9.23.3.8.1 and 2 to
15 conform to the new process, and I can bring you language
16 in the morning that sets forth how that works.

17 MS. HOPFENBECK: Am I correct that if we were
18 to resolve the impasse issue that we now have on whether
19 multiplexing and a loop is EEL or not an EEL that that
20 would change the ordering process for a loop plus
21 multiplexing, because you consider that to -- it seemed
22 to me that what Andy said is that the reason why an ASR
23 is required in that context is because it involves
24 transport, and I believe that's because you consider
25 multiplexing transport. But if we -- if our

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1 interpretation prevails, that MUXing is not just
2 transport but really should be appropriately treated as
3 feature functionality of or either its own UNE or a
4 feature functionality of loop, it would seem to me that
5 it would be also appropriate to create processes to
6 allow ordering through an LSR process of that
7 combination. Would that be true?

8 MS. STEWART: Well, we would need to look at
9 it, because then it would just become a technical
10 process full of which of the service orders processes
11 would be needed to put it in. So I can't say that it's
12 an absolute given that suddenly if MUXing alone was not
13 transport you still wouldn't have to use an ASR. I'm
14 not sure they're as linked as that.

15 MS. HOPFENBECK: Okay.

16 MS. STEWART: But I have never specifically
17 gone in and asked that question of our process people,
18 but we would use whichever process made sense and was
19 the easiest and best to install.

20 MS. LUBAMERSKY: Even if hypothetically loop
21 plus an associated MUX doesn't include transport, even
22 hypothetically if that were the case, it would require
23 two LSRs, because OBF guidelines and the industry says
24 if you're going to have a MUX at a different bandwidth
25 at one side, you need one LSR for this speed, and then

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1 the MUX goes somewhere else to associate it with a
2 higher speed. So it's not so much an ASR LSR as when
3 you have loops and MUXing up that's two LSRs industry
4 wide.

5 MS. STEWART: Whenever you have two
6 bandwidths, you have two orders.

7 MS. LUBAMERSKY: Right.

8 MS. STEWART: Industry wide.

9 MS. LUBAMERSKY: Yeah.

10 MR. WILSON: And I think it's evident that it
11 really doesn't have anything to do with definition,
12 because now if you don't have multiplexing, you get loop
13 and transport with one LSR.

14 MS. STEWART: Correct, on the
15 non-multiplexing UNE.

16 MS. LUBAMERSKY: Right, as long as it's one
17 speed.

18 MR. WILSON: Yeah.

19 MS. LUBAMERSKY: Correct.

20 MS. STEWART: The bandwidth --

21 MS. LUBAMERSKY: Multiple speeds cause you to
22 have two LSRs.

23 MR. WILSON: So you've got the goesinto and
24 the goesoutto.

25 MS. LUBAMERSKY: I just use my hands to

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1 explain high speed and low speed.

2 MR. CRAIN: Does that close EEL-10?

3 MS. STRAIN: Take back.

4 MR. CRAIN: Oh, take back, I keep trying.

5 MS. LUBAMERSKY: The language exists in
6 Friday's filing for the seven state and Oregon's last
7 filing, so it exists. We'll just bring that same
8 language to this group tomorrow morning.

9 MR. CRAIN: Okay.

10 MS. LUBAMERSKY: We were trying to assure we
11 took credit for 1 LSR per EEL, because a number of BOCs
12 don't do that, so we were trying to take that credit,
13 but we need to provide additional detail to you
14 tomorrow.

15 MR. CRAIN: EEL-11 is something that is
16 identified as an issue, and for the life of me, I'm not
17 sure what that is.

18 MS. STEWART: Looking at my rebuttal
19 testimony on page 45, it was a general over arching
20 issue that WorldCom was concerned whether any EELs were
21 being provisioned at all. I'm not sure if it was a
22 specific your own interconnection agreement dispute type
23 of question.

24 MS. WICKS: Gosh, we never have
25 interconnection agreement disputes.

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1 MS. STEWART: So it couldn't be that. I have
2 it WorldCom at page six in your filed comments, if
3 that's helpful.

4 MS. HOPFENBECK: I think this is really a
5 hang over issue, you know, that really grows out of the
6 history that we have had with Qwest and U S West on
7 getting any kinds of combinations. And since EEL is a
8 part of our amendment process, I think one of the
9 concerns is, you know, whether you are fulfilling your
10 obligation to provide EELs as required.

11 MS. STEWART: I have, in my notes, I have I
12 believe on page six it would be line one and two of your
13 comments was where I was attempting to be responsive to
14 that issue.

15 MS. HOPFENBECK: I think this really is
16 addressed in the previous discussion that we have had
17 under EEL-5, and I don't think we need to go at it again
18 here, and we can close this issue and address it.

19 MR. CRAIN: Thank you.

20 MS. HOPFENBECK: Is it EEL-5 or is it -- it's
21 really UNE-5?

22 MS. STRAIN: It's one of the UNE issues.

23 MR. CRAIN: UNE-C --

24 MS. HOPFENBECK: Oh, actually, I take that
25 back. I think it probably needs to remain an issue

03303

1 here, because EEL is separate than UNE. It's a
2 separate.

3 MR. CRAIN: Should we refer to the --

4 MS. HOPFENBECK: Actually, I'm sorry, that's
5 UNE-C, we can deal with it there.

6 MR. CRAIN: Yeah.

7 MS. LUBAMERSKY: It's just one of the
8 combinations.

9 MR. CRAIN: Yeah.

10 MS. LUBAMERSKY: EEL-1 flavor, not of ice
11 cream, and other combinations.

12 MS. STRAIN: Which issue?

13 MR. CRAIN: UNE-C-5.

14 MS. WICKS: So we can close EEL-11, because
15 its subsumed in UNE-C-5.

16 MR. CRAIN: Okay. Moving on to EEL-12, this
17 was an issue that was raised by several CLECs. And we
18 have addressed that issue, and I think it is clear in
19 the EEL language that we provide EELs through OS192,
20 OC192, and I think this issue should be closed.

21 MR. SEKICH: I would like to just clarify.

22 The language Qwest proposes does provide for EEL
23 availability through OC192. Certain bandwidths are
24 available only through the special request process that
25 Qwest has established we referred to later or earlier in

03304

1 this workshop. We think that it may be appropriate to
2 deal with those extra or higher bandwidths through the
3 special request process.

4 I just want to note, because the parties have
5 not dealt with it here because there is no supporting
6 testimony for it yet, it's difficult to agree that
7 that's a sensible alternative. I think it's reasonable
8 to do what we have done in other places, which is
9 address the special request process as we plan to in the
10 general terms and conditions with just a footnote in our
11 minds that it does sort of impinge on our availability
12 of things like, for example, EELs at the higher
13 bandwidths, so.

14 MR. CRAIN: So are we closing this with a
15 footnote in our minds?

16 MR. SEKICH: Please.

17 MR. CRAIN: Okay.

18 MS. HOPFENBECK: I hate to do this, but we
19 have to go back to EEL-11, because it's a little bit
20 broader of an issue than was raised earlier.

21 MR. CRAIN: Okay.

22 MS. HOPFENBECK: This issue concerns
23 WorldCom's experience of seeking to convert customers
24 that are currently being provisioned by special access
25 to EEL or -- and I think also involves the situation

03305

1 where we are ordering what we consider to be loop and
2 transport facilities to serve a customer with local
3 service, provide a customer with local service, and we
4 are being charged special access rates. And that has
5 raised the question about what Qwest policy is right now
6 about that situation where I assume you must be
7 believing for some reason that we are not complying with
8 the restrictions set forth in the supplemental order of
9 clarification.

10 And I guess we need to get an understanding
11 of what that policy is, because we wouldn't be seeking
12 to be able to -- I mean we know what our obligation is
13 under the special -- the supplemental order of
14 clarification and what the circumstances are under which
15 we can provide service to a customer using EEL, and yet
16 so far I think it's our experience that we have just run
17 into a roadblock there, and we are being required in
18 order to provision service to those customers to pay
19 special access rates.

20 MS. STEWART: If I can -- I can not from my
21 personal knowledge address your specific situation, but
22 I would like to generically address this issue and the
23 issue that was brought up by Mr. Peters from ELI
24 earlier, and that is the conflicting information. I,
25 you know, asked this group and I got that answer, and I

03306

1 asked that group and got that answer.

2 Qwest has recently gone through quite a bit
3 of change in its account management teams, and obviously
4 as we have continued to do the SGAT work here, we have
5 all identified that agreements are made here about such
6 things as TLA and what's an EEL and how do you convert
7 and that Qwest has the need and the obligation to make
8 sure that any of its commitments that it makes in the
9 SGAT negotiation process is communicated back to its
10 total organization.

11 So the combining of all of these issues has
12 really led Qwest to realize that it needs to very
13 specifically proactively go back and do an educational
14 process with its account teams, its provisioning teams,
15 with everyone, clearly identifying and delineating how
16 conversion work, and particularly with EELs will work,
17 and that you, you know, that the CLEC if they self
18 certify, you do it right away, even if there's a TLA,
19 you do it right away.

20 So Qwest has already began the work to assess
21 how long it would take and what we can do to bring a
22 very specific focused training package and kind of a
23 clear black and white back to the account teams and
24 provisioning people so that we won't continue to have
25 any misunderstandings or lack of clarity between what's

03307

1 happening here in this negotiation process and what the
2 CLECs are facing real life front and center with the
3 account teams. And so I think you're just pointing out
4 that we do need to make sure that we reinforce and
5 clarify, if necessary, our obligations around converting
6 circuits and when they're converted and how they're
7 converted.

8 MS. HOPFENBECK: I think what we would --
9 what we really need to have today happen is we need to
10 get an understanding of what Qwest understands its
11 obligation to be.

12 MS. STEWART: Okay.

13 MS. HOPFENBECK: With respect to converting
14 special access to EELs. Because at this point -- and I
15 think that's what raises the question of whether Qwest
16 is providing EELs or has to date, and based on what you
17 have said, raised the question in my mind about whether
18 you have been allowing conversions to date and whether
19 it's been the policy. We need to know sort of where you
20 are as of where you have been and where you're going and
21 how you view your obligation so that we can challenge
22 that if we think it's inconsistent with the Act.

23 MS. STEWART: Okay. We believe we have been
24 making the conversions consistent with our
25 understanding. I'm not sure that the complete

03308

1 communication has been there. There has been some
2 current policy as it relates to EEL conversion. For
3 example, our policy says once the CLEC self certifies
4 and they tell us under which of option one, two, or
5 three that they are certifying that they're making the
6 significant amount of local exchange, that we will just
7 do the conversion. We will take kind of the CLEC's self
8 certification, and we will do the conversion unless we
9 absolutely know for sure that it's like being sent to a
10 tariffed service. And we've already discussed, and we
11 are at impasse over our belief that we don't have to do
12 the conversion to the tariffed service.

13 But what we have found and discovered is that
14 in that conversion process, we will have a CLEC that
15 will come back and say, yeah, I self certify it's local,
16 but they won't put which of the three options. And the
17 FCC has made it clear that we have the right to know the
18 option, because otherwise how can we do an effective
19 audit later. And so the CLEC is saying, you're not
20 converting my EELs, I've got a problem with that. We're
21 sitting here saying, well, you didn't certify exactly
22 which option, you just said yes it's all local, or
23 sorry, significantly local. So I think there's still
24 some, you know, making sure that there's a complete
25 communication between the groups.

03309

1 And just to kind of jump to that one, we will
2 require as contemplated by the FCC that you tell us
3 under which option you're certifying each and every
4 individual circuit. You just can't send us a
5 spreadsheet of 3,000 circuits and say, yeah, trust me,
6 they're all local. You've got to tell us circuit by
7 circuit, is it option one, is it option two, or is it
8 option three. And that may be -- I think the kind of
9 thing you're trying to say is let us come back and give
10 you the training package.

11 MR. CRAIN: Do you have specific questions
12 about --

13 MS. HOPFENBECK: Yeah.

14 MS. STEWART: That I know is at issue.

15 MS. LUBAMERSKY: Can we wait one second.

16 MR. CRAIN: If you want, we can bring in
17 tomorrow a section from our product catalog that
18 specifically sets forth the requirements, what is
19 necessary, what happens, and that sort of thing if that
20 would help clarify the situation.

21 MS. LUBAMERSKY: It's relatively new, it's
22 been revised in the last six weeks. Training is just
23 beginning that Karen mentioned to assure that the
24 changes in advocacy and as a result of experience as
25 well as negotiations are known by all. I would

03310

1 certainly agree there may have been some differing
2 opinions within the company. It has been codified.
3 Training has begun. We have accepted EEL conversion
4 orders.

5 MS. HOPFENBECK: Just since that time?

6 MS. LUBAMERSKY: There were some before that
7 as well. I think Karen's testimony describes some in
8 the October, November time frame. But as long as the
9 remarks section had the circuits qualified with a
10 validation code and the circuit is certified to carry a
11 significant amount of local traffic with option number
12 one, two, or three, it's there.

13 MR. SEKICH: Question, the SGAT provides that
14 our self certification be in the form of a letter
15 consistent with the FCC's rules on this.

16 MS. LUBAMERSKY: Yes.

17 MR. SEKICH: You make reference to
18 certification of codes. How does that work? Is the
19 account team trained to take the letter, convert the
20 codes, do that necessary work?

21 MS. LUBAMERSKY: Exactly. You complete your
22 certification letter, return it to your Qwest account
23 manager, and the Qwest account manager then goes through
24 the process of work necessary to return to you a
25 validation code for circuits that qualify.

03311

1 MR. SEKICH: But return to us a validation
2 code, that doesn't require any further activity on our
3 part?

4 MS. STEWART: I want to clarify, because I
5 think we're, not that I'm trying to bring up new issues,
6 but I'm just trying to make sure we're all clear. A
7 CLEC at any time can submit an LSR for a conversion to
8 an EEL. They can say, I got a circuit, I want to
9 convert it, here's my LSR, and I say that it's option
10 one, two, or three. You do need to tell us under which
11 local option on that particular LSR you're converting,
12 okay.

13 MR. SEKICH: Why?

14 MS. STEWART: Because that is a requirement
15 within the FCC and the SGAT that you identify which of
16 the three options.

17 MR. SEKICH: Indeed it's a requirement under
18 the FCC that we specify self certify, specify what
19 option we're seeking to qualify the circuit.

20 MS. STEWART: Right.

21 MR. SEKICH: There's no need to specify that
22 on the LSR. That's not part of the FCC's ruling on this
23 matter.

24 MS. STEWART: Well, typically you would
25 communicate with us on a conversion by conversion on an

03312

1 -- well, would you rather send an individual separate
2 letter for each circuit, or would you rather have an
3 overall letter that covers everything? Then you just
4 put the individual circuit information on an LSR. You
5 want a letter for every circuit?

6 MR. SEKICH: We want something easy and
7 simple.

8 MR. CRAIN: Which is the LSR.

9 MR. WOLTERS: There's already language, we
10 went through this, on how the certification is done. If
11 you look at 9.23.3.7.2.4, the certification is
12 independent of the LSR.

13 MR. CRAIN: Sure, but the question is, do you
14 want to send a separate letter for every LSR I think for
15 every circuit. I think this is a heck of a lot easier.

16 MS. LUBAMERSKY: Our understanding is --

17 MR. WOLTERS: The issue is --

18 JUDGE WALLIS: I'm just going to ask that we
19 slow down a little bit here, and let's let the lawyers
20 talk.

21 MR. WOLTERS: I think the issue is if you're
22 rejecting orders because it's not on the LSR and there's
23 no requirement in the SGAT that it be on the LSR, then
24 you're unfairly rejecting orders because you say they
25 don't have a certification. So I think if somebody

03313

1 sends an LSR and doesn't have a certification but sends
2 you an E-mail that's been agreed to, you can't reject
3 the LSR.

4 MS. STEWART: And I did not mean to imply
5 that we were rejecting LSRs without the certification of
6 one, two, three if the one, two, three certification has
7 been done by another method. I'm really trying to jump,
8 to kind of give you the background, to jump to the -- so
9 what confusion I know that has happened between various
10 CLECs and Qwest.

11 There is a need for each circuit to come up
12 with option -- which option it's certifying under, one,
13 two, three. Instead of using an individual LSR when you
14 have a bulk of circuits to convert, because on a new
15 circuit one at a time it probably does make sense, you
16 just send in the LSR, we decide, whether it's on there
17 or a separate letter, you have somehow communicated to
18 us.

19 But in reality, we have CLECs that are coming
20 to us saying I have a large number of circuits I want to
21 convert. So instead of the CLEC sending in a large
22 number of LSRs and trying to sort out do we have all the
23 correct information, is it certified, is the CFA
24 correct, is this correct, we have told CLECs if they
25 want to send us a spreadsheet with all the relevant

03314

1 information, we will look through the spreadsheet and
2 make sure that you've got all the relevant information.
3 If there's any disputes or whatever, and then you will
4 know, we will know, everything will be set, and you can
5 then send through the LSRs.

6 So what we have coming in on these kind of a
7 -- we're trying to be customer focused. We're trying to
8 not sit here and discuss it through the reject of 2,400
9 LSRs. We're trying to look at it holistically in a
10 spreadsheet and be responsive to these mass conversions.
11 But we have received these spreadsheets where it just
12 says local service, yes. It doesn't say which option
13 for which circuit, and so we have gone back and said, at
14 some point this spreadsheet, a letter, an LSR, at some
15 point you've got to tell us whether you're certifying
16 under option one, two, or three.

17 And I think, and I'm not saying this to
18 anyone here or whatever the deal is, but I do think
19 there are some CLECs that may interpret self
20 certification as just yes, not option one, two, or
21 three. And I know that has been an issue of concern
22 between some parties.

23 MS. HOPFENBECK: Okay, I think it would be
24 very helpful to have you bring the product description
25 tomorrow. It will be important to WorldCom to read that

03315

1 product description together with the SGAT to make sure
2 that the two are consistent. And then it's my
3 understanding from your testimony that as of pretty
4 recently there are processes have been put in place that
5 should allow for convergence pretty expeditiously; is
6 that correct?

7 MS. STEWART: Correct, assuming each party
8 has provided each party with the total information
9 necessary including by circuit in some manner, if you
10 don't want to do it on an LSR, you want to do it on a
11 separate letter, whatever, we're open to that, but that
12 we have received the complete information about each
13 individual circuit.

14 MS. HOPFENBECK: Can you tell me before this
15 product description was developed within -- that was
16 circulated within the last five or six weeks, was there
17 another product description that advised under that, and
18 could we look at a copy of that?

19 MS. STEWART: Yeah, we can --

20 MS. HOPFENBECK: The previous one.

21 MS. STEWART: Yeah, there was one, and we can
22 see if we have a copy of it. And I may even have it in
23 my direct testimony. I will take a look.

24 MR. WOLTERS: Karen.

25 MS. LUBAMERSKY: That goes back when we had 1

03316

1 LSR and 1 ASR and we had a lot of different --

2 MS. STEWART: And the self cert --

3 MS. LUBAMERSKY: -- descriptions and such, so
4 it would be much more honed and detailed since the
5 beginning of the year.

6 MR. WOLTERS: Karen, my understanding was
7 that I think, Andy, correct me if I'm wrong, but my
8 understanding was once the certification was made that a
9 CLEC is supposed to, I think they used the word
10 immediately but maybe they didn't, but some other word
11 that said it's supposed to happen. But when listening
12 to you, I got the impression that you go through this
13 process, and I'm concerned with a multi circuit order
14 that your explanation of this process going over the
15 form and everything is something more than just making
16 sure the circuit's identified and there's a
17 certification.

18 I wanted to kind of tie that with that it
19 will -- we know it's connected to something else. It's
20 not my understanding that you go out and actually do a
21 physical inspection to determine whether these circuits
22 are attached to tariff services or anything like that.
23 You're essentially making sure the form has all the
24 information you need. If it does, you're making a
25 conversion.

03317

1 MS. STEWART: That's correct, but we can
2 sometimes tell by the CFA or whatever the tie down
3 information that it's tying down to a MUX that's
4 carrying special access, DS3 or it's a DS3 special
5 access MUX. So sometimes by the address and
6 information, we will know it's tied to a tariffed
7 service.

8 MR. WOLTERS: But now say you had the
9 multiple order, if you have 100 orders, 100 circuits,
10 and you find one or two, you're not holding up the order
11 to resolve the one or two circuits that you may feel
12 that don't have a certification or may be tied to a
13 finished service. You're processing the other 98 or
14 whatever immediately?

15 MS. STEWART: Well, yes, and that's where I'm
16 not -- I want to be clear. Every circuit that's
17 converted needs to have a service order, okay. What we
18 had offered to do because we felt that it was customer
19 responsive and friendly, when we're trying to do a mass
20 conversion, I mean what we're really -- we're not
21 talking about the how it's going to work a year from now
22 when, you know, there's more EELs and more things are
23 happening and now you're only getting in one or two
24 circuits a day. I'm talking about when a CLEC is trying
25 to do a mass conversion of its in-place network to the

03318

1 extent that it legally can with local service to UNEs.
2 So we're really talking a project status type of
3 situation, a lot of conversions. You still need an
4 order per circuit, and that is correct. If an order
5 comes in, we got all the information, we're doing it.
6 We're not holding up all of the orders until all of them
7 are spiffy. We're going to do them as the orders come
8 in.

9 Before you place an LSR, we're offering you
10 the opportunity to send us a spreadsheet of all of the
11 circuits so we can look at the circuits and then kind of
12 do a prequalification back to you saying, yes, you seem
13 to have all the good information, and oh, by the way,
14 you have done your one, two, three, and we're all good
15 to go. Yes, the CLEC could take the ones that we came
16 back and said they looked good to us immediately, send
17 LSRs, they would be processed, and we could continue to
18 talk about those. But we are not going to process and
19 do the work off of the spreadsheet. You still need to
20 send me an LSR for every circuit.

21 MR. WOLTERS: Just --

22 MS. STEWART: But I think what's happening is
23 is in this prequalification spreadsheet process, we got
24 a lot of CLECs, who maybe are not as knowledgeable as
25 CLECs who participate here, not wanting to give us one,

03319

1 two, three. They just want to say yes, local.

2 MR. CRAIN: Can I suggest that --

3 MR. SEKICH: Can I clarify one thing?

4 MR. CRAIN: Sure.

5 MR. SEKICH: In fact, the scenario

6 Mr. Wolters had suggested where there might be two or
7 three that appear to have some certification problem,
8 you would not hold any orders up, you would provision
9 them all, as I understand it, consistent with the FCC's
10 ruling. The SGAT would provide you can only object to
11 or object to those circuits that have been demonstrated
12 as a consequence of an audit not to comply with the
13 requirements of the SGAT.

14 MR. CRAIN: Actually, if we know, for
15 example, that this attaches to a finished service, it's
16 not an audit, we're not going to convert something that
17 we --

18 MR. SEKICH: That's not the --

19 MS. LUBAMERSKY: That's what Karen was
20 responding to Mr. Wolters. Mr. Wolters said, if you
21 think some of them are connecting to a MUX or a tariff,
22 what would you do. That's what I heard the example to
23 be.

24 MR. CRAIN: Yes. If we know that this
25 doesn't qualify even though you certify that it

03320

1 qualifies, we're not going to convert that. But it's
2 not an audit. It's a --

3 MR. SEKICH: I understand that you might know
4 that because of collocation, because of a connection to
5 tariff service. But where it's solely based upon the
6 certification by the CLEC, you process those orders,
7 Qwest does not hold them out because they believe
8 there's something odd about them. Qwest's proposal is
9 to process the orders for the circuit conversions,
10 conduct an audit if they feel that's necessary; is that
11 correct?

12 MS. STEWART: Correct.

13 MR. SEKICH: Thank you.

14 MS. STEWART: But if you knowingly know it
15 doesn't qualify because you're asking us to tie it down
16 to a tariff service, then we will not process that
17 order.

18 MR. PETERS: I would like to go on the record
19 here just from ELI's perspective, and more and more it
20 looks like we made a huge strategic mistake years ago
21 when we decided to buy MUXing and special access from
22 Qwest, but basically we can't convert a thing because of
23 a number of policy positions that Qwest has taken. This
24 EEL or the loop connected to a MUX is still an
25 outstanding issue for us. Termination liabilities on

03321

1 those special access circuits that we bought from them
2 when we had no other alternative but to buy special
3 access from them and buy them under a discount plan that
4 allowed us to compete effectively prevent us from
5 converting because of the charges that are assessed with
6 those. The commingling issue because everything we buy
7 from Qwest goes to a Qwest purchased MUX basically
8 prohibits us from converting anything.

9 So I want to make it clear that there -- that
10 in our network as it stands today and the way we have
11 designed it, conversions are absolutely not an option
12 for us for those reasons I went through. And let me --
13 all of our circuits could potentially qualify as
14 significant local, but if we have to maintain 800 of
15 those to avoid substantial termination liability
16 charges, those remain tariffed services and can't be
17 commingled with anything else even though they meet
18 every other qualification of significant local.

19 So I just want to make it clear that we've
20 talked a lot about the details of ordering this stuff,
21 but, you know, the reality is the way it stands today,
22 it's all meaningless to ELI at least. And I'm not sure
23 whether any other carriers are in this position.

24 MR. CRAIN: To get tasky here --

25 MS. HOPFENBECK: I think that other carriers

03322

1 are in that situation.

2 MR. KNOWLES: XO to a certain extent would be
3 in that situation as well. We're not quite as far down
4 that road as ELI is, having that be the only way we do
5 business, but we have a substantial number of that
6 situation as well.

7 MS. HOPFENBECK: Can I just get clarification
8 on --

9 MR. CRAIN: Can I do one thing first. I'm
10 sorry, to get tasky, we have identified, I think, the
11 issue of loop plus MUX. I think we do need to identify
12 an additional issue on the commingling. I think that is
13 an impasse issue that's currently being discussed by the
14 FCC.

15 MR. PETERS: Yeah, and that isn't teed up in
16 here as --

17 MR. CRAIN: Yeah.

18 MR. PETERS: -- an issue I don't think, so
19 that's one that we would like to have brought in as
20 probably an EEL.

21 MR. CRAIN: EEL-13.

22 MR. PETERS: EEL-13 then.

23 MS. HOPFENBECK: Is the commingling issue
24 that you raise analogous to the commingling issue that
25 comes up in the context of interconnection?

03323

1 MR. WILSON: I was just going to make a point
2 on that. This is very similar to an issue that we
3 raised in interconnection where it makes sense to allow
4 CLECs to use a large pipe for both tariffed facilities
5 and non-tariffed facilities. In interconnection, we
6 pointed out that we would be willing to pay the
7 unbundled price for unbundled elements that -- or tariff
8 services that went down the pipe and for the
9 interconnection trunks. Those would be part of
10 reciprocal compensation.

11 My reading of the preliminary order that that
12 is going to be allowed in Washington, so I think this is
13 a similar issue, and I would say certainly AT&T's
14 position is similar, that a large facility should be
15 used or could be used by the CLEC for both tariffed
16 services and unbundled elements, and the appropriate
17 prices be paid for both. And I think ELI's situation
18 really puts this in a highlight, because they're not
19 even being allowed to do that commingling for circuits
20 that really should be UNEs. They have just gotten stuck
21 with term plans because they weren't able to order UNEs
22 up until recently.

23 MR. CRAIN: And it's Qwest's position this is
24 an issue that the FCC has ruled on in their supplemental
25 order of clarification, specifically reaffirmed the

03324

1 ability of LECs to prohibit commingling. It is an issue
2 that is being considered by the FCC as a result of I
3 think a petition filed by WorldCom and East -- or is it
4 just WorldCom. We handed out today Exhibit 594, an ex
5 parte. We have submitted that with the FCC on that
6 issue for further clarification of Qwest's position on
7 that point. I think, well, I know this is going to be
8 an impasse issue, and I think it can be handled on the
9 briefs, but if we want to discuss it further.

10 MR. PETERS: And if I could clarify one other
11 policy issue with Qwest since Qwest has recently changed
12 a lot of their policies to verify that LIS trunks can be
13 combined on UNE facilities and that that would not
14 constitute a commingling restriction; is that still
15 Qwest's policy?

16 MS. STEWART: Can we take that -- I'm not the
17 LIS trunk witness, and I know they have had a lot of
18 workshops, so can we have an opportunity to come back
19 tomorrow morning with a response on that? Because I do
20 want to make sure I check the latest information.

21 MS. HOPFENBECK: That was my specific
22 question is what does tariffed service as used in this
23 section refer to, and does it include LIS trunk service?

24 MS. STEWART: Yeah, we had that earlier
25 today. I said it did, and you said no, in recent

03325

1 negotiation it didn't, so that's why I want to come back
2 and make sure my information is complete.

3 MS. HOPFENBECK: I don't think it's in
4 negotiations. I think Qwest has gone impasse on the
5 issue. It's just I think the preliminary order of the
6 Washington Commission.

7 MS. STEWART: Oh, that one, I'm sorry, that
8 was it.

9 MR. CRAIN: Yeah.

10 MS. STEWART: I knew there was some clue that
11 I had not the most current information.

12 MS. HOPFENBECK: But can you give me other
13 examples of what you have in mind with respect to the
14 restriction of when these facilities terminate at a
15 tariffed service or connect to a tariffed service?

16 MS. STEWART: Can I do that -- I just wanted
17 to finish identifying all the items, if we could. Is
18 that okay so we don't lose track of?

19 Is the, can LIS trunk over UNES, is that
20 going to be an additional actual -- so when we come back
21 with a response, would that be a general UNE thing, so
22 would it be UNE-C-24? I'm just asking the question.

23 MS. HOPFENBECK: I think this is EEL-14.

24 MS. STEWART: EEL-14.

25 MS. HOPFENBECK: And I think the issue is

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1 when --

2 MS. STEWART: LIS trunking is on there, is

3 that --

4 MS. HOPFENBECK: Does that preclude
5 conversion from EEL, from special access to EEL.

6 MS. STEWART: If you have LIS trunking coming
7 in and terminating on a MUX with other services, would
8 the LIS trunking itself terminating somehow make it not
9 eligible. Okay, that's EEL-14.

10 The other issue that was addressed by
11 Mr. Peters is where I've got a circuit, it is a special
12 access circuit, it meets the local requirement, but I
13 got a TLA, so I'm not going to convert it because of my
14 TLA, but it really is local I think is a little similar
15 to the issue we've identified from XO of UNE-C-21 where
16 because you made the decision to move forward with a
17 tariff service, now you are potentially restricted
18 making a combination out of it. Is that separate, or is
19 it the same, or is it slightly different?

20 MR. KNOWLES: Slightly different, the one
21 issue he's talking about is the term commitment portion
22 of a term plan, where I was -- he was -- mine could have
23 been just month to month.

24 MS. STEWART: Okay, so would we put yours in
25 as EEL-15?

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1 MR. PETERS: That's fine.
2 MS. STRAIN: I think this is already in as
3 EEL-13.
4 MS. STEWART: 13 is commingling.
5 MS. STRAIN: Oh.
6 MR. CRAIN: EEL-15 would be --
7 MS. STRAIN: Termination liability?
8 MR. CRAIN: Yes.
9 MS. STRAIN: Are we making --
10 MS. STEWART: Special access termination
11 liability for circuits that or otherwise meet the local
12 service requirement?
13 MR. KNOWLES: Right.
14 MS. LUBAMERSKY: To make sure I understand,
15 Mr. Peters, the question is not that you can't
16 physically convert them, but that financially paying the
17 TLA makes it not a good business decision.
18 MR. PETERS: Right.
19 MS. LUBAMERSKY: Okay.
20 MS. STEWART: And then that business decision
21 keeps that a tariffed service which then therefore has
22 other ramifications?
23 MR. PETERS: Yes.
24 MR. WOLTERS: And I think part of all this,
25 as I understand it from AT&T's perspective, is a lot of

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1 times we bought the special access services because we
2 needed the circuits and we were unable to get the UNEs
3 because of some disagreements between the CLEC or AT&T
4 and Qwest. So in order to provide the service to our
5 customers, we just bought the services out of special
6 access. Now, I think the issue is, now that Qwest is
7 willing to provide these services as UNEs, some of these
8 things as UNEs, we would like to convert them and not be
9 penalized for doing so mainly because we felt we should
10 have been able to order them as UNEs in the first place.

11 MS. STEWART: But when you have a TLA, isn't
12 it true that meant that you have taken advantage of some
13 type of volume and/or term discount, and therefore you
14 had a lower price, and would it be discriminatory if we
15 let you out of that but we wouldn't let another customer
16 out of it. I mean we had -- you made the decision to
17 buy a service at a volume returned discount is typically
18 why you have a TLA.

19 MS. HOPFENBECK: But usually the conversion
20 with the volume discount, you're still not paying as low
21 a rate as you would have been paying at the UNE rate, so
22 I mean that's the whole -- I think you can't have it
23 both ways. I mean it's either we go back and just
24 litigate the whole refusal to provide the conversions to
25 begin with and sue for the damages and the difference

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1 between the two. I mean it's just --

2 MR. CRAIN: The other issue we do have on
3 TLAs is what we talked about earlier where we don't have
4 an obligation to build transport, and a lot of these
5 were done in terms of we will build this if you -- under
6 these terms. And so what -- we're not talking about
7 everything here, we're talking about a lot of these are
8 basically us saying, we will build these if you enter
9 into this agreement, and those are certainly entirely
10 appropriate.

11 MR. WILSON: I think this should be a special
12 TLA issue. I think where CLECs were not able to order
13 unbundled elements and were forced to order private line
14 services that the TLA should be waived unless Qwest can
15 show that facilities were not available and they
16 especially built those facilities for the CLEC, and
17 therefore they should be able to recover the costs of
18 building that. Otherwise, I think these TLA's should be
19 waived because the CLEC was buying local facilities, and
20 the price in all cases would have been lower if we would
21 have been able to order the unbundled element in the
22 first place.

23 MR. CRAIN: Now are we talking --

24 MS. YOUNG: This is Barb Young of Sprint. If
25 you had built those, it would be under a special

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1 construction type arrangement, contract arrangement, and
2 not just a tariff special access term discount plan;
3 would that not be true?

4 MR. CRAIN: We would in a lot of cases not
5 make the decision to build if it weren't for the term
6 plan.

7 MS. STEWART: It can be both. It could be a
8 special construction arrangement, or it could be we made
9 the decision to do it because we were going to take the
10 volume and term commitment.

11 MS. HOPFENBECK: I mean if we paid the cost
12 of construction, it would seem to me that that would be
13 an appropriate circumstance to waive the TLA as well, if
14 we paid for the construction of the facilities through
15 special construction charges, regardless of whether you
16 would have made the decision to build.

17 MR. CRAIN: I will take that one back, but
18 something --

19 MS. TORRENCE: As Karen mentioned earlier --

20 MR. CRAIN: You have not paid for the
21 construction.

22 MS. LUBAMERSKY: No, there is a possibility
23 where I know some other BOCs did do building under SSA
24 Section 12, the federal tariff, or something like that.
25 That doesn't happen to be what we're talking about here,

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1 but if the potential arose that transport had been built
2 under a special construction arrangement, which is not a
3 local comp thing, then that discussion of the terms of
4 that contract would apply. I don't know of any of those
5 circumstances in Qwest territory in the last year since
6 EELs arose.

7 MR. CRAIN: The other -- we should probably
8 regroup and discuss this further in the morning, but
9 there's been a lot of sweeping statements that we
10 couldn't get this, we couldn't get that, we couldn't get
11 this, so we had to buy this, we had to buy this, we had
12 to buy this, I have heard very few specifics in terms of
13 this. And particularly when we didn't have an
14 obligation to combine elements on behalf of CLECs and
15 CLECs decided to do something else, we did things that
16 are completely within our right, and there's no reason
17 at a later date for you to say, well, if we could have
18 gotten UNEs earlier, we would have done that. I mean if
19 we didn't have a legal obligation to provide something,
20 we didn't have a legal obligation to provide something.

21 MS. HOPFENBECK: In this jurisdiction, I
22 think you have always had the obligation to provide.

23 MR. CRAIN: I don't believe that's true.

24 MS. HOPFENBECK: Or not always, but for
25 longer than anywhere else in the region.

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1 MR. KOPTA: This Commission did require Qwest
2 to provide, at that time U S West, to provide
3 combinations, and that was the decision that was
4 eventually upheld by the Ninth Circuit. So at least as
5 far as this state, this Commission, this Circuit, Qwest
6 has always had that obligation since 1996.

7 MR. CRAIN: Then we would assert that that is
8 not accurate, but we can both brief that issue.

9 MS. LUBAMERSKY: I just didn't want the
10 record to sit that we believed that we were rejecting
11 orders that we had to do years ago.

12 MR. WILSON: And some of this also hinges on
13 whether or not multiplexing is transport, because some
14 of this -- some of what was ordered as private line or
15 much of it was simply loops and maybe with multiplexing,
16 but we don't think a lot of it would fall even under the
17 EEL definition, so it was not necessarily a combination.

18 JUDGE WALLIS: I would suggest we go off the
19 record for a scheduling discussion.

20 (Discussion off the record.)

21 JUDGE WALLIS: AT&T has Exhibit 626 and would
22 like to offer it to the record at this time; is that
23 correct, Mr. Wolters?

24 MR. WOLTERS: That's correct, Your Honor, I
25 would like to move for the admission of Exhibit 626.

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1 JUDGE WALLIS: Is there any objection?

2 Let the record show that there is no

3 response, and 626 is received.

4 Now Mr. Kopta's clients also have not

5 presented their basic information. I think it's

6 appropriate that we do that now and consider the offer

7 of their exhibits.

8 Mr. Kopta.

9 MR. KOPTA: Thank you, Your Honor. I will
10 begin with Mr. Peters.

11 Mr. Peters, would you state your name and
12 business address for the record, please.

13 MR. PETERS: Timothy H. Peters, Electric
14 Lightwave, the address is 4400 Northeast 77th Avenue,
15 Vancouver, Washington 98662.

16 MR. KOPTA: And did you cause to be prepared
17 the document that's been marked for identification as
18 Exhibit 661-T, entitled Workshop 3 Response Testimony of
19 Timothy H. Peters?

20 MR. PETERS: Yes, I did.

21 MR. KOPTA: And is that document true and
22 correct to the best of your knowledge?

23 MR. PETERS: Yes, it is.

24 MR. KOPTA: I would move for the admission of
25 Exhibit 661-T.

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1 JUDGE WALLIS: Is there objection?
2 Let the record show that there is no
3 objection, and 661-T is received.
4 MR. KOPTA: Thank you, Your Honor. Now with
5 respect to Mr. Knowles.
6 Mr. Knowles, would you state your name and
7 business address for the record, please.
8 MR. KNOWLES: Rex Knowles, XO Communications,
9 111 East Broadway, Suite 1000, Salt Lake City, Utah
10 84111.
11 MR. KOPTA: And did you cause to be prepared
12 the document that's been identified as Exhibit 671-T
13 entitled Workshop 3 Response Testimony of Rex Knowles?
14 MR. KNOWLES: I did.
15 MR. KOPTA: And is this document and the
16 information contained therein true and correct to the
17 best of your knowledge?
18 MR. KNOWLES: It is.
19 MR. KOPTA: I move for the admission of
20 Exhibit 671-T.
21 JUDGE WALLIS: Is there objection?
22 Let the record show that there is no
23 objection, and that document is received in evidence.
24 MR. KOPTA: Thank you, Your Honor. That
25 concludes our presentation of exhibits at this point.

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1 JUDGE WALLIS: Thank you, Mr. Kopta.

2 At this point, I believe it's the consensus
3 of the group that our process would best be served by
4 recessing at this point and reconvening tomorrow
5 morning, and we will take up in the hearing room, Room
6 206 in this building, at 9:30 tomorrow morning. Is
7 there anything further -- I'm sorry, 8:30 tomorrow
8 morning.

9 Is there anything further to come before the
10 Commission at this time?

11 Let the record show that there is no
12 response, and we are in recess until tomorrow morning at
13 8:30.

14 (Hearing adjourned at 5:05 p.m.)

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