

**BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION**

**AT&T COMMUNICATIONS OF THE)
PACIFIC NORTHWEST, INC.,) Docket No. UT-003120
)
Complainant,)
v.)
)
QWEST CORPORATION,)
)
Respondent.)
)**

**DIRECT TESTIMONY OF
C. MICHAEL PFAU
ON BEHALF OF
AT&T COMMUNICATIONS
OF THE PACIFIC NORTHWEST, INC.**

MARCH 19, 2001

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is C. Michael Pfau. My business address is 295 North Maple Avenue,
3 Basking Ridge, New Jersey 07920.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT POSITION?**

5 A. I am employed by AT&T Corp., and I serve as Division Manager in the Law and
6 Public Policy Division.

7 **Q. WHAT ARE YOUR DUTIES AND RESPONSIBILITIES IN THAT**
8 **CAPACITY?**

9 A. My responsibilities include developing and analyzing public policy primarily as it
10 relates to interconnection with incumbent Local Exchange Companies and the use
11 of unbundled network elements they are obligated to provide under the
12 Telecommunications Act of 1996 (“the Act”) and the Federal Communications
13 Commission (“FCC”) Rules implementing the Act. In that capacity I am required
14 to understand the operational needs of the various business units so that their
15 interests may be reflected in the policy positions taken by AT&T. I also help
16 those units understand how provisions of the Act and FCC Rules affect such plans
17 and work and when the incumbent LECs may not be fully honoring their
18 obligations under the Act and FCC Rules. Over about the last three years, I have
19 participated in developing the written comments that AT&T has filed in most
20 FCC dockets addressing UNEs, interconnection and building access – generally
21 cc Dockets 96-98, 98-147 and 99-217. I have also supported the AT&T position

1 through ex parte meetings, generally with the FCC Common Carrier Bureau and
2 through direct testimony in various state proceedings.

3 **Q. WHAT IS YOUR PROFESSIONAL EXPERIENCE?**

4 A. I began my career in Bell of Pennsylvania, where I had various assignments in
5 central office engineering, plant extension, circuit layout and regulatory
6 operations. Just prior to divestiture, I moved to AT&T General Departments,
7 where I was responsible for managing intrastate service cost models. My next
8 assignment was in an AT&T regional organization responsible for regulatory
9 implementation support of service and marketing plans within the five Ameritech
10 states. I then moved to a headquarters position responsible for managing market
11 research related to business communications services. I also worked within the
12 product management organization, focusing upon private line data services.
13 Immediately prior to my current assignment, I supported regional teams
14 negotiating interconnection agreements with the incumbent LECs by conveying
15 product requirements and helping them understand the legal/regulatory impacts of
16 decisions affecting access and use of unbundled network elements.

17 I have a Bachelors of Science degree in Mechanical Engineering and a Master of
18 Business Administration. I have a Professional Engineering license from the state
19 of Pennsylvania.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. My testimony will demonstrate that recent FCC actions establish a framework for
22 states that helps to assure that competitive telecommunications carriers will have

1 nondiscriminatory access to customers in Multiple Tenant Environments
2 (“MTEs”). As such, AT&T is well within its rights to proceed as it has in Qwest
3 territory to obtain access to serve its customers in MTEs and Qwest, by flagrantly
4 blocking such access, has violated relevant federal and Washington law. AT&T’s
5 access is critical to fulfilling the objectives of the Act.

6 My testimony will first address the recent action taken by the FCC to pry open the
7 ILEC stranglehold on MTEs and afford competitors non-discriminatory access. I
8 will then discuss the relevant clarifications and requirements set forth in *In the*
9 *Matter of Implementation of the Local Competition Provisions of the*
10 *Telecommunications Act of 1996*, CC Docket No. 96-98; *Third Report and Order*
11 *and Fourth Further Notice of Proposed Rulemaking*, FCC 99-238 (rel. Nov. 5,
12 1999) (“UNE Remand Order”). Finally, I will discuss the additional clarifications
13 and requirements established in *In the Matter of Promotion of Competitive*
14 *Networks in Local Telecommunications Markets*, WT Docket No. 99-217;
15 *Implementation of the Local Competition Provisions of the Telecommunications*
16 *Act of 1996*, CC Docket No. 96-98; *Review of Sections 68.104 and 68.213 of the*
17 *Commission’s Rules Concerning Connection of Simple Inside Wiring to the*
18 *Telephone Network*, CC Docket 88-57; *First Report and Order and Further*
19 *Notice of Proposed Rulemaking in WT Docket No. 99-217*, *Fifth Report and*
20 *Order and Memorandum Opinion and Order in CC Docket No. 96-98*, and
21 *Fourth Report and Order and Memorandum Opinion and Order in CC Docket*
22 *No. 88-57*. (rel. October 25, 2000) (“Building Access Order”).

1 In the process of discussing the above, I will show how Qwest's recent actions
2 run contrary to the rules established by the FCC and should be foreclosed by this
3 Commission. Permitting Qwest to persist in its anticompetitive conduct will
4 severely inhibit, if not halt, facilities-based competition for customers in MTEs.

5 **Q. WHY DID THE FCC TAKE ACTIONS TO OPEN INTERNAL**
6 **CUSTOMER PREMISES WIRING TO LOCAL COMPETITION?**

7 A. Almost five years after passage of the Act, the FCC remains concerned that "at
8 least in some cases, both building owners and incumbent LECs retain the ability
9 and have the incentive to discriminate and impose unreasonable terms on new
10 entrants." (Building Access Order at ¶ 14). Furthermore, the FCC has recently
11 noted "incumbent LECs are using their control over on-premises wiring to
12 frustrate competitive access to multi-tenant buildings" and that "...competitive
13 LECs contend that incumbent LECs often require network configurations which
14 may be disadvantageous for competitors." (Building Access Order at ¶ 19).
15 Because of these and other concerns the FCC found "incumbent LECs possess
16 market power to the extent their facilities are important to the provision of local
17 telecommunications services in MTEs." (Building Access Order at ¶ 24). The
18 same concerns, issues and findings are especially true and applicable to Qwest's
19 behavior with respect to AT&T when AT&T seeks access to serve customers
20 living in a MTE in Washington.

21 The FCC set forth a number of clarifications and requirements in both the
22 Building Access Order and the UNE Remand Order. While these actions by the

1 FCC are important, state commissions need to be actively involved in assuring the
2 practical and timely implementation of the rules. Unfortunately, past experience
3 has shown that the ILECs have perfected the art of slow rolling and frustrating
4 otherwise sound CLEC market entry strategies by misinterpreting FCC and
5 various state commission order language and rules, claiming self-serving
6 ambiguity, hiding behind asserted operational complexity, protracting negotiation
7 and implementation of support procedures, and by over-stating risks of network
8 harm. As the FCC points out in its Building Access Order at ¶ 17 "...there is also
9 meaningful evidence that competitive LECs have in many instances encountered
10 unreasonable demands and significant delay in their efforts to obtain access to
11 buildings," and that "...contract negotiations have reportedly spanned upwards of
12 eighteen months – a timeframe that is particularly problematic for a service
13 provider in a competitive market."

14 One need only examine what is occurring here in Washington – although the
15 situation is not unique to the state – to see that Qwest is defending its monopoly
16 customer base (gained by regulatory fiat, not through customer choice) not by
17 proving itself to be the better service provider, but instead by continuing to
18 engage in tactics that run counter to reasonable interpretations of the Act, FCC
19 Orders, and various Washington state statutes. Qwest's actions, from a very
20 practical perspective, have and will continue to thwart customer choice and
21 prevent meaningful competition from developing in MTEs.

1 **Q. WHY ARE MTEs IMPORTANT TO THE DEVELOPMENT OF**
2 **FACILITIES-BASED COMPETITION?**

3 A. Providing telephone service, whether for voice or data application is capital
4 intensive, and therefore involves high fixed costs. While an incumbent LEC has
5 made, and in many instances has recovered and even over-recovered its
6 investment, the same is not true for new market entrants. Furthermore, because a
7 new market entrant does not have a pre-existing and large base of customers
8 already paying for service, it does not have the cash flow to fund investments
9 essential to facility-based market entry. Instead, a new entrant must raise capital
10 through other means such as borrowing or issuing new stock. Each method
11 requires that the competitor generate a cash flow to pay interest charges/dividend
12 and/or to permit further growth necessary to meet investor expectations.
13 Accordingly, a new entrant pursuing a facilities-based market entry will generally
14 seek niches that permit plant and equipment to be deployed in a manner that
15 quickly provides competitive economies of scale while still having the potential to
16 quickly generate cash. Customers, located in MTEs, represent one such
17 opportunity.

18 **Q. WHY IS CLEC ACCESS TO THE MTE IMPORTANT FOR**
19 **WASHINGTON CONSUMERS?**

20 A. The FCC has commented that denial of CLEC access, unreasonable terms being
21 placed upon CLECs, and/or other discriminatory actions has already resulted in
22 end user consumers being forced to pay unnecessary high rates for local
23 telecommunications services, as well as being denied the benefits of advanced and

1 innovative service options. (*See* Building Access Order at ¶ 14). Of course, if the
2 WUTC allows such conduct to continue, Qwest will continue to undermine the
3 competition with impunity causing even more of a decrease in competitive
4 services for Washington consumers.

5 **Q. WHY ARE THE ECONOMICS OF ADDRESSING MTEs DIFFERENT**
6 **COMPARED TO THE GENERAL TELECOMMUNICATIONS**
7 **MARKET?**

8 A. Wireline telecommunications service, at its most basic levels, employs an
9 infrastructure of transmission facilities (loops) connecting retail customers to a
10 telecommunications network comprised of switches and interoffice facilities that
11 interconnect those switches. While each of these elements, in its own right,
12 represents a sizeable investment, the transmission facilities connecting to a
13 customer's premises are currently the most difficult for a competitor to
14 successfully and efficiently self-deploy. (*See* UNE Remand Order at ¶ 183). The
15 local loop facilities, as provided in most instances, are dedicated to one and only
16 one customer, and used only for a single revenue generating call at any one
17 particular time.¹

18 In the case of MTEs, the situation is somewhat different. A MTE represents a
19 high concentration of customers in a very limited geographic footprint such that
20 the serving carrier theoretically has the opportunity to both better use loops (i.e.,

¹ ADSL is one notable exception. That technology permits voice communications, on a properly conditioned local loop, simultaneously with high-speed Internet access. ADSL services have only recently been widely offered in the market place.

1 share the costs) and engage in focused marketing. By deploying multiplexing and
2 other transmission functionality on the facility between the MTE and the service
3 provider's network (i.e., the first point of switching) the facility investment can be
4 shared, thereby significantly improving the economics of the capital invested for
5 market entry. When a carrier is also in a position to offer other non-
6 telecommunications services, such as video entertainment and high-speed Internet
7 connectivity that simultaneously share the facility with voice service, the
8 economics is potentially even better. By focusing on a small and consolidated
9 customer base, marketing can be more targeted and thereby more productive and
10 cost-effective. As attractive as MTEs may be on paper, however, the potential
11 will not help fuel facilities-based competition unless competitive carriers can
12 obtain prompt, efficient and cost-effective access to retail customers in MTEs.

13 **Q. ARE MANY CUSTOMERS LOCATED IN MTEs?**

14 A. According to the most recently published U.S. Census data, 29% of households
15 nationwide are in MTEs. Currently there are about 105 million residential
16 households in the U.S., which means more than 30 million households are located
17 in MTEs. The Washington figures are a little different – 29% of the state's
18 residential households are in MTEs. However, what must be recognized is that
19 about 75% of these households are in Spokane, Tacoma, or Seattle. Thus, the
20 customers in MTEs in Washington are both numerous and highly concentrated.
21 There is little doubt, therefore, that Qwest will be vigilant in guarding these
22 customers.

1 **Q. IS FACILITIES-BASED COMPETITION FOR CUSTOMERS IN MTEs**
2 **DEVELOPING AS EXPECTED?**

3 A. No. Despite the fact that the economics may be superior for facilities-based
4 service to MTEs compared to serving other potential configurations, MTEs are
5 not being addressed at the pace and scope expected. The FCC correctly noted that
6 customers in MTEs are ripe for competition, but that competition has been slow to
7 develop. (*See Building Access Order at ¶ 23*). Prominent among the reasons for
8 the slow development of competition is the fact that the ILECs have both the
9 ability and the incentive to discriminate. (*See Building Access Order at ¶ 14*).

10 ILECs, including Qwest here in Washington, have frustrated MTE competition by
11 using control of (or ambiguity regarding control of) on-premise wire to deny or
12 slow access by competitors. ILECs have also sought to impose operational
13 procedures that largely only serve to increase their competitors' costs and/or
14 cause needless delays. The FCC specifically recognizes that ILECs are using
15 their control over on-premise wiring to frustrate competitive access to MTEs:

16 The record further indicates that incumbent LECs are using their control
17 over on-premises wiring to frustrate competitive access to multi-tenant
18 buildings. Competitive LECs report that they have encountered
19 difficulties with incumbents when attempting to arrange for
20 interconnection or lease unbundled network elements. For example,
21 competitive LECs report that incumbents may fail to timely provide non-
22 proprietary information in their possession, require the presence of their
23 own technicians to supervise competitive LEC wiring, and take
24 unreasonable amounts of time in scheduling such visits. In addition
25 competitive LECs contend that incumbent LECs often require network
26 configurations which may be disadvantageous for competitors.

1 (See Building Access Order at ¶ 19). Indeed, the practices by Qwest that are at
2 issue in this proceeding clearly illustrate the very tactics that the FCC recognized
3 as incumbent carrier monopoly abuses.

4 **Q. WHAT ARE SOME OF THE PRACTICES BY QWEST THAT ARE**
5 **INHIBITING AT&T'S EFFORTS TO SERVE CUSTOMERS IN**
6 **WASHINGTON MTES?**

7 A. Among the most recent actions, which I believe both inhibit competition and are
8 contrary to recent FCC rulings, are the following:

- 9 (1) Qwest has denied AT&T the opportunity to make its own connection to
10 intra-premises wiring in both Option 1 (where the building owner owns the
11 internal customer premises wiring) and Option 3 (where Qwest owns the internal
12 customer premises wiring) locations and placed padlocks on various MPOE
13 Terminals/NIDs.
- 14 (2) Qwest has denied AT&T access to intra-premises right-of-way ("ROW").
- 15 (3) Qwest seeks to dictate the use of a Single Point of Interconnection
16 ("SPOI") at Option 3 properties rather than permitting interconnection at any
17 technically feasible point.
- 18 (4) Qwest insists that AT&T negotiate operational procedures, and has caused
19 this to be a lengthy undertaking, even when AT&T need not rely on Qwest to
20 perform any of the work necessary to connect at the premises.
- 21 (5) Qwest draws out the process by wrongly insisting that AT&T negotiate
22 interconnection agreement provisions to cover on-premise wiring sub loop

1 unbundled network element ordering and compensation as a pre-condition to
2 serving the customer.

3 (6) Qwest seeks extortionate rates for use of on-premises wiring that it
4 controls.

5 (7) Qwest has apparently removed AT&T wiring at an MTE just as AT&T
6 was to begin service to customers at the building.

7 In my remaining testimony I will address these issues as well as discuss rulings by
8 the FCC that foreclose Qwest's anticompetitive activities, and establish that
9 Qwest's anti-competitive and commercially coercive procedures violate
10 Washington state law and must cease.

11 **Q. WHAT ACTIONS HAS THE FCC TAKEN RECENTLY TO FACILITATE**
12 **COMPETITION FOR RETAIL CUSTOMERS IN MTES?**

13 A. As I noted earlier, the FCC took actions in two separate orders –the UNE Remand
14 and the Building Access Orders – to minimize the ability of the ILECs to use the
15 last few feet of wiring at a customer's location as an insurmountable obstacle to
16 competition. More specifically, the FCC in the UNE Remand Order modified the
17 loop definition, (*see* UNE Remand Order at ¶ 167); clarified obligations with
18 respect to the NID, (*Id.* at ¶ 230-240); required subloop unbundling of on-
19 premises wire, whether owned or simply controlled by the ILEC, (*Id.* at ¶ 209-
20 229); and further required that, when so requested, the ILEC establish a SPOI that
21 affords nondiscriminatory access to the on-premises wire for multiple carriers,
22 (*Id.* at ¶ 226). In addition, the FCC took steps in the Building Access Order to

1 afford competitors access to conduit and ROW owned or controlled by a utility
2 operating in an MTE. The Building Access Order also provided further
3 clarification regarding rules governing on-premises wiring so as to foreclose
4 purported ambiguity regarding ownership of such wiring becoming a means for
5 the ILEC to prevent or delay competitive entry.

6 **Q. WHAT IS THE FCC’S DEFINITION OF THE NETWORK INTERFACE**
7 **DEVICE (“NID”) AS COMPARED TO QWEST’S DEFINITION OF A**
8 **NID?**

9 A. In the UNE Remand Order, the FCC redefined the NID to “include all features,
10 functions, and capabilities of the facilities used to connect the loop distribution
11 plant to the customer premises wiring, regardless of the particular design of the
12 NID mechanism.” (See UNE Remand Order at ¶ 233). The FCC specifically
13 defined the NID to include any means of interconnection of customer premises
14 wiring to the incumbent LEC’s distribution plant, such as a cross-connect device
15 used for that purpose. *Id.* In pleadings in this matter, Qwest has defined the NID
16 as “the place where regulated facilities end and customer owned premises begin.”
17 See Qwest Reply to Its Motion for Summary Determination at p. 5. Qwest
18 impermissibly attempts to substitute the definition of the demarcation point
19 because it is the only way Qwest can support its arguments.² But Qwest’s self-
20 serving and erroneous definition is clearly contrary to the above stated FCC

² The definition of the demarcation point has remained unchanged as a result of the UNE Remand and the Building Access Orders. The same definition as existed prior to the orders is still in effect today. Simply put, the demarc is where the control of on-premises wiring shifts from the incumbent LEC to the property owner/service subscriber.

1 definition.

2 Furthermore, if the NID did represent the demarcation point as Qwest asserts, the
3 FCC would not have commented that it “find(s) the demarcation point preferable
4 to the NID in defining the termination point of the loop because, in some cases,
5 the NID does not mark the end of the incumbent’s control of the loop facility.”
6 (UNE Remand Order at ¶ 168). Nor is Qwest’s definition at all consistent with
7 the FCC determination that the existence of the NID had nothing to do with where
8 the ILEC’s facilities ended as the ILEC’s loop could terminate at the NID, before
9 the NID, or beyond the NID. *Id.* at fn. 457. Indeed, Qwest’s interpretation seems
10 to rely solely upon the language of 47 CFR 51.319 where the NID is defined as
11 “any means of interconnection of end-user customer premises wiring to the
12 incumbent LEC’s distribution plant, such as any cross-connection device used for
13 that purpose.” Qwest evidently relies on the term “end-user customer premises
14 wiring” meaning the wiring in the individual rental unit. However, this
15 interpretation is faulty and ignores the very specific clarification made by the
16 FCC: “Thus, although we refer to ‘inside wire’ and ‘customer premises,’ for the
17 sake of convenience, we acknowledge that the wire may be out-of-doors, and the
18 ‘customer’ may be a subscriber, a landlord, a condominium, a university and so
19 on.” (UNE Remand Order at ¶ 170).

20 **Q. WHEN DID THE FCC MODIFY THE LOOP UNBUNDLED NETWORK**
21 **ELEMENT AND DID ITS MODIFICATION IMPROVE THE ABILITY**

1 **OF COMPETITIVE CARRIERS TO SERVE CUSTOMERS LOCATED IN**
2 **MTEs?**

3 A. Until the FCC redefined the NID in its UNE Remand Order, the local loop
4 element ended at the NID located at the retail customer's premises. (*See* UNE
5 Remand Order at ¶ 167). In the UNE Remand Order, the FCC redefined the loop
6 to extend from a distribution frame in the ILEC central office to the demarcation
7 point at the customer's premises. The demarcation point is where control of
8 wiring shifts from the carrier to the subscriber or premises owner. The
9 definitional change is largely non-impacting for single unit residential locations.³
10 On the other hand, the change is significant for MTEs and was made because the
11 prior loop definition "may not provide the competitor with actual access to the
12 subscriber." (UNE Remand Order at ¶ 305). The portion that could be missing,
13 in the case of certain MTEs in which the ILEC claims to own the internal
14 customer premises wiring, is a relatively short segment of wiring that runs
15 between the NID or its functional equivalent and the point where ownership
16 and/or control of the wiring clearly is in the domain of the landlord or building
17 owner.

18 **Q. WHY DID THE FCC BELIEVE THAT THE PRIOR LOOP DEFINITION**
19 **MIGHT NOT PROVIDE SUFFICIENT ACCESS TO SUBSCRIBERS?**

20 A. The connection for a retail service subscriber in an MTE compared to a subscriber
21 in a single dwelling unit is somewhat different, although more so in nomenclature

³ In a single dwelling unit where the premises owner has provided the inside wire, the NID and the demarc will generally be at the same location. The same cannot be said for a multi-tenant environment and that is precisely what is at issue in this proceeding.

1 than in physical configuration. In an MTE, three different parties may participate
2 in connecting the retail customer to the service provider network. The three
3 parties are the customer, who is responsible for wiring within the rental unit; the
4 building owner or the ILEC, who generally controls the on-premises wiring
5 connecting the rental unit to facilities of the service provider; and the service
6 provider (typically the ILEC) who furnishes the loop plant connecting to the
7 service provider network. Originally, the FCC defined the unbundled loop
8 element as “a transmission facility between a distribution frame, or its equivalent,
9 in an incumbent LEC central office, and the network interface device at the
10 customer premises.” *See In the Matter of Implementation of the Local*
11 *Competition Provisions of Telecommunications Act of 1996 et. al., First Report*
12 *and Order in CC Docket No. 96-98 and CC Docket No. 95-185, FCC 96-325*
13 (rel. August 8, 1996) (“Local Competition First Report and Order”) at ¶ 380.
14 Unfortunately, in hindsight, this loop definition allowed the ILECs to dispute a
15 competitive carrier’s rights to use a small portion of the on-premises facilities that
16 an ILEC may still own (or control) at a MTE.

17 **Q. WHAT FCC ACTIONS ALLOW CLECS ACCESS TO INTERNAL**
18 **CUSTOMER PREMISES WIRING?**

19 A. The FCC clarified the meaning of two key terms, the demarcation point or
20 “demarc,” and the NID and then modified the definition of the loop UNE. The
21 FCC defined the demarc to mean “the point on the loop where the telephone
22 company’s control of the wiring ceases, and the subscriber’s control (or in the
23 case of some multi-unit premises, the landlord’s control) of wire begins. Thus the

1 demarcation point is defined by control; it is not a fixed location on the network,
2 but rather a point where an incumbent's and property owner's responsibilities
3 meet." (UNE Remand Order at ¶ 169). As discussed above in detail, the FCC
4 then defined the NID as a physical device including "any means of
5 interconnection of customer premises wiring to the incumbent LEC's distribution
6 plant such as a cross-connection device used for that purpose." (UNE Remand
7 Order at ¶ 233). The NID, therefore, is readily identifiable because it is the first
8 cross-connection point after the ILEC distribution plant crosses the property line
9 of the building owner. Generally for building wiring established after August 13,
10 1990, the NID will be at the Minimum Point of Entry ("MPOE") which is either
11 the closest practical point where the ILEC outside plant facility crosses a property
12 line, or the closest practical point where the wiring enters a multi-unit building or
13 buildings. (*See* 47 CFR Ch. I, Section 68.3).

14 At the same time, by locating the NID, one does not necessarily define the point
15 where ILEC practical control of the facility ends. In multi-unit premises, there
16 may be either a single demarcation point for the entire building or separate
17 demarcation points for each tenant, located at any of several locations, depending
18 on the date the inside wire was installed, the local carrier's reasonable and
19 nondiscriminatory practices, and the property owner's preferences.⁴ Thus
20 depending on the circumstances, the demarcation point may be located either at

⁴ For example where wiring was done after August 13, 1990, and where it was not the reasonable and non-discriminatory practice of the ILEC to place the demarc at the MPOE, the building owner is responsible for specifying whether there shall be a single demarcation or whether individual demarcation points will be established at each customer's unit, no more than 12 inches within the walls of the unit, or as close as practical thereto.

1 the NID, outside the NID, or inside the NID. (UNE Remand Order at ¶ 169).
2 Accordingly, the FCC modified its definition of the unbundled loop, clearly
3 stating the “revised definition [of the loop element] retains the definition from the
4 *Local Competition First Report and Order*, but replaces the phrase ‘network
5 interface device’ with ‘demarcation point’ and makes explicit that dark fiber and
6 loop conditioning are among the ‘features, functions and capabilities’ of the
7 loop.” (UNE Remand Order at fn. 303).

8 This change is critical to MTE access. The modified definition of the loop,
9 coupled with the clarified obligations to unbundle sub-components of the loop
10 UNE (or subloops) should remove means employed by ILECs to deny competitor
11 access to customers in MTEs, particularly when the competitor accesses the
12 loop/subloop unbundled element at a point before the facility crosses onto an
13 MTE property.

14 **Q. HOW DOES THIS RELATE TO THE SITUATION HERE IN**
15 **WASHINGTON?**

16 A. Qwest, as I understand it, serves MTEs primarily through one of two means –
17 Option 1 or Option 3 wiring. In the case of Option 1 wiring, the building owner
18 owns and controls the on-premises wire and, as a result, there is no question that
19 Qwest may not legally deny a competitor access to wiring at the premises. This is
20 true because there are no Qwest-owned or controlled facilities used when the
21 competitor directly connects to the building wire. Because there are no
22 unbundled network elements involved, there is nothing to be negotiated with

1 Qwest. In the case of Option 3 wiring, Qwest asserts control, if not ownership, of
2 at least a portion of the wiring on the premises that may be used by the connecting
3 carrier. Because Qwest controls a portion of the facilities, the connecting carrier
4 may in turn use some Qwest-controlled assets that must be unbundled as sub loop
5 unbundled network elements. Consistent with the established subloop unbundling
6 obligation, Qwest must provide non-discriminatory access to retail customers
7 served by those unbundled network elements.

8 **Q. WHAT ARE THE SUBLOOP UNBUNDLING OBLIGATIONS IN THE**
9 **CASE OF QWEST CONTROLLING MTE INSIDE WIRE?**

10 A. The FCC clarified ILEC unbundling obligations with respect to subloop elements
11 important to MTE access. Basically, the ILEC must provide unbundled access to
12 any portion of the loop facility between two points of technically feasible access.
13 A subloop is generally defined as any portion of the loop (which includes any
14 ILEC owned or controlled on-premises wiring) “that can be accessed at terminals
15 in the incumbent’s outside plant.” (UNE Remand Order at ¶ 206 and ¶ 210). The
16 FCC defined an accessible terminal as “any point on the loop where technicians
17 can access the wire or fiber within the cable without removing the splice case.”
18 (UNE Remand Order at ¶ 206). To provide even further clarity, the FCC stated
19 that an accessible terminal is any location and physical device where the cable
20 and respective pairs are physically fastened in a manner that permits cross-
21 connection to another facility and its pairs. (UNE Remand Order at fn. 395).

1 **Q. DID THE FCC IDENTIFY EXAMPLES OF SUBLOOP**
2 **INTERCONNECTION POINTS THAT IT BELIEVES ARE**
3 **TECHNICALLY FEASIBLE POINTS?**

4 A. Yes. The points identified that are most relevant to the MTE are the NID, the
5 MPOE, and a utility room in a multi-dwelling unit, or any accessible terminal.
6 (UNE Remand Order at ¶ 210).

7 **Q. DID THE FCC MAKE ANY OTHER PROVISIONS WITH REGARDS TO**
8 **OTHER TECHNICALLY FEASIBLE POINTS OF ACCESS TO**
9 **SUBLOOP ELEMENTS?**

10 A. Yes. The FCC did not want competitors to be limited by the subsequent evolution
11 of technology. Therefore, the FCC established a further “rebuttable presumption
12 that, once one state has determined that it is technically feasible to unbundle
13 subloops at a designated point, it will be presumed that it is technically feasible
14 for any incumbent LEC, in any other state, to unbundle the loop at the same point
15 everywhere.” (UNE Remand Order at ¶ 227). The ILEC will then bear the
16 burden of proving that the location is technically infeasible due to conditions
17 uniquely present within a particular state. *Id.*

18 **Q. WHAT SUB LOOP ELEMENT IS OF PARTICULAR RELEVANCY TO**
19 **ACCESS RETAIL CUSTOMERS IN MTEs?**

1 A. The element referred to as the “on-premises wiring” subloop element.⁵ The on-
2 premises wiring subloop element is an ILEC-provided facility, generally between
3 and including two technically feasible accessible terminals on a facility wholly
4 located on a single property where one or more retail customers reside. One end
5 of the facility will typically be the demarcation point where the control of the
6 wiring changes from the ILEC to the property owner. This subloop element is
7 available only when an ILEC owns or controls the on-premises wiring and
8 includes all terminal points required for the CLEC to cross-connect to the
9 premises wiring.

10 **Q. WHAT IS IMPORTANT WITH REGARDS TO PROPER TREATMENT**
11 **OF THE ON-PREMISES WIRING SUBLOOP ELEMENT?**

12 A. The element is intended to provide competitors access to wiring that an ILEC
13 controls and is located strictly within the bounds of property owned by a single
14 property owner. As such, historical definition and or discretionary classification
15 of the wiring by the ILEC cannot be permitted to subvert the pro-competitive
16 intent of the FCC.

17 **Q. HOW MIGHT THIS OCCUR?**

18 A. Because the FCC 47 CFR 68 rules allow the demarc to be established either at the
19 MPOE, individual customer units or according to otherwise nondiscriminatory
20 and uniform practices, the ILEC provided facilities on some premises that on

⁵ Although I use the term on-premises wiring, it is entirely consistent with the “Inside Wire” subloop identified in 47 CFR 51.319(a)(2)(A). In that section, the FCC states: “Inside wire is defined as all loop plant owned by the Incumbent LEC on the end-user customer premises as far as the point of demarcation as defined in § 68.3, including the loop plant near the end-user customer premises.”

1 other similarly configured premises were owned by the property owner. Thus, the
2 ILEC generally needed a means to “book” and “inventory” such facilities.

3 In dealing with the situation a typical solution would be for the ILEC to classify
4 the facility from the CO to the premises MPOE as “feeder,” the facilities from the
5 MPOE to individual buildings (e.g., in campus style environments) or to
6 telecommunications closets on individual floors of buildings as distribution and
7 the runs to individual units as drops. Note that the so-called distribution facility
8 and drops are wholly contained within one property and at another location would
9 be considered deregulated inside wire.⁶ In any event, four things must be kept in
10 mind. (1) Because the ILEC has chosen, for administrative convenience, to
11 designate a facility as feeder or distribution does not change the fact that the
12 wiring is wholly contained within a single premise and effectively inside wire.
13 (2) When the costs for the on-premises wiring element are set, the costs must not
14 be based on traditional feeder and/or distribution element design and support, but
15 rather reflect the cost of premises wiring. (3) When charges are applied for use of
16 the element, it is likely that the ILEC will be receiving a windfall because the
17 wiring is fully depreciated or the investment is recovered through charges to the
18 general rate payer, and (4) administrative practices for accessing on-premises
19 wiring are less complex and clearly do not involve the collocation, record keeping
20 and potential for network harm that may be present when true feeder and
21 distribution subloop elements are accessed.

⁶ Indeed this conclusion is fully supported by the language of 47 CFR 51.319 (a)(2)(A).

1 **Q. WHERE DOES AT&T SEEK TO ACCESS THE ON-PREMISES WIRING**
2 **ELEMENT?**

3 A. As a general rule, AT&T will seek to access the on-premises wiring element at
4 the first cross-connect device on the facility after the facility crosses the property
5 line. The name given to the cross-connection device is not really important (i.e.,
6 whether it is a NID or MPOE) because a cross-connection device has been
7 declared a technically feasible point for subloop access. Generally, the cross-
8 connection device that AT&T would access will be on the exterior of the building
9 or in the telecommunications room within the building, typically in the basement.

10 **Q. HAS ANY STATE FOUND THAT ACCESS TO A SUBLOOP ELEMENT**
11 **(SUCH AS ON-PREMISES WIRING) THROUGH THE MPOE**
12 **TERMINAL/NID IS TECHNICALLY FEASIBLE?**

13 A. Yes. The Georgia Public Utilities Commission did in *In re: MediaOne*
14 *Telecommunications of Georgia, LLC and BellSouth Telecommunications, Inc.;*
15 *Docket No. 10418-U; In re: MediaOne Telecommunications of Georgia, LLC v.*
16 *BellSouth Telecommunications, Inc., Docket No. 10135-U (rel. December 28,*
17 *1999) (hereinafter "Georgia Order"). In this case, which facts are analogous to*
18 *the one here in Washington, BellSouth would not allow MediaOne access to*
19 *MPOE terminals because BellSouth asserted "it would make it impossible for*
20 *BellSouth to ensure the safety and security of its network, and would make it*
21 *equally impossible to maintain accurate records of the use being made of its*
22 *network by other service providers." The Georgia Commission found that the*
23 *concerns could be adequately addressed through the implementation of*

1 appropriate procedures and that access to the MPOE Terminal/NID to connect
2 with the internal customer premises wiring is technically feasible. Accordingly,
3 the Georgia Commission ruled that MediaOne should be allowed access to the
4 MPOE Terminal/NID to connect its customers.

5 **Q. IS THERE ANY REASON TO BELIEVE THAT THE MANNER OF**
6 **INTERCONNECTION USED BY AT&T IS TECHNICALLY**
7 **INFEASIBLE?**

8 A. No. In addition to the fact that another state commission made a finding in this
9 matter,⁷ the facts show that the customers in Washington have been connected
10 and service has been provided, thereby demonstrating the technical feasibility of
11 the arrangement. Nor is the technical feasibility contingent upon whether the on-
12 premises wiring is controlled by the building owner or Qwest. Furthermore, the
13 FCC has required unbundled access to the NID without mentioning any need to
14 determine the technical feasibility of such access. (*See* UNE Remand Order at ¶¶
15 230-240).

16 Qwest does not and cannot dispute the technical feasibility of these connections.
17 Rather, Qwest seeks to control competitor access to on-premises wiring in all
18 instances and dictate the use of a Single Point of Interconnection (or “SPOI”)
19 whenever Qwest legally controls the on-premises wiring.

⁷ Given such a finding, the burden shifts to the ILEC to show that the manner of connection is technically infeasible as set forth in 47 CFR 51.319(a)(2)(C).

1 **Q. MAY THE INCUMBENT REQUIRE USE OF A SINGLE POINT OF**
2 **INTERCONNECTION AT THE PREMISES?**

3 A. No. A competitor may request access using an existing SPOI or negotiate for the
4 installation of a SPOI either if the competitor desires or “there is not currently a
5 single point of interconnection that can be feasibly accessed by a requesting
6 carrier.” (UNE Remand Order at ¶ 226). Nevertheless, the use of the SPOI or
7 any other technically feasible point of interconnection is the choice of the
8 competitor, not the dictate of the incumbent. Clearly this intent is embodied in
9 the language of 47 CFR 51.319(a)(2)(E): “This obligation [to provide a SPOI] is
10 in addition to the incumbent LEC’s obligation to provide nondiscriminatory
11 access to subloops at any technically feasible point.”

12 The FCC recognized that a SPOI (assuming other impediments did not exist)
13 would promote competition; however, it explicitly declined to mandate that the
14 ILEC establish a SPOI, where none exists. Only when a competitive carrier
15 seeking access to customers in an MTE and the ILEC cannot agree to another
16 practical means of access must the ILEC construct the SPOI and charge for its
17 use, based on forward-looking pricing principles.

18 **Q. HOW DOES QWEST PROPOSE THAT AT&T INTERCONNECT TO**
19 **GAIN ACCESS TO ON-PREMISE WIRING THAT QWEST CONTROLS?**

20 A. Qwest seeks to impose a requirement that AT&T use a Field Connection Point
21 (“FCP”). Qwest may not require that AT&T use a FCP, which is another term for
22 a SPOI.

1 **Q. ARE THE CHARGES AND TERMS AND CONDITIONS SURROUNDING**
2 **QWEST'S FIELD CONNECTION POINT DISCRIMINATORY TO**
3 **CLECS?**

4 A. Absolutely. Among other things, Qwest imposed a provisioning process of up to
5 150 days to determine the feasibility of installation of a FCP. If Qwest
6 determines that a FCP is practical, there is the potential that an \$800 (later
7 reduced to \$450) "grooming charge" will apply.⁸ The cost inflation for a CLEC
8 seeking to serve an MTE probably does not end here. If the preceding prospects
9 are not sufficiently discouraging, Qwest may also apply a site survey fee,
10 feasibility fee, and quote preparation fee which, in most instances, are
11 unnecessary and add no value to serving the customer or expanding competition.
12 Finally, if the CLEC can afford the previous extortion – which is highly unlikely
13 – Qwest's on-going charges for "intrabuilding cable for internal customer
14 premises wire," and the potential requirement of a "dual truck roll" where Qwest
15 dispatches a technician to watch AT&T change the cross-connection to customer
16 premises wiring will likely make most, if not all, MTE business unattractive for a
17 CLEC.

18 Given the preceding, I am advised by counsel that Qwest's actions violate
19 Washington statute including RCW 80.36.186 (relating to unreasonable
20 preference of or access to non-competitive services), RCW 80.36.170 (relating to
21 prohibition of unreasonable preferences), RCW 80.36.090 (relating to failure to

⁸ This charge would be per 25 pairs wired and is a non-recurring charge (Qwest Response to AT&T Discovery Request AT&T 01-016, Attachment A in Docket UT-003120, February 20, 2001 attached as Exhibit CMP-2).

1 furnish suitable and proper connections for telephonic communications), RCW
2 80.36.080 (relating to failure to render services in a prompt, expeditious and
3 efficient manner), and RCW 80.36.186 (relating to undue or unreasonable
4 preference or advantage as to pricing or access to noncompetitive services). But
5 the practical result of what Qwest seeks is a Commission sanction to stop
6 competition for customers in MTEs where Qwest asserts control of the on-
7 premise wiring – a condition that Qwest has difficulty proving promptly or
8 conclusively.

9 **Q. MAY QWEST UNILATERALLY DEPLOY A SPOI, AND THEN**
10 **REQUIRE THAT AT&T UTILIZE AND/OR PAY FOR THE**
11 **ARRANGEMENT?**

12 A. No, not unless AT&T has agreed to use the SPOI – which it has not done. As I
13 noted, a SPOI is not necessary to serve a small numbers of customers. AT&T has
14 attempted to work with Qwest to initially or subsequently have a SPOI installed,
15 where practical. However, as provided by the FCC, even when a SPOI is
16 deployed, AT&T may still exercise its right to interconnect at or through any
17 technically feasible point. Qwest may not force a “one size fits all” solution on
18 the marketplace. The FCC emphasized that access to a SPOI “in no way
19 diminishes a carrier’s right to access the loop at any technically feasible point,
20 including other points at or near the customer premises.” (UNE Remand Order at
21 ¶ 226).

1 **Q. WHAT HAS THE FCC SAID REGARDING HOW COMPETITORS**
2 **CONNECT TO ON-PREMISES WIRE?**

3 A. In the Local Competition First Report and Order, the FCC did not make a finding
4 regarding the technical feasibility of a competitor direct connecting to on-
5 premises wiring. (Local Competition First Report and Order at ¶ 396). Instead, it
6 left the determination of technical feasibility of such connections to the states. *Id.*
7 Subsequently, state commissions have found direct connection to the ILEC NID
8 technically feasible. (*See Georgia Order at p.6.*)

9 **Q. DOES AT&T CONTEMPLATE DIRECT CONNECTION TO QWEST'S**
10 **LOOP UNES?**

11 A. No. When AT&T uses on-premises wiring controlled by Qwest in an Option 3
12 location, AT&T first terminates its outside loop plant on its own device that
13 provides electrical protection. A cross-connection is then made to Qwest's on-
14 premises wiring sub loop through but not using Qwest's NID. As a result, AT&T
15 is not directly connected to Qwest's loop UNEs nor is there an issue of possible
16 over-voltage because Qwest's outside loop plant remains connected to its
17 electrical protective device as well.

18 **Q. DID THE FCC AUTHORIZE THIS TYPE OF CONNECTION FOR**
19 **COMPETITORS PROVIDING THEIR OWN LOOP FACILITIES?**

20 A. The FCC agreed, based on representations by Ameritech made in ex parte, that a
21 NID-to-NID interconnection was not unreasonable. To that end, the FCC said "a
22 requesting carrier is entitled to connect its loops, via its own NID, to the

1 incumbent LEC's NID." (FR&O at ¶ 392) In particular, and of relevance to the
2 case here in Washington, the FCC said the "requesting carrier is entitled to
3 connect its loops" which allows the competitor to do its own work rather than
4 relying upon the ILEC. This language is explicitly incorporated into 47 CFR
5 51.319(b): "An incumbent LEC shall permit a requesting telecommunications
6 carrier to connect its own loop facilities to on-premises wiring through the
7 incumbent LEC's network interface device, or any other technically feasible
8 point."

9 **Q. IS THE AMERITECH EX PARTE RELIED UPON BY THE FCC IN CC**
10 **DOCKET 96-98 APPLICABLE TO THE SITUATION HERE IN**
11 **WASHINGTON?**

12 A. Yes. I have included the Ameritech ex parte referenced by the FCC as Exhibit
13 CMP-3. That document shows four different configurations of NID-to-NID
14 interconnection that Ameritech said it commonly offers and that justified ILECs
15 NOT unbundling the NID. Said another way, Ameritech indicated that
16 accommodating the methods of interconnection illustrated relieved an ILEC of the
17 need to make a NID available on an unbundled basis and, accordingly, the
18 competitor would not be using the NID when taking advantage of any such
19 configuration.

20 Option 2 described in Ameritech's ex parte (CMP-3) is most relevant to the
21 debate occurring here in Washington and, in the ex parte itself, is acknowledged
22 to be "present primarily in older installations and is always found on the outside

1 of the building.” (CMP-3 at p.3). Included in the description of Option 2 is the
2 following text:

3 The bold [Premise Wiring] wire at the bottom of the diagram represents
4 premises wiring which **runs from the alternative carrier's connecting**
5 **block, through Ameritech's enclosure, into the building.** This
6 premises wiring serves all customers in the building. With Option 2,
7 Ameritech (or even a third provider) is able to serve individual customers
8 in the building via a 'jumper' that connects Ameritech's connecting block
9 (or the third provider's connecting block) with the customer's premises
10 wire at the connecting block of the alternative provider.

11 (CMP-3 at p.3, emphasis added.) The diagram attached to the order clearly shows
12 the premises wiring coming through a hole in the back of the Ameritech
13 enclosure. Although the diagram shows the premises wiring first going to the
14 alternate provider enclosure with cross-connects running between a terminal
15 block in the alternate service provider enclosure and the terminal block in the
16 Ameritech enclosure, it is unlikely that Ameritech intended to indicate that the
17 alternate service provider would always re-terminate all the premises wiring to its
18 block – a needless disruption of service for all customers -- in order to give
19 Ameritech access via cross-connection to the very customers Ameritech had
20 previously been serving. Instead, the more reasonable conclusion is that both the
21 alternatives of cross-connecting between terminal block in each enclosure and
22 extending wiring from one enclosure to another were feasible and permissible and
23 did not entail use of the NID.

24 In fact, when arguing in opposition to MCI, Ameritech said the following in that
25 same ex parte:

1 MCI's claim that 'inside wire is not readily accessible as individual pairs
2 are braided into cable of 25 pairs or more' (id.) is false because individual
3 pairs -- whether or not braided further 'upstream' -- **are accessible as**
4 **individual pairs at the connecting block.**

5 (CMP-3 at p. 5, emphasis added.) Ameritech goes on to say, in dispute of MCI's
6 claim that re-wiring of the building is necessary if the carrier deploys its own
7 NID, "re-wiring is not necessary given the options described above." *Id.* Thus,
8 Ameritech, a Qwest ILEC brethren, in its ex parte to the FCC establishes the
9 accessibility of individual pairs at the connecting block which Qwest now
10 disputes.

11 **Q. HAS THE FCC COMMENTED ON NID USE SUBSEQUENT TO ITS**
12 **COMMENTS IN THE LOCAL COMPETITION FIRST REPORT AND**
13 **ORDER?**

14 A. Yes. Although the FCC established the NID as a UNE in the Local Competition
15 First Report and Order, it did not then explicitly discuss whether or not the
16 unbundled NID was used when a competitor engaged in NID-to-NID
17 interconnection. Subsequent language in the UNE Remand Order is enlightening:

18 By continuing to identify the NID as an independent unbundled network
19 element, we underscore the need for the competitive LEC to have
20 flexibility in choosing where best to access the loop. Competitors
21 purchasing a subloop at the NID, however, **will acquire the functionality**
22 **of the NID for the subloop portion they purchase.**

23 (UNE Remand Order at ¶ 235, emphasis added). This language is significant in
24 that it indicates that the ILEC NID is used when the CLEC obtains unbundled on-
25 premises wiring from the ILEC. Even then, the language clearly indicates that the
26 entire functionality of the NID may not necessarily be acquired (e.g., electrical

1 protection for the feeder and the feeder terminals). Because there is no parallel
2 discussion of NID use when the competitor accesses on-premises wiring that the
3 ILEC does not own or control, it is reasonable to conclude no use is made of the
4 NID in that circumstance.

5 **Q. IN WHAT CIRCUMSTANCES IS ON-PREMISES WIRING ACCESSED**
6 **WITHOUT USING THE ILEC NID?**

7 A. As articulated above, a NID is a cross-connect device that includes any means of
8 interconnection of customer premises wiring to the incumbent LEC's distribution
9 plant, such as a cross-connect device used for that purpose. (UNE Remand Order
10 at ¶ 233). The device may be contained within an enclosure and generally is
11 when located on the exterior of a building. In effect, the NID is jointly provided
12 by the ILEC and the building owner when the building owner controls the internal
13 customer premises wiring terminating on the device. In this case, i.e. "Option 1"
14 the NID is the demarcation point. It is useful to consider the cross-connection
15 device in piece-parts in order to understand the treatment provided under the FCC
16 Orders. First, to the extent one is used, the enclosure should be considered the
17 limits of a right of way consistent with the discussion in the FCC's recent
18 Building Access Order. (See Building Access Order at ¶ 82). Next, the NID can
19 be treated as a cross-connection device that provides at least three functions— a
20 termination mechanism for the service provider's outside plant, a termination
21 point for the on-premises wiring controlled by the building owner (or end-user in
22 owner occupied single dwelling units), and a cross-connection (or jumper)
23 between the two terminals where the facilities just discussed terminate. The ILEC

1 controls the outside plant and terminals upon which the plant terminates.

2 Similarly, the building owner controls (but does not necessarily own) the on-

3 premises wiring and terminals upon which the on-premises cable terminates

4 The building owner, due to the NID enclosure defining a right-of-way, controls

5 access by agreements with the carrier providing service. The remaining element

6 -- the cross-connection from the service provider outside plant to the building

7 owner on-premises -- wiring should be "controlled" by the retail customer

8 because it is through the establishment of the cross-connection that connectivity is

9 established to the service provider's network. The building owner, therefore,

10 determines which carrier may access the enclosure, but among those carriers, it is

11 the retail customer who determines that the appropriate cross-connection may be

12 connected to a particular carrier's loop facility. A carrier providing its own loop

13 plant has three options for physically connecting to the on-premises wiring: (1)

14 install a new terminal block, if space permits within the enclosure and cross-

15 connect to the on-premises wiring, (2) pull the on-premises wiring through to a

16 separate cross-connect device (which can be done if slack exists in the on-premise

17 wiring or a physical splice is made to add more wiring), or (3) use designated

18 space on the existing terminal block of the ILEC. It is only in this latter instance

19 that any ILEC controlled element is used and such arrangements are currently

20 rare. On the other hand, the first two approaches are commonly employed and

21 result only in the use of the "enclosure" right-of-way for placement of a terminal

22 block (cases 1) and the running of wires (cases 1 and 2). Unless the carrier uses

1 the ILEC terminal, it has nothing to negotiate with the ILEC before serving the
2 customer located at the premises.

3 **Q. UNDER WHAT CIRCUMSTANCES WOULD THE COMPETITOR GAIN**
4 **ACCESS TO THE ON-PREMISES WIRING USING THE ILEC NID?**

5 A. When the ILEC owns or controls the on-premises wiring, a competitor would use
6 an unbundled sub loop element.⁹ In this case, the ILEC would own/control the
7 wiring on both terminals of the NID. The enclosure surrounding the NID,
8 however, should still be considered the boundary of a right-of-way – between the
9 enclosure wall and the cross-connection terminals that the competitor may use.
10 As before, it should be the retail customer, rather than the ILEC, that exerts
11 practical control of the cross-connection between the building wiring and the
12 ILEC outside plant. Note that the cross-connect has value only to the specific
13 retail customer and the particular service provider (and must be replaced
14 whenever a change is made to an alternative provider). This model better assures
15 competitive neutrality because the retail customer, by ordering service from a
16 particular carrier, gives that carrier authority to modify the cross-connection. The
17 competitor, as described above, has three options for connecting to the on-
18 premises wiring. In this instance, where the ILEC controls the on-premises
19 wiring, the competitor uses the on-premises wiring and the terminals (within the
20 NID) upon which the on-premises wiring terminates.

⁹ It is possible and permissible for the competitor to gain access closer to the retail customer's unit if the competitor so chooses, provided that a technically feasible point of interconnection exists.

1 **Q. WOULD THE COMPETITOR THEN NEED TO ORDER BOTH A NID**
2 **AND ON-PREMISES WIRING ELEMENT FROM THE ILEC FOR A**
3 **COMPETITOR TO GAIN ACCESS TO THOSE ELEMENTS?**

4 A. No. The FCC has required that the ILEC provide the loop plant with the device
5 upon which it terminates (i.e., the NID). For example, the FCC said:
6 “Competitors purchasing subloops at the NID; however, will acquire the
7 functionality of the NID for the subloop portion they purchase.” (UNE Remand
8 Order at ¶ 235). There is no point (or precedent), in requiring that a competitor
9 order a NID when it seeks to obtain on-premise sub loop UNE. The cost of the
10 terminal used is inconsequential and easily reflected with the charge for the on-
11 premises wiring as the two are provided in combination. Furthermore, the use of
12 the NID is minimal and, if anything, the competitor should pay less than the full
13 cost of the NID as not all of the NID functionality is required to access the on-
14 premises wiring. The competitor is merely accessing the internal customer
15 premises wiring in the confines of the NID. Indeed, Qwest has no provisioning or
16 payment schedule for the use of the NID.

17 **Q. IS THE PRECEDING UNDERSTANDING OF NID ACCESS AND USE**
18 **CONSISTENT WITH FCC PRECEDENT?**

19 A. Yes. The FCC has adopted this interpretation, which thus permits a requesting
20 carrier to make its own cross-connections even when it uses a subloop UNE.
21 Affording this ability to the requesting carrier is consistent with the FCC
22 statement "*an incumbent LEC must permit requesting carriers to connect its*
23 *own loop facilities* to the inside wire of the premises through the incumbent

1 LEC's network interface device, or at any other technically feasible point, to
2 access the inside wire subloop network element." (UNE Remand Order at ¶ 237,
3 emphasis added). It also prevents the ILEC from imposing needless transactional
4 costs.

5 **Q. DO COMPETITIVE CARRIERS ALWAYS HAVE THE OPTION TO**
6 **MAKE THE PHYSICAL CONNECTION BETWEEN THEIR LOOP AND**
7 **INTRA-PREMISES WIRING?**

8 A. Yes. Regardless whether access is provided through or using the ILEC NID, a
9 competitor is not prohibited from connecting its loop facility to the building
10 wiring connected to the retail customer. As stated by the FCC, "(w)e find that the
11 availability of unbundled NIDs will accelerate the development of alternative
12 networks, because *it will allow requesting carriers efficiently to connect their*
13 *facilities* with the incumbent's loop plant." (UNE Remand Order at ¶ 240,
14 emphasis added). Note that only when the requesting carrier uses the unbundled
15 on-premises wiring subloop UNE would a carrier be connecting its facility to the
16 incumbent's loop plant. Thus, this language also further supports the conclusion
17 that the NID is used only when ILEC controlled intra-premises wiring is used.
18 Where the building owner controls the wiring, the ILEC is not involved.

19 Clearly, it is critical that competitors have this "safety valve." Otherwise, a
20 facility-based carrier that provided its own loops would be at the mercy of its
21 primary competitor with respect to the timing, cost and quality of access to
22 customers, precisely what Qwest is attempting to achieve in Washington MTEs

1 **Q. IS QWEST PERMITTING AT&T TO PERFORM ITS OWN CROSS-**
2 **CONNECTIONS?**

3 A. No. The fact that Qwest has placed locks on enclosures to prevent AT&T access
4 to on-premises wiring is the most graphic illustration.

5 **Q. TAKING FCC MANDATES INTO CONSIDERATION, WHAT MUST A**
6 **REQUESTING CARRIER'S INTERCONNECTION AGREEMENT**
7 **PROVIDE, AT A MINIMUM, TO AFFORD FACILITIES-BASED**
8 **ACCESS TO CUSTOMERS IN THE MDU?**

9 A. The interconnection agreement of a carrier that intends to perform its own cross-
10 connections to on-premises wiring need only address TELRIC based
11 compensation for any element used.

12 **Q. HAS AT&T ATTEMPTED TO IMPLEMENT THIS PROTOCOL IN**
13 **WASHINGTON?**

14 A. I believe a workable proposal has been set forth but was rejected by Qwest.
15 AT&T has notified Qwest that it will provide compensation, as ultimately
16 negotiated or arbitrated, retroactively to the first service date for a customer. This
17 approach assures that Qwest will have compensation appropriate for use of the
18 unbundled element employed while at the same time not holding AT&T's market
19 entry hostage to lengthy negotiation and arbitration over an element of minor cost.

20 **Q. WHY DO YOU SAY THAT THE ON-PREMISES WIRING SUB LOOP**
21 **ELEMENT SHOULD ONLY HAVE MINOR COST?**

1 A. The engineered and installed investment for on-premises wiring is certainly no
2 more than about 25 to 50 cents per pair based on cost studies prepared in
3 Washington and other jurisdictions. This, of course, assumes a prospective
4 installation of the wiring. In many instances the on-premises wiring, to the extent
5 it is owned by the incumbent, was installed ten or more years ago and the
6 investment has been fully recovered from the general rate payer. In fact, AT&T
7 has been informed by Qwest that “All wire owned and maintained by Qwest **is**
8 **expensed** and is driven to *6362.21 Regulated Inside Wire account code.*”
9 [emphasis added] (See Qwest Response to AT&T Discovery Request AT&T 01-
10 012 in Docket UT-003120, February 20, 2001, attached as Exhibit CMP-4.)
11 Thus, for Qwest to bar AT&T’s market entry over the potential cost recovery of
12 an asset that has minimal forward looking cost and for which Qwest has likely
13 already been fully compensated indicates that factors, other than just
14 compensation, motivate Qwest’s behavior. In fact, compensation should not be
15 an issue at all, given that AT&T is willing to compensate Qwest for use of
16 unbundled on-premises wiring that AT&T uses retroactively to the date of first
17 use of the wiring by AT&T once fair processes and pricing using the relevant
18 TELRIC standard are established.

19 **Q. QWEST HAS INDICATED THAT IT MUST INVENTORY THE ON-**
20 **PREMISES WIRING PRIOR TO CLEC ACCESS. IS THIS NECESSARY?**

21 A. No. There is no practical purpose served by this undertaking. While it is possible
22 to inventory on-premises wiring in LFACS, if no such inventory exists now or the
23 inventory is deemed unreliable, then a competitor seeking to use the wiring raises

1 no new compelling reason to justify the undertaking.¹⁰ The only purpose served
2 is to give the ILEC information that has operational value only to the ILEC while
3 at the same time substantially raising costs and delaying entry by potential
4 competitors. The FCC is clear that Qwest, or any other ILEC, should not be
5 permitted to halt market entry by competitive carriers by seeking to negotiate
6 charges for on-premises wiring based upon over-engineered processes or
7 processes that require needless truck rolls, ILEC oversight of work or other steps
8 that simply raise costs, delay service delivery and discourage competition. (*See*
9 *e.g.* Building Access Order at ¶ 18-19).

10 **Q. WHY WOULD THE INVENTORY ONLY HAVE OPERATIONAL**
11 **VALUE TO THE ILEC?**

12 A. When the competitor connects the on-premises wiring to its network, it can record
13 the terminal block ID, the cable designation and the pair used for its own
14 purposes, assuming that there is clear labeling present at the premises.

15 On the other hand, an accurate LFACS (or equivalent inventory) serves only two
16 identifiable purposes: (1) it allows the ILEC to perform automatic pair assignment
17 for dispatching of its technicians when the ILEC provides service to the customer,
18 and (2) it provides a possible inventory for billing purposes (although this is
19 unlikely as the identification of the carrier using the pair is not an element that
20 one would expect to find accommodated by the LFACs record). Thus, by

¹⁰ In fact it appears that Qwest does employ LFACS to inventory pair assignments. (See Qwest Response to AT&T Discovery Request AT&T 01-027 in Docket UT-003120, February 20, 2001, attached as Exhibit CMP-5). Thus, the need for an inventory can only be taken to mean that Qwest considers the records unreliable and endeavors to have the competitor pay for its database reconciliation.

1 requiring an inventory where none previously existed, the competitor would
2 effectively be paying for improvement in process efficiency for the ILEC
3 (permitting automatic pair assignment where none previously existed).

4 The fact that Qwest asserts that an inventory is required indicates that such
5 records do not exist or are unreliable.

6 **Q. WITHOUT SUCH AN INVENTORY, HOW WOULD A COMPETITOR**
7 **OR QWEST KNOW WHICH PAIR TO UTILIZE?**

8 A. The carrier would follow procedures that are well established. If the building
9 terminal was labeled with the unit number, the technician could elect to rely on
10 this information. Even if labeled, however, it is prudent to perform additional
11 confirmation that can be conducted without assistance by, or information directly
12 from, the incumbent. If existing service is being transferred to a new carrier,
13 there will be a telephone number for that existing service. The technician
14 performing the re-termination could attach a butt set to the terminals and dial a
15 loop-back number (commonly used in all regions) to receive Automatic Number
16 Identification (“ANI”). By identifying the loop plant associated with the
17 telephone number of interest, the technician can identify the on-premise wiring
18 (currently connected to the loop plant) that must be re-terminated to the new
19 carrier’s network. In the alternative, the technician could put tone on the line
20 from the customer’s units then attach to building terminals until the technician
21 finds the pair with the tone. This last procedure would generally be used when
22 the customer is seeking new, rather than a transfer of service. As I said, none of

1 this work is dependent upon or requires information from the incumbent. In
2 particular, the service provisioning is not reliant upon an exchange of ordering
3 information with the incumbent.

4 **Q. ARE THERE OTHER OPERATIONAL PROCEDURES THAT COULD**
5 **HOBBLE OR PRECLUDE COMPETITIVE ENTRY?**

6 A. Yes. Given the minimal cost of the on-premises wiring that may be used as a sub
7 loop, the ordering, invoicing and remittance processes employed should be
8 designed to minimize these administrative costs. One means to accomplish this
9 would be for an ILEC, such as Qwest, to not require that wiring be ordered on a
10 pair-by-pair basis nor necessarily billed or paid monthly.

11 **Q. WHY ARE TRADITIONAL UNE ORDERING PROCEDURES**
12 **UNNECESSARY?**

13 A. Use of the Local Service Request (“LSR”), or its equivalent, to order on-premises
14 wiring subloops would only convey non-essential information to the incumbent
15 and add significantly – both in terms of cost and complexity – to the competitor’s
16 processes. The fact that the incumbent LECs have not sought to raise on-premises
17 wiring sub loop ordering procedures at the OBF (the industry body guiding the
18 development of the LSR) is further evidence that (1) the ordering is not
19 considered essential, and (2) given that no work has been performed to date, use
20 of a LSR-based approach will be non-standard if it is implemented at all before
21 the OBF sets forth the unneeded procedures. A much more cost-effective
22 approach would be for the competitor to periodically inventory the pairs in use at

1 a particular location and submit such quantities to the incumbent.¹¹ The
2 incumbent could then apply approved charges for the use of the wiring through
3 established invoicing procedures. Should a concern arise regarding the accuracy
4 of the payment, visual inspection of the property would be possible to determine
5 what carriers were serving what customers.

6 **Q. HOW COULD SUCH INDEPENDENT VALIDATION OCCUR?**

7 A. The carrier could, as mentioned above, determine the number active on a
8 particular line. Using its version of the LNP SMS¹² (ported numbers) or by
9 consulting the LERG (any NPA-NNX), it could determine the carrier serving the
10 particular line.

11 **Q. HOW WOULD THE CHARGES FOR THE ON-PREMISES WIRING BE**
12 **APPLIED?**

13 A. Given the information regarding the lines used by a competitor at a particular
14 premises (where the incumbent controlled the on-premises wiring), the incumbent
15 would simply multiply the volume by the applicable TELRIC-based unit price. It
16 is important to keep in mind that in general terms we are talking about a few
17 hundred feet (at most) of 24 or 26 gauge copper pairs and a pair of terminals on a
18 66 type connector block (or equivalent). Forward looking costs of newly installed
19 wiring for premises such as are at issue here should only be in the range of 10 to
20 20 cents per pair per month. Furthermore, the physical wiring at issue generally

¹¹ Of course, if a competitor so chose, it could agree to use a “traditional” LSR approach.

¹² While each carrier may not refer to the information store by this name, the reference here is to the database that carriers can create by storing number port broadcast messages from the NPAC.

1 has either been expensed, fully depreciated, or charged to the general body of rate
2 payers. Therefore, the incumbent receives a cash flow for which it has no
3 offsetting expense. Accordingly, the incumbent should not be permitted to apply
4 clearly excessive rates, as Qwest is doing here, that are likely to be three to eight
5 times what is reasonable.

6 **Q. IS QWEST SEEKING TO APPLY CHARGES FOR THE ON-PREMISES**
7 **WIRING OF THE MAGNITUDE THAT YOU CITE?**

8 A. No. Qwest proposes to charge AT&T \$1.60 per month per pair¹³ -- a charge eight
9 to sixteen times the amount I just mentioned. These charges are in addition to the
10 generally unnecessary and likewise over-priced non-recurring charges for a field
11 connection point. This commission should note that while Qwest proposes to
12 charge \$1.60 per pair per month, Qwest does not know the average length of
13 wiring in Option 3 buildings – one of the major cost driver (along with utilization)
14 of the on-premises wire. (See Qwest Response to AT&T Discovery Request
15 AT&T 01-028, In Docket UT 003120, February 20,2001, Exhibit CMP-6). As a
16 result, it is not clear on what factual basis Qwest even set its proposed charge.

17 **Q. WHAT IF THE ON-PREMISES WIRING CONTROLLED BY THE ILEC**
18 **HAS UNIQUE COST CHARACTERISTICS?**

19 A. The unit cost at each premises could be the basis for compensation. However, the
20 process should not delay the competitor's ability to immediately provide service

¹³ See Qwest Response to AT&T Discovery Request AT&T 01-016, Attachment A in Docket UT-003120, February 20, 2001, attached as Exhibit CMP-2.

1 at the MTE. One needs also to keep in mind that there are approximately 64,000
2 residential buildings that are MTEs in Washington. The administrative
3 complexity and the potential costs of such precision must be carefully weighed
4 before premises-by-premises pricing is supported or imposed. In any event,
5 provision could be made to negotiate premises wiring charges that reflect
6 differing infrastructure or exceptional situations. Care should be taken, however,
7 to assure that such exceptions do not ultimately consume and render moot an
8 otherwise reasonable general provision. One likewise has to keep in mind for
9 most of the situations that AT&T seeks to serve, the on-premises wiring is
10 nothing more than a short length of twisted pair cable and pins on a connecting
11 block.

12 **Q. HOW DOES AT&T ADDRESS QWEST'S "MAINTENANCE"**
13 **CONCERNS?**

14 A. Nothing complex should be required, if anything at all. If Qwest is providing an
15 unbundled element it is responsible for maintaining the element. In the unlikely
16 event that a trouble would need to be reported by AT&T for on-premises wiring
17 that is not used with any other Qwest unbundled element, the situation would be
18 little different than what Qwest would do for any other building owner that
19 reported trouble on wiring that Qwest owned or controlled. Indeed there is no
20 reason that Qwest should be testing on-premise wiring without AT&T referring
21 the trouble. It seems highly likely, in the event on-premises wiring was the source
22 of the trouble, a carrier such as AT&T would sectionalize the trouble to the on-
23 premises wiring and be able to identify the faulty wiring that Qwest must address.

1 **Q. MUST AT&T DISPATCH A TECHNICIAN TO ISOLATE THE PREMISE**
2 **WIRING TROUBLE?**

3 A. AT&T, like any other telecommunications provider, can remotely test loops only
4 when there is a means to create a continuous electrical path. Because no such
5 device is routinely installed at the NID or demarc, the remote test signal must
6 loop through the Customer Premises Equipment (“CPE”)-i.e. the customer’s
7 jacks, phones etc. As a result, the carrier can remotely determine if the loop plus
8 on-premises wiring meets performance standards. However, without dispatch or
9 other “special equipment” at the premises, the carrier could not determine, when
10 defective performance is identified, whether the source is in the premise wiring
11 (or possibly the CPE) or in the carrier’s loop plant.¹⁴

12 **Q. DOES AT&T OBJECT TO THIS IMPLIED NECESSITY TO DISPATCH?**

13 A. No, but clearly the service quality risk is more for AT&T who, once it has
14 determined that on-premises wiring is defective, must then rely upon Qwest to
15 subsequently dispatch a technician. This dispatch time is added to the trouble
16 resolution time that AT&T has already spent in isolating the trouble to the
17 customer premises wiring. As a result, the trouble closure time could easily
18 exceed one business day if Qwest does not operate with urgency. In addition,
19 there is nothing that obligates Qwest to accept the diagnosis by AT&T that the
20 premise wiring is defective and Qwest could close the trouble as “no trouble

¹⁴ It is possible to deploy a “smart block” as the terminal for the wiring. Such a block, when a particular tone is applied to the pair, would activate a loop-back or short circuit that would permit the carrier to determine if the outside plant is impaired. Because such blocks cost around \$350 for a 50 pair block, they are not routinely deployed.

1 found,” “CPE” or “inside wire.” While the trouble is closed out with no black
2 mark for Qwest (as such troubles are generally excluded from performance
3 results), the customer who would see AT&T as the service provider, is potentially
4 left dissatisfied. In fact, Qwest indicated that in calendar year 2000, 40% of all
5 troubles were closed with these three preceding codes. (*See* Qwest Response to
6 AT&T Discovery Request AT&T 01-023, In Docket UT 003120, February
7 20,2001, attached as Exhibit CMP-7.)

8 **Q. IS THERE A MEANS FOR THE CUSTOMER IMPACT POTENTIAL TO**
9 **BE MINIMIZED?**

10 A. Yes. AT&T (or any other CLEC) should be provided the option to shift active
11 customer service to a spare set of wire to the customer unit, provided that the
12 defective pair is tagged in some manner. Furthermore, if no such spare is
13 available and the building owner has no objection, then AT&T should have the
14 option of running a new pair of wires to replace the defective pair, after which
15 AT&T would no longer be responsible for any payments to the incumbent LEC
16 for the UNE previously employed. In this way, the competitor could better assure
17 quality service for its customers.

18 **Q. IF MULTIPLE CARRIERS MAY ACCESS THE ON-PREMISES WIRING,**
19 **DO SERIOUS RISKS OF CUSTOMER SERVICE INTERRUPTIONS**
20 **ARISE?**

21 A. In its “Cross-Complaint,” Qwest has claimed potential customer outages due to
22 AT&T’s actions accessing Qwest’s NIDs. However, the concern about possible

1 service outages appears overblown. Qwest has been unable to provide
2 documented evidence of customer service interruptions due specifically to AT&T
3 work at a premises and refuses to provide any discovery which AT&T believes
4 would establish that the Qwest out-of-service rate is no greater due to AT&T
5 modifying cross-connections at MTEs than occurs when Qwest performs similar
6 work.¹⁵ In fact, Qwest explicitly states “Qwest did not determine, nor did it make
7 any allegations about, the customer trouble rate for MTEs in which AT&T does
8 not have a presence versus those in which AT&T has a presence.” (See Qwest
9 Response to AT&T Discovery Request AT&T 01-026, In Docket UT 003120,
10 February 20, 2001, Exhibit CMP-9.)

11 Of course, as referenced in the Georgia Order, AT&T would accept responsibility
12 for interconnections it performs at the NID, but such responsibility would not
13 exceed the tariff liability that Qwest has to its customer due to any inadvertent
14 disruption cause by AT&T.

15 **Q. IF ON-PREMISES WIRING CONTROL IS UNCLEAR, HOW IS THE**
16 **SITUATION RESOLVED?**

17 A. Uncertainty as to the actual location of the demarcation point leads to confusion
18 regarding whether the CLEC must work with the ILEC or the building owner to
19 gain access to customers. The FCC concluded that incumbent LECs are generally
20 in the best position to know the location of the demarcation point, and they should

¹⁵ See Qwest responses to AT&T 01-017 through 20 in Docket UT-003120, February 20, 2001, Exhibit CMP-8.

1 not be permitted to use their control over such nonproprietary information in order
2 to frustrate competition. (*See* Building Access Order at ¶ 56).

3 The FCC has also held that carriers must make available information on the
4 location of the demarcation point within 10 business days of a request from the
5 premises owner. If carriers do not make this information available, the building
6 owners may presume that the demarcation is at the MPOE. Although the FCC
7 declined to require that the demarc be uniformly moved to the MPOE (out of
8 concern that carriers using UNE loops might be disadvantaged), it did clarify
9 “that in all multiunit premises, the incumbent carrier must move the demarcation
10 point to the MPOE upon the premises owner’s request.” (Building Access Order
11 at ¶ 50-58). As part of this clarification and out of concern that relocation of the
12 demarc not unduly delay or hinder competitors’ access, the FCC directed
13 “incumbent LECs to conclude negotiations with requesting building owners in
14 good faith and within 45 days of the initial request and that building owners may
15 file complaints with the Commission for resolution of allegations of bad faith
16 bargaining.” (*Id.* at ¶ 55). Where carriers do not establish a practice of placing
17 the demarcation point at the MPOE, they are required to fully inform building
18 owners, at the time of installation, of their options regarding placement. (*Id.* at ¶
19 57).

20 **Q. SHOULD A CARRIER BE PERMITTED TO SERVE CUSTOMERS**
21 **WHILE ON-PREMISE WIRING OWNERSHIP DISPUTES ARE**
22 **RESOLVED?**

1 A. Most definitely. Assuming that the competitor has the building owner's
2 permission to access the premises, there is no reason for the competitor not to
3 begin immediate service to the premises provided that the competitor performs its
4 own cross-connection work and the competitor is willing to compensate the party
5 ultimately proven to own the on-premises wiring used.

6 **Q. HOW DOES MOVING THE DEMARC TO THE MPOE LARGELY**
7 **RESOLVE THE ISSUES RAISED BY QWEST?**

8 A. If the demarc is established at the MPOE, it is the building owner rather than the
9 ILEC that determines the terms and conditions applicable to all carrier access and,
10 if assets are transferred, what compensation, if any, is paid for the use of the
11 facilities. Qwest would lose some monopoly control and be on more equal
12 footing with other competitors, if this were to occur.

13 **Q. YOUR TESTIMONY HAS THUS FAR FOCUSED ON USE OF EXISTING**
14 **ON-PREMISES WIRING. WHAT STEPS DID THE FCC TAKE TO**
15 **FACILITATE A CARRIER DEPLOYING NEW ON-PREMISES**
16 **WIRING?**

17 A. The FCC clarified the applicability of section 224 of the Telecommunications Act
18 of 1996 to MTEs. The FCC determined "to the extent a utility owns or controls
19 poles, ducts, conduit, or rights-of-way within an MTE, the utility may not exercise
20 its control in a manner inconsistent with section 224 to impede competitive
21 access." (Building Access Order at ¶ 76). The FCC reached a number of

1 important conclusions relating to utility obligations that allow competitors to
2 better serve MTE:

- 3 1. The term “rights-of-way” is broadly interpreted “in the context of
4 buildings to include, at a minimum, defined areas such as ducts or
5 conduits that are being used or have been specifically identified for use as
6 part of the utility’s transportation and distribution network.” (Building
7 Access Order at ¶ 76)
- 8 2. [T]he obligations under section 224 encompass in-building facilities, such
9 as riser conduit, that are owned or controlled by a utility. (Building
10 Access Order at ¶ 80).
- 11 3. “[R]ights-of-way” in buildings means, at a minimum, defined pathways
12 that are being used or have been specifically identified for use as part of a
13 utility’s transmission and distribution network.” (Building Access Order
14 at ¶ 82).
- 15 4. “[A] right-of-way exists within the meaning of section 224, at a minimum,
16 where (1) a pathway is actually used or has been specifically designated
17 for use by a utility as part of its transmission and distribution network and
18 (2) the boundaries of that pathway are clearly defined, either by written
19 specification or by an unambiguous physical demarcation.” (Building
20 Access Order at ¶ 82).
- 21 5. “[A] ‘right-of-way’ under section 224 includes property owned by a utility
22 that the utility uses in the manner of a right-of-way as part of its
23 transmission or distribution network.” (Building Access Order at ¶ 83).

24 **Q. HOW ARE THESE FINDINGS IMPORTANT TO MTE ACCESS BY**
25 **COMPETITORS OF QWEST?**

26 A. If and when Qwest is unwilling or unable to provide access to on-premises wiring
27 that is economic, timely and capable of supporting the service equality that the
28 competitor strives to deliver, the competitor may be faced with deploying its own

1 on-premises wiring. Should the competitor seek to place its own facilities for use
2 by individual customers at the MTE, it would require conduit, duct and other
3 structures in much the same manner as the ILEC.

4 In most instances, the building owner is unlikely to either reduce “rentable” space
5 or allow unnecessary new construction that would disrupt and annoy tenants in
6 order to permit a competitor to “run wires.” Thus, existing paths and structure set
7 aside for pre-existing on-premises wiring are the likely first choice for placement
8 of any new wiring. The FCC action prevents the ILEC or other utilities from
9 prohibiting competitors from using available space in conduits, ducts, common
10 room and other structures that the ILEC uses or has access to at the particular
11 premises. The Commission will consider initiating a rulemaking proceeding to
12 establish rate formulas for in-building attachments in the future if it proves
13 necessary or efficient to do so. It feels that in most instances the existing rules will
14 encourage the parties to agree to reasonable rates through negotiation. (Building
15 Access Order at ¶ 91).

16 **Q. HOW DOES ON-PREMISES RIGHT OF WAY RELATE TO THE ISSUE**
17 **WITH QWEST HERE IN WASHINGTON?**

18 A. The enclosure surrounding the terminal block where on-premises wiring
19 terminates, whether an equipment room, cabinet enclosure, or something similar
20 that has defined boundaries, establishes the boundaries of what is a portion of an
21 on-premises right of way. There can be little debate that the enclosure has
22 defined boundaries and that the facilities that it encloses are used in the ILEC

1 transmission and distribution network. Thus, the terminal space contained in an
2 enclosure qualifies on-premises right of way for which Qwest may not deny
3 access by CLECs.

4 **Q. DOES QWEST AGREE THAT THE MPOE/NID ENCLOSURE**
5 **CONSTITUTES A RIGHT OF WAY?**

6 A. It seems that Qwest believes that use of the enclosure somehow involves
7 collocation. However, closer examination of what constitutes collocation shows
8 the notion to be inapplicable in this context. Part 51.5 of the FCC Rules (47 CFR
9 51.5) defines collocation as an offering that permits a CLEC to place its
10 qualifying equipment “within or upon an incumbent LEC’s premises.” That same
11 section of the Rules goes on to say: “*Premises* refers to an incumbent LEC’s
12 central office and serving wire centers, as well as all buildings or similar
13 structures owned or leased by an incumbent LEC that houses its network
14 facilities, and all structures that house incumbent LEC facilities on public rights-
15 of-way, including but not limited to vaults containing loop concentrators or
16 similar structures. None of these provisions apply to an MTE so the space within
17 an enclosure at an MTE, to the extent it is on private property, must be considered
18 right of way rather than collocation space.

19 **Q. WHAT IS QWEST'S BASIS FOR ITS INTERPRETATION?**

20 A. I can only assume that it is relying upon 47 CFR 51.319(a)(2)(D) which states that
21 access to sub loop elements is subject to the Commission's collocation rules.
22 Where subloop access involves use of the ILEC property (e.g., CO space, Remote

1 Terminal Space or other structures placed by the ILEC in public right-of-way),
2 the collocation rules may apply.

3 **Q. IS THIS A VALID INTERPRETATION?**

4 A. No, it is not. In this narrow instance where access to the on-premises wiring is
5 involved, the collocation rules are not applicable because the space utilized is not
6 within the definition of that covered by collocation. Furthermore, the clarification
7 of access to “right-of-way” located within the confines of an MTE was provided
8 by the FCC after it issued the rule change upon which Qwest relies.

9 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

10 A. As explained above, the FCC has been consistent in allowing competitive carriers
11 to access internal customer premises wiring citing numerous policy reasons
12 including eliminating the possibility that an ILEC could use its control over on-
13 premises wiring to obstruct or delay competitive access. In view of the totality of
14 the circumstances in this matter, this is a textbook case of Qwest discriminatorily
15 blocking access and using a lengthy process for negotiating unnecessary and
16 costly terms directly contrary to FCC mandate. As such, it is clear that Qwest has
17 violated Washington law by attempting to afford unreasonable preference of or
18 access to non-competitive services to itself, and failing to render wholesale
19 services in a prompt, expeditious and efficient manner to AT&T. AT&T needs
20 access to the internal customer premises wiring to provide competitive local
21 service to Washington consumers. As Qwest has not been at all cooperative, it is

1 only through this Commission's enforcement of Washington law that AT&T will
2 be able to do so.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY AT THIS TIME?**

4 **A. Yes.**