EXHIBIT KAS-54T

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Investigation Into Qwest Corporation's Compliance with Section 271of the Telecommunications Act of 1996	))))))	**Docket No. UT-003022**

REBUTTAL TESTIMONY OF

KAREN A. STEWART

ON BEHALF OF

QWEST CORPORATION

RE: EMERGING SERVICES

JUNE 21, 2001

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, POSITION, EMPLOYER, AND BUSINESS ADDRESS.

A. My name is Karen A. Stewart. I am a Senior Staff Advocate in the Qwest Services Corporation (Qwest) Policy and Law organization. My office is located at 421 SW Oak Street, Portland, Oregon.

Q. HAVE YOU PREVIOUSLY FILED DIRECT TESTIMONY IN THIS DOCKET?

A. Yes. I filed direct testimony regarding Emerging Services on May 16, 2001.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my rebuttal testimony is to reply to the testimony of the numerous parties commenting on line sharing, sub-loop unbundling, access to dark fiber, and Qwest's obligation to provide access to unbundled packet switching. Specifically, I respond to the testimony of: AT&T Communications of the Pacific Northwest, Inc (AT&T); T.D. Huynh representing WORLDCOM, INC (WCom); and Michael Zulevic representing Covad Communications Company (Covad).

Attached to the testimony of Ms. Jean Liston, filed as Exhibit JML-42, is Section 9 of the Washington SGAT. This version of the SGAT has been updated to incorporate changes to the SGAT agreed to in other workshops on these same topics.

As described in my direct testimony and in this rebuttal testimony, Qwest satisfies the requirements of Section 271 of the Act and the FCC's rules as it relates to emerging services.

II. EXECUTIVE SUMMARY

Q. CAN YOU SUMMARIZE YOUR TESTIMONY?

A. In this testimony, I address issues raised by other parties regarding Qwest's compliance with the FCC's latest emerging services obligations.

Qwest's emerging service obligations are the result of the FCC's Third Interconnection Order in CC Docket No. 96-98[1] and the Line Sharing Order in CC Docket Nos. 98-147 and 96-98.[2] The Line Sharing Order, as its name implies, added a requirement for line sharing and the Third Interconnection Order added requirements for sub-loop unbundling, access to dark fiber, and limited access to unbundled packet switching.

Qwest has a concrete and specific legal obligation to provide emerging services and UNEs through its revised Statement of Generally Available Terms and Conditions (SGAT) and various interconnection agreements. Attached to the testimony of Ms. Jean Liston, filed as Exhibit JML-42, is Section 9 of the

[1] Third Interconnection Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, (November 5, 1999) (Third Interconnection Order or UNE Remand Order).

[2] Third Interconnection Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 96-98, FCC 99-355 (December 9, 1999) (Line Sharing Order).

Washington SGAT updated to reflect the most current offerings for revised SGAT sections for line sharing, sub-loop unbundling, dark fiber, and packet switching. This version of the SGAT has been updated to incorporate changes to the SGAT agreed to in other workshops on these same topics.

My testimony, when combined with the Regional Oversight Committee's (ROC) Third Party Operation Support System (OSS) testing results, and references to the SGAT proves that Qwest provides access to emerging services in conformance with the Act. The Washington Commission should confirm that Qwest satisfies its obligations to provide access to emerging services under checklist item 2.

III. SCOPE OF EMERGING SERVICES WORKSHOP

Q. WHAT IS THE PURPOSE OF THE EMERGING SERVICES PORTION OF THE WORKSHOP?

A. The Emerging Services workshop will review Qwest's Emerging Services obligations that have arisen primarily as a result of the FCC's Third Interconnection Order in CC Docket No. 96-98 ("UNE Remand Order')[3] and the Line Sharing Order in CC Docket Nos. 98-147 and 96-98.[4] The Line Sharing Order, as its name implies, added a requirement for line sharing and the UNE Remand Order added

[3] Third interconnection Order and Fourth Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, (November 5, 1999) (Third Interconnection Order or UNE Remand Order).

[4] Third interconnection Order, CC Docket No. 98-147, and Fourth Report and Order, CC Docket No. 96-98, FCC 99-355 (December 9, 1999) (Line Sharing Order).

requirements for sub-loop unbundling, access to dark fiber, and in limited circumstances, unbundled packet switching.

Q. DOES ANY PARTY ADDRESS ISSUES QWEST BELIEVES SHOULD HAVE BEEN ADDRESSED IN ANOTHER WORKSHOP?

A. Yes. In its reply comments, WCom discusses changes to unbundled switching, tandem switching and the resale sections of the SGAT.[5] These topics have already been closed in workshops in Washington. WCom was a full member to those workshops and had ample opportunity to raise these issues in the prior workshops. WCom does not present any new material facts (that have occurred since those workshops were concluded) to justify re-opening these check list items.

Covad also made a statement in the subloop portion of the testimony of Mr. Zulevic regarding a theoretical transfer of "accessible terminals to an affiliate."[6] To the extent that Covad has any concerns regarding the theoretical transfer of "accessible terminals" to affiliates, this issue would need to be discussed in the context of the asset transfer case. Asset transfers to affiliates, and any potential unbundling requirements, is an issue that is clearly beyond the scope of a discussion regarding subloop access.

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5 WCom at page 12 and pages 17 to 18.

6 Covad at page 11.

Last, Covad provides testimony regarding their concerns about UNE forecasting requirements. Qwest has removed all references to requiring forecasts for UNEs in Section 9 of the SGAT. Therefore, from a Qwest prospective this issue is closed.

IV. LINE SHARING ISSUES

Q. WHAT ISSUES HAVE BEEN RAISED BY INTERVENORS REGARDING QWEST'S LINE SHARING OFFERING?

A. The comments have the other parties identified the following issues regarding Section 9.4 Line Sharing in the SGAT. I have identified the line sharing issues with the prefix "LS."

<u>Issue LS-1</u> - Whether Qwest's five day provisioning interval is appropriate or whether Qwest must reduce its line sharing provisioning interval to 1-2 days.

A. Covad contends that Qwest's five day line sharing provisioning interval should be decreased to a single day. Again, although Qwest is exceeding its obligations under current law, Covad demands more. Here, Covad's inappropriate demand would result in an interval that is operationally unsupportable.

Covad's witness was crystal clear in Colorado about Covad's key reasoning for demanding a shorter interval: Covad desires a "competitive edge" over Qwest in the provisioning of retail services using DSL technology. Covad's witness testified as follows:

> We have proposed going from the five-day down to a one-day interval over a period of time. I don't think that's totally unreasonable. But the parity issue, no, I don't think that is appropriate. Just because their business plan and their customers are satisfied with the 10-day interval, it doesn't mean that all of the customers in the state of Colorado are satisfied with waiting 10 days for that service to be put in.
>
> One of the things that we would like to offer to our customers is a better quality of service as being maybe one of the *competitive edges* that we can provide in entering in market. And in order to do that, we have to be able to differentiate ourselves.[7]

The Act does not require Qwest to provide intervals that ensure CLECs a competitive advantage. CLECs are not entitled to a competitive edge. Instead, the FCC has clearly established the appropriate standard as nondiscriminatory access, measured by parity with Qwest's retail processes. In the *SBC Texas Order*, the FCC reiterated the standard for provisioning unbundled network elements, as follows:

> [F]or those functions the BOC provides to competing carriers that are analogous to the functions a BOC provides to itself in connection with its own retail service offerings, the BOC must provide access to competing carriers in "substantially the same time and manner as it provides to itself. Thus, where a retail analogue exists, a BOC must provide access that is equal to (*i.e.*, "substantially the same as") the level of access that the BOC provides itself, its customer, or its affiliates, in terms of quality, accuracy, and timeliness.[8]

This standard applies where the BOC's "actual performance can be measured to determine whether [the BOC] is providing access to its competitors in 'substantially

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[7] Colorado Workshop, 11/02/00, Transcript, page 37, line 23 to page 38, line 11 (emphasis added).

[8] *SBC Texas Order* ¶44.

the same time and manner' as it does to itself."[9] Only where there is no retail analogue should a different standard apply.[10]

The FCC has expressly determined that the retail parity standard applies to line sharing because there is a retail analogue:

> As a general matter, the nondiscrimination obligation requires incumbent LECs to provide to requesting carriers access to the high frequency portion of the loop that is equal to that access the incumbent provides to itself for *retail* DSL service its customers or its affiliates, in terms of quality, accuracy and timeliness. Thus, we encourage states to require, in arbitration proceedings, incumbent LECs to fulfill requests for line sharing within the ***same interval the incumbent provision xDSL to its own retail or wholesale customers***, regardless of whether the incumbent uses an automated or manual process.[11]

Thus, the FCC has established that the nondiscrimination standard for line sharing is retail parity and the interval for line sharing should be the same as the xDSL loop interval.

Qwest followed the FCC's directive when it set the line sharing interval at five days. Qwest's retail DSL provisioning interval is ten days. Thus, Qwest is already providing CLECs with a faster interval than required to comply with the parity standard. This five day interval plainly provides DLECs better than retail parity. Nonetheless, Qwest has agreed to reduce the line sharing interval even further.

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9 *Id.* at ¶45.

10 *Id.*

11 *Line Sharing Order* ¶173 (emphasis added).

Effective July 1, 2001, the standard interval for line sharing will be reduced to only 3 days for quantities of 1 to 24 lines.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

<u>Issue LS-2</u> - Obligation to provide stand alone Qwest DSL. Whether Qwest is obligated to provide DSL service when it is not the voice provider.

A. AT&T claims that Qwest should be required to continue to provide its DSL service to a customer that has decided to obtain voice service from another provider.[12]

The FCC recently confirmed that Qwest has no obligation to provide xDSL service when it is no longer the voice provider.[13] (ILEC is not required to provide xDSL service when it is no longer the voice provider). Indeed, the FCC left no room for doubt on this issue:

> We deny, however, AT&T's request that the Commission clarify that incumbent LECs must continue to provide xDSL services in the event customers choose to obtain voice service from a competing carrier on the same line because we find that the *Line Sharing Order* contained no such requirement.[14]

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12 AT&T Comments at page 21.

13 *Line Sharing Reconsideration Order* ¶26.

14 *Line Sharing Reconsideration Order* ¶16.

AT&T's claim that it could be disadvantaged if Qwest does not continue to provide DSL service is equally baseless. AT&T suggested Qwest's termination of retail DSL service when its customer switches voice service to a competitor may present a barrier to switching. This contention makes no sense because such a customer could obtain DSL service from another carrier in a line splitting arrangement with the CLEC voice provider. Moreover, a CLEC in that situation may choose to resell Qwest's voice and DSL service to its voice customer. Thus, DSL service poses no barrier to CLEC entry: a CLEC can provide DSL service to its voice customer, or that customer can obtain DSL service from another provider.

<u>Issue LS-3</u> - POTS splitter ownership: Should Qwest be required to purchase, own, and provide POTS splitters to CLECs.

A. Qwest strongly disagrees with the CLECs position that Qwest be required to purchase, own, and deploy line splitters to support line splitting arrangements. The FCC in the Texas 271 order rejected this exact request. Specifically the FCC stated:

> 326. AT&T also argues that it has a right to line splitting capability over the UNE-P with SWBT furnishing the line splitter.[15] AT&T alleges that this is "the only way to allow the addition of xDSL service onto UNE-P loops in a manner that is efficient, timely, and minimally disruptive."[16] Furthermore, AT&T contends that competing carriers have an obligation to provide access to all the functionalities and capabilities of

[15] *See* AT&T Texas II Pfau/Chambers Decl. at ¶¶40-42; *see also* IP Communications at 12, 14.

[16] AT&T Texas II Pfau/Chambers Decl. at ¶41.

the loop, including electronics attached to the loop.[17] AT&T contends that the splitter is an example of such electronics and that it is included within the loop element.[18]

327. **We reject AT&T's argument that SWBT has a present obligation to furnish the splitter when AT&T engages in line splitting over the UNE-P**. The Commission has never exercised its legislative rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the splitter, **and incumbent LECs therefore have no current obligation to make the splitter available**.[19] As we stated in the *UNE Remand Order*, "with the exception of Digital Subscriber Line Access Multiplexers (DSLAMs), the loop includes attached electronics, including multiplexing equipment used to derive the loop transmission capacity."[20] We separately determined that the DSLAM is a component of the packet switching unbundled network element.[21] We observed that "DSLAM equipment sometimes includes a splitter" and that, "[i]f not, a separate splitter device separates voice and data traffic."[22] **We did not identify any circumstances in which the splitter would be treated as part of the loop, as distinguished from being part of the packet switching element.** That distinction is critical, because we declined to exercise our rulemaking authority under section 251(d)(2) to require incumbent LECs to provide access to the packet switching element, and our decision on that point is not disputed in this proceeding. (emphasis added)

328. **The *UNE Remand Order* cannot fairly be read to impose on incumbent LECs an obligation to provide access to their splitters.** (emphasis added).

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17 AT&T Texas II Pfau/Chambers Decl. at ¶¶40-42.

18 AT&T Texas II Pfau/Chambers Decl. at ¶40.

19 *See* 47 U.S.C. § 251(d)(2); *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 736 (1999).

20 *UNE Remand Order*, 15 FCC Rcd at 3776, ¶175.

21 *UNE Remand Order*, 15 FCC Rcd at 3833, ¶¶302-303.

22 *UNE Remand Order*, 15 FCC Rcd at 3833, ¶303.

Thus, this issue has been resolved by the FCC against AT&T. This position is further supported by the FCC's Line Sharing Order, which initiated the line-splitting requirement. This order specifically stated that ILECs such as Qwest had the option of providing line splitters itself or, in the alternative, allowing CLECs to place their splitters in the ILEC's central offices.[23]

Interestingly, the FCC believes that providing CLECs with the option to own lines splitters is to the CLEC's advantage, since it ensures that the ILEC cannot limit the CLEC's ability to deploy competitive services.[24]

Thus, the FCC has specifically stated, not once but twice, that ILECs are not required to own and install splitters for CLECs that can be obtained on a line at a time basis.

Moreover, this issue has also been determined by the Texas Commission. In the case of Southwestern Bell (SWBT), it was utilizing non-integrated outboard splitters as part of a managed data service it was offering. Because outboard splitters were already available to an SWBT affiliate, the Texas Commission mandated that the CLECs could also use the SWBT outboard POTS splitters. Additionally, the Texas Commission clarified in its order:

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[23] Line Sharing Order at ¶146.

[24] Line Sharing Order at ¶76.

> "The Commission clarifies that this finding applies only to "stand-alone" splitters, as requested by AT&T in this docket. This does not apply to a splitter that has been incorporated into a DSLAM."[25] (emphasis added)

Covad even admits in the testimony of Mr. Zulevic that the FCC has placed no such obligation on the ILECs: "Although the FCC has declined to rule on the issue of splitter ownership at this time (FCC 01-26 para. 25)."[26] Still, Mr. Zulevic goes on to state that "outboard" splitters must be made available for use in line splitting.[27] Qwest does not currently provide non-integrated (i.e. outboard) POTS splitters to an affiliate. The only splitters used in Qwest's central offices are those that are integrated into the Qwest DSLAM unit. Within both the Cisco and Lucent platforms used by Qwest, there is a separate shelf for the splitters. However, the DSLAM shelves are hardwired directly to the back of the data ports of the splitters. These hardwired connections are made with amphenol connectors. Qwest's current architecture for DSLAM and splitter deployment does not call for circuit board integration, due to critical need to maintain voice service if a DSLAM card fails or is removed for maintenance purposes. However, Qwest's believes that the integration of DSLAMs and splitters is not defined exclusively by circuit board integration.

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[25] Order Approving Revised Arbitration Award, PUC Docket No. 22315, Public Utility Commission of Texas, page 9.

[26] Covad at page 20.

[27] Covad at page 20.

From a design and provisioning perspective, the DSLAM modems and the POTS splitters are considered as one unit. This translates into one and only one point of demarcation between the shared loop and the Splitter/DSLAM port combinations. Also, the interface to the ATM switch is seen as one demarcation point. Furthermore, the equipment bays that house the POTS splitter and DSLAM units are ordered from the manufacturer as one unit EF&I (Engineered, Furnished, and Installed) unit. Finally, Qwest's technicians do not have access to the cable between the Splitter and the DSLAM for testing. Testing is performed at the MDF. Therefore, it is impossible to provide access for another provider to the Qwest-owned splitter. In summary, Qwest does not use the type of "outboard splitters" that could be shared between Qwest and other CLECs.

Therefore, the Qwest position that POTS splitters in Washington must be provided by the CLEC or DLEC is consistent is with both the FCC and the Texas Commission on this issue.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

Issue LS-4 - Sharing over fiber loops: Whether Qwest's language meets the requirements of the FCC's supplemental line sharing order that discussed fiber facilities.

A. Covad, WCom and AT&T seek to impose new obligations, in addition to those the FCC currently imposes, on Qwest to provide line sharing over fiber.[28] In the Line Sharing Reconsideration Order, the FCC clarified Qwest's current obligation:

> where a competitive LEC has collocated a DSLAM at the remote terminal, an incumbent LEC must enable the competitive LEC to transmit its data traffic from the remote terminal to the central office. The incumbent LEC can do this, at a minimum, by leasing access to the dark fiber element or by leasing access to the subloop element.[29]

These CLECs do not dispute that Qwest complies with this current obligation. Qwest provides CLECs with the network elements to transport data from Qwest remote terminals including unbundled dark fiber,[30] DS1 capable loops,[31] and OCN.[32] Qwest also provides CLECs with the ability to commingle its data with Qwest's data.[33]

The FCC then acknowledged that there may be additional ways to implement line sharing where there is fiber in the loop, which would turn on the inherent

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28 Covad at page 9, WCom at page 15, and AT&T at page 22.

29 Line Sharing Reconsideration Order ¶12.

30 *See* SGAT section 9.7.

31 *See* SGAT section 9.2.

32 *See* SGAT section 9.2.2.3.1. Qwest also offered to add the following sentence at the end of section 9.2.2.3.1: "Qwest shall allow CLECs to access high capacity loops at accessible terminals including DSX, FDPs or equivalent in the Central Office, customer premises or at Qwest owned outside plant structure (e.g., CEV, RT or hut)."

capabilities of the equipment ILECs have deployed.[34] Accordingly, the FCC initiated two further notices of proposed rulemaking to request comments to explore the feasibility of additional methods of providing line sharing over fiber fed loops.[35] Clearly, the FCC has not imposed any additional obligations, but has merely begun the process for considering whether to impose any such additional obligations. Nonetheless, the CLECs demand that the Commission impose additional line sharing obligations of the very kind the FCC intends to study through the comments it has requested.

Specifically, the CLECs demand that Qwest delete a reference to copper loops in SGAT section 9.4.1, which describes Qwest's line sharing offering, and broaden the reference to include other loops. These revisions would expand Qwest's line sharing obligations. As fully discussed above, this section 271 proceeding is not an appropriate forum for imposing new obligations. Moreover, the CLEC proposal would render the SGAT's description misleading because Qwest cannot currently offer line sharing over anything other than a copper loop.

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[33] *See* SGAT section 9.20 (unbundled packet switching).

[34] Line Sharing Reconsideration Order ¶12.

[35] *Line Sharing Reconsideration Order* ¶12 ("For these reasons, we are initiating a Third Further Notice of Proposed Rulemaking today in the Advanced Services docket and a Sixth Further Notice of Proposed Rulemaking in the Local Competition docket that requests comment on the feasibility of different methods of providing line sharing where an incumbent LEC has deployed fiber in the loop.").

Nonetheless, Qwest has offered to add the following language to section 9.4.1.1. to the SGAT:[36]

> …To the extent additional line sharing technologies and transport mechanisms are identified, and Qwest has deployed such technology for its own use, and Qwest is obligated by law to provide access to such technology, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access.

AT&T has refused to accept this offer, claiming that Qwest must do more. In addition, Covad has requested that this language be modified to strike the "and Qwest is obligated by law to provide access to such technology" and the concept that rates terms and conditions may need to be amended.[37] It is not a given that every new capability that Qwest deploys will have to provided via a line sharing arrangement. Qwest will not blanket waive its rights to review its legal obligations prior to making a new technology available in a line sharing arrangement. Moreover, the rates, terms and conditions that have been developed for line sharing have assumed a cooper loop. Qwest is unable to say that some new (as yet unknown) technology will have the same requirements and cost structure as cooper loop line sharing.

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[36] The new proposed section 9.4.1.1 appears as the last page of Exhibit 5 Qwest 21, excerpt from transcript of Multistate workshop.

[37] Covad at line 15.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

<u>Issue LS-5</u> - Is Qwest required to provide "plug and play" capability in its DSLAMs for CLECs when all the four FCC conditions are not met.

A. Qwest is under no obligation to provided plug and play capability as requested by Covad.[38] Plug and play is a term commonly used in conjunction with customer provided equipment (CPE). In this context, an ADSL modem, for example, is plugged into a computer is capable of performing without additional intervention. It literally is plugged in, trains up, and is ready for use. Next Generation Digital loop carrier (NGDLC) line cards do not exist that can perform in a plug and play manner

NGDLC and DSLAM line cards rely on control cards and trunk cards located within the same shelf as the line cards. Using the DSLAM as an example, the line card performs modem functions, the control card maps virtual channels to individual line cards, and trunk cards aggregate virtual channels for transport back to an ATM switch. DLC and DSLAM line cards are connected through integrated backplane wiring of the DLC or DSLAM shelves. There is no physical demarcation between the line card and other system elements within the DSLAM or NGDLC shelf. This makes isolation of a line card as a standalone network element impossible.

Moreover, none of Qwest's NGDLC or DSLAM manufacturers provide network management systems that are capable of partitioning a single line card. This makes it impossible for CLECs to provision and maintain individual line cards in the NGDLC and DSLAM systems.

Therefore, without the ability to operate in a standalone manner, without the ability to provision and maintain individual line cards through network management systems, and without a physical network demarcation for testing and trouble isolation, it is technically infeasible to unbundle the NGDLC and DSLAM platforms themselves.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

<u>Issue LS-6</u> - Whether the 10,000 line limit in Section 9.4.2.3.1 is appropriate.

A. Covad is the only CLEC that takes issue with part (c) of the following sentence in section 9.4.2.3.1:

> If CLEC elects to have POTS splitters installed in Qwest Wire Centers via Common Area Splitter Collocation, the POTS splitters will be installed in those Wire centers in one of the following locations: (a) in a relay rack as close to CLEC's DS0 termination points as possible; (b) on an ICDF to the extent such a frame is available; or (c) where options (a) and (b) are not available, or in Wire Centers with network

[38] Covad at page 14.

access line counts of less than 10,000, on the Cosmic/MDF or in some other appropriate location such as an existing Qwest relay rack or bay.

In particular, Covad seeks to be able to collocate a splitter on the Cosmic/MDF in every circumstance. Covad appears to base its argument solely on a belief that Qwest allowed a CLEC to avoid the 10,000 line limit in a large central office in Colorado.[39] Covad acknowledged that this situation occurred because the frame at issue was an IDF that became an ICDF, which does not face the 10,000 line restriction. Thus, this isolated incident in Colorado does not support Covad's request. More importantly, Covad offered no evidence of any similar situation in Arizona or Washington.

Regardless, this issue should be resolved in Qwest's favor. First, there is no obligation for Qwest to allow Cosmic/MDF splitter collocation in all circumstances. Second, Covad's proposal would preclude Qwest from recovering its legitimate costs that it incurred based on the Interim Line Sharing Agreement. Qwest is entitled to recover its just and reasonable costs of providing CLECs access to its facilities and equipment.[40] The CLECs agreed to the 10,000 limitation in the Interim Line Sharing Agreement. Based on the Interim Line Sharing Agreement,

[39] It is interesting to note that Covad has abandoned its earlier claim that this situation constituted discrimination. Although Covad described the situation as discrimination in the Colorado workshop, Covad made no such claim at the workshop in this proceeding. This about-face is likely attributable to two factors: Qwest's submission of conclusive evidence in the Colorado proceeding that established that there was no factual basis for any such claim, and the complete absence of any facts to support such a claim in Washington.

[40] *Iowa Utilities Board v. FCC*, 219 F.3d 744, 750 (8th Cir. 2000), *cert. granted* January 22, 2001.

Qwest invested heavily in relay racks and bays for CLEC splitters collocated in a common area. Covad now wants Qwest to eat that cost.

Finally, Qwest's position is eminently reasonable: Qwest will remove the restriction for situations in which the current line splitter bays and racks have been fully utilized.

Thus, the 10,000 line limit is not only reasonable, but it is also necessary to ensure Qwest recovers its legitimate costs related to line sharing.

<u>Issue LS-7</u> - Whether Qwest must provide data continuity testing on every line sharing order.

A. Covad has requested that Qwest revise the SGAT to insert an obligation to conduct a data continuity test as part of the line sharing provisioning process. Such testing would require test gear that is compatible with the CLEC's chosen xDSL services.

The FCC has clearly delimited Qwest's obligation regarding testing. Qwest's sole obligation is to provide CLECs access to the loop facility so that they can test for themselves.[41] The CLECs have not alleged that Qwest has failed to fully implement this obligation. Because different CLECs deploy varying DSLAM equipment, this demand would force Qwest to incur the substantial burden and expense of obtaining a range of types of test gear that are compatible with the

various CLECs' xDSL services, and making that gear available at various places in the network. Again, this demand is clearly beyond the scope of the FCC's current requirements and must be rejected as not appropriately raised in this proceeding.

Issue LS-8 - Qwest central office technicians training on central office requirements for line sharing orders.

A. Covad implies in their rebuttal testimony that Qwest has not adequately trained its central office technicians to process line sharing orders.[42] Qwest had conducted initial training in all central offices equipped with line sharing equipment. However, it took longer than anticipated for the DLECs to start placing line shared orders and it was necessary to re-train some technicians. Qwest took the additional steps of developing job aids and re-training all central office technicians.

Earlier this year, a Qwest line sharing process annalist traveled to Arizona, Minnesota, Colorado and Utah to specifically meet with Covad to spot check the level of proficiency of central office technicians. Qwest allowed Covad to randomly select the central offices, and do surprise checks on each technician's understanding of how to handle line sharing orders. At each of the central offices visited, Covad was satisfied with the technicians knowledge and understanding of the job aid. In summary, training may have been an issue with initial orders, but

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41 *Line Sharing Reconsideration Order* ¶27.

42 Covad at page 6.

Qwest is not aware of any current training issues in Washington (or any other state) at this time. Qwest believes this issue is closed between the parties.

Issue LS-9 - Qwest line sharing performance in Washington.

A. Covad claims in confidential exhibits that Qwest line sharing performance results are significantly worse than the actual situation. The testimony of Ms. Jean Liston describes in detail Qwest's concerns with the data provided by Covad. Attached as Exhibit KAS–55 is the actual results for Qwest emerging services in Washington. Moreover, Qwest ability to provision line sharing will be objectively tested by the Regional Oversight Committee's ("ROC") Third Party Operation Support System (OSS) test.

V. SUBLOOP ISSUES

Q. WHAT ISSUES HAVE BEEN RAISED BY INTERVENORS REGARDING QWEST'S SUBLOOP OFFERING?

A. The comments have the other parties identified the following issues regarding Section 9.3 Subloop in the SGAT. I have identified the subloop issues with the prefix "SB."

Issue SB-1 - MTE Subloop Access: Whether the SGAT's provisions for access to subloop elements at MTE terminals is consistent with the FCC's definition of, and rules regarding access to, the unbundled NID.

A. Qwest and AT&T have reached impasse regarding whether the SGAT section on subloop access is consistent with the FCC's definition of the unbundled network

interface device ("NID"). Qwest is confused about this issue, as it appears to be an unnecessary hold over from the time when Qwest demanded collocation in MTE terminals. The SGAT allows CLECs to access NIDs (demarcation points) and MTE terminals (when subloop access is required) in exactly the same way. Despite this, AT&T contends that any accessible terminal containing a protector in an MTE is a NID and subject to the FCC's rules on access to the unbundled NID.

Before discussing the merits of AT&T's position, Qwest would like to make a practical point. This is simply a terminology issue, nothing more. There is no difference in what CLECs will obtain. The only issue is what do we call these terminals when they are demarcation points and what do we call these terminals when they are not. Qwest asserts that the terminals should have different names to leave absolutely no confusion about whether a subloop is involved or not. When an MTE Terminal is involved, subloop is necessarily there. When a NID is ordered, it is necessarily the demarcation point. We do not need to add a level of confusion for the individuals who must implement the SGAT.

Rule 319 (a)(2)(D) provides that "[a]ccess to the subloop is subject to the Commission's collocation rules." In order to avoid the application of the collocation rules, AT&T claims that the accessible terminals it seeks to access in conjunction with subloop elements constitute unbundled NIDs, and therefore are not subject to the collocation rules.

In the UNE Remand Order, the FCC required unbundling of subloops[43] and of the NID.[44] The FCC defined the NID unbundled network element in the *UNE Remand Order*. Specifically, the FCC defined "the NID to include any means of interconnection of *customer premises wiring to the incumbent LEC's distribution plant*, such as a cross-connect devise used for that purpose."[45] The FCC acknowledged that it was establishing a particular definition for the NID unbundled network element: "[T]he NID definition, *for purposes of our unbundling analysis*, should be flexible and technology-neutral."[46] The FCC then reiterated that this discrete UNE NID definition includes any variation in "the hardware interfaces *between carrier and customer premises facilities,*" i.e., the demarcation point.[47] Thus, the FCC plainly defined the unbundled NID, regardless of the technology the NID employs, as the demarcation point at which the customer premises facilities begin.

In defining the UNE NID, the FCC expressly "declined to adopt parties' proposals to include the NID in the definition of the loop."[48] Instead, FCC carefully distinguished the unbundled NID demarcation point from the *functionality* of the

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43 *UNE Remand Order* ¶¶202-229.

44 *UNE Remand Order* ¶¶230-240.

45 *UNE Remand Order* ¶233 (emphasis added).

46 *UNE Remand Order* ¶234 (emphasis added).

47 *Id.* (emphasis added).

48 *UNE Remand Order* ¶235.

NID. Because competitors "acquire the *functionality* of the NID for the subloop portion they purchase," the FCC determined that there is "no need to . . . include the NID as part of any other subloop element."[49] Thus, the FCC created a distinction between the unbundled NID, which is defined as the demarcation point, and the functionality of the NID, which is included in the subloop elements CLECs purchase.

Moreover, the FCC specifically stated that its collocation rules apply to all accessible terminals on the loop: "[W]e intend to make collocation available at all accessible terminals."[50] The reason for making collocation available is to establish the "methods and standards of obtaining interconnection."[51]

In describing the accessible terminals at which subloop elements can be accessed, the FCC explicitly contemplated that collocation would apply: "Accessible terminals contain cables and their respective wire pairs that terminate on screw posts. This allows technicians to affix cross connects between binding posts of terminals *collocated* at the same point."[52]

The crux of the disagreement between AT&T and Qwest turns on the FCC's description of these two UNEs – subloop and NID. Essentially, AT&T claims that

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49 *UNE Remand Order* ¶235.

50 *UNE Remand Order* ¶221.

51 *UNE Remand Order* ¶221.

any accessible terminal that includes the cross-connect and electrical overvoltage protections that a NID performs constitutes a NID to which Qwest must provide unbundled access pursuant to Rule 319(b). This contention ignores the FCC's plain distinction between the functionality of the NID, which the FCC expressly held is included as part of a subloop, and the unbundled network element NID, which the FCC clearly defined as the demarcation point between "end-user customer premises wiring [and] the incumbent LEC's distribution plant."[53]

AT&T ignores this distinction. AT&T claims that the NID is any accessible terminal that contains an over voltage protector and cross-connects. This claim clearly focuses on the functionality of the NID. As set forth above, the FCC specifically determined that the functionality of the NID is part of the subloop element, but that functionality does not satisfy the definition of the unbundled NID.

Thus, pursuant to the *UNE Remand Order*, the terminals to which AT&T repeatedly referred in the workshop as "NIDs" are simply accessible terminals through which CLECs access subloop elements. Pursuant to Rule 319(a)(2)(D), these terminals constitute "[a]ccess to the subloop [and] is subject to the Commission's collocation rules." As a matter of law, CLECs must be required to

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[52] *UNE Remand Order* ¶206 n.395 (emphasis added).

[53] *UNE Remand Order* ¶233.

comply with the collocation rules when they access subloop elements at accessible terminals.

Issue SB-2 - LSR issuance: Whether CLEC must issue a LSR for each subloop it orders from Qwest.

A. Submission of an LSR is the industry standard for wholesale orders. The OBF is the national industry forum that creates and maintains LSR ordering guidelines. These guidelines are the de facto standard for ordering UNEs. The OBF has considered how subloop unbundling should be ordered and is nearing closure on its draft solution. The process the OBF has defined for ordering subloops is based on submission of an LSR.

The industry standard requires submission of an LSR for ordering for good reason. The LSR contains information Qwest requires for billing, tracking inventory, and identifying the circuit for maintenance and repair purposes. Timely submission of the LSR is required so that Qwest can satisfy its obligations to manage and maintain its network and to bill and recover the payment to which it is entitled for the element. More importantly, both CLEC and Qwest customers will be adversely affected by the lack of a timely LSR due to the resultant inaccuracies in Qwest's systems, which will impede Qwest's repair efforts.

AT&T's latest contention is that it is too costly to submit LSRs. Yet, AT&T does not object to submitting LSRs when the end user customer they are going to serve

wants its number ported. AT&T has estimated that 80% of the time this will be the case. So in the remaining 20%, AT&T proposes a non-standard, one-off process that does not eliminate cost but rather increases it. The difference with AT&T's proposal, is that all the cost of having to deploy methods, processes, training and system changes are borne by Qwest.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

Issue SB-3 - Inventory of facilities: Whether an inventory of CLEC facilities must be created before CLECs may obtain access to subloop elements in an "MTE terminal."

A. AT&T contends that Qwest should inventory CLEC facilities after, rather than before, the CLEC has completed its installation process. AT&T's only argument here is one of timing. They claim they would be unfairly prejudiced by waiting for the inventory. Qwest has agreed to provide this inventory in five days. Moreover, this inventory interval only applies before the first subloop order in a MTE. Once the inventory is complete, the CLEC may submit LSRs and provision the jumpers at the MTE terminal on the same day. Each subsequent sub-loop in that MTE can be accessed on a same day due date basis as long as the CLEC has the available resource to provision the jumper.

Further, a CLEC's business plan will be in place well before marketing actually begins. AT&T could notify Qwest in advance of the targeted MTEs so that the inventory can be completed before the CLEC even begins marketing, eliminating AT&T's concern. Accordingly, AT&T's argument should be rejected.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

<u>Issue SB-4</u> - Whether Qwest must determine whether it owns the intrabuilding cable (or inside wire) before a CLEC may access subloop elements. Assuming Qwest's processes (including Qwest's determination of ownership, inventory of terminations, FCP and collocation processes) are appropriate, whether the intervals provided by Qwest for such processes are appropriate.

A. Qwest's subloop proposal specifically provides Qwest with ten days from a request from a CLEC to determine whether Qwest or the landlord owns the facilities on the customer side of the MTE Terminal. AT&T objects to Qwest determining whether it owns MTE wiring prior to the CLEC accessing subloop elements.

This process is necessary because it determines where Qwest's network -- and its maintenance and repair obligations -- ends and the customer premises facilities begin. Without this determination, Qwest and the CLEC do not know if CLEC requires a subloop element from Qwest or cable owned by the landowner or both. Because AT&T stated no real objection to the need for the determination, but rather focused on the interval, this issue is dealt with in the next section regarding

intervals. Indeed, in the Colorado follow-up workshop on emerging services the week of April 16, 2001, AT&T proposed SGAT language requiring Qwest to perform the ownership inquiry.[54]

Qwest has proposed standard intervals to address the amount of time Qwest has to perform the up front work required to gather the appropriate information and enter it into Qwest's systems.

Qwest's ten calendar day interval for determining ownership of MTE wiring is reasonable. In the *MTE Order*, the FCC held that the ILEC has up to ten business days to determine ownership of the intrabuilding cable.[55] Therefore, Qwest's ten calendar days interval is less than the amount of time it is entitled to by the FCC. Moreover, Qwest will complete this step in less time if possible. It should also be noted that, in the Colorado follow-up workshop on emerging services the week of

[54] AT&T proposed SGAT, filed April 19, 2001 in the Colorado workshop as Exhibit 3 ATT 4, section 9.3.8.2 ("Qwest shall reply to such MTE Ownership Request within (a) ten (10) days, if CLEC's request is the first request for access at such MTE ").

[55] First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets, Wireless Communications Association International, Inc. Petition for Rulemaking to Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 96-98 & 88-57, FCC 00-366 (Rel. October 25, 2000) ("*MTE Order")* ¶56.

April 16, 2001, AT&T proposed language giving Qwest ten days to perform the ownership inquiry.[56]

Once ownership is determined, the interval for inventorying the CLEC's terminal begins. Qwest reduced its original proposal for the inventory interval from ten to five calendar days, running from the end of the interval for determining ownership. During this five day period, Qwest accomplishes the vital steps discussed above to get the addressing information for the CLEC's terminations entered into Qwest's systems so that the CLEC can issue an LSR. Five days is a reasonable period to allow for Qwest to accomplish this important task so that CLECs can order subloops by LSR and avoid the problems, that would result from any ordering process that does not involve submitting an LSR. In prior workshops, AT&T has stated that an inventory was not necessary at all because CLECs should not be required to submit LSRs. This objection does not make sense, because in the vast majority of cases as LSR is required for number porting.

It is also important to remember that the ownership inquiry and the inventory are required only once. After the first subloop order in a MTE, these intervals do not apply. For those subsequent orders, the interval is either zero days (for intrabuilding cable) or five days (for distribution subloop). The initial infrastructure

[56] AT&T proposed SGAT, filed April 19, 2001 in the Colorado workshop, section 9.3.8.2 ("Qwest shall reply to such MTE Ownership Request within (a) ten (10) days, if CLEC's request is the first request for access at such MTE ").

intervals, which total 15 days, are reasonable in view of the work involved. Indeed, AT&T itself must perform work in the MTE before getting customers, such as putting its own terminal in the MTE and running conduit to the Qwest MTE Terminal.[57] Thus, the one-time infrastructure work taking up to 15 days should not have any negative effects on a CLEC's marketing plan.

At prior workshops, Qwest has eliminated the SGAT provision requiring an FCP for MTE terminals in order to simplify access to those terminals. When an FCP is required, the CLEC accesses the subloop by collocation of equipment or by simplified cross-connect collocation in the terminal. The FCP and cross-connect installation interval is 90 days. AT&T did not focus specific criticism on this interval, so Qwest is unable to do more than provide in a general way the basis for this interval. First, the FCC's rule on subloop expressly indicates that collocation applies to subloop access.[58] Second, the FCC adopted a standard 90 day collocation interval for all forms of collocation.[59] The 90 day interval was adopted without objection in the collocation workshops. There is simply no reason to utilize any different interval and AT&T has not attempted to put forth evidence explaining why a shorter interval is appropriate.

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[57] Testimony of Daniel C. Keating, III on Behalf of AT&T Communications of the Pacific Northwest, Inc., dated March 19, 2001, at page 4, line 20 to page 5, line 5 ("Before AT&T markets to potential customers, it prepares the building by running a one inch weather proof conduit from its cross connect box to the Qwest MPOE Terminal/NID").

This issue has two parts: first, whether Qwest will waive the rights it has to confidentiality of agreements it has with MTE owners (MTE Agreements) with the exception of dollar amounts.[60] Second, if the first answer is affirmative, whether Qwest will amend the Consent to Disclosure form attached to the SGAT to disclose such a limited waiver.

In its written submission, Qwest answered both parts of this issue in the affirmative. Qwest agreed to a limited waiver[61] of confidentiality to permit disclosure of MTE Agreements to CLECs for the legitimate purposes of access to subloops and access to ducts, conduits, and ROW without the dollar amounts and without disclosure to their marketing, sales or product management staffs. In addition, Qwest attached a new SGAT section 10.8.2.27 that describes the process for disclosing MTE Agreements, along with a new Exhibit G, Consent to Disclosure form, to the SGAT. Because Qwest has agreed to implement both aspects of this issue, the issue should be closed by consensus.

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[58] Rule 319 (a)(2)(D) provides that "[a]ccess to the subloop is subject to the Commission's collocation rules."

[59] *Collocation Order* ¶27 (FCC 00-297, released 8/10/00).

[60] In other states, Qwest and CLECs have reached consensus that dollar amounts should be redacted.

[61] Consistent with the narrow legitimate uses of MTE Agreements and with Qwest's rights to their confidentiality, Qwest insists that CLEC not disclose MTE Agreements to CLEC agents or employees engaged in sales, marketing, or product management efforts on behalf of CLEC, and Qwest continues to require the redaction of dollar amounts. In other words, CLECs have no legitimate need to know the dollar amounts in MTE Agreements or to disclose them to marketing or sales or product personnel.

Issue SB-5 - Whether CLEC is entitled to the option of having Qwest or CLEC run jumpers necessary to access subloops in MTE terminals regardless of the type of subloop ordered or is section 9.3.5.4.5 the proper approach.

A. In previous workshops, AT&T has objected to Qwest's requirement that, if the subloop element the CLEC is accessing is a distribution element, then Qwest must run the jumper. By having CLECs run the jumpers in MTE Terminals when CLECs order intrabuilding cable, Qwest has gone well beyond its FCC requirements as well as the subloop unbundling policies of other ILECs such as Bell Atlantic and SBC. Qwest's position is consistent with *GTE v. FCC*, 205 F.3d 416 (D.C. Cir. 2000). First, this decision emphasized that the FCC *Collocation Order* provided that a LEC "may take reasonable steps to protect its own equipment, such as enclosing the equipment in its own cage."[62] Second, the court also stated:

> Even counsel for the Commission seemed unwilling to embrace an expansive view of paragraph 42: He suggested that LECs should be allowed to choose the collocation space; he also suggested that the LECs should be allowed to segregate collocation space from the rest of a LEC's property. . . .[63]

Thus, the FCC took the position that a LEC is allowed to take reasonable steps to protect its own equipment, up to and including segregating its equipment from CLEC equipment in a collocation space. Such segregation would allow the LEC to preclude a CLEC from being able to access LEC services and equipment. The only way Qwest can reasonably protect its equipment and prevent CLECs from

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62 *GTE v. FCC*, 205 F.3d 416, 426 (D.C.Cir. 2000).

63 *GTE v. FCC*, 205 F.3d 416, 426 (D.C.Cir. 2000).

accessing the cable pairs though which Qwest provides local exchange service, is to limit access for the purpose of running the jumpers to Qwest technicians. Both SBC and Verizon have obtained 271 approval with a policy of running jumpers in all circumstances.

At CLECs request Qwest's SGAT has CLECs performing jumper work in MTE Terminals.[64] CLECs run their own jumpers in MTE Terminals for access to intrabuilding cable subloops, which is where the vast majority of the demand for MTE subloops is. Moreover, CLECs can often bypass the distribution loop and bring their loop directly to each building in a campus environment. However, Qwest's systems do not allow for CLECs to run the jumpers in MTE Terminals for distribution subloops. While the Qwest systems do recognize terminals as MTE Terminals or Detached Terminals. The Qwest systems do recognize the difference between intrabuilding cable subloops and distribution subloops, which is why Qwest can allow CLECs to run jumpers for intrabuilding cable subloops, those systems do not recognize terminals as MTE terminals or Detached Terminals.

The result is that there is no way for Qwest to know not to roll a truck for distribution subloop order involving a MTE Terminal. Moreover, it is simply not possible for Qwest to run the jumpers on an order for intrabuilding cable because

[64] SGAT Section 9.3.5.4.5. ("If CLEC ordered intrabuilding Cable Loop, CLEC shall dispatch a technician to run a jumper between its Subloop elements and Qwest's Subloop elements.")

the terminal in that situation will not have CLEC terminations on a cross connect field. Consequently, Qwest technicians will not have any idea where to connect the subloop unless a full FCP was installed at the MTE Terminal. This is not the case where distribution subloop is ordered at an MTE terminal because the terminals that serve distribution subloop will have the CLEC terminations on a cross connect field so that the Qwest technicians will be able to figure out where to connect the subloop.

Issue SB-6 - Distribution subloop definition: whether the rate for distribution subloop facilities on a campus, including cabling between buildings, should be the same as distribution subloop or priced as a separate subloop element.

A. Qwest's current cost studies have averaged the distribution facilities that serve typical residences with the shorter distribution that can occur in an MTE. This is the way both the Qwest and AT&T cost models calculate distribution. If the distribution element were to be deaveraged into two elements – residential distribution and MTE distribution -- the result will be that the rate for the distribution portion of the loop going to typical residences will increase while the rate for the distribution subloop on MTEs would drop. This would raise serious policy issues. In other words, this deaveraging (which is not echoed in retail rates) would artificially divert resources away from competition for customers in single tenant buildings and toward competition in MTEs.

Although supporting competition in MTEs is laudable, it is not without costs in the form of lessening the likelihood of competition in single tenant situations. The delicate balancing of these interests must be done carefully by the Commission in a cost docket. Moreover, since retail rates would not be similarly super-deaveraged, it would create perverse economic incentives and cause an inordinate amount of competitive resources to be diverted to MTEs from single tenant environments. This issue is already being considered in a separate docket where appropriate costing data has been made available to the Commission.

Issue SB-7 - Applicability of FCP requirement for subloop access.

A. Covad expressed concerns about the field connection point (FCP) process for subloop access.[65] These concerns are misplaced. The FCP ensures that a cross-connect field exists providing a physical demarcation that will allow for easy cross-connection between CLEC and Qwest facilities. The existence of a cross-connect field makes it simple for Qwest technicians to identify and locate its facilities, and for the CLEC to identify and locate its facilities for purposes of provisioning, maintenance and repair. It also ensures that good engineering practice is used, that facilities are properly marked and limits the possibility of one carrier accidentally disconnecting another carrier's customer. This is the first time that the

[65] Covad at page 10.

issue of FCP's in detached terminals has arisen in any state. In every other state, the issue closed as consensus.

The FCP, in connection with what is now described as cross-connect collocation, creates the very cross-connect field and demarcation point that will make it simple for CLEC and Qwest alike to access such subloop facilities.

In response to Covad's concern about intervals, the FCP will be normally be completed within the 90 days identified for collocation as Covad suggested, as documented in the SGAT:

> 9.3.5.5.2.1 The following constitute the intervals for provisioning Collocation associated with a FCP, which intervals shall begin upon completion of the FCP Request Form and its associated Collocation Application in their entirety:
>
> 9.3.5.5.2.1.1 Any Remote Collocation associated with a FCP in which CLEC will install equipment requiring power and/or heat dissipation shall be in accordance with the intervals set forth in Section 8.4.
>
> 9.3.5.5.2.1.2 A Cross-Connect Collocation in a detached terminal shall be provisioned within ninety (90) calendar days from receipt of a written request by CLEC.
>
> 9.3.5.5.2.1.3 Reserved for Future Use
>
> 9.3.5.5.2.1.4 Reserved for Future Use
>
> 9.3.5.5.2.1.5 Qwest may seek extended intervals if the work cannot reasonably be completed within the set interval. In such cases, Qwest shall provide written notification to CLEC of the extended interval Qwest believes is necessary to complete the work. CLEC may dispute the need for and the duration of, an extended interval, in which case Qwest must request a waiver from the Commission to obtain an extended interval.

Covad also requests the ability to place the FCP inside a Qwest terminal and not have the CLEC be required to build a separate structure. The SGAT already permits CLECs to use space when available, it is only when space is exhausted that a separate structure is required:

> 9.3.1.4.3 A FCP arrangement can be established either within a Qwest accessible terminal, or, if space within the accessible terminal is legitimately exhausted and when technically feasible, CLEC may place the FCP in an adjacent terminal. CLEC will have access to the equipment placed within the Collocation for maintenance purposes. However, CLEC will not have access to the FCP Interconnection point.

Qwest does agree that similar SGAT provisions when a denial of space for other types of collocation could apply for denial of space for cross connection collocation. The relevant SGAT section is:

> 8.2.1.11 If Qwest denies a request for Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to tour the entire Premises escorted by Qwest personnel within ten (10) calendar days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed floor plans for the Premises with CLEC during the tour, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the tour of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Collocation Application date for determining RFS unless both Parties agree to a revised date.

Qwest would suggest the following practical changes to this SGAT section to make it applicable to cross connect collocation, in particular, detailed space plans would not exist for many remote accessible terminals:

> If Qwest denies a request for Cross-Connect Collocation in a Qwest Premises due to space limitations, Qwest shall allow CLEC representatives to inspect the entire Premises escorted by Qwest personnel within ten (10) calendar days of CLEC's receipt of the denial of space, or a mutually agreed upon date. Qwest will review the detailed space plans (to the extent space plans exist) for the Premises with CLEC during the inspection, including Qwest reserved or optioned space. Such tour shall be without charge to CLEC. If, after the inspection of the Premises, Qwest and CLEC disagree about whether space limitations at the Premises make Collocation impractical, Qwest and CLEC may present their arguments to the Commission. In addition, if after the fact it is determined that Qwest has incorrectly identified the space limitations, Qwest will honor the original Cross-Connect Collocation Application date for determining RFS unless both Parties agree to a revised date.

In addition, Qwest does agree to allow the CLEC the option to test and do an acceptance inspection of the Cross-Connect Collocation, i.e. FCP, as part of the standard process. Qwest would propose the following new SGAT language:

> Payment for the remaining nonrecurring charges shall be upon the RFS date. Upon completion of the construction activities and payment of the remaining nonrecurring charge, Qwest will schedule with CLEC an inspection of the FCP with CLEC if requested. Upon completion of the Acceptance inspection, CLEC will be provided the assignments and necessary ordering information. With prior arrangements, the CLEC can request testing of the FCP at the time of the Acceptance inspection. If Qwest, despite its best efforts, including notification through the contact number on the Cross-Connect Collocation Application, is unable to schedule the Acceptance inspection with CLEC within twenty-one (21) calendar days of the RFS, Qwest shall activate the applicable charges.

Qwest believes these changes should resolve Covad's concerns regarding the FCP process.

VI. DARK FIBER ISSUES

Q. WHAT ISSUES HAVE BEEN RAISED BY INTERVENORS REGARDING QWEST'S DARK FIBER OFFERING?

A. The comments have the other parties identified the following issues regarding Section 9.7 Dark Fiber in the SGAT. I have identified the dark fiber issues with the prefix "DF."

Issue DF-1 - Whether Qwest Corp.'s affiliates, including its parent corporation, are obligated to comply with the unbundling obligations of Sections 251 and 252 of the Act?

A. Qwest does not agree it is under any obligation to unbundle its affiliates network facilities. Please see the testimony of Ms. Mary LaFave for the factual information regarding this issue.

Issue DF-2 - Whether Qwest is required to unbundle dark fiber that is included in a "joint build arrangement" that Qwest enters into with a third party?

A. In a meet point arrangement, two entities combine to make a fiber route between two points. As part of the arrangement, the route is divided into two parts that come together at the meet point, and each entity owns one of the parts. Usually, each entity has some rights to send traffic over the fiber owned by the other party.

As Qwest has made clear in its SGAT, it will unbundle dark fiber that it owns as part of a meet-point arrangement. Specifically, Qwest added the following language to the SGAT:

> 9.7.2.20 Qwest shall allow CLEC to access Dark Fiber that is part of a meet point arrangement between Qwest and another Local Exchange Carrier if CLEC has an interconnection agreement containing access to Dark Fiber with the connecting Local Exchange Carrier. Qwest rates, terms and conditions shall apply to the percentage of the route owned by Qwest.

AT&T, however, wants Qwest to go further and unbundle dark fiber it does not own in such meet point arrangements. Qwest cannot and will not unbundle such dark fiber belonging to other entities.

Qwest has clearly met its legal obligations concerning this issue by committing to unbundle all dark fiber it owns in meet point arrangements. Section 9.7.2.20 provides the following:

> Qwest shall allow CLEC to access Dark Fiber that is a part of a meet point arrangement between Qwest and another Local Exchange Carrier if CLEC has an Interconnection agreement containing access to Dark Fiber with the connecting Local Exchange Carrier. Qwest rates, terms and conditions shall apply to the percentage of the route owned by Qwest.

The intent here is that Qwest will unbundle all the dark fiber it owns and controls in the route, but it cannot, nor is it obligated to, unbundle dark fiber it does not own or control. For the portion of the route that Qwest does not own or control, the CLEC

must go to the owner of that dark fiber and strike an agreement, which is what Qwest did.

AT&T points out Qwest may have rights to send traffic over the fiber owned by the other party and argues that CLECs are entitled to have those rights unbundled. This is not the case. First, whatever those rights may be, they are not Qwest dark fiber, and therefore, they are not subject to unbundling obligations as part of dark fiber. Second, failure of Qwest to unbundle those rights is not, as AT&T contends, discriminatory. Rather, having to deal with the third party that has no legal obligation to deal with Qwest is exactly what Qwest had to do. So it is not discriminatory that CLECs have to do the same. And the rights Qwest may have with regard to the third party's fiber depend on what Qwest provided to the third party in return.

To provide Qwest's rights to CLECs at TELRIC rates (which is necessarily implied by unbundling) when CLEC does not have to take over Qwest's duties under the arrangement with the third party would actually be unlawfully discriminatory against Qwest and possibly the third party. Moreover, the third party may have some legal rights against the unbundling to CLECs of Qwest's rights under the two-party arrangement.

Consequently, the Commission should reject AT&T's request as reaching far beyond not just the legal requirements placed on Qwest, to unbundle dark fiber.

Issue DF-3 - Whether Qwest's technical publications relating to dark fiber have been updated to be consistent with its SGAT language?

A. AT&T claims that Qwest's Technical Publication 77383 regarding dark fiber was not in all respects consistent with the recent SGAT changes regarding dark fiber. Qwest offered to revise the Technical Publication and provide a new draft within 30 days. Qwest performed on this offer, and the revised draft Technical Publication was filed and served in this proceeding on February 23, 2001. Qwest further has committed to allow such changes to be reviewed as part of the CLEC Industry Change Management Process (CICMP) process. Finally, Qwest also added section 2.3 to the SGAT:

> 2.3 In cases of conflict between Qwest's IRRG product descriptions, methods and procedures, or a Technical Publication, and this Agreement, the rates, terms and conditions of this Agreement shall prevail over such IRRG product descriptions, methods and procedures, or a Technical Publication.

This new language solves AT&T's concern over conflicts between the Technical Publication and the SGAT by clarifying that the SGAT will govern in such circumstances. The impasse arises because AT&T contends that the Technical Publication must be revised to its satisfaction before 271 can be satisfied.

Based on the foregoing, Qwest has more than fulfilled its 271 obligations. The SGAT requires Qwest to provide unbundled dark fiber. To the extent the Technical Publication may be inconsistent with the SGAT, the SGAT governs. In addition, Qwest has amended the Technical Publication. Checklist item

compliance depends on two elements: a legal obligation and performance.[66] As demonstrated above, the legal obligation is not in doubt. Performance will be demonstrated through the OSS testing. The workshop process exists to determine approval of the legal obligation conditioned on a demonstration of adequate performance as part of the OSS test. Consequently, the Washington Commission should find that the Technical Publication issue does not preclude a finding of conditional approval of Qwest's provisioning of dark fiber.

<u>Issue DF-4</u> - Whether it is appropriate for Qwest to apply the FCC's EEL restriction relating to special access services to unbundled dark fiber?

A. AT&T has challenged the following provision in the SGAT as unlawful:

> 9.7.2.9 CLEC shall not use UDF as a substitute for special or switched access services, except to the extent CLEC provides "a significant amount of local exchange traffic" to its end users over the UDF as set forth by the FCC (See 9.23.3.7.2).

AT&T claims that the FCC authorized such a restriction only for enhanced extended links (EELs) and not dark fiber per the FCC's *Supplemental Order Clarification* regarding the *UNE Remand Order*.

EELs are combinations of loop and transport.[67] Dark fiber is not a UNE unto itself, but rather a flavor of transport and loop.[68] The local exchange traffic restriction

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66 *Kansas/Oklahoma Order* ¶28.

67 *UNE Remand Order* ¶¶477, 480.

68 *UNE Remand Order* ¶¶174, 325.

pertains to combinations of loop and transport.[69] Thus, the local exchange traffic restriction does properly pertain to combinations of dark fiber loop and transport.

Moreover, the FCC's rationale for the local exchange restriction pertains to dark fiber combinations of loop and transport just as it does to EELs. The FCC imposed the restriction so as to prevent unbundling requirements from interfering with access charge and universal service reform.[70] In other words, an unfettered unbundling obligation would have erased substantial amounts of access charge revenues. In addition, access revenues have historically provided implicit subsidies that are necessary to maintain the goals of universal service. Without the local service restriction, dark fiber loop and transport unbundling could present a similar threat to access revenues and universal service.

Consequently, section 9.7.2.9 is just and proper under the FCC's *Supplemental Order Clarification*.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

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[69] *Supplemental Order Clarification,* In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183 (rel. June 2, 2000) ¶8.

[70] *Id.*

Issue DF-5 - DWDM Unbundling: Whether Qwest must unbundle fiber lit with DWDM equipment?

A. Covad contends that Qwest must unbundle fiber that is lit with dense wave division multiplexing (DWDM) equipment. This is sometimes called "dim fiber" and the Covad position has been referred to as "spectrum unbundling." Qwest has continually pointed out that such fiber fails the definition of dark fiber because it is lit. The FCC defined dark fiber as "fiber that has not been activated through connection to the electronics that 'light' it."[71] The lack of any such unbundling requirement has been confirmed by the fact that the FCC currently is considering whether to impose such a requirement in a rulemaking.[72] In prior proceedings, another CLEC, AT&T appears to have conceded this issue at the state level, given that in Colorado and in the 7 state proceeding, it has conceded that no such obligation exists.

In addition, there is very little DWDM in Qwest's network, and DWDM unbundling would necessitate new cost studies for dark fiber. Based on the foregoing, the Commission should find that Qwest has no obligation to unbundle fiber lit with

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[71] *Third Re[port and Order and Fourth Further Notice of Proposed Rulemaking,* In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238 (Rel. Nov. 5, 1999) (*UNE Remand Order*) ¶174. *See also id.* ¶325.

[72] *Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98,* In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-297 (rel. Aug. 10, 2000) ¶121.

DWDM equipment, and this Commission should wait and see how the issue is resolved during the above mentioned FCC rulemaking.

Issue DF-6 - UDF/ E-UDF rate structure.

A. WCom is concerned about the fact dark fiber has a different rate element for UDF and Extended-dark fiber (E-UDF).[73] The distinction Qwest has drawn between UDF and E-UDF is largely a question of rate design. Qwest's proposed rate design is consistent with the way costs for facilities analogous to unbundled dedicated transport (UDIT) has historically been recovered.[74] By delineating the unbundled dark fiber between the Qwest serving wire center and the CLEC central office as "E-UDF", Qwest's intent was to clearly identify that this specific segment of dedicated transport has historically been recovered as a non-distance sensitive rate element. All other interoffice transport has typically been cost modeled and rated on a fixed and per mile basis. For example, other transport services have this segment as a non-distance sensitive rate component, e.g., in Switched Access Services it is an "entrance facility" and in retail private line tariffs it is typically called a "termination."

This is a standard industry practice on how to rate dedicated transport and is not an inappropriate rate structure as implied by WCom. The FCC suggested use of

[73] Wcom at page 15.

[74] Dark fiber is a sub-set of UDIT.

existing rates for interstate dedicated switched transport as a default proxy for unbundled dedicated transport.[75] The FCC actually gave an example of the price structure difference between the equivalent of UDIT and EUDIT:

> Interstate access rates for dedicated transport vary by region, type of circuit, mileage, and other factors. For example, BellSouth's entrance facility charge, for transport from an IXC's point of presence to a BellSouth serving wire center, is $134 monthly per DS1 circuit ($5.58 per derived voice grade circuit) and $2,100 monthly per DS3 circuit ($3.13 per derived voice grade circuit). Dedicated transport for 10 miles of interoffice transmission between a serving wire center and an end office is $325 monthly per DS1 circuit ($13.54 per derived voice grade circuit) and $2,950 monthly per DS3 circuit ($4.39 per derived voice grade circuit). Installation, multiplexing and other transport-related charges may also apply.[76]

SBC's Texas 271 Agreement provides for a price structure similar to Qwest's distinction between UDIT and EUDIT:

> The price for dedicated transport is found in Appendix Pricing – UNE Schedule of Prices labeled "Interoffice Transport." Entrance facility rates are found in Appendix Pricing – UNE Schedule of Prices, labeled as "Dedicated Transport, Entrance Facilities." (T2A, Attachment UNE-TX, Section 8.2.1).

In reality, this "concern" among the parties is really a cost model and rate issue. Therefore, Qwest recommends that the cost and rate structure issues associated with the E-UDF portion of unbundled transport be deferred to the cost docket.

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[75] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, FCC-96-325 (Local Competition First Report and Order), ¶821.

[76] Local Competition First Report and Order, fn. 1948.

Issue DF-7 - UDF Light detecting equipment placement.

A. Qwest provides language that parties should mutually agree on the wire center at which Qwest must provide a light detector and the Wire Center at which CLEC must provide light generating equipment. WCOM believes such mutual agreement is an unnecessary step.[77] Qwest believes that light generating equipment (for Loop UDF) should be provided from the CLEC customer premises where the CLEC will be providing equipment to the Qwest serving wire center. Since Qwest is not providing the light generating equipment and does not have direct access to the CLEC customer location, the CLEC should provide a light source from their customer premises location.

Qwest still believes that mutually agreed to and coordinated testing of UDF-IOF is appropriate. The mutual agreement is meant to avoid confusion on any changes that might occur after the initial order has been placed. This step should not add any significant time delays to the process of testing the UDF-IOF. It is Qwest's intent to accept the CLEC's requested choice of central office where Qwest will place the light detecting equipment. It would be unusual that Qwest would have a strong preference to a particular central office.

[77] WCom at pages 15 to 16.

Issue DF-8 - IRI and FVQP rate clarifications.

A. WCom objects to charges based on inquiry and field verification of dark fiber locations and believes Qwest should have inventory and location for its dark fiber that does not require investigation of location of fiber. Qwest disagrees. The IRI recovers the cost for record checks into the TIRKS database and requires an engineer to verify records based on availability. This is necessary to ensure that the requested fiber routes have been identified and that there is not a hold or a reserved status on those routes for verification. It also identifies what work may have been completed prior to the IRI that is in queue to be posted to the records. This element is supported by cost studies for various job functions to verify results for requested fiber routes.

The FVQP Process incorporates more than just records check. FVQP is required for complex UDF requests which requires cost recovery for administrative activity from the CPMC, and Outside plant engineering. Additionally the FVQP takes into account engineering time, OSP tactical planning, records verification via TIRKS and other systems. OSP engineering is required to prepare a quote based on the complexity of the work needed to be completed. Work includes, but is not limited to, field check, travel time and verification of issues at the proposed location and setting up conformance testing. Qwest is allowed to recover all reasonable costs associated with making the dark fiber UNE available to CLECs. Any cost recovery concerns that WCom has should be referred to the Washington cost docket.

Issue DF-9 - Clarification of Cross Connect charges.

A. WCom states that Qwest is charging a rate element based on a per pair basis, rather than per mile basis as was originally proposed by Qwest. WCOM seeks to understand the basis for this change and questions why UDF, which is a "lit" version of IOF Transport, has a different cost structure; that is, why UDF is based on per pair rather than the per mile structure used for IOF Transport.

WCom's concerns are misplaced. The interoffice component of UDF is billed on a per pair per mile basis. The cross connection elements are per pair for cross connection work associated with delivering the dark fiber to the requested CLEC location within a central office, remote terminal or at a customer location. Following is the rate structure for each dark fiber configuration:

UDF-IOF (designed from Qwest wire center to Qwest wire center at CLEC collocations at each end). UDF-IOF is priced per pair per mile. UDF-IOF was the first dark fiber offering for Qwest and was always priced per pair per mile. This has a fiber cross connect rate element at each end office where the CLEC is collocated as well as a fiber cross connect element for each intermediate office the UDF-IOF passes through or transits.

UDF-Loop was introduced in 2000. The costs and rate elements are based on statewide average costs for fiber loops and are flat rated. The definition for loop UDF is a facility from the CLEC's customer location to a Qwest serving wire

center. The cost structure is totally different than the IOF model and is supported by cost studies as flat rated. The term used as IOF fiber cross connect for the loop structure is associated with the termination at the serving Qwest wire center.

Any additional cost recovery concerns that WCom has should be referred to the Washington cost docket.

VII. PACKET SWITCHING ISSUES

Q. WHAT ISSUES HAVE BEEN RAISED BY INTERVENORS REGARDING QWEST'S PACKET SWITCHING OFFERING?

A. The comments have the other parties identified the following issues regarding Section 9.20 Packet Switching in the SGAT. I have identified the packet switching issues with the prefix "PS."

<u>Issue PS-1</u> - Scope of Unbundling Obligation: Whether Section 9.20.2 of the SGAT is consistent with Qwest's obligation to provide nondiscriminatory access to unbundled network elements pursuant to the Act and the FCC's orders? In particular, has Qwest properly implemented the conditions regarding spare copper loops and remote collocation?

A. In its *UNE Remand Order*, the FCC modified Rule 319 to require unbundling of packet switching in very limited circumstances.[78] As the FCC has recently confirmed, Rule 319(c)(3)(B) requires an incumbent to unbundle packet switching only if each of the following preconditions is met: (1) the ILEC has deployed a

digital loop carrier system ("DLC"); (2) there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer; (3) it has not permitted the requesting CLEC to collocate its DSLAM at the remote terminal; and (4) the ILEC has deployed packet switching capability for its own use.[79]

The parties in Arizona reached impasse regarding the second of these requirements: "there are no spare copper loops capable of supporting the xDSL services that a CLEC seeks to offer." In order to insure its meeting FCC requirements to implement this condition, Qwest literally copied it word-for-word into the SGAT at section 9.20.2.1.2. Nonetheless, CLECs complained that additional language regarding available copper loops must be included in order to ensure that CLECs can offer the xDSL service they desire.

Specifically, AT&T requested that the word “no” be replaced with “insufficient” and that the word “adequately” be added before “supporting,” so that the requirement would be revised to read: "there are *insufficient* spare copper loops capable of *adequately* supporting the xDSL services that the requesting carrier seeks to

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[78] Third Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, 15 FCC Rcd 3696 (rel. Nov. 5, 1999) ("*UNE Remand Order*") ¶313.

[79] Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 & 96-98, FCC 01-26 (Rel. January 19, 2001) ("*Line Sharing Reconsideration Order*") ¶ 56, citing 47 C.F.R. 51.319(c)(3)(B).

offer." Clearly, the CLECs are seeking to add to Qwest's existing obligations under the Rule and FCC orders. Covad admitted as much during the workshop held in Colorado. The CLECs seek to revise the SGAT to include more onerous requirements.

The FCC has already rejected this attempt by CLECs. The identical dispute arose in SWBT's Kansas/Oklahoma proceeding. The FCC held that SWBT had satisfactorily established a sufficient legal obligation because the SGATs at issue "incorporate verbatim the criteria adopted in our *UNE Remand Order* to establish when packet switching will be made available."[80]

In addition, inserting "adequately" to modify the requirement that available loops must be "capable of supporting the xDSL services the requesting carrier seeks to offer" adds nothing but vagueness and the potential for conflict. The CLECs' revision would introduce a layer of uncertainty by requiring a factual inquiry regarding the "adequacy" of loop capabilities. The language in the SGAT (and the Rule) unambiguously states the condition: available loops are either capable of supporting the xDSL service the CLEC chooses to offer or they are not.

The CLECs' idea that "no" should be replaced by "insufficient" is similarly

[80] *Kansas/Oklahoma Order* ¶243 (emphasis added).

problematic. Under the Rule, packet switching must be unbundled if there are no spare copper loops capable of supporting the xDSL service the CLEC seeks to offer. This analysis applies on a customer-by-customer basis. If there is an available loop capable of providing the particular customer with the service the CLEC desires to offer, then the condition is not met. If there is no such loop available to support the xDSL service a CLEC seeks to offer to its customer, the condition is met. The concept of insufficiency simply does not apply. Again, the CLECs' proposal would only introduce an additional layer of uncertainty by requiring a factual inquiry regarding the "sufficiency" of available loops.

Finally, the CLECs' concern that the availability of copper loops will pose an impediment to their ability to obtain unbundled packet switching is moot as a practical matter. In order for packet switching to be unbundled, Qwest must have remotely deployed a DSLAM. Generally, Qwest will only remotely deploy a DSLAM if the existing loops are too long to support xDSL; thus, as a practical matter, where the fourth condition for unbundling -- Qwest has remotely deployed a DSLAM -- is met, the second condition -- no xDSL capable copper loops – will generally also be met.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

Issue PS-2 - Plug and Play: Whether Qwest must offer card at a time access to unbundled packet switching when the FCC concluded that unbundling is not required if Qwest allows CLECs to collocate a DSLAM in its remote terminal.

A. Covad demands the ability to place line cards into Qwest remote DSLAMs, which is sometimes referred to as "plug and play."[81] As an initial matter, Qwest has no obligation to allow CLECs to place line cards in Qwest's remote DSLAMs. In fact, the FCC recently requested comments regarding whether this kind of line card collocation is possible: "We also seek comment on the technical feasibility and practical considerations associated with different methods of providing such access . . . includ[ing] . . . the use of 'plug in' line cards in remote terminal equipment that perform a function similar to that of a traditional DSLAM."[82] The fact that the FCC is considering whether to create a new obligation confirms that no requirement for Qwest to allow CLECs to install line cards in its remote DSLAMs currently exists.

Moreover, there was no evidence in the record to suggest that "plug and play" is

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81 Covad at page 14.

82 *Line Sharing Reconsideration Order* ¶13.

technically feasible without imposing additional obligations on Qwest to unbundle packet switching in situations that are outside of the clearly defined circumstances under which packet switching is required.[83]

The FCC has defined packet switching as "the function of routing individual data units, or 'packets,' based on address or other routing information contained in the packets[,] . . . includ[ing] the necessary electronics (*e.g.*, routers and DSLAMs)."[84] Packet switching qualifies as a network element because it includes "all features, functions and capabilities . . . sufficient . . for transmission, routing or other provision of a telecommunications service."[85]

Plug and play necessitates unbundled packet switching because individual line cards do not have the full functionality required to operate the DSLAM; rather, a line card is merely a sub-component of the DSLAM, with very little stand-alone functionality. ADSL line cards provide DSLAM functionality on a shared resource basis, *i.e.*, ADSL line card performs similarly to a modem pool in that DSLAM functions, including packetizing, are provided to end users on a first come, first

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[83] As more fully discussed in section I.A. above, the FCC requires unbundled packet switching only in certain limited circumstances. *UNE Remand Order* ¶313.

[84] *UNE Remand Order* ¶304.

[85] *UNE Remand Order* ¶304, quoting *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) ¶262.

served basis. Further, an additional DSLAM card is required to address individual end users of served from the ADSL line card and switch packets from the ADSL line cards to the trunk card carrying data packets back to the ATM switch. This card, generically referred to as the CPU, is shared by all ADSL line cards in a DSLAM, which means that data packets for all users are commingled across the DSLAM platform. Taken together, these cards provide DSLAM functionality combined with addressing and switching.

A CLEC's line card must be integrated into the DSLAM and must rely on the functionality of Qwest's DSLAM in order to comprise the features, functions and capabilities necessary to provide DSL service. Thus, plug and play requires unbundled packet switching. Whether providing an individual customer on an ADSL line card to a CLEC or providing an entire ADSL line card to a CLEC, the result is the same—unbundled packet switching.

Thus, allowing CLECs to install line cards in Qwest's DSLAM would effectively provide CLECs access to unbundled packet switching without regard to the limited conditions under which packet switching is required. Because the CLEC demand for the ability to “plug and play” place line cards into Qwest remote DSLAMs would amount to unbundled packet switching in situations where packet switching is not required, the commission should reject this request.

Qwest has implemented its legal obligation in the SGAT to unbundle packet switching in the limited circumstances required by the FCC. It is not required to unbundle packet switching in any situation other than those limited circumstances.

In addition, the facilitator overseeing the 7 state 271 process has agreed with Qwest on this issue, and is recommending that each state Commission adopt the Qwest position to resolve this impasse issue.

<u>Issue PS-3</u> - Whether Qwest can satisfy its Section 271 obligations to provide access to packet switching at just, reasonable and nondiscriminatory rates, consistent with Section 252(d), if it does not identify particular rates for the UNE, but offers packet switching solely on an individual contract basis ("ICB")?

A. AT&T contends that Qwest cannot satisfy its section 271 obligations unless it establishes uniform rate schedules for unbundled packet switching. As an initial matter, Qwest believes that this impasse issue will be moot. Qwest is currently developing rates for packet switching in Washington and will have shortly filed such rates. In the interim, Qwest will provide packet switching at ICB rates until the rates are determined. Qwest believes that it will have established these rates prior to the time it files its section 271 application with the FCC, thus eliminating this issue.

The FCC has expressly held that a section 271 application will not be rejected solely because permanent rates are not yet been established.[86] Rather, the mere existence of interim rates "will not generally threaten a section 271 application so long as an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set."[87] Qwest's interim ICB rates satisfy these requirements. There is no allegation that Qwest's current use of ICB rates is unreasonable under the circumstances. Moreover, Qwest agreed to add a provision to the SGAT specifying that the ICB packet switching rates will be subject to refunds or true-ups once the rates are established.

<u>Issue PS-4</u> - Whether Section 9.20.4.1 should be amended to remove the requirement that a CLEC wait until all four conditions in 9.20.2 have been satisfied before applying for packet switching? Whether Section 9.20.2.1.3 should be amended to require packet switching to be unbundled when it is economically infeasible for a CLEC to remotely deploy DSLAMs?

A. The CLECs object to complying with Rule 319's four conditions for unbundled packet switching, incorporated in SGAT section 9.20, on the basis that complying with the Rule would take too long or allegedly it may be economically infeasible.

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[86] Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (rel. December 22, 1999) ("*BANY Order*") ¶258 ("a BOC's application for in-region interLATA authority should not be rejected solely because permanent rates may not yet have been established for each and every element or nonrecurring cost of provisioning an element").

[87] *SBC Texas Order* ¶88.

The CLECs claim that, if they must wait for Qwest to deploy a remote DSLAM before they can submit a collocation application, Qwest will have captured significant market share because the collocation interval is 90 days. There is no requirement for CLECs to wait for Qwest to deploy a remote DSLAM in order to apply for collocation or deploy their own DSLAMs.

The issue here may be one of timing. If a CLEC were to wait until Qwest deploys its own remote DSLAM and then submit a collocation application, it may take as long as 90 days for the collocation space to be provisioned. This reasoning is based on the faulty assumption that CLECs must wait for Qwest to actually deploy a remote DSLAM before they can submit a collocation application for the remote location. Qwest has committed to disclose to CLECs the locations where Qwest has deployed remote DSLAMs and to provide a space availability report that indicates when there is no space at a location. Further, Qwest has agreed at prior workshops to provide CLECs with additional information regarding Qwest's plans to remotely deploy DSLAMs as follows: when Qwest has made an affirmative decision to deploy a DSLAM at a remote location at a set time, upon request, Qwest will disclose that decision to the requesting CLEC. Thus, CLECs are not required to wait until Qwest has actually deployed the DSLAM.

Covad states that a DLEC remote deploying a DSLAM is not viable.[88] Ultimately, it appears to be an issue of economic viability. Yet Covad provides no financially data to substantiate this claim. In essence, as already mentioned in prior issues, the CLECs are asking this Commission to remove the four conditions established by the FCC, and at the CLECs sole discretion to require Qwest to unbundled packet switching. This is not contemplated by the FCC and should be rejected by this Commission.

Issue PS-5 - New packet switching definitions.

A. WCom has suggested that new definitions for packet switching be incorporated into section 4 of the SGAT. Qwest believes this is unnecessary and could lead to confusion about the packet switching product offering. Packet switching already defined in section 9.20 of the SGAT:

> 9.20.1.1 Unbundled Packet Switching provides the functionality of delivering and routing packet data units via a virtual channel to a CLEC demarcation point. Unbundled Packet Switching includes use of a distribution Loop and virtual transport facilities as well as the DSLAM functionality with the routing and addressing functions of the packet switch necessary to generate the virtual channel.

This definition has been developed over several workshops as a collaborative effort between Qwest and several CLECs/DLECS. To have a different definition in section 4 will be confusing to future users of the SGAT. If WCom feels it is critical

[88] Covad at page 13.

to have a definition of packet switching in section 4, Qwest would agree to repeat the definition that is currently located in section 9.20.1.1 in section 4.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, this concludes my testimony.